

# **Cost Benefit Analysis of Galambany Court**

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The authors acknowledge the Ngunnawal people as the traditional owners and custodians of the Canberra region and recognise the displacement and disadvantage they have suffered as a result of European contact settlement. We recognise the region's significance, as an important meeting place, to other Aboriginal groups. We respect and celebrate the Aboriginal and Torres Strait Islander people, their continuing culture, and the contribution they make to the Canberra region.

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## **Code of Conduct**

Economic modelling does not have a formal code of conduct however, this Cost Benefit Analysis meets the necessary requirements of such a code. As economic modellers we have:

- disclosed who commissioned this work,
- clearly explained our key assumptions,
- provided a sensitivity analysis,
- provided context and comparison, and
- explained our choice of economic model.

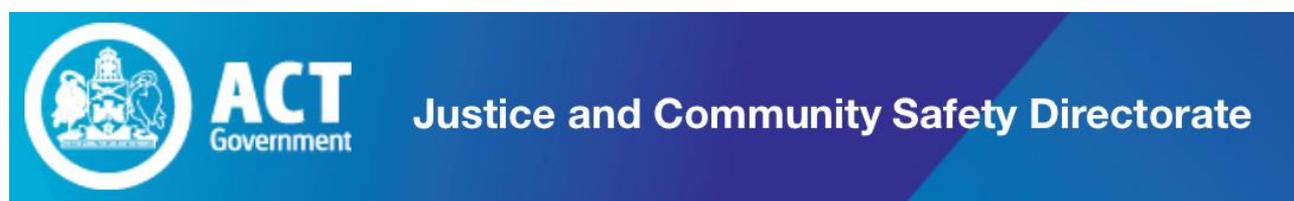
We take responsibility for the plausibility of our results, and our full modelling outcomes are included in this Cost Benefit Analysis report.

This CBA was funded by the ACT Government's Justice and Community Safety Directorate (JACS).

JACS seeks to maintain a fair, safe and peaceful community in the ACT where people's rights and interests are respected and protected.

This is achieved through:

- maintaining the rule of law and the Westminster style of democratic Government;
- promoting the protection of human rights in the Territory;
- providing effective offender management and rehabilitation;
- protecting and preserving life, property and the environment;
- providing for effective and cohesive emergency response and management; and
- developing and amending legislation covering regulatory functions of Government.



*NOTE:* In 2017 the ACT Justice and Community Safety Directorate commissioned a small qualitative evaluation of the experiences of those who had attended Galambany Circle Sentencing Court. The aim was to collect information from those who had participated in Galambany Court, as either defendants or as supporting family members of defendants, and establish their views on the Court's operation, its strengths and weaknesses and any suggestions for improvement. All quotes from defendants or family members of defendants used throughout this CBA report are from people who participated in this qualitative evaluation. For further context regarding these comments please refer to Attachment E.

## Executive Summary

*People take notice of the Elders, My boy has not been in any further trouble (since being at Galambany) – he knew he had people he could go to.*

Interview comment from the mother of a male defendant appearing at Galambany

Galambany Court is a specialised court for Aboriginal and Torres Strait Islander offenders, within the Australian Capital Territory (ACT) Magistrates Court. The purpose of Galambany circle sentencing court is to provide a culturally appropriate ACT Magistrates Court sentencing option for Aboriginal and Torres Strait Islander offenders. Circle Sentencing is a partnership between the ACT Aboriginal and Torres Strait Islander community and the ACT criminal justice system to address ACT Aboriginal and Torres Strait Islander over representation issues and offending behaviour.

The purpose of Galambany Court is to encourage Aboriginal and Torres Strait Islander offenders in the ACT justice system to recognise the harm they have caused the ACT community while reducing the continuing negative impact of the justice system. By incorporating Aboriginal and Torres Strait Islander elders, community leaders and practices, Galambany Court has improved the standing of Aboriginal and Torres Strait Islander people in the ACT justice system. In so doing, it has improved the wellbeing of both Aboriginal and Torres Strait Islanders and the wider community. It has improved wellbeing, health, education and economic outcomes for Aboriginal and Torres Strait Islander offenders sentenced in Galambany Court and their families. This provides substantial economic benefits to the ACT.

Galambany Court has strengthened the justice system's connection with Aboriginal and Torres Strait Islander offenders, while reducing demands on government agencies (such as police, courts, hospitals, foster care, emergency housing, etc.). Galambany Court has improved the life of Aboriginal and Torres Strait Islander offenders and thereby the wider ACT community.

Cost Benefit Analysis (CBA) is a powerful tool for determining the economic value of a program or project. It is widely used by governments to evaluate the impact of their policies on the economic wellbeing of their constituents.

This CBA finds that Galambany Court delivers a substantial positive net economic benefit to the ACT. Galambany Court returns economic benefits that far exceed its economic costs. Sensitivity analysis shows this is a particularly robust conclusion.

This CBA has taken a rigorous approach to identifying and assigning values to costs and benefits arising from Galambany Court. Conservative values have been used to derive Galambany Court's net present value (NPV) and Benefit/Cost Ratio. The relevant costs and benefits have been identified and valued using standard economic methodologies. These valuation and other techniques reveal the substantial economic merit of Galambany Court.

This CBA values the social impacts (ie impact on society's wellbeing) of Galambany Court in economic terms. These values are aggregated over time (10 years) using a discount rate (2%) measuring society's trade-off between current and future consumption. The discounted impacts are compared, using the decision criteria Net Present Value (NPV) and Benefit/Cost Ratio to measure the extent to which the economic benefit to the ACT, of Galambany Court, exceed its costs.

Galambany Court provides a substantial net benefit to the ACT economy. For the ten years from 2017, the NPV of Galambany Court is measured at \$7.4 million in 2017 dollars. The benefit cost

ratio of over 3 to 1 is high compared with other investments. The result validates the economic rationale for government funding for Galambany Court and its continuation.

All the calculated decision criteria indicate that Galambany Court is worth supporting on economic (efficiency of resource use) grounds.

There are no significant uncompensated costs experienced by stakeholders and therefore distributional issues are not a prominent matter in this report.

Galambany Court plays a key role in reducing some of the negative impacts Aboriginal and Torres Strait Islander people may experience from the ACT's justice system. Galambany Court improves the quality of life and output of the ACT community and is an excellent use of ACT resources.

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## Abbreviations

ABS	Australian Bureau of Statistics
ACTCS	ACT Corrective Services
ACTCOSS	ACT Council of Social Service
AIHW	Australian Institute of Health and Welfare
ALRC	Australian Law Reform Commission
AJC	Aboriginal Justice Centre
AJA 2010–13	Aboriginal and Torres Strait Islander Justice Agreement 2010–13
ALS	Aboriginal Legal Service
AMC	Alexander Maconochie Centre
ATSI	Aboriginal and Torres Strait Islander peoples
ATSIEB	Aboriginal and Torres Strait Islander Elected Body
CBA	cost benefit analysis
CHCH	Community Holistic Circle Healing
DPP	Office of Director of Public Prosecutions
DSS	Department of Social Security
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
JACS	ACT Government's Justice and Community Safety Directorate
NPV	net present value
PV	present value

## Introduction

*It is a sad reflection on Australia that our first peoples are so grossly overrepresented in our nation's prisons.*

George Brandis, Attorney-General, ABA and Victorian Bar Conference, Melbourne, October 2016.

### Purpose of Cost Benefit Analysis

The purpose of this Cost Benefit Analysis (CBA) is to identify and value the economic impact (costs and benefits) arising from Galambany Court.

A civilized society should be judged on how it treats its Indigenous people. A civilized society has an ethical obligation to celebrate its Indigenous people and this ethical obligation is the principal motivation for Galambany Court.

In Australia, Government ethical obligations are recognised, and therefore many government services are provided as a right or entitlement.

*“Australia’s social security and universal health care systems provide an entitlement to services based on need” (Productivity Commission 2011: iv).*

Galambany Court is provided as a right and the motivation for doing so is the ethical obligation to provide justice to Aboriginal and Torres Strait Islander people.

However, rights are rarely costless and government needs to account for how it allocates its limited resources. CBA is designed to inform this need.

*“There are a large number of programs about which there is no publicly accessible literature or evaluations available. Rigorous evaluation is important to counter the perception that social support is ineffective in preventing crime and that law and justice approaches are more effective. Available research suggests that this is a false assumption, but there is a need for more local research on the efficacy of crime prevention programs. Most local evaluations are process focused and there is a need for more long term, outcome focussed evaluation.” (ACTCOSS & AJC 2008:86).*

This CBA is a contribution to outcome-focused evaluation in primarily quantitative terms.

The Productivity Commission (2013b) has identified a need for more evaluation of Aboriginal and Torres Strait Islander policies. The ACT Legislative Assembly Standing Committee on Justice and Community Safety has recommended more evaluation of prisoner rehabilitation programs in its March 2015 report “Inquiry Into Sentencing”. The ACT’s Aboriginal and Torres Strait Islander Elected Body and the ACT Council of Social Service (Payne 2017:14) have also recommended the use of Cost Benefit Analysis to evaluate current approaches to Aboriginal and Torres Strait Islander people in the justice system. This CBA is consistent with those recommendations and provides economic accountability by estimating the net economic impact of Galambany Court, on society.

The scope of this cost benefit analysis is provided at Attachment A.

## Methodology

The evaluation methodology used in this report is a rigorous application of Cost Benefit Analysis. It incorporates a desktop review, interviews with key stakeholders, and a review of key documents to identify and value the economic costs and benefits of Galambany Court.

This Cost Benefit Analysis of Galambany Court is a comprehensive means to determine the degree to which the economic value of benefits exceeds the economic value of costs. Cost Benefit Analysis answers the question: *Does Galambany Court add to the net economic wellbeing of society?*

The methodology used in this CBA is consistent with the recommendations of relevant government agencies (Office of Best Practice Regulation 2016, Western Australian Program Evaluation Unit 2015, Queensland Treasury 2015, New Zealand Treasury 2015, New South Wales Government 2013, NSW Treasury 2007, Department of Finance and Administration 2006, European Commission 2008, Treasury Board of Canada Secretariat 1998, United States Office of Management and Budget 2003 & HM Treasury 2003). This CBA follows the standard processes set out in those guidelines.

This CBA comprises recognised techniques for conducting a cost-benefit analysis in an analytical process including:

1. Define the scope of the analysis;
2. Identify program impacts, both costs and benefits;
3. Estimate the value of costs and benefits;
4. Calculate present values and decision criteria;
5. Conduct sensitivity analyses; and
6. Assess the distribution of costs and benefits.

The economic valuation techniques and algorithms used in this analysis are consistent with studies valuing justice system and other social interventions, including in Australia, for example Barrett (1993), Mauser *et al.* (1994), Piehl & DiIulio (1995), Karoly *et al.* (1998), Welsh & Farrington (1999), Chisholm (2000), Wakerman *et al.* (2001), Crime Research Centre (2007), Price Waterhouse Coopers (2009), Browning (2011), Barrett & Applegate (2011), Nous Group (2012), Degeny *et al.* (2012), Daly & Barrett (2012, 2014, & 2016) and Daly *et al.* (2016 & 2017). These studies, like this CBA, identify the factors that affect the relevant outcome, make plausible estimates from reasoned assumptions and aggregate them to obtain estimates of the selected decision criteria.

The unit values used in this CBA are derived from a desk-top analysis of the research literature and presented in a meta-analysis at Attachment D. Meta-analysis is a set of techniques for analysing and summarising the findings of multiple quantitative empirical studies (Lipsey & Wilson 2001). The meta-analysis here derives consensus estimates of unit values from professional judgments and knowledge. Specialist courts for Aboriginal and Torres Strait Islander offenders have been subject to evaluations. These include four on the NSW Circle Courts (CIRCA, 2008; Daly & Proietti-Scifoni, 2009; Fitzgerald, 2008; Potas *et al.*, 2003), two on the Victorian Koori Court Division of the Magistrates' Court (Harris, 2006; Sentencing Advisory Council, 2010), one on the Victorian County Koori Court (Dawkins *et al.*, 2011), one on the Victorian Children's Koori Court (Borowski, 2010), two on the Queensland Murri Courts (Morgan & Louis, 2010; Parker & Pathe, 2006), one on the WA Kalgoorlie Aboriginal Sentencing Court (Aquilina *et al.* 2009), and one on the SA Nunga Courts (Tomaino, 2004). These do not provide an economic evaluation but are used in this report to provide the basis for predicting the impacts of Galambany Court for economic valuation.

This CBA focuses on the costs and benefits of Galambany Court in the ACT. However, the Aboriginal and Torres Strait Islander people assisted by the Court in the ACT are part of the wider Aboriginal and Torres Strait Islander community, keeping in mind, the vast majority of Aboriginal and Torres Strait Islander in the ACT are law abiding citizens. In addition, the operation of Galambany Court is like circle sentencing courts elsewhere in Australia. Therefore, the conclusions drawn here can be applied to other Indigenous circle sentencing courts in Australia and overseas.

## Description of Galambany Court

### Operation of Galambany Court

*We are looking to make sure that jail is the option of last resort.*  
ACT Corrections Minister, Shane Rattenbury, Canberra Times, February 24, 2016

Galambany Circle Sentencing Court (Galambany Court) is a type of restorative justice and therapeutic jurisprudence (Freiberg 2005, Harris 2006a, King 2003, McAsey 2005). It is a specialised court<sup>1</sup> within the ACT Magistrates Court established to provide a culturally relevant sentencing process for Aboriginal and Torres Strait Islander offenders who have pleaded guilty to an offence.

An application for referral to Galambany Court must be made in the ACT Magistrates Court. The Magistrate, prosecution or defence can do this. A referral to Galambany Court means an eligible defendant has agreed to be assessed and sentenced by a Panel of Aboriginal and Torres Strait Islander Elders and respected community members. Only the Magistrate can make a referral.

To be eligible for referral:

- the defendant must identify as an Aboriginal or Torres Strait Islander person and have ties to an Aboriginal and Torres Strait Islander community, either in the ACT or elsewhere;
- the offence can be finalised in the Magistrates Court;
- the offence is not a sexual offence;
- the defendant has entered a plea of guilty; and
- the defendant consents to be assessed to determine their suitability for circle sentencing and agrees to participate fully in the processes of Galambany Court.

The circle sentencing process gives the ACT Aboriginal and Torres Strait Islander community an opportunity to work collaboratively with the ACT criminal justice system to address over representation issues and offending behaviour. Cultural relevant sentencing is supported by the High Court decisions in Fernando and Bugmy and section 33(1)(m) of the Crimes (Sentencing) Act 2005 (ACT) requiring courts to consider the ‘cultural background, character, antecedents, age and physical or mental condition of the offender’

Galambany Court is culturally competent (King & Auty 2005:70) in that it directly engages with Aboriginal and Torres Strait Islander peoples in the design and decision-making processes of the court. Cultural competence in Galambany Court includes employing a Coordinator and community Panel experienced in the particular issues that can arise for Aboriginal and Torres Strait Islander

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<sup>1</sup> The court was originally known as the *Ngambra circle sentencing court* until 2010, when the change of name from *Ngambra* to *Galambany* was recommended by participants in the circle court and agreed to by the ACT Elected Body and United Ngunnawal Council of Elders. Galambany is pronounced ‘Jul-um-baa-ni’ and means ‘we all, including you’.

peoples; and a changed mainstream court environment including the use of a round table, the display of the Aboriginal and Torres Strait Islander flags, Aboriginal artwork, smoking the room, and other cultural items.

Galambany Court has both:

- criminal justice aims:
  - reducing recidivism,
  - improving court appearance rates, and
  - reducing the over-representation of Indigenous people in the criminal justice system, and
- community building aims:
  - providing a culturally appropriate process,
  - increasing community participation, and
  - contributing to reconciliation.

The court aims to:

- involve Aboriginal and Torres Strait Islander communities in the sentencing process,
- increase the confidence of Aboriginal and Torres Strait Islander communities in the sentencing process,
- reduce barriers between the courts and the Aboriginal and Torres Strait Islander community,
- provide culturally relevant and effective sentencing options for Aboriginal and Torres Strait Islander offenders,
- provide offenders with support services to reduce offending behaviour,
- provide support to victims of crime,
- enhance the rights and place of victims in the sentencing process, and
- reduce repeat offending in Aboriginal and Torres Strait Islander communities.

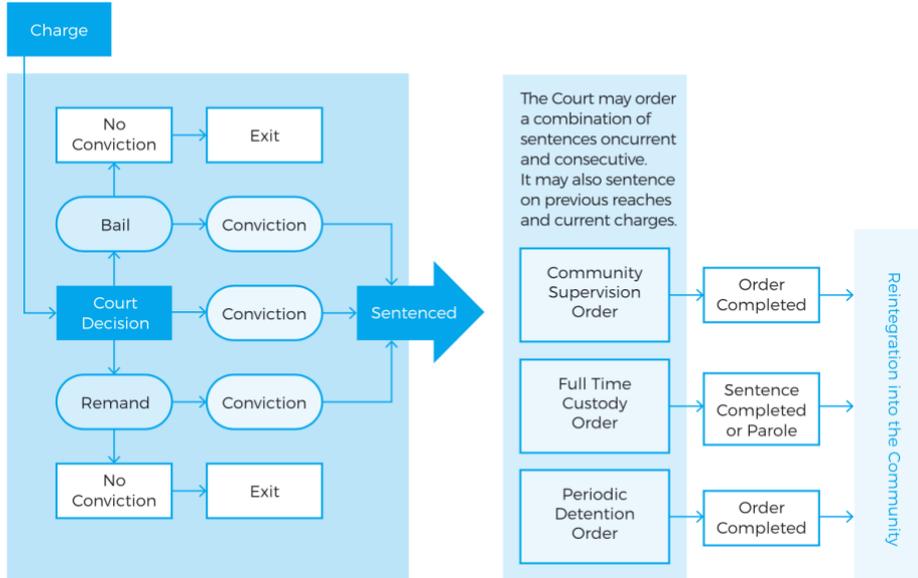
*Sentences imposed are by no means a 'soft option' but are often onerous on the offender as they ...  
involve treatment and close supervision  
(Fingleton 2007: 18).*

Galambany Court gives sentences appropriate to the needs of Aboriginal and Torres Strait Islander offenders, in order to:

- reduce the number of failures to appear,
- decrease breaches of court orders,
- reduce recidivism,
- provide general deterrence, and
- increase community safety.

Over its 14 year history, Galambany Court has dealt with both adult and young offenders. Since the end of 2014 the Court has only heard adult matters. Galambany Court operates in the ACT Magistrates Court between conviction and sentencing (see figure below).

## ACT Magistrates Court process

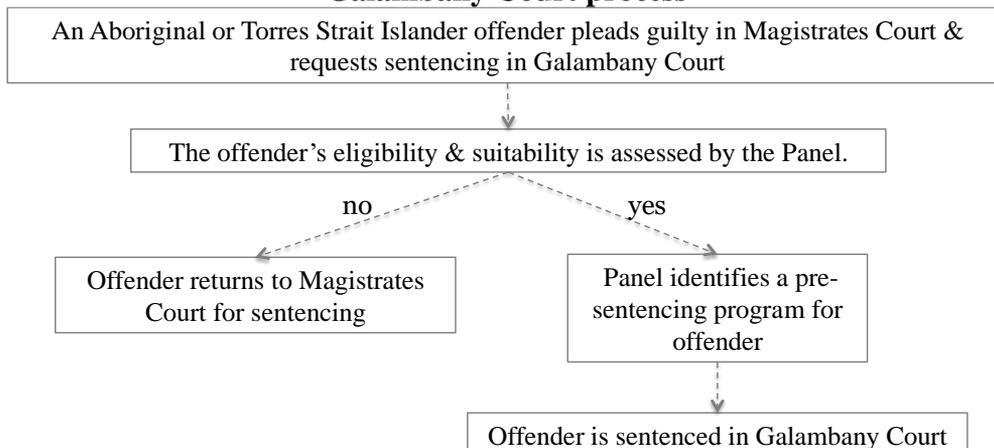


Source: Justice and Community Safety: Annual Report 2015–16, page 49.

Note: periodic detention is no longer a sentencing option in the ACT.

The basic difference in process between the mainstream Magistrates Court and Galambany Court is the inclusion of an extra step between conviction and sentencing. This extra step is an assessment by the Panel of the offender’s eligibility for circle sentencing. If the offender is eligible for Galambany Court, the Panel sets the offender a pre-sentencing program. Approximately three months later, Galambany Court meets to sentence the offender. At that time the Panel and the Magistrate can consider the program achievements of the offender and other matters.

## Galambany Court process



For a more detailed account of Galambany Court see Attachment C.

## What is the problem?

*Overall, imprisonment rates are more related to political choices than to the crime rate*  
(Bartels 2017)

*I got goosebumps from message stick and Elders. Didn't get goosebumps or a sense of pride in mainstream.*

Interview comment from a male defendant appearing at Galambany

The problem addressed by Galambany Court is the negative impact of dispossession on the Aboriginal and Torres Strait Islander community. Aboriginal and Torres Strait Islander people have been marginalised in their own country. This has created a breach between Aboriginal and Torres Strait Islander people in the ACT and the justice system. The justice system requires trust between the community, the police, the courts and the prison. Galambany Court builds trust between the ACT Aboriginal and Torres Strait Islander community and the justice system.

For Aboriginal and Torres Strait Islander people mainstream courts can be inaccessible or alienating. This impedes their access to justice, and undermines the principles underpinning criminal justice—including deterrence, punishment and rehabilitation—for Aboriginal and Torres Strait Islander defendants. This results in a minority of Aboriginal and Torres Strait Islander people being trapped in the justice system. In the NSW, SA and WA Magistrate's Courts, Aboriginal and Torres Strait Islander offenders are between 23% and 50% more likely than non-Indigenous offenders to be sentenced to prison even after accounting for other influential sentencing determinants (Jefferies & Bond 2011:7).

Galambany Court addresses these problems.

## What is the response?

*I am a strong cultural man. I sat up straighter. I liked it because culture is a part of it. I opened my ears, showed respect and looked them in the eyes*

Interview comment from a male defendant appearing at Galambany

Galambany Court works with Aboriginal and Torres Strait Islander social capital<sup>2</sup> and Indigenous Cultural Authority<sup>3</sup> (Cunningham *et al* 2013) to build security, trust and confidence. Building on positive Aboriginal and Torres Strait Islander social capital is crucial to the success of Aboriginal and Torres Strait Islander people within the wider society (Walter 2015 & Page 2015) and provides the theory of change (LogFrame) underpinning the logic of this CBA.

Galambany Court is based on the Aboriginal and Torres Strait Islander social capital integrating family life and community life (Lohar *et al.* 2014). The Elders and respected persons bring the strength of extended kinship relations and respect for elders to Galambany Court giving sentencing more salience to the Aboriginal and Torres Strait Islander offenders. Elders are generally respected for the value of their cultural knowledge, leadership abilities and for making decisions on behalf of the community (McIntyre, 2001). They are particularly valued for helping younger members of the

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<sup>2</sup> Social capital refers to the ability of people to secure benefits by virtue of membership in social networks or other social structures (Portes 1998).

<sup>3</sup> Cultural authority is authority without having to overtly exercise it, as opposed to social authority, which is the ability to command people. The two primary features of cultural authority, competency and legitimacy must be achieved collectively as a group rather than imposed from outside.

community to understand the practical aspects of life, society and culture. They reinforce the strength and resilience Galambany Court offenders gain from connecting to Aboriginal and Torres Strait Islander culture and spirituality.

Aboriginal and Torres Strait Islander Elders and respected persons sit with the Magistrate at the centre of Canberra's justice system. This demonstrates substantive respect for the Aboriginal and Torres Strait Islander community in Canberra. This respect, status and social capital have a real impact on Aboriginal and Torres Strait Islander community outcomes particularly in health, education and justice. Physical capital, such as hospitals and schools, are insufficient without the social capital to facilitate access by Aboriginal and Torres Strait Islander people.

Social epidemiology has identified strong connections between levels of social capital and community health status (Brough *et al* 2007). For example, research in Canada has identified the importance of social capital to the health and wellbeing of First Nation communities (see Mignone 2003; Matthews 2003; Matthews *et al.* 2005). The social determinants of Aboriginal and Torres Strait Islander health include the history of racism and marginalisation, poverty, social class, education, training, powerlessness, employment, place, income, incarceration, housing, family separation, land and reconciliation as (Smith 2007, Anderson 1988; Anderson 2001; Tsey *et al.* 2003; Saggars & Walter 2004, Burris *et al.* 2002, Marmont & Wilkinson 1989, Reynolds *et al.* 20014 & Shepherd & Zubrick 2012). The role of the Aboriginal and Torres Strait Islander Elders and Respected Persons in Galambany Court addresses social factors that may contribute to offending behaviours, such as social isolation and marginalisation. Galambany Court is an important element in Aboriginal and Torres Strait Islander social capital.

Crime is part of a society and reducing crime depends as much on improved social capital as on expanding the physical capital of the justice system (prisons, courts, police stations). Galambany Court by respecting Aboriginal and Torres Strait Islander community leaders strengthens the positive social links between the justice system and the Aboriginal and Torres Strait Islander community. Research identifies the role of Elders or Respected Persons as an integral and invaluable aspect of the process generating accountability between offenders, victims and the wider community (CIRCA 2008; Harris 2006a; Parker & Pathe 2006; Potas *et al.* 2003).

Galambany Court is well placed to prevent crime. Crime is best deterred by certainty of detection while the severity of punishment has little impact (Spelman 2000). Increasing the length of prison sentences does not increase their deterrent effect and short prison sentences have no greater deterrent effect than comparable community orders (Trevena & Weatherburn 2015, Wan *et al* 2012). This validates Galambany Court's approach of building positive social capital with the Aboriginal and Torres Strait Islander community and more emphasis on community orders. By building Aboriginal and Torres Strait Islander social capital in the justice system, Galambany Court increases the cooperation of Aboriginal and Torres Strait Islander people with the justice system and thereby raised the certainty of detection, preventing crime rather than hiding it.

## What are the alternatives?

*No one gets heard by the Magistrate in the mainstream. They're locking you up and you don't get to say anything. And I am not the only person who feels like this.*

Interview comment from a male defendant appearing at Galambany

This CBA identifies the incremental costs and benefits, of Galambany Court, over the likely costs and benefits in its absence. The alternative to Galambany Court considered in this CBA is the mainstream Magistrates Court. This CBA estimates the extra costs and benefits of Galambany Court compared to the Magistrates Court.

The alternative of not using the justice system is not feasible.

A police-based diversion process is an alternative to Galambany Court. However, the types of offences considered by Galambany Court are less suitable for police-based diversion. Therefore, police-based diversion is not considered.

The mainstream Magistrates Court is the most realistic alternative to Galambany Court and is used in this CBA as the alternative against which the impact of Galambany Court is determined.

Relying on the mainstream Magistrates Court does not provide the same level of service as Galambany Court. Comparing the different impacts of Galambany Court and the Magistrates Court is the basis for this CBA. By using the Magistrates Court as our comparison (base case scenario), this CBA captures the costs and benefits of Galambany Court.

## Identifying benefits

*There are way too many blackfellas in prison. We're not worse than whitefellas. But people get labelled. It's a cycle - poverty and your head's not right.*

- Interview comment from a female defendant appearing at Galambany

Galambany Court provides better outcomes for both the ACT Aboriginal and Torres Strait Islander offenders and the wider community. These benefits include improvements in:

- imprisonment,
- criminal justice proceedings,
- unemployment,
- family life for offenders,
- emergency accommodation use,
- educational outcomes,
- foster care, and
- health care use.

Galambany Court's ability to delve deeper into the underlying reasons to the offender's attitude and subsequent behaviour, enables Galambany Panel Members to prescribe more pertinent sentencing options. In the absence of Galambany Court, support services will be less effective and this comes with its own costs, particularly because the outcomes for offenders are increased homelessness, recidivism, unemployment, social exclusion and mental illness.

The benefits of Galambany Court included in this CBA are:

- reduced costs for governments (resources freed for their next best use),
- more productive employment for offenders,

- better educational outcomes for offenders,
- better health outcomes for offenders, and
- better child protection outcomes for offender's children.

The benefits for **offenders** from Galambany Court are substantial. Offenders gain:

- A voice in the justice system;
- Increased confidence, self-esteem, dignity, respect, independence, choice and control;
- A more positive self-identity;
- Empowerment and personal development;
- Raised expectations about what is possible;
- Improved health and wellbeing;
- Reduced mental distress;
- Increased ability to access and use information and services; and
- Networks and support to build relationships.

The benefits for **offenders' families** from Galambany Court are substantial. The offenders' families gain:

- A voice;
- Increased confidence, self-esteem, dignity, respect, independence, choice and control;
- Raised expectations about what is possible;
- Larger combined family income;
- Help with home duties;
- Improved health and wellbeing; and
- Reduced mental distress.

The benefits for the **justice system** from Galambany Court are substantial. The justice system gains:

- Resource savings;
- Improved relationship with the ACT's Aboriginal and Torres Strait Islander community;
- Improved awareness/understanding of Aboriginal and Torres Strait Islander people; and
- Better communication and relationships between community members and legal professionals.

The benefits for the **wider community** from Galambany Court are substantial. The community gains:

- Opportunities for sharing with the Aboriginal and Torres Strait Islander community;
- Stronger families; and
- Reduced crime.

Galambany Court saves the government substantial resources. In the absence of Galambany Court there would be a substantial increase in the resources required by agencies such as the mainstream Magistrates Court, Supreme Court, police, prisons, child protection, DPP, and other government agencies to effectively engage with Aboriginal and Torres Strait Islanders. In the absence of Galambany Court greater costs to support Aboriginal and Torres Strait Islander offenders will shift to these agencies and will inevitably result in even larger costs for the health and welfare systems.

The benefits valued in this CBA are based on Galambany Court promoting an alternative to imprisonment; freeing resources for other economic opportunities; and increasing the productivity of Aboriginal and Torres Strait Islander offenders and their families. In this way Galambany Court provides major benefits to the people of the ACT. Galambany Court minimises the resources required to process Aboriginal and Torres Strait Islander offenders in the justice system and raises their productivity as members of the wider community.

Strengthened Aboriginal and Torres Strait Islander social capital enables:

- Diversion from prison
- Offender accepting responsibility
- Respect for Aboriginal and Torres Strait Islander community

Benefits from resources freed for their next best use:

- Court resources
- Prison resources

Benefits from resources becoming more productive:

- Offender and their families' employment, health, education.

The benefits of Galambany Court are clearly substantial. These benefits are the logical outcome of the modest inputs used up by Galambany Court.

## Program logic

*White people are more educated and they are more likely to stand up for themselves. Harder for Kooris. Galambany can help you sort things out and they try and help you sort things out. Mainstream Court they don't help you sort things out. Judge Boss is fair and she listens. Other Magistrates could learn from her. She listens and asks questions. You are given a chance by Elders and the Judge rather than being pre-judged. Mainstream is very adversarial – they get to kick you but you can't kick back.*

Interview comment from a female defendant appearing at Galambany

Evaluation needs to be based on a theory of how a policy creates social change. In the evaluation literature, this is variously referred to as 'logic model', 'theory of change', 'pathways of change' or 'critical path analysis' (Whelan 2009, Harvard Family Research Project 2009, Guthrie et al 2006, Reisman et al 2007 & Organizational Research Services 2004). This theory of social change is very important as it defines the inputs and outputs of the object of the evaluation. In this case Galambany Court.

The logical framework (LogFrame) validates the causation of social change by specifying the objectives of a project, program, or policy. It aids in the identification of expected causal links (program logic) of the hierarchical results chain of inputs, processes, outputs, outcomes, and impact. It leads to the identification of performance indicators at each stage in this chain, as well as risks that could mitigate the attainment of the objectives (Clark et al 2004:8 & Team Technologies 2005). A similar project logic approach is used in CIRCA (2013:72) to analyse the South Australian Aboriginal Sentencing and Nunga Courts.

The relationship between Galambany Court's inputs and outputs (cause and effect) is summarised in the Logframe table below. This shows that Galambany Court has a logical relationship between:

- **inputs** (*labour, services, materials, etc*) which are used in court activities:
- **activities** (*sittings*) to produce a set of outputs/outcomes:
- **outputs/outcomes** (*Aboriginal and Torres Strait Islander social capital*) to achieve Court's purpose:
- **purpose** (*freeing government resources for other uses and superior productivity of offenders and their families*) which achieves society's goal:
- **goal** (*increased wellbeing of Australians*).

Using this causal hierarchy helps ensure that only the costs and benefits logically pertinent to Galambany Court are included in this CBA.

The Logframe identifies the CBA costs as the *inputs* (resources) used by Galambany Court. The CBA benefits are identified as *purposes*, these are: reduced costs of government agencies and greater production from offenders and their families.

The Logframe (Table 1) displays the hierarchy of Galambany Court impacts in the Narrative Summary column. In the table impact-causality rises, that is: impacts below cause the impacts above.

The Measurable Indicators column quantifies how Galambany Court impacts will be measured.

The Means of Verification column records where the measurement information will be sourced.

The Logframe summarises the risks (shown in the final column) behind the causal relationship between inputs and outputs. These are risks that could prevent the logical-causality achieving the outputs, purposes and goals. The CBA assumes these risks are avoided and therefore Galambany Court causality works. The assuming the risks are avoided allows Galambany Court to move up the logframe table and achieve the goal. These risk assumptions are important for determining what can go wrong with Galambany Court and therefore the risks to be included in the sensitivity analysis undertaken later in the report.

**Table 1: Logframe: Galambany Court**

<b>Narrative Summary</b>	<b>Measurable Indicators</b>	<b>Means of Verification</b>	<b>Risks</b>
<b>Goal:</b> (program objective) Increase Australian's wellbeing	Net present value	CBA report	
<b>Purpose:</b> (aim or impact) <ul style="list-style-type: none"> <li>• more employment</li> <li>• better education</li> <li>• less foster care</li> <li>• less justice system use</li> <li>• less healthcare use</li> </ul>	<b>End Status</b> <ul style="list-style-type: none"> <li>• resources saved.</li> <li>• more output.</li> </ul>	<ul style="list-style-type: none"> <li>• stakeholder interviews.</li> <li>• research literature.</li> </ul>	<ul style="list-style-type: none"> <li>• value of benefit over-estimated.</li> <li>• discount rate excessive.</li> <li>• measuring error.</li> </ul>
<b>Outputs:</b> (deliverables) Aboriginal and Torres Strait Islander social capital <ul style="list-style-type: none"> <li>• Diversion</li> <li>• Offender accepts responsibility</li> <li>• Respect for Aboriginal and Torres Strait Islander community</li> </ul>	<b>Terms of reference</b> <ul style="list-style-type: none"> <li>• number of offenders diverted</li> </ul>	<ul style="list-style-type: none"> <li>• End of program report</li> <li>• stakeholder interviews.</li> </ul>	<ul style="list-style-type: none"> <li>• resources are insufficient or inappropriate</li> </ul>
<b>Activities:</b> (key clusters or work breakdown structure) <ul style="list-style-type: none"> <li>• Assessment sittings</li> <li>• Sentencing sittings</li> <li>• Administration</li> </ul>	<b>Inputs:</b> (budget, people, material, time, cost) <ul style="list-style-type: none"> <li>• labour</li> <li>• services</li> <li>• materials</li> </ul>	<ul style="list-style-type: none"> <li>• program budget</li> <li>• stakeholder interviews.</li> </ul>	<ul style="list-style-type: none"> <li>• resources are insufficient or inappropriate</li> </ul>

## Identify the economic impacts (costs and benefits)

*In mainstream they tell their solicitor stuff and there is no response. In Galambany they own it. In the mainstream there is all this legal jargon and one off interactions. In Galambany they are heard, it isn't time limited, there is space for feelings, people are asked why, the language used means they know what they are being charged with and family could speak. This creates a sense of obligation and respect for the country you are on.*

Interview comment from mother of a male defendant appearing at Galambany

As identified in the Logframe analysis Galambany Court has several benefits and costs.

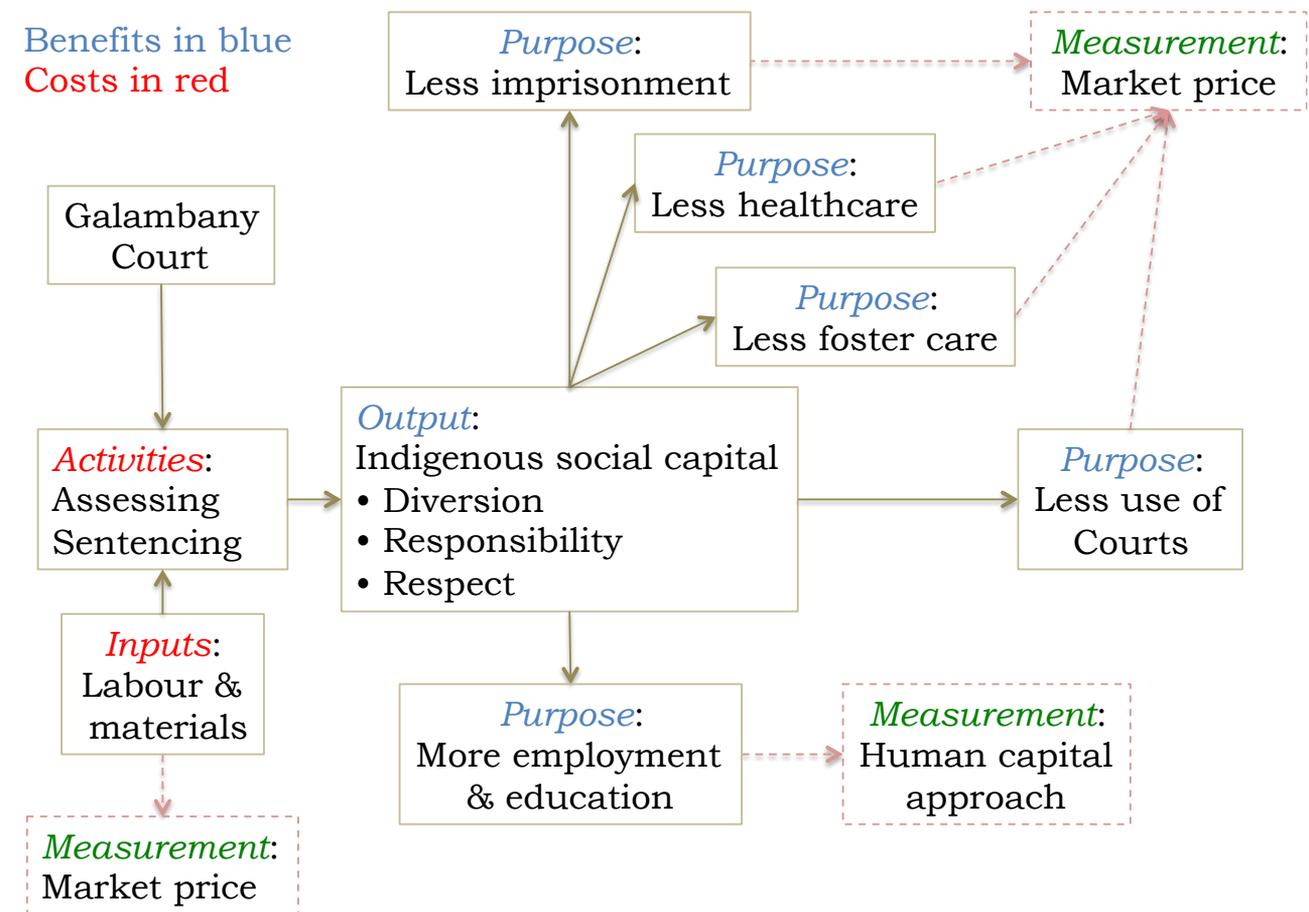
Galambany Court costs directly use up (in administration, sittings & training) a set of resources (labour, materials, etc). These resources are therefore unavailable for other uses in society (i.e. should be included in cost benefit analysis as an opportunity cost to society).

Galambany Court, through Aboriginal and Torres Strait Islander social capital, releases resources for their next best use. These resources would have been required if Galambany Court had not assisted Aboriginal and Torres Strait Islander offenders to more appropriate and less resource using support programs. These released resources are principally Territory government resources. The benefits valued in this CBA are based on Galambany Court reducing the total cost of Territory policing, courts, prisons, health care, education, etc. by diverting Aboriginal and Torres Strait Islander offenders from expensive institutions (prison) into the community.

In addition, Galambany Court allows the resources and activities of Aboriginal and Torres Strait Islander offenders and their families to be more productive. For example, Galambany Court has helped improve school attendance and employment outcomes (see Attachment D). This has the potential to raise the productivity of labour and increase the output of the economy.

These impacts are mapped in the impact chart below (Figure 1). The chart uses the Logframe concepts of Inputs, Activities, Output and Purpose to identify the flow of causation in Galambany Court. The chart also identifies the valuation techniques used to measure the Purposes. This technique corroborates that the selected costs and benefits are germane to this CBA.

Figure 1: Galambany Court Impact Chart



Identifying stakeholders assists in identifying relevant costs and benefits. The stakeholder table below (Table 2) lists the stakeholders impacted by Galambany Court. Understanding which groups are directly or indirectly involved in Galambany Court, their point of view and objective is an important check on the costs and benefits identified in the impact chart above. It also provides an input into the Incidence Table (Planning Balance Sheet) used to examine the distribution of costs and benefits (Krutilla 2005).

Table 2: Galambany Court- Stakeholder objectives

Stakeholder	Point of view	Objective
Australian governments	National/State	Improve Australian's wellbeing
Offenders & families	Individuals	Improve individual wellbeing (health, education, employment)
Justice and Community Safety Directorate	Govt. agency	Improve ACT resident's wellbeing
Aboriginal Legal Service	Agency	Improve legal services
Galambany Court	Govt. Agency	Provide justice system
Support services	Agency	Support Aboriginal & Torres Strait Islander offenders
Public Housing	Govt. agencies	More appropriate housing
Child & Youth Protection Services	Govt. agencies	Less notifications, care & family violence
Police	Govt. agencies	Improved use of Police resources
Courts	Govt. agencies	Improved use of Court resources
Prison system	Govt. agencies	Community safety
Education	Govt. agencies	Pupil attendance & completion
Health system	Govt. agencies	Fewer admissions

The Incidence Table (or Planning Balance Sheet) (Table 3) summarises the costs and benefits of Galambany Court stakeholders. Examining the stakeholder groups it is clear that the costs are borne

principally by the Territory funders and service providers (the service providers are compensated by government funding). Most of the benefits go to the Territory government through reduced use of justice, health, housing, family and education agencies. The Aboriginal and Torres Strait Islander offenders and their families benefit from better health, education, wellbeing and great labour productivity.

*At least they (Galambany) would listen. With mainstream you have got to take whatever you are given.*

Interview comment from mother of a male defendant appearing at Galambany

**Table 3: The Incidence of costs and benefits**

Participant	Cost	Benefit
Australian governments	Grant money	Fulfil govt. policy, reducing govt. spending
Offenders & families	time	Better health & wellbeing, greater productivity
Justice & Community Safety Dir.	labour, materials, services	Fulfil govt. policy
Aboriginal Legal Service	labour, materials, services	Govt. funding
Magistrates Court	labour, materials, services	Govt. funding
Support services	labour, materials, services	Govt. funding
Public Housing	no extra cost	Fewer clients, freed resources
Child & Youth Protection Services	no extra cost	Fewer clients, freed resources
Police	no extra cost	Fewer clients, freed resources
Courts	no extra cost	Fewer clients, freed resources
Prison	no extra cost	Fewer clients, freed resources
Education	no extra cost	Pupil attendance & completion
Health system	no extra cost	Fewer admissions, feed resources

Note: the no extra cost is due to these services experiencing a reduction in use due to Galambany Court.

Galambany Court provides the Territory governments with substantial cost savings while improving the wellbeing of Aboriginal and Torres Strait Islander offenders and their families.

## Value the Program's costs and benefits

*It feels like you've put something into it (Galambany) – it's not just being done to you, you're putting your own two cents worth in.*

Interview comment from a male defendant appearing at Galambany

Economic valuation requires assumptions to make complex reality tractable in a rigorous cost benefit analysis framework. As shown in the preceding analysis this CBA encompasses the relevant costs and benefits. This CBA measures the net impact on Canberra's economic wellbeing of Galambany Court.

As agreed in the terms of reference, the CBA assumes a 10-year timeframe beginning in 2017. Ten years is a sufficient timeframe to encompass the relevant future benefits and costs. Longer time periods increase uncertainty. The future benefits and costs are compared by aggregating back to the year 2017 using a discount rate of 2% (explained below).

The CBA techniques used in this report are in accord with relevant professional practice. Cost Benefit Analysis commonly makes economic valuations based on the research literature. This methodology is known as Benefit Transfer and is used in this CBA. Attachment D summarises the relevant research literature to substantiate the valuations adopted in this CBA.

Details of the valuation of Galambany Court costs and benefits are given below. They have been verified with relevant stakeholders, however the estimates are the responsibility of the authors.

*I can see the progress and so can the Panel and at the last session they were really pleased with him. He is more likely to listen to them because they are Elders and not whitefellas.*

Interview comment from mother of a male defendant appearing at Galambany

## Costs

### Cost Summary: Galambany Court

2017-2026 Total Present Value (2017 dollars discounted by 2% over ten years).

Galambany Court	\$2,536,000
Longer in remand	\$360,000
Extra community services	\$405,000
<b>Total Costs</b>	<b>\$3,300,000</b>

*Judges (in mainstream) are a production line – next paper, next paper.*

Interview comment from a male defendant appearing at Galambany

#### • Galambany Court: labour, services and supplies

##### Reason:

The resources consumed operating Galambany Court will not be available for other uses and therefore there is an opportunity cost to society. These costs would not have arisen without Galambany Court.

##### Methodology:

The resources used by Galambany Court will be purchased in competitive markets where prices are a good estimate of economic value. Therefore, these costs are valued at market prices as used in the JACS budget.

The 2017-18 budget for Galambany Court is \$147,415 (personal communication JACS 2017). This budget includes the cost of the full time Galambany Court Coordinator, panel member reimbursements, training expenses, ICT charges and a small budget for tea/coffee/snacks in the courtroom.

Overhead costs of JACS administration incorporate a proportion of salary costs for the Executive, Director, Manager, Senior Policy Officer and Governance/Administration officers who all hold responsibility for overseeing/administering the court. In 2017-18, this is expected to add \$86,505 to the cost of providing Galambany Court (personal communication JACS 2017).

Galambany Court Magistrate normally sits 10 days per year. Distributing the annual remuneration of \$344,084 for ACT Magistrates, determined by the ACT Remuneration Tribunal, over 260 working days gives a total cost for Galambany Court's 10 sitting days of \$13,234 per year. Adding 100% for costs of an Associate, court recorders, and utilities gives a total cost of \$27,000 pa.

Galambany Court uses a meeting room that could have alternative uses. The most likely alternative use of this space is offices. The space could accommodate a four person workspace

and a web search identified the typical rent for this type of space at \$400 per week giving an annual rent of \$21,000.

Altogether, this gives a total cost to run Galambany Court of \$282,000 per year.

See Attachment D for more detail.

**2017-26 Total Present Value: \$2,536,000** (2017 dollars discounted by 2% over ten years)

*Best because they (Galambany Panel) listen – you’re more likely to listen to them. You can explain yourself. I’ve got a job and I can explain this. They listen and take things into account.*

Interview comment from a male defendant appearing at Galambany

**• Galambany Court offender use of extra community services**

**Reason:**

Galambany Court recommends or requires offenders to use specific community services. Offenders sentenced in the mainstream Magistrates Court would have accessed some of these services but some will be extra. The extra resources consumed by community services will not be available for other uses and therefore are an opportunity cost to society. These costs would not have arisen without Galambany Court.

**Methodology:**

The resources used by the community services will be purchased in competitive markets where prices are a good estimate of economic value. Therefore, these costs are valued at market prices.

The extra community services are valued at \$1,000 per offender. For the 45 Galambany Court sentenced offenders this gives a total extra community service cost of \$45,000 for each year of Galambany Court’s operation.

See Attachment D for more detail.

**2017-26 Total Present Value: \$405,000** (2017 dollars discounted by 2% over ten years)

*All are on the same level – even the Magistrate is on the same level and doesn’t just point the finger.*

Interview comment from a male defendant appearing at Galambany

**• Galambany Court offenders may stay longer in remand**

**Reason:**

Galambany Court involves an extra stage compared to the mainstream Magistrates Court. There will be extra cost to the AMC if Galambany Court results in longer periods in remand for some offenders. Extra resources consumed by the AMC will not be available for other uses and therefore are an opportunity cost to society. These costs would not have occurred without Galambany Court.

**Methodology:**

The resources used by the AMC will be purchased in competitive markets where prices are a good estimate of economic value. Therefore, these costs are valued at market prices.

Based on the research literature summarised in Attachment D, this CBA estimates an extra cost to the AMC of \$400 per adult prisoner per day<sup>4</sup>.

Some Galambany offenders in remand would have received a custodial sentence in the mainstream Magistrate’s Court and therefore there is no extra time in prison. Assuming conservatively that 10 offenders are imprisoned for an average of 10 extra days (Galambany Court typically sits once a month).

**Galambany Court, Aboriginal and Torres Strait Islander offenders sentenced, number**

Year	2011	2012	2013	2014	2015
Offenders	40	44	26	48	44

Source: ACT Criminal Justice Statistical Profile - September 2016

There is an extra cost to the AMC of \$40,000 for each year of Galambany Court’s operation.

See Attachment D for more detail.

**2017-26 Total Present Value: \$360,000** (2017 dollars discounted by 2% over ten years)

*Without Galambany my child would have ended up dead. Galambany has offered the chance to re-evaluate life. It has made them think more.*

Interview comment from a parent of an adult child who appeared at Galambany.

**Benefits**

**Benefit Summary: Galambany Court**

2017-2026 Total Present Value (2017 dollars discounted by 2% over ten years)

<b>Output gains</b>	
Employment	\$3,372,000
Offender life span	\$1,079,000
Education	\$252,000
<b>Resources freed for alternative use (cost savings)</b>	
Justice system	\$5,332,000
Health	\$180,000
Education	\$135,000
Child protection	\$135,000
Accommodation	\$117,000
Violence against women	\$111,000
<b>Total Benefits</b>	<b>\$10,713,000</b>

<sup>4</sup> This is conservatively based on the Productivity Commission’s annual Report on Government Services (ROGS).

***This CBA has not placed a value on preventing deaths in custody and the reasons for this are outlined below.***

A CBA is an evaluation at the level of the entire community. Placing a value on the value of human life is a standard component of many CBAs. Estimates of the value of a human life should ideally include both the productive value of a human life (Human Capital Approach) and the consumption benefit of a human life (willingness-to-pay). It should be noted that economic valuations of life are averages and do not apply to any particular individual, nor are they indicative of the quantum that may be placed on the value of any particular individual's life through compensatory or legal processes.

Economic estimates of the value of life typically are well over one million dollars (Abelson 2003 & Viscusi & Aldy 2003). The Department of Prime Minister and Cabinet<sup>5</sup> (2014) estimate the value of a statistical life at \$4.2m and the value of a statistical life year at \$182,000, in 2014 dollars. These willingness-to-pay estimates of the consumption benefit of a human life would be at least as high for Aboriginal and Torres Strait Islander people as for the non-Aboriginal and Torres Strait Islander population.

However estimates based on the Human Capital Approach (HCA) are generally much lower. This is because Aboriginal and Torres Strait Islander people generally have significantly poorer health than other Australians and typically – and tragically – die at much younger ages. This is exacerbated by a range of factors including the staggeringly higher rates of imprisonment compared to the general population, figures which are even higher in the ACT. In addition, due to the ongoing impacts of institutionalised racism, lateral violence and systemic discrimination including higher rates of imprisonment, Aboriginal and Torres Strait Islander people are generally unlikely to be as productive – although this average conceals Aboriginal and Torres Strait Islander people who are highly productive and well paid – as assumed in most HCA estimates. These HCA value of life estimates only measure the productive value of a human life and as such are minimum estimates. The economists who have prepared this research recognise that placing a value on preventing deaths in custody, which involves estimates of the value of human life is a very sensitive area. They also note that as the following quote from an article titled ‘*What is saving an Australian life worth?*’ states:

*The reality is that human life is constantly being priced - every time a road is designed, every time another safety regulation is mooted, every time an expensive new drug is considered for government subsidy, every time a court decides appropriate compensation for wrongful death. Abacuses of actuaries are constantly on the case.*<sup>6</sup>

ACT Justice and Community Services as those who commissioned this research suggested to the economists that placing a value on preventing deaths in custody in the ACT may cause offence or distress to the families of those persons who have died at AMC. Out of respect and the desire not to escalate any distress or suffering the body of this report does not contain a value on preventing deaths in custody. That this figure has not been included in the body of this report should not be taken to mean there is no economic value in preventing deaths in custody at AMC.

*Economic modelling of preventing deaths in custody, whilst not in the body of the report, is contained in Attachment D*

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<sup>5</sup> [https://www.pmc.gov.au/sites/default/files/publications/Value\\_of\\_Statistical\\_Life\\_guidance\\_note.pdf](https://www.pmc.gov.au/sites/default/files/publications/Value_of_Statistical_Life_guidance_note.pdf)

<sup>6</sup> <https://www.smh.com.au/business/the-economy/what-is-saving-an-australian-life-worth-20170109-gtny3a.html>

## **Output gains**

The research literature demonstrates that initiatives such as Galambany Court increase Australian output by allowing Aboriginal and Torres Strait Islander offenders and their families to be more productive. Galambany Court will improve their physical health, mental health, academic achievement, local economic development, and lower rates of homicide, suicide, and substance abuse. This research is summarised in Attachment D.

*With Galambany you can explore your own culture. It builds confidence to explore culture.*  
Interview comment from parent of a Galambany defendant

### **• Output gains from improved educational outcomes for offender's children**

#### **Reason:**

Galambany Court improves the educational performance of children of Aboriginal and Torres Strait Islander offenders and thereby those children's lifetime contribution to the labour force. The economic value of output gains from these education-based employment improvements are a benefit to society (increased output) and are included in this Cost Benefit Analysis. The research literature valuing the education's impact on employment output is summarised in Attachment D.

Education for Aboriginal and Torres Strait Islander children is even more important for their future incomes than it is for the wider community (Biddle 2010). Avoided imprisonment allows offenders to be more actively engaged in school activities. This parental involvement is an important contributor to educational achievement of children (Hill & Tyson 2009). Galambany Court will reduce the absenteeism, performance problems and misbehaviour of the children of Aboriginal and Torres Strait Islander offenders. These are significant predictors of early school leaving (Eivers *et al.* 2000:8-9) and reduced lifetime contribution to the labour force.

The economic value of output gains due to these employment improvements are a benefit to society (increased output) and are included in this Cost Benefit Analysis.

#### **Methodology:**

Based on the research literature summarised in Attachment D, this CBA conservatively estimates the benefits of Galambany Court to be a 2% increase in lifetime average earnings for children of Aboriginal and Torres Strait Islander offenders.

The number of Galambany Court offender's children with educational problems is conservatively estimated as 5% of the 45 Aboriginal and Torres Strait Islander offenders sentenced by Galambany Court, giving two students in each of the ten years. These two students will experience less absenteeism, better educational performance and better behaviour thereby improving their educational outcomes.

The median total personal income for Aboriginal and Torres Strait Islander persons in the ACT is estimated at \$792 per week in the 2016 ABS census (see Attachment E). In 2017, the minimum wage was \$695 per week, or \$18 per hour. On this basis we assume a conservative annual average wage of \$35,000 over a 30 year working life. This is discounted by 2% per year (using an annuity factor of 22.3965) giving a total present value of a lifetime employment output as \$784,000. Increasing this lifetime output by 2% produces an extra

\$16,000 per student over their working life. For the 2 students assisted each year this results in an improved productivity valued at \$32,000.

The students may not begin working for several years. Therefore, the benefit \$32,000 will not begin in the year of sentencing but from the year of first employment. This CBA assumes a delay of 6 years. Discounting by 2% pa (using a discount factor of 0.888) back to the year of sentencing results in present value benefit of \$28,000 for two students in each year of Galambany Court's operation.

See Attachment D for more detail.

**2017-26 Total Present Value: \$252,000** (2017 dollars discounted by 2% over ten years).

*My family spoke at the assessment phase – gave them some of my background. That makes a difference to how the Court sees you. I got a job and a missus and that can be taken into account.*

Interview comment from a male defendant appearing at Galambany

#### • **Output gains from increased employment of offenders**

##### **Reason:**

Galambany Court, directly and indirectly, assists Aboriginal and Torres Strait Islander offenders to engage more fully in the workforce, both paid and unpaid. The economic value of employment gains is a benefit to society (increased output) and is therefore included in this Cost Benefit Analysis.

##### **Methodology:**

Imprisonment has a very negative impact on access to employment prospects and output (Hunter & Borland 1999). The benefits of reducing unemployment can be measured by the contribution this makes to output, based on average weekly earnings measures (human capital approach)<sup>7</sup>.

In the CBA literature this increased output is often valued at the minimum wage rate (Bauer *et al.* 2013). This provides a minimum (i.e. conservative) estimate of a person's wage (in competitive employment) and thereby an estimate of the value of output (net of other input costs) produced by that person.

Based on the conservative assumption that Galambany Court diverts 10 Aboriginal and Torres Strait Islander offenders to non-custodial sentences (avoiding imprisonment) estimates can be made of the immediate impact of retaining existing employment and the long term impact of life time employment.

The immediate impact on retaining existing employment for 5 offenders, for an average of 3 months of imprisonment, on the minimum wage of \$3,000 per month, results in extra employment output of \$9,000 per offender, giving a total of \$45,000 for the 5 offenders.

The long-term impact means that 2 offenders are (as a result of Galambany Court) able to obtain work for an extra 5 years at the minimum wage of \$35,000 pa. When this increased output is discounted (back to the year of sentencing) by 2% pa (using an annuity factor of

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<sup>7</sup> It also increases the taxation revenue raised by Government and reduces reliance on unemployment benefits, however these are transfer effects rather than a net benefit. Accordingly, taxation benefits are not included as to do so would result in double-counting (Wilkins *et al.* 2012).

4.7135), the present value of the increase in employment output is valued at \$330,000 for both offenders.

This gives a total employment benefit of \$45,000 plus \$330,000 giving a total of \$375,000 for each year of Galambany Court's operation.

See Attachment D for more detail.

**2017-26 Total Present Value: \$3,372,000** (2017 dollars discounted by 2% over ten years).

*Without Galambany I think my son would have been in jail – at least 2 years- and this would have put him on the path to more and more offending. But he has done everything the Panel has suggested and he looks so much different - healthy. He could hear the advice from the Elders but not from whitefellas.*

Interview comment from mother of a male defendant appearing at Galambany

#### • **Output gains from improved health outcomes of offenders**

##### **Reason:**

Aboriginal and Torres Strait Islander people generally have significantly poorer health than other Australians and typically die at much younger ages. This is exacerbated by imprisonment.

The Galambany court improves the general health of Aboriginal and Torres Strait Islander Offenders by prescribing more appropriate sentencing options that address the underlying factors to the offending behaviour. This increased human life is included in this CBA as a benefit.

##### **Methodology:**

Estimates of the value of a human life<sup>8</sup> should ideally include both the productive value of a human life (Human Capital Approach) and the consumption benefit of a human life (willingness-to-pay) (Viscusi 2008 & Hammer 1997).

Economic estimates of the consumption value of life typically are well over one million dollars (Abelson 2003 & Viscusi & Aldy 2003). The Department of Prime Minister and Cabinet (2014) estimates that the Australian value of a statistical life is \$4.2 million in 2014 dollars. These willingness-to-pay estimates of the consumption benefit of a human life would be at least as high for Aboriginal and Torres Strait Islander offenders as for the rest of the population.

Estimates of the productive value of a human life, based on the Human Capital Approach (HCA) are generally much lower. In addition, due to the widespread lack of appropriate support, Aboriginal and Torres Strait offenders are unlikely to be as productive<sup>9</sup> as assumed in most HCA estimates. These value of life estimates only measure the productive value of a human life and as such are minimum estimates.

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<sup>8</sup> Rights based approaches to human life embodied in ethics, law and religion regard human life as priceless. Therefore, the economic value of a human life is only a portion of its wider value.

<sup>9</sup> It is important to note that this average conceals Aboriginal and Torres Strait Islander people who are highly productive and well paid.

To be conservative a very low estimate for the average productive value of a human life is used in this CBA and the consumptive value is omitted.

This CBA assumes that 5 of the 40 Aboriginal and Torres Strait Islander offenders sentenced by Galambany Court gain an average of one extra year of working life (after on average working 19 years) and values this extra year at \$35,000 (around the minimum wage). Discounting back to the present at 2% per year (using a discount factor of 0.673) gives \$24,000 per person per year and \$120,000 for the total 5 people each year of operation.

See Attachment D for more detail.

**2017-26 Total Present Value: \$1,079,000** (2017 dollars discounted by 2% over ten years).

*The Panel tell them (the defendant) what I tried to tell them as a parent. This reinforces what the parents are saying and helps back up the parents too.*  
Interview comment from a parent of a defendant appearing at Galambany

*Easier to make the Panel understand me. I got no record. I thought they will know me through playing football at Boomanulla.*  
Interview comment from a male defendant appearing at Galambany

### **Resources freed for alternative use (cost savings)**

Galambany Court increases productivity of public services through cost savings: freeing economic resources for their next best use. Galambany Court assists Aboriginal and Torres Strait Islander offenders to find the most appropriate services (health, justice system, accommodation, education, etc). Typically, these appropriate services are less expensive (over the life of the Aboriginal and Torres Strait Islander offender) than the services that would be used without the assistance of Galambany Court. The benefits (net of the cost of the more appropriate alternatives) flow directly to reductions in government budget deficits or can be used to support other government priorities. The resources freed by this improvement in efficiency are available for other uses in the ACT economy.

*At least they (Galambany) would listen. With mainstream you have got to take whatever you are given.*  
Interview comment from mother of a male defendant appearing at Galambany

### **• Education cost savings**

#### **Reason:**

Galambany Court reduces the cost of running the education system, thereby saving society's resources. Galambany Court helps the children of Aboriginal and Torres Strait Islander offenders to prosper in the general education system. Galambany Court achieves education cost savings. These savings are a benefit to society and therefore are included in the CBA.

#### **Methodology:**

Galambany Court frees education resources for alternative uses and those uses can be valued by the market prices paid for them, principally wages, transport, accommodation, and other services and supplies.

Each year the number of students in the families of Galambany Court offenders is very conservatively estimated as 10. This CBA assumes that 30% of those students (3 students) will require less educational assistance at a saving per student of \$1,000 pa. Over an average of six years of schooling, the \$1,000 pa is valued in present terms as the lump sum value of an annuity of \$1,000 pa for six years discounted by 2% pa (using an annuity factor of 5.6014) giving a present value of \$5,000 per student per annum. For all 3 students this adds to \$15,000 for each year of Galambany Court's operation.

See Attachment D for more detail.

**2017-26 Total Present Value: \$135,000** (2017 dollars discounted by 2% over ten years).

*It's part of where I come from. They are trying to get us all together and in the Court something is coming from all mobs. Having culture there – it is our history – all our families are combined into the picture.*

Interview comment from a male defendant appearing at Galambany

• **Child protection cost savings**

**Reason:**

Galambany Court by reducing the numbers of parents experiencing detention reduces the use of child protection and thereby saves society's resources (lowers costs). Galambany Court helps Aboriginal and Torres Strait Islander offenders maintain their families. It helps offenders with children in out-of-home care to maintain contact with their children and strengthens the placement stability of their looked-after-children. Placement stability improves outcomes for looked-after-children (Pecora 2010). The alternatives are more costly child protection processes. The resulting savings are a benefit to society and therefore are included in the CBA.

**Methodology:**

Galambany Court has freed child protection resources for alternative uses and those uses can be valued by the market prices paid for them.

Based on the research literature summarised in Attachment D, this CBA conservatively estimates a net cost reduction to the public sector of \$3,000 per annum per child that avoids child protection services. This CBA assumes that of the 40 Aboriginal and Torres Strait Islander offenders sentenced by Galambany Court there are 5 children that avoid child protection because the custodial parent is not sentenced to imprisonment. This achieves a total annual saving of \$15,000 for each year of Galambany Court's operation.

See Attachment D for more detail.

**2017-26 Total Present Value: \$135,000** (2017 dollars discounted by 2% over ten years).

*If my son had been sentenced to a custodial sentence he would have accepted it if the Panel said he needed to do it. But if this happened in mainstream he would have been angry and that anger would have followed him in. Galambany gave him the opportunity to redeem himself. He would feel he is letting down the Elders if he goes back before them.*

Interview comment from mother of a male defendant appearing at Galambany

#### • **Medical cost savings**

##### **Reason:**

Imprisonment has substantial negative impacts on the health of offenders and their families. Galambany Court substantially reduces health costs, releasing resources for alternative uses. Those uses can be valued by the market prices paid for them.

##### **Methodology:**

Galambany Court assists offenders to gain appropriate healthcare through panel members exploring the offender's health issues with them in more depth, sensitivity and understanding. Typically, this care is more likely to be community based and at lower cost than in the absence of the Court. Examples of the typical cost savings are given in Raman *et al.* (2005b).

Based on the research literature summarised in Attachment D, this CBA conservatively estimates a net cost reduction to in health expenditure of \$2,000 per annum for each of the 10 Aboriginal and Torres Strait Islander offenders who would, without Galambany Court, receive a custodial sentence. This achieves a total annual saving of \$20,000 for each year of Galambany Court's operation.

See Attachment D for more detail.

**2017-26 Total Present Value: \$180,000** (2017 dollars discounted by 2% over ten years).

#### • **Costs avoided from reduced violence against women by offenders**

##### **Reason:**

Galambany Court assists in the reduction of violence against women by more effectively dealing with the perpetrators of domestic violence in prescribing more appropriate sentencing outcomes. Violence against women has substantial negative economic impacts on society. By reducing violence against women Galambany Court provides a benefit to the ACT.

##### **Methodology:**

Violence against women and their children costs the Australian economy an estimated \$14 to \$26 billion each year (National Council to Reduce Violence against Women and their Children, 2009, Access Economics 2004, Laing 2001, Walby 2004, Snively 1995 & KPMG 2016:11-13).

In 2007-08, for every woman whose experience of violence could be prevented, \$20,766 in costs across all affected groups in society was avoided (National Council to Reduce Violence Against Women and their Children 2009). This 2007-08 estimate has been up-dated to 2014-15 by Price Waterhouse Coopers (2015:15) to \$26,780 per woman. Its components are:

- Pain, suffering and premature mortality costs \$10,075 per victim.
- Health care cost of \$1,312 for every victim.
- Lost employment output per victim of \$1,969.

- Victims of partner violence are typically less likely to form future relationships and therefore lose the benefit of living in a larger household that can pool their resources and enjoy the resulting economies of scale. This forms a large part of the consumption cost per victim of \$9,179.
- Police and court costs of \$1,879 for victims of partner violence and \$1,490 for violence perpetrated by non-partners.
- Child protection and extra education cost of \$639 per victim.

Making the conservative assumption that Galambany Court removes one woman from violence every second year and using the unit cost of \$25,000 gives a saving of \$12,500 for each year of Galambany Court operation.

See Attachment D for more detail.

**2017-26 Total Present Value: \$111,000** (2017 dollars discounted by 2% over ten years).

*Separation between sentencing and assessment gives them time to reflect and gives them a goal. 'I'm not going to do nothing until the hearing.' They have three months to think about things. More sense of responsibility. They have more respect for Magistrate Boss.*  
Interview comment from mother of a male defendant appearing at Galambany

#### • Accommodation cost savings

##### Reason:

A custodial sentence increases the likelihood that offenders will become homeless. Galambany Court helps Aboriginal and Torres Strait Islander offenders retain their access to housing.

The cost of homelessness is high. Hospitalisation, medical treatment, incarceration, police intervention, and emergency shelter expenses make homelessness very expensive for governments and taxpayers. Culhane *et al.* (2002) established that persons placed in supportive housing achieve marked reductions in shelter use, hospitalisations, length of stay per hospitalisation, and time incarcerated.

Galambany Court has helped offenders to retain low cost accommodation resources freeing the higher cost homeless oriented accommodation resources for alternative uses. Those uses can be valued by the market prices paid for them.

##### Methodology:

Reducing homelessness provides substantial public sector cost savings (Thomson *et al.* 2001, Flatau *et al.* 2008 & Connelly 2014). Based on the research literature summarised in Attachment D, this CBA conservatively estimates a net cost reduction to the public sector of on average \$8,000 per person assisted out of crisis accommodation per year (assuming five weeks per person per year). In addition, appropriate housing also has positive impacts on health, education and employment (valued at an additional \$5,000 per year).

For each of the 10 Aboriginal and Torres Strait Islander offenders who would, without Galambany Court, receive a custodial sentence, it is assumed that one would have become homeless for a year. This gives a saving of \$13,000 for each year of Galambany Court's operation.

See Attachment D for more detail.

**2017-26 Total Present Value: \$117,000** (2017 dollars discounted by 2% over ten years).

*It's a lot easier to talk to your own. Don't feel like you're going to be prejudged. If you want be heard go to Galambany. Court should be about having a voice.*  
Interview comment from a female defendant appearing at Galambany

### **Justice System cost savings**

The high number of Aboriginal and Torres Strait Islander people inappropriately held in the justice system has led to considerable strain on police, court and prison services and related costs (McCausland *et al.* 2013). Substantial economic resources are used up in the justice system. Australian governments spent nearly \$15 billion dollars on the justice system in 2013-14: 68% on the police, 23% on prisons and 9% on the courts (SCRGSP 2015a:C.8). A major benefit of Galambany Court identified in this CBA is a reduction in the use of justice system resources, freeing them for their next best use.

Aboriginal and Torres Strait Islander people (in the absence of Galambany Court and alternative pathways) are often pressed into the criminal justice system early in life. Once caught up in a cycle of charges, court appearances and incarceration, Aboriginal and Torres Strait Islander offenders use up substantial resources (Baldry *et al.* 2015:52). Substantial costs fall on the individual Aboriginal and Torres Strait Islander offenders, their families and communities, as well as the government. These costs increase over time, as Aboriginal and Torres Strait Islander offenders become entrenched in the criminal justice system and are further disadvantaged.

Galambany Court provides a net economic benefit to Australia by diverting offenders from the mainstream courts and prison to community-based programs. Offender diversion saves police, court and prison resources (freeing resources for other uses). Diverting offenders improves their productivity, creating new resources for the Australian economy.

Justice system diversion programs reduce re-arrests, increase median time to subsequent arrest, and reduce the likelihood of post-diversion imprisonment (Crime Research Centre 2007:9). Diversion influences important areas of an offender's life and can produce substantial economic savings for publicly funded services such as health and welfare (Welsh 2004:12). Benefits of diverting justice system clients include improvements in education, employment, health, social service use, and illicit substance use.

Aboriginal and Torres Strait Islander offenders often have complex and intersecting needs. They experience multiple and intense forms of disadvantage, including: disability, homelessness, substance abuse, poverty, ill health and violence. Many Aboriginal and Torres Strait Islander offenders have complex needs that originate from the systemic failure of services to appropriately support people who experience intense social disadvantage. Research has established that in the absence of appropriate service provision, people with these complex needs are criminalised and cycle in and out of the criminal justice system more rapidly and more frequently compared to those without complex needs.

The economic and human costs, of entrenchment in the criminal justice system, to governments, communities, and Aboriginal and Torres Strait Islander offenders and their families are significantly greater than the cost of providing appropriate services to support them in the community.

*There is no fairness there (in mainstream). They are smirking and the police and the judge are against you. You can tell your side of the story at Galambany. I am not the person I'm labelled to be.*

Interview comment from a female defendant appearing at Galambany

### • **Reduced Prison Costs**

#### **Reason:**

Galambany Court provides a net economic benefit to Australia by diverting Aboriginal and Torres Strait Islander offenders from imprisonment to community-based programs. The respect shown to the ACT Aboriginal and Torres Strait Islander community by Galambany Court has built up social capital (respect) underpinning the operation of the justice system in the ACT. Due to a reduction in Aboriginal and Torres Strait Islander resentment and conflict within the justice system fewer resources are required for its operation. This has freed resources for alternative uses and those uses can be valued by the market prices paid for them.

#### **Methodology:**

Based on the research literature summarised in Attachment D, this CBA estimates a cost reduction to the public sector of \$400 per adult prisoner per day<sup>10</sup> for 10 Aboriginal and Torres Strait Islander offenders who would, without Galambany Court, receive a custodial sentence. This value is based on the more conservative of the research literature estimates in Attachment D. Assuming an average 120-day sentence this gives an annual saving of \$480,000 for each year of Galambany Court's operation.

Imprisonment encourages repeat convictions. Strang *et al* (2013: 25) identifies 7% to 45% fewer repeat convictions or arrests from diversion interventions. It is assumed that Galambany Court results in one less repeat conviction per year, reducing imprisonment by 120 days, valued at \$400 per day, giving a total saving of \$48,000 for each year of Galambany Court's operation.

The respect shown to the ACT Aboriginal and Torres Strait Islander community by Galambany Court has built up social capital underpinning the operation of the justice system in the ACT. Due to a reduction in Aboriginal and Torres Strait Islander conflict with the justice system the cost of operating the AMC is reduced by \$50,000 per year.

The total justice system saving (initial and repeat imprisonments) is \$480,000 plus \$48,000 plus \$50,000 giving \$578,000 for each year of Galambany Court's operation.

See Attachment D for more detail.

*Don't think a (mainstream) magistrate would understand. I can say it in my words. Be myself. They (the Elders) know what I mean but I don't want offend the Magistrate by swearing or anything. In mainstream feel prejudged by a Magistrate because I am Aboriginal.*

Interview comment from a male defendant appearing at Galambany

### • **Policing cost savings**

#### **Reason:**

Galambany Court frees police resources for their next best use. Those uses can be valued by the market prices paid for them, principally wages and services prices.

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<sup>10</sup> This is a conservative estimate based on ROGS.

**Methodology:**

Based on the research literature summarised in Attachment D, this CBA makes the conservative assumption that Galambany Court results in 12 fewer police interventions per year (personal communication, ACT Policing). This CBA adopts a cost reduction of \$500 per minor case and \$2,000 per major case per annum per police intervention avoided (Mason and Robb 2010:55). This value is based on the more conservative of the estimates in Attachment D.

Assuming two police interventions are major cases and ten are minor cases the saving is \$7,000 for each year of Galambany Court's operation.

See Attachment D for more detail.

*It was easier in mainstream for the prosecution to say whatever and I couldn't speak up and my lawyer didn't speak up.*

Interview comment from a male defendant appearing at Galambany

**• Reduced Court Costs****Reason:**

Galambany Court results in fewer repeat convictions and fewer appeals (compared to the mainstream Magistrates Court) thereby freeing court resources for their next best use. Due to Galambany Court offenders are more likely to appear in Court as scheduled saving Court resources required to reschedule appearances and reconvene the Court. Therefore, Galambany Court frees resources for their next best use. Those uses can be valued by the market prices paid for them, principally wages and legal services prices.

**Methodology:**

Based on the research literature summarised in Attachment D, this CBA estimates a net cost reduction to the public sector of \$450 per minor case and \$3,000 per major case per annum per person. These values are based on the more conservative of the estimates in Attachment D.

Assuming one avoided repeat offense per year is a major case the saving is \$3,000 for each year of Galambany Court's operation.

Assuming one avoided appeal per year is a major case the saving is \$3,000 for each year of Galambany Court's operation.

Assuming five avoided non-appearances requiring rescheduling, each saving a minor case valued at \$450 gives an annual total saving of \$2,000.

This gives a total Court cost saving of \$8,000 for each year of Galambany Court's operation.

In total, the cost savings to the police, courts and prisons is estimated to be \$593,000 for each year of Galambany Court's operation.

See Attachment D for more detail.

**2017-26 Total Present Value: \$5,332,000** (2017 dollars discounted by 2% over ten years).

*In Galambany they care. In mainstream they don't care.*  
Interview comment from a female defendant appearing at Galambany

## Discounting (aggregating over time)

A social discount rate reflects the time and risk preferences of a society as a whole. Unlike individuals, societies must consider future generations and must also balance the benefits accruing to different sections of society in current and future periods (i.e. the distribution of income and consumption). In addition, the risks of earning returns are far more dispersed and balanced at a societal than at an individual level and therefore the compensation for risk will usually be lower for society as a whole. Social discount rates are applied by government in relation to its decision-making on behalf of society (Moore *et al.* 2004, Falk *et al.* 2015 & Dohmen *et al.* 2011).

The social discount rate measures society's valuation of today's wellbeing relative to wellbeing in the future (Zhuang *et al.* 2007). The costs and benefits, identified and valued above, accrue over the ten-year period 2017 to 2026. To make comparisons with other programs, the future values need to be expressed in present day values. This recognises that people value current consumption more highly than the same future consumption. People are, to a degree, impatient. The discount rate measures the degree of impatience.

Discounting future values back to present values requires information about society's rate of time preference. This is the amount of future consumption they require to induce them to give up current consumption. This is revealed in the capital market, where interest payments are the reward for giving up current consumption in return for greater future consumption.

Since the Global Financial Crisis in 2007, interest rates in most markets have fallen to levels close to the inflation rate and therefore discount rates measuring Australian willingness to forego current consumption have fallen sharply. This implies that we have become less impatient or more concerned about the future. The falling discount rate is being driven by economic changes since 2007. With falling economic growth rates and with nearly all that growth accruing to the wealthiest, most Australians can expect to have little improved or even falling living standards in the future. As future incomes are likely to be more constrained for most Australians, the value of future consumption rises and current consumption becomes less valuable compared to future consumption, lowering the social rate of discount. Government recommendations for real discount rates for CBA began falling even before the 2007 global financial crisis: in the UK from 10% in 1969 to 3.5% in 2003; in Germany from 4% in 1999 to 3% in 2004; in France from 8% in 1999 to 4% in 2005; and in Norway from 7% in 1978 to 3.5% in 1998 (Zhuang *et al.* 2007:19).

Interest rates include a reward for risk taking and inflation. Risk is not relevant to Galambany Court because it is part of government's broad investment portfolio where risk in any single program is cancelled out across the other programs<sup>11</sup>. Inflation is not relevant because all values used in this CBA are in real terms.

Risk is excluded by using a low risk Commonwealth Government bond. The longest maturity (10 years) is used because this fits this CBA's 10-year time frame. Inflation is removed by subtracting the inflation rate from the interest rate.

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<sup>11</sup> Using high discount rates to account for risk is easy but not very appropriate. It is a better solution to address relevant risk specifically for each project through various risk analysis methods, such as quantified risk analysis or sensitivity analysis (Hagen *et al.*, 2012) as is done in this CBA.

In November 2017, the Commonwealth 10-year Treasury Bond interest rate was 2.6% pa (RBA Statistical Tables). Inflation measured by the average CPI for the 12 months to September 2017 was 1.8% pa (RBA Statistical Tables). Taking the inflation rate away from the interest rate and rounding gives the real rate of interest and discount rate as 0.8%. In comparison, the inflation adjusted Commonwealth Government Indexed Bond interest rate was 1.0% (RBA Statistical Tables). Therefore, the Australian capital markets are indicating that the social rate of time preference was around 1% in late 2017. Based on this capital market information this analysis uses a conservative discount rate of 2% as its base case.

Some authorities vary discount rates according to the type of project. The United States Office of Management and Budget (2003) uses a 7% rate where the project/program would displace private investment, 3% for social projects/programs and 1% where the impacts are intergenerational<sup>12</sup>.

Typically, governments recommend the use of a higher discount rate than 2%. In Australia, the standard government recommended rate is 5% and can be as high as 10% (Harrison 2010). Recently, Terril & Batrouney (2018) have recommended that Australian governments shift to using a 3.5 and 5% discount rate in economic evaluation of transport projects. This CBA adopts a 10% discount rate for sensitivity analysis to demonstrate that the conclusions at the 2% rate are robust.

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<sup>12</sup> The 7 % rate is an estimate of the average before-tax rate of return to private capital in the U.S. economy, based on historical data. It is a broad measure that reflects the returns to real estate and small business capital as well as corporate capital. It approximates the opportunity cost of capital, and it is the appropriate discount rate whenever the main effect of a regulation is to displace or alter the use of capital in the private sector.

The 3 % discount rate is based on a recognition that the effects of regulation do not always fall exclusively or primarily on the allocation of capital. When regulation primarily and directly affects private consumption, a lower discount rate is appropriate. The alternative most often used is sometimes called the “social rate of time preference.” The real rate of return on long-term government debt may provide a fair approximation. Over thirty years, this rate averaged around 3 % in real annual terms on a pre-tax basis.

Private market rates provide a reliable reference for determining how society values time within a generation, but for extremely long time periods no comparable private rates exist. If the regulatory action will have important intergenerational benefits or costs, the agency might consider a sensitivity analysis using a lower but positive discount rate, ranging from 1 to 3 % United States Office of Management and Budget (2003:11).

## Aggregating cost and benefits

*I left feeling good because I was shown respect and allowed to present my case.*  
Interview comment from a defendant appearing at Galambany Court

The table below applies the 2% discount rate (using each year's discount factor) to the values estimated above for Galambany Court. The yearly costs and benefits are given in 2017 dollars. Totals are aggregated as present values (in bold) to calculate NPV and B/C ratios.

Table 5: Economic Costs & Benefits: Galambany Court

	2017 dollars, 000										Total	Total @ 2%	
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026			
<b>Costs</b>													
Galambany Court	282	282	282	282	282	282	282	282	282	282	282	2,820	<b>2,536</b>
Longer in remand	40	40	40	40	40	40	40	40	40	40	40	400	<b>360</b>
Extra community services	45	45	45	45	45	45	45	45	45	45	45	450	<b>405</b>
Total Costs	367	367	367	367	367	367	367	367	367	367	367	3,670	<b>3,300</b>
<b>discounted @ 2%</b>	<b>363</b>	<b>353</b>	<b>346</b>	<b>339</b>	<b>333</b>	<b>326</b>	<b>320</b>	<b>313</b>	<b>307</b>	<b>301</b>	<b>3,300</b>	<b>3,300</b>	<b>3,300</b>
<b>Benefits</b>													
<b>Cost savings</b>													
Education	15	15	15	15	15	15	15	15	15	15	15	150	<b>135</b>
Child protection	15	15	15	15	15	15	15	15	15	15	15	150	<b>135</b>
Health	20	20	20	20	20	20	20	20	20	20	20	200	<b>180</b>
Violence against women	-	25	-	25	-	25	-	25	-	25	-	125	<b>111</b>
Justice system	593	593	593	593	593	593	593	593	593	593	593	5,930	<b>5,332</b>
Accommodation	13	13	13	13	13	13	13	13	13	13	13	130	<b>117</b>
<b>Increased output</b>													
Education	28	28	28	28	28	28	28	28	28	28	28	280	<b>252</b>
Longer life	120	120	120	120	120	120	120	120	120	120	120	1,200	<b>1,079</b>
Employment	375	375	375	375	375	375	375	375	375	375	375	3,750	<b>3,372</b>
Total Benefits	1,179	1,204	1,179	1,204	1,179	1,204	1,179	1,204	1,179	1,204	1,204	11,915	<b>10,713</b>
<b>discounted @ 2%</b>	<b>1,167</b>	<b>1,157</b>	<b>1,111</b>	<b>1,112</b>	<b>1,068</b>	<b>1,069</b>	<b>1,027</b>	<b>1,027</b>	<b>987</b>	<b>987</b>	<b>10,713</b>	<b>10,713</b>	<b>10,713</b>
<b>Benefits-Costs</b>													
undiscounted	812	837	812	837	812	837	812	837	812	837	812	8,245	<b>7,413</b>
<b>discounted @ 2%</b>	<b>804</b>	<b>804</b>	<b>765</b>	<b>773</b>	<b>736</b>	<b>743</b>	<b>707</b>	<b>714</b>	<b>680</b>	<b>686</b>	<b>7,413</b>	<b>7,413</b>	<b>7,413</b>
Discount factor @ 2%	0.990	0.961	0.942	0.924	0.906	0.888	0.871	0.853	0.837	0.820			
<b>NPV @ 2%</b>	7,413												
<b>IRR</b>	na												
<b>B/C ratio</b>	3.2												

Note: values in bold are discounted by 2% pa.

## Decision criteria

Cost Benefit Analysis values the impacts (costs and benefits) of Galambany Court in economic terms (ie impact on society's wellbeing). These values are aggregated using the discount rate embodying society's trade-off between current and future consumption. The discounted impacts are then compared using decision criteria.

The findings from a CBA are commonly expressed by three decision criteria:

- The **benefit cost ratio** takes the present value of total benefits and divides this by the present value of total costs. The ratio is useful for comparing the efficiency of programs across different program scales. A ratio greater than 1 demonstrates that there is a net economic benefit to society from the program. Using Galambany Court estimates from the table above: the PV of total benefits divided by the PV of total costs is \$10,713,000/\$3,300,000. This gives a very high cost benefit ratio of 3.25 to 1.

In a recent OECD publication "A ratio below 1 is considered poor, a ratio between 1 and 1½ low, a ratio between 1½ and 2 medium and a ratio above 2 high" (Persson & Song 2010:33). For comparison the World Bank (2011:4) estimates benefit cost ratios for Indonesian urban sanitation programs at 1.1 to 2.4, the Productivity Commission (2013a:27) estimates the benefit cost ratio of smart electrical meters at 2.7, the ACT Government (2017:18) estimates a benefit cost ration of 1.8 for a Container Deposit Scheme, the South Australian Centre for Economic Studies (2010:95) estimates a benefit cost ratio of Opal fuel at 3.7, Daly and Barrett (2014) estimated a cost benefit ratio in mediation program in Yuendumu at 4.3 and Infrastructure Australia estimates a benefit cost ratio for the Winchelsea to Colac Road Duplication at only 0.08. In comparison with these estimates, Galambany Court's ratio of over 3 is clearly very high.

- The **Internal Rate of Return** (IRR) is the discount rate where the present value of costs and benefits are equal. IRR cannot be measured for this program due to distribution of costs over time. IRR requires a pattern of negative then positive net benefits. For this CBA net benefits are always positive.

- The **Net Present Value** (NPV) is the amount by which the present value of benefits exceeds the present value of costs. It measures the scale of the net benefit.

Galambany Court's NPV is \$7,413,000 in 2017 dollars.

Total costs PV	\$3,300,000
Total benefits PV	\$10,713,000
Benefit Cost Ratio	3.25:1
NPV	\$7,413,000

All the calculated decision criteria indicate that Galambany Court is worth supporting on economic (efficiency of resource use) grounds. The criteria show that Galambany Court provides Canberra with a very high return on its modest costs.

## Sensitivity analysis

The impact of Galambany Court may be sensitive to changing conditions. These could include variance in the assumptions underpinning the CBA. If the NPV is still positive with more conservative assumptions this report's conclusions can be considered robust.

The assumptions made in this analysis were generally pessimistic about the benefits of the program but in order to test the robustness of our conclusions we assume an unrealistically large 50% reduction in our estimated benefits. Even in this extremely pessimistic case both decision criteria (shown below) indicate that the program provides exceptional worth in economic (efficiency of resource use) terms.

Total costs PV	\$3,330,000
Total benefits PV	\$5,356,000
Benefit Cost Ratio	1.62:1
NPV	\$2,056,000

The choice of a discount rate can sometimes have a large impact on the decision criteria. The unusual current global financial conditions may mean that the base case discount rate of 2% is lower than the actual social rate of time preference it attempts to measure. A standard maximum discount rate is 10%. As can be seen below, raising the discount rate by five times has little impact on the net worth of the program. The conclusions of this CBA are not sensitive to the choice of discount rate.

Total costs PV	\$2,255,000
Total benefits PV	\$7,317,000
Benefit Cost Ratio	3.24:1
NPV	\$5,062,000

The purpose of sensitivity analysis in this case is not to compare alternative program scenarios for selection of the best program design. Here we are using sensitivity analysis to test the robustness of our conclusions regarding the value of Galambany Court. As the Court can absorb a 50% reduction in the already conservative estimates of benefits, the conclusion that it is a worthwhile program is strong. The sensitivity analysis shows that the estimates are very robust as is the conclusion that Galambany Court provides a substantial net benefit to Australia.

## Distribution

The distribution of benefits and costs is important because the connections between social structures and public health, reveal that life expectancy, illness and other health factors are closely related to the structure of a given society, and that variations in health within a population are primarily related to socio-structural factors, including income inequality, educational differences, lack of opportunity and racism (Kawachi & Kennedy 1997).

Gainers and losers are identified in the distributional incidence table given previously (Table 3).

Galambany Court offenders and their families gain more appropriate services improving their employment output, health and wellbeing.

Government service providers gain cost savings as offenders access less expensive services.

Costs are borne by the ACT government (as the funder). However, these costs are more than fully compensated by the shift to lower cost services.

The ACT community gains in welfare from a more equitable and inclusive society.

Overall, distributional impacts of Galambany Court for offenders are positive with the losers compensated for their loss, leaving the gainers with a net improvement and therefore distribution is not a critical issue.

## **Conclusion**

This CBA verifies that Galambany Court delivers substantial economic benefits far exceeding the costs.

The sensitivity analysis indicates that these conclusions are very reliable. The distributional analysis shows that Galambany Court does not damage stakeholders and compensation is not required.

This CBA provides a strong support for continued investment in Galambany Court. All the calculated decision criteria indicate that the Court is worth supporting on economic (efficiency of resource use) grounds. More efficient resource use allows improvements in society's wellbeing.

This CBA supports a wider use of circle sentencing courts. Galambany Court delivers a net benefit of \$7.4 million to the Australian Capital Territory over the ten years. With a benefit cost ratio of 3.25:1 (or a \$3.25 return for every dollar spent), Galambany Court is a very efficient use of the Australian Capital Territory's resources.

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Please note that the authors are responsible for the estimates and assumptions used in the CBA.

## Attachment A

### Scope of Services

#### Proposal for Galambany Court CBA

It is anticipated that a Cost Benefit Analysis would identify the costs and benefits associated with the following aims of Galambany Court:

1. involving Aboriginal and Torres Strait Islander communities in the sentencing of Aboriginal and Torres Strait Islander defendants;
2. increasing the confidence of Aboriginal and Torres Strait Islander communities in the sentencing process;
3. reducing barriers between the ACT Magistrates Court and Aboriginal and Torres Strait Islander communities;
4. providing culturally relevant and effective sentencing options for Aboriginal and Torres Strait Islander defendants;
5. providing Aboriginal and Torres Strait Islander defendants with support services that will assist them to overcome their offending behaviour;
6. providing support to victims of crime and enhance their rights and participation in Galambany Circle Sentencing Court process; and
7. reducing repeat offending by Aboriginal and Torres Strait Islander defendants.

It is anticipated that through the initial scoping and development of the full project brief additional areas may also be identified.

#### Project Steps

##### 1. Preparation Phase

- Researchers would meet Galambany Court staff and panel members to introduce themselves, explain the CBA proposal and begin learning about the work of the Court.
- Final Project Brief developed in collaboration with researchers.
- Initial Stakeholder List finalised in collaboration with researchers.
- Comparable projects and existing research including any economic data identified.
- Researchers attend Galambany Court to observe proceedings.
- Consideration given to who the research results will be available to upon project completion.

##### 2. Research Phase

- Desktop review of materials.
- Stakeholder preparation and interviews.
- Collation of 'stories' that best illustrate the depth and range of the work of the Court and the impact of that work.
- Progress meetings as agreed.
- Preliminary Report prepared.

##### 3. Finalising the Report

- Meetings to review and finalise the report, including agreement of which 'stories' to include.
- Separate Plain English and Technical Summaries prepared from final report.
- Media interviews on results of report if agreed and requested.

It is estimated that the CBA would be completed within 3 months from time of commencement.

## **Attachment B**

### **Glossary**

#### **Aboriginal or Torres Strait Islander**

Persons identifying themselves as an Aboriginal and/or Torres Strait Islander person.

#### **Assessment panel**

The members selected to assess the suitability of a defendant referred to Galambany Court and make recommendations to the presiding Magistrate.

#### **Benefit transfer**

A practice used to estimate economic values for use in Cost Benefit Analysis by transferring information available from studies already completed in one location or context to another.

#### **Case**

One or more defendants against whom one or more criminal charge(s) have been laid and are heard together by a court as one unit of work. The charge(s) usually relate to the same criminal incident(s) and appear together on one indictment. Case is the operational unit of work for a court and signifies an intention to hear one or more charge relating to one or more individuals or organisations.

#### **Civil cases**

Civil matters are lodged by individuals or organisations (the plaintiff or applicant) against another party (the defendant or respondent) who responds to the file

#### **Clean street time**

If a person completes their parole period without cancellation their sentence is discharged (or served). However, if a person's parole order is cancelled, he or she will be returned to prison and will be liable to serve the entire parole period in custody. The time that the person may have already served on parole will not be counted as being served. In other words, no time is credited as 'clean street time'. In this respect parole operates differently in the ACT than it does in some other states. In the ACT the term 'parole period' refers to the period from the date a person is released from prison until the expiry of their sentence. In the ACT, a sentence is not counted as being served unless a parolee completes the parole period.

#### **Community Based Order**

The CBO is a non-custodial sanction that has been developed for offences that might ordinarily involve a period of imprisonment. CBOs have a punitive element (in the imposition of tasks or duties that take up the defendant's time), coupled with a rehabilitative dimension (the requirement that the defendant complete rehabilitation or counselling programs).

#### **Community service orders**

An order requiring a person to undertake a specified number of hours of unpaid work for the community. Should that person breach the order he/she may be brought back to court and receive another penalty

#### **Community corrections**

Community-based management of court-ordered sanctions, post-prison orders and administrative arrangements and fine conversions for offenders, which principally involve one or more of the following requirements: supervision; program participation; or community work.

**Cost-benefit analysis (CBA)**

A method to evaluate the net economic impact of a project. Expected benefits are estimated, and monetised and offset against project costs. The approach is most commonly used to inform decisions to invest in major infrastructure projects.

**Cost-effectiveness analysis (CEA)**

This method is used where monetising outcomes is not possible or appropriate, most commonly in health. Common measures include quality adjusted life years. Organisations that use it include the World Health Organisation, which has developed a series of tools and software to aid analysis.

**Criminal cases**

Criminal matters are brought to the court by a government prosecuting agency, which is generally the Director of Public Prosecutions, but can also be the Attorney-General, the police, local councils and traffic camera branches.

**Custodial**

Offenders serving a prison sentence and those who are awaiting trial (remandees).

**Culturally competent, & culturally safe**

The requirement that matters be developed, organised and implemented with Aboriginal and Torres Strait Islander communities and, where possible, facilitated and owned by those communities.

**Galambany Court Panel Member**

A member of the Aboriginal and Torres Strait Islander Community approved to be a member of assessment and hearing panels for Galambany Court.

**Economy**

Minimising the cost of resources used for an activity, while having regard to appropriate quality.

**Efficiency**

An efficient activity maximises output for a given input, or minimises input for a given output and, in so doing, pays due regard to appropriate quality.

**Effectiveness**

Successfully achieving the intended outcomes from an activity.

**Hearing panel**

The members selected to sit on Galambany Court for a particular matter.

**Human capital approach**

Values the economic productivity of human life as the present value of expected future earnings.

**Justice Reinvestment**

Economic modelling whereby resources are redirected from punitive responses to crime into preventative strategies and early diversion away from the criminal justice system in areas with high crime rates.

**Magistrates' Court**

A lower court level (also known as Court of Summary Jurisdiction, Local Court or Court of Petty Sessions), which deals with relatively less serious charges and has the most limited legal powers of all the state and territory court levels. A Magistrates' Court is presided over by a Magistrate and has

jurisdiction to try and sentence matters relating to summary offences. Under some circumstances, this court level may also deal with less serious indictable offences known as ‘minor indictable’, ‘triable either way’ or ‘summary/indictable’ offences. Magistrates’ Courts are also responsible for conducting preliminary (committal) hearings for indictable offences.

### **Merit goods and services**

Create positive externalities when consumed and these 3rd party spill over (externality) benefits can have a significant effect on social welfare. Market failure occurs when merit goods and services are under-consumed under free market conditions.

### **Non-custodial**

Offenders serving correctional orders not involving incarceration (mostly probation and community service orders) and offenders serving post-prison orders, including parole and licence orders. The legislative basis for non-custodial orders differs among States, but all have the following three main types.

- **Probation** - When a person is convicted for an offence for which imprisonment may be imposed, the court can instead make a Probation Order. Adult offenders can be released on probation by courts for a fixed period, during which time they receive supervision and a range of guidance, support and referral services.
- **Parole** - This allows a prisoner to be released from prison at the discretion of a Parole Board to serve the remainder of their prison sentence in the community. Prisoners on parole are still under order of the correctional service and have specific conditions placed on them, for example, they may have to report to a local police station regularly and have conditions placed on their movements.
- **Community service** - These provide a sentencing alternative to imprisonment whereby the courts can direct offenders to make restitution by undertaking a set number of hours of community service work.

### **Probation orders**

An order requiring an offender to be released, with or without conviction, to the supervision of an authorised officer. Includes any order requiring an offender to report periodically to an authorised officer but does not include any period of restricted liberty. Excludes Intensive supervision orders and Intensive corrections orders that contain periods of restricted liberty.

### **Remand**

A legal status where a person is held in custody pending outcome of a court hearing, including circumstances where the person has been convicted but has not yet been sentenced.

### **Replacement Cost**

Valuing a non-market cost or benefit by an equivalent in a market.

### **Sentencing hearing**

The hearing before Galambany Court where the hearing panel make recommendations about an appropriate sentence for a defendant to the presiding Magistrate.

### **Social Capital**

The features of social organisation, such as networks, norms and social trust that facilitate coordination and cooperation for mutual benefit.

**Social return on investment analysis (SROI)**

A method that quantifies project outcomes and impacts, usually in monetary terms. It measures value from the bottom up by including the perspectives of different stakeholders.

**Suspended sentence**

A custodial order providing that all of the sentence not be served, subject to the person being of good behaviour for the length of the sentence.

**Winnunga Nimmityjah Health and Community Services**

Aboriginal and Torres Strait Islander community-controlled health service in the ACT.

## Attachment C

### Galambany Circle Sentencing Court: background

*No one truly knows a nation until one has been inside its jails.  
A nation should not be judged by how it treats its highest citizens, but its lowest ones.*  
Nelson Mandela

#### Colonial legacy

Aboriginal and Torres Strait Islander disadvantage is an intergenerational legacy of racial discrimination, with effects persisting into the present day including the over-representation of Aboriginal and Torres Strait Islander people in Australian prisons. Aboriginal and Torres Strait Islander Australians share a history of colonisation, dispossession and discrimination. Between 1794 and 1872, there were at least 150 recorded massacres of Aboriginal people in Eastern Australia in contrast to only 6 recorded massacres of colonists. It would appear that almost every Aboriginal clan experienced a massacre (Ryan *et al.* 2007).

Before colonisation, Australia's Aboriginal and Torres Strait Islander population was at least 300,000 and possibly over one million. By the 1920s, the violence, disease and hunger brought by colonisation reduced Australia's Aboriginal and Torres Strait Islander population to only around 60,000 people (ABS 1994 & Smith 1980). Currently, there are around 650,000 Aboriginal and Torres Strait Islander people in Australia, accounting for 3% of the Australian population (ABS 2017).

#### Extent of imprisonment

Aboriginal and Torres Strait Islander disadvantage is reflected in extremely high rates of Aboriginal and Torres Strait Islander imprisonment compared to both non-Indigenous Australians and also indigenous peoples in New Zealand, Canada and America.

### Indigenous Australians are the most incarcerated people on the planet Earth

Adult imprisonment rates per 100,000 adults, 2010 and 2010-11



*Data drawn from US Bureau of Justice Statistics, Canada's Office of the Correctional Investigator, and Australian Bureau of Statistics.*

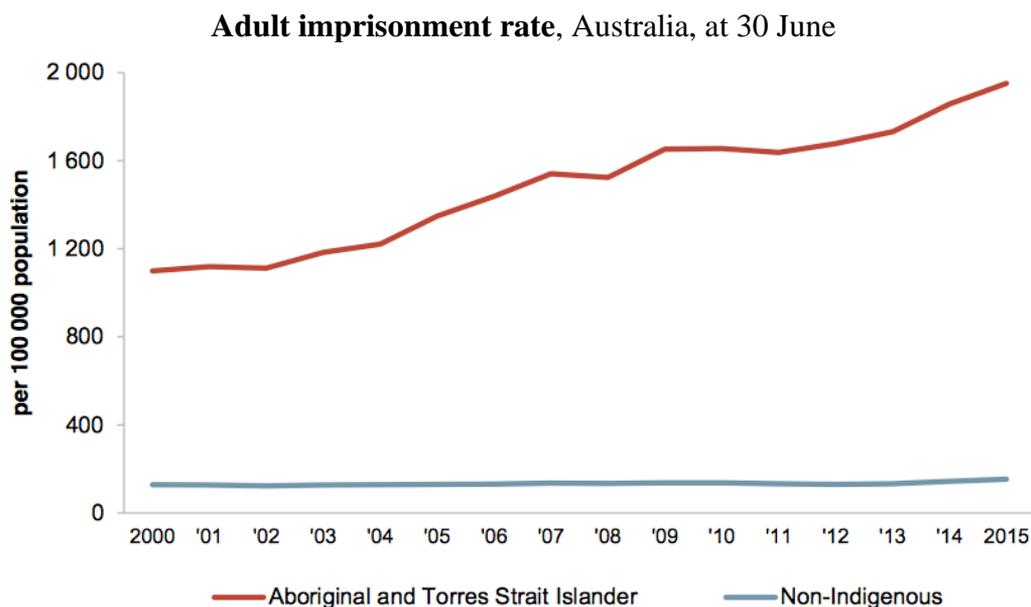
Adult imprisonment rates per 100,000 adults, 2015



*Data drawn from Australian Bureau of Statistics, US Bureau of Justice Statistics, NZ Department of Corrections, and Stats NZ.*

Source: Anthony T, 2017, FactCheck Q&A: are Indigenous Australians the most incarcerated people on Earth? *The Conversation*, June 6.

While Aboriginal and Torres Strait people represent under 3% of the Australian population they represent 27% of the adult prison population. The rate of Aboriginal and Torres Strait Islander incarceration has increased by 77% between 2000 and 2015. Aboriginal and Torres Strait Islander women represent 34% of the female prison population while comprising just 2.2% of Australian women. Aboriginal and Torres Strait Islander men are being imprisoned at 11 times the rate of the general male population, and women at more than 15 times the rate of non-Indigenous women (Australian Law Reform Commission 2017:26).

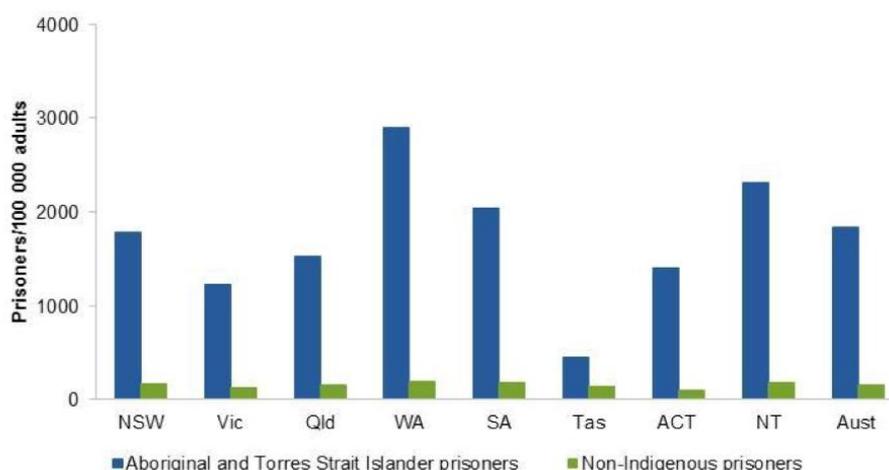


Rates for all years are calculated using population estimates based on the 2011 Census.  
Data are age standardised.

Source: ABS (2015) Prisoners in Australia, 2015, Cat. no. 4517.0; table 4A.13.5.

The higher imprisonment of Aboriginal and Torres Strait Islander people is consistent across jurisdictions in Australia and is continuing to grow.

### Aboriginal & Torres Strait Islander and non - Indigenous age standardised imprisonment rates, 2015-16



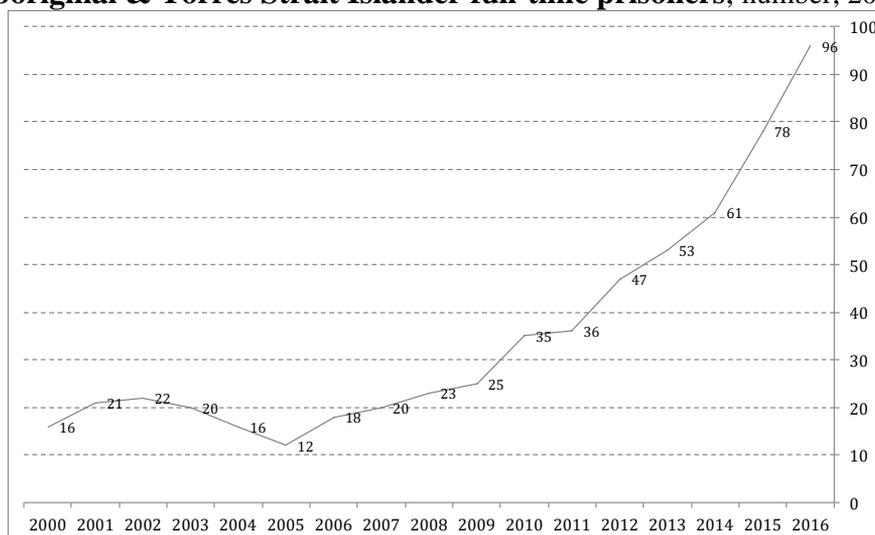
Source: SCRGSP 2017:8.5.

It is important to recognise that most Aboriginal and Torres Strait Islander people in Australia have not been arrested or imprisoned. In 2014-15, 91 per cent of Aboriginal and Torres Strait Islander

Australians (aged 15 years and over) reported never having been incarcerated and around two-thirds (65 per cent) reported never having been formally charged by police (ABS 2016). At 30 June 2015, only around 2 per cent of Aboriginal and Torres Strait Islander adults were in prison.

Aboriginal and Torres Strait Islander imprisonment in the ACT has grown since 2005, and dramatically since the ACT prison, the Alexander Maconochie Centre (AMC)<sup>13</sup>, accepted its first detainees in March 2009. From 2009 to 2016, full-time Aboriginal and Torres Strait Islander imprisonment has grown from 25 to 96 Aboriginal and Torres Strait Islander prisoners, a 280 per cent increase (see figure below). Over the same period the ACT Aboriginal and Torres Strait Islander population grew by only about 50% to 6,476 people in 2016.

**ACT Aboriginal & Torres Strait Islander full-time prisoners, number, 2000 to 2016**

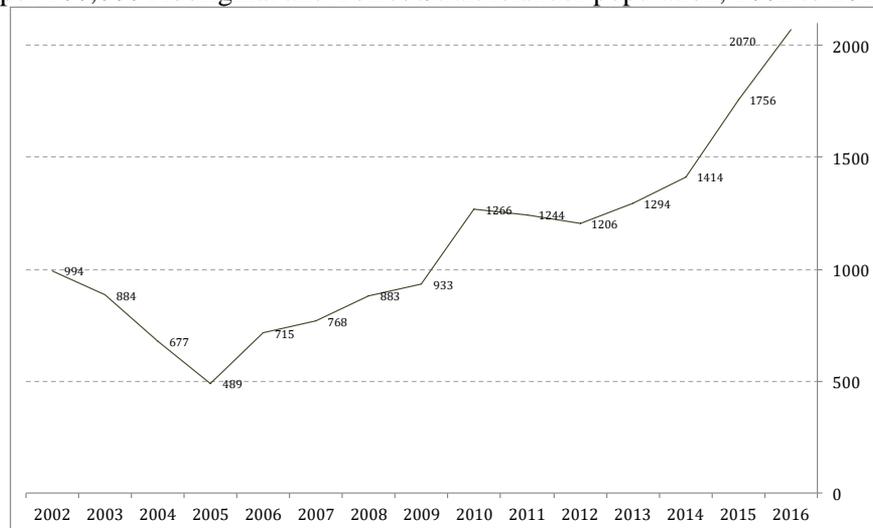


Source: ABS 2017, Corrections Services, Cat. No. 4512.0.

There has been a dramatic increase in the rate of Aboriginal and Torres Strait Islander imprisonment, up from 939 to 2,070 prisoners per 100,000 ACT Aboriginal and Torres Strait Islander residents from 2009 to 2016. This is a 120% increase (see figure below). Sentence lengths for Aboriginal and Torres Strait Islander prisoners have also increased. The ACT courts are imprisoning more Aboriginal and Torres Strait Islander people and for longer periods. Non-indigenous imprisonment has also increased but more slowly.

<sup>13</sup> The Alexander Maconochie Centre is a new prison facility to house ACT people sentenced to full-time custody. It began taking prisoners on 30 March 2009. As at 30 June 2009, all ACT prisoners held in New South Wales prisons had been relocated to the new Alexander Maconochie Centre. The AMC was to be the first human rights-compliant prison in Australia (ACT del-General 2015:).

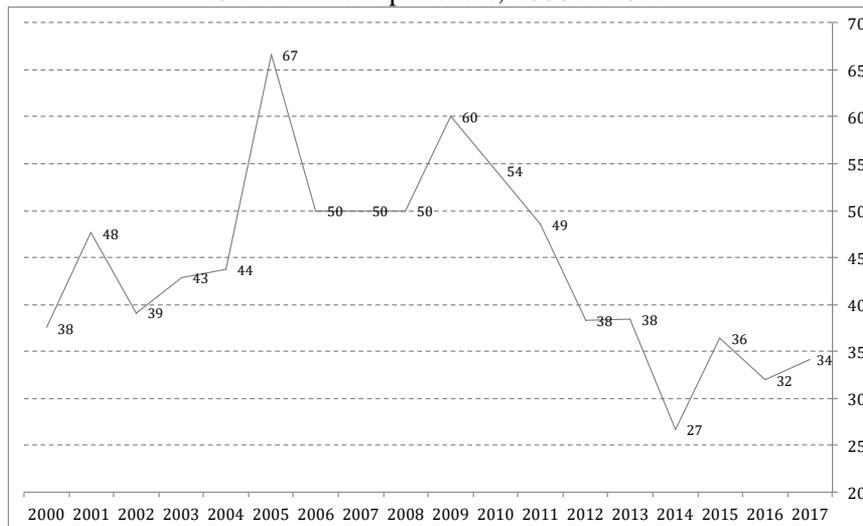
**ACT Aboriginal and Torres Strait Islander imprisonment rate, per 100,000 Aboriginal and Torres Strait Islander population, 2002 to 2016**



Source: ABS 2017, Corrections Services, Cat. No. 4512.0.

As shown in the table below, from 2009 to 2013, most of the increase in Aboriginal and Torres Strait Islander prisoners came from sentenced prisoners (the proportion of unsentenced prisoners fell) but since then both sentenced and unsentenced (remand) prisoner numbers have risen roughly proportionally. The increase in sentenced prisoners may be due to longer sentences.

**ACT Aboriginal and Torres Strait Islander unsentenced prisoners, % of all Aboriginal and Torres Strait Islander prisoners, 2000 to 2017**



Source: ABS 2017, Corrections Services, Cat. No. 4512.0.

**Causes of imprisonment**

*The majority of Aboriginal and Torres Strait Islander peoples never commit criminal offences*  
 Australian Law Reform Commission, 2017

Research has identified social inequality as the main factor associated with contact with the justice system (Naylor 2015). This social inequality is expressed through:

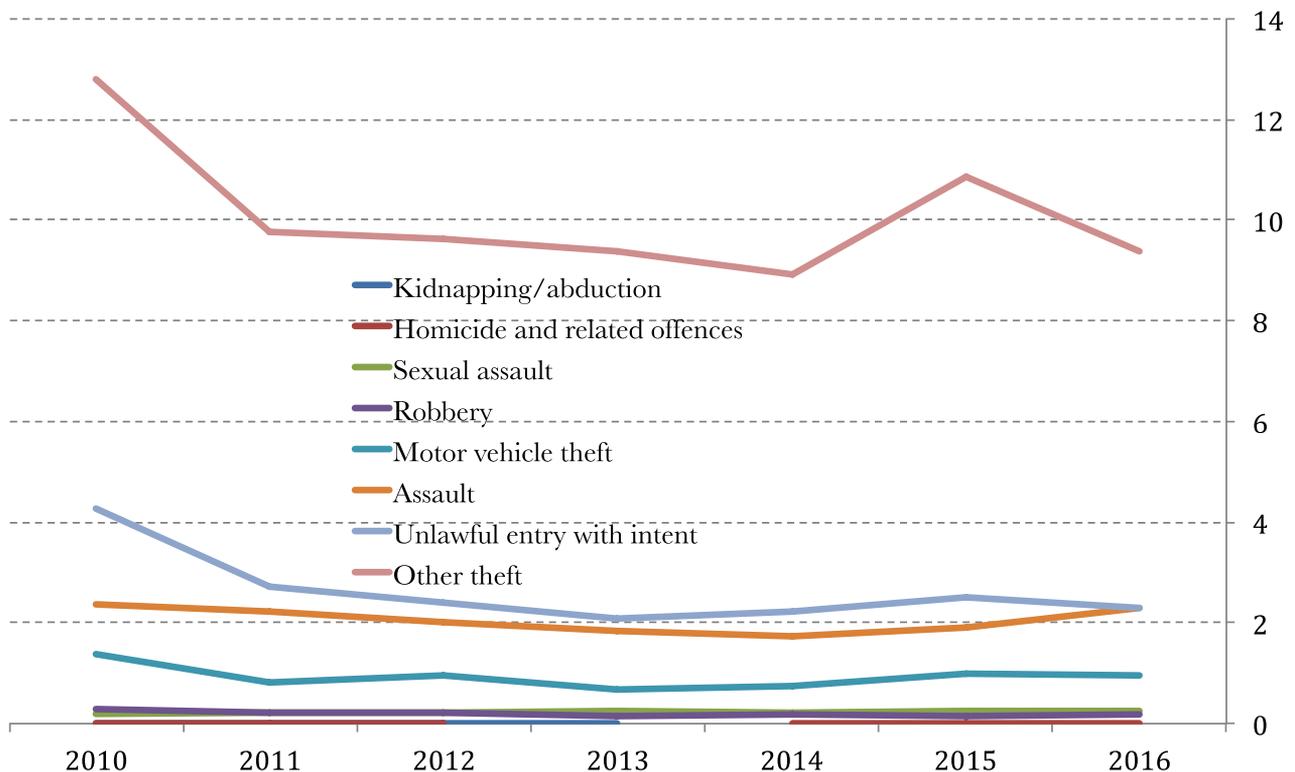
- substance abuse;
- early school leaving;
- unemployment;
- low rates of social involvement;

- living in households that have experienced financial stress;
- living in a crowded household;
- living in an area with perceived neighbourhood or community problems;
- being a member of the ‘stolen generation’;
- child neglect and abuse;
- poor physical and mental health;
- a lack of support from parents, families and friends; and
- the prevalence of family violence and abuse (Snowball & Weatherburn 2006, Delahunty & Putt 2006; Putt, Payne & Milner 2005; Weatherburn, Snowball & Hunter 2006).

However, these determinants have not dramatically worsened over the period of increasing imprisonment. The explanation for the dramatic increase in Aboriginal and Torres Strait Islander imprisonment needs to be sought not in the characteristics of individual people but in changes to the social institutions driving imprisonment. Galambany Court redresses the social institutions driving imprisonment.

The extent of imprisonment is a policy choice by governments. Looking around the world it is now widely recognised that there is no direct relationship between crime rates and imprisonment rates (Naylor 2015). As the figure below demonstrates, crime has not risen in the ACT but imprisonment has grown dramatically. Falling crime and rising imprisonment points to a need to re-examine justice system institutions.

**ACT Crime offences, 2010-16, ‘000**



Source: ABS, 2017, Recorded Crime - Victims, Australia, 2016, Catalogue Number 4510.0, Canberra: Australian Bureau of Statistics.

In the ACT, the opening of the AMC prison may have caused the dramatic shift in sentencing from community to prison. Between 2008-09 and 2015-16, the rate of community corrections fell from 593 to 299 per 100,000 people, while the rate of imprisonment rose from 63 to 131 per 100,000 people (SCRGSP 2017:Table 8A.5). So while crime rates have fallen sentencing has become

harsher. This pattern is even stronger for Aboriginal and Torres Strait Islander Canberrans. Over the same period the rate of Aboriginal and Torres Strait Islander imprisonment rose from 618 to 1,409 per 100,000, while the rate of community corrections fell from 5,272 to 3,008 per 100,000. In 2015-16, in the ACT, Aboriginal and Torres Strait Islanders were 23% of all prisoners but only 15% of all offenders in community corrections (SCRGSP 2017:Table 8A.8). This supports the need for more diversionary sentencing options<sup>14</sup> and Galambany Court.

US research shows that minority groups are treated more harshly at every stage of judicial proceedings (Wilkinson and Pickett 2011:150). Australian research into sentencing also identifies a higher likelihood of Aboriginal and Torres Strait Islander imprisonment. Snowball & Weatherburn (2007) estimate this as statistically significant but not large. Research into Aboriginal and Torres Strait Islander offending rates and over-representation in prison has found that contributing factors include over-policing of Aboriginal and Torres Strait Islander people, institutional discrimination, and greater criminal justice system severity for Aboriginal and Torres Strait Islander offenders (Fitzgerald 2009, Baldry *et al.* 2015, Weatherburn & Ramsey 2016, Cunneen 2006, Walters & Longhurst 2017, Sentence Advisory Council 2013, & Allard 2010). Aboriginal and Torres Strait Islander peoples are being incarcerated for lower order crimes for which diversion and rehabilitation may be a more appropriate response (Australian Law Reform Commission 2017:26).

Changes to judicial processes, and criminal justice legislation and policies have been linked to increases in Aboriginal and Torres Strait Islander imprisonment rates — for example, longer sentences, mandatory minimum sentences, increasing parole revocations and technical violations and more restrictive bail conditions (Senate Legal and Constitutional Affairs References Committee 2013; Wood 2014).

The relevance of post-colonial Aboriginal identity is not recognised in the mainstream sentencing process (Lewis *et al.* 2013). Court constraints, explaining higher Indigenous incarceration, identified in the research literature include:

- sentencing often occurs with restricted information under time pressures (see e.g. Steffensmeier, Ulmer & Kramer 1998:767–768; Johnson 2003:454),
- magistrates can only sentence based on the information that is provided in court about the offence and the offender,
- magistrates, are faced with increased workload and subsequent time pressures, which raises the possibility that they may have insufficient time to properly consider cases before them (Mackenzie, 2005:28).

These constraints allow community-based stereotypes (i.e. ‘perceptual shorthands’) about certain types of offenders (e.g. Indigenous versus non-Indigenous, men versus women, older versus younger offenders) to influence judicial perceptions of blameworthiness and risk (Steffensmeier, Ulmer and Kramer, 1998; Johnson, 2003; Jeffries and Bond, 2009: 52-53). This imprisonment research supports Galambany Court’s involvement of the Aboriginal and Torres Strait Islander community in sentencing to address the systemic problems facing Aboriginal and Torres Strait Islander offenders.

### **Impact of imprisonment**

*Too often, the impact of the justice system is to punish and entrench disadvantage, rather than promoting healing, support and rehabilitation (Walters & Longhurst 2017:5).*

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<sup>14</sup> The current law allows for diversion, ACT Crimes (Sentencing) Act, 2005 Ch 2, 7(1) (a), (c), & (d), & (g).

Imprisonment has a heavy social and economic impact (Senate Legal and Constitutional Affairs References Committee 2013), but a modest impact on deterring crime. Research has found that:

- imprisonment has
  - a negative but generally insignificant effect upon the crime rate,
  - a small positive deterrent effect, and that
- increases in the severity of punishment has no impact of the crime rate (Ritchie 2011:17).

Imprisonment has a weak impact on crime rates. Spelman's (2000) review of the literature finds that most studies show that doubling current U. S. prison capacity would reduce crime rates by only 20-40 per cent. It is likely that cost-effective alternatives to prison are a better use of scarce resources. Other research found that offenders given a suspended sentence are no more likely to re-offend than those given a prison sentence of up to 12 months in duration, suggesting that there is no particular deterrent effect in receiving a prison sentence for people who had not previously been sentenced to prison (Trevena & Weatherburn 2015). Wan et al (2012) found no evidence that in NSW increases in the length of imprisonment has any short or long-run impact on crime rates. Prison can become more of an expectation than a deterrent; for some it may even become a rite of passage and can lead to the 'normalisation' of incarceration among community members (Brown 2010).

There are very good reasons why Aboriginal and Torres Strait Islander people should not be sent to prison:

- The deterrent impact of imprisonment dulls with use.
- Prison can be a better life-style than release for the most disadvantaged prisoners.
- Prison encourages re-offending.
- Prison damages the human capital of the prisoner and their children, damaging their ability to connect with society (employment, family life).
- Prisons are extremely expensive.
- International criticism, including by the United Nations, of Australia's extremely high rate of Aboriginal and Torres Strait Islander imprisonment.
- An apology for past wrongs is meaningless without a determined attempt to remedy the damage done, particularly reducing Aboriginal and Torres Strait Islander imprisonment (Weatherburn 2014:7-10).

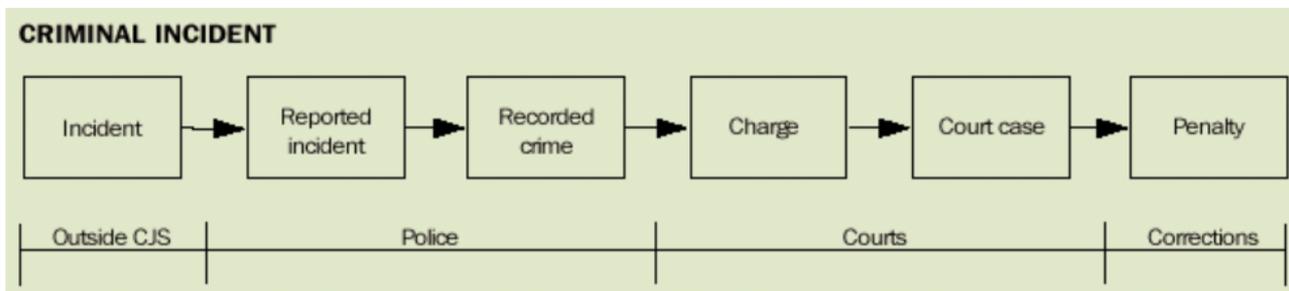
Galambany Court has not reduced the modest deterrent impact of the ACT justice system. Rather, it is likely that Galambany Court has increased the deterrent impact of the ACT justice system by making sentencing more culturally appropriate to Aboriginal and Torres Strait offenders.

### **Criminal Justice System**

The criminal justice system is very complex. People entering the criminal justice system are passed from the police to courts and finally to corrections.

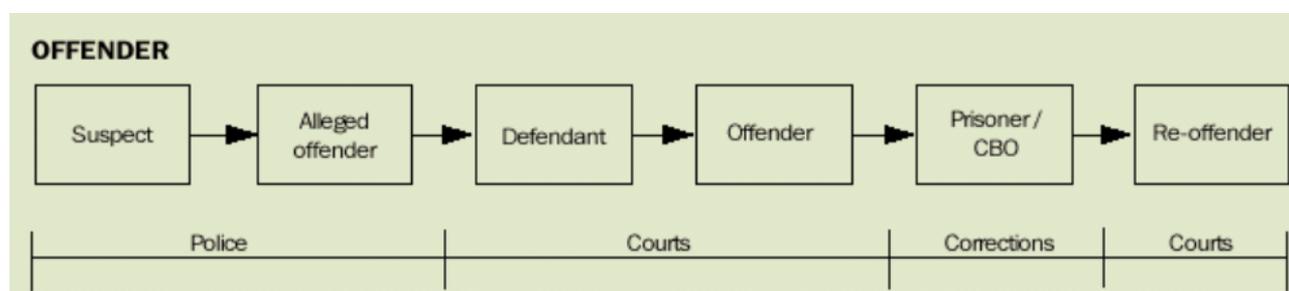
The three stages of involvement with the criminal justice system (see figure below) are:

- i. Investigative stage (police): the criminal justice system becomes aware of an incident;
- ii. Adjudicative stage (courts): the criminal justice system determines if criminal responsibility exists and directs that some form of penalty or obligation to be applied as the result of a finding of liability or guilt; and
- iii. Correctional stage (prisons): the criminal justice system applies and manages the penalty or obligation.



Source: Australian Bureau of Statistics, 2001, *Measuring Wellbeing: Frameworks for Australian Social Statistics*, 2001, Catalogue No. 4160.0, Canberra.

People passing through the criminal justice system move from being suspects to prisoners (see figure below) but can be diverted from the criminal justice system at each stage. There are concerns that the high rate of Aboriginal and Torres Strait Islander imprisonment reflects bias in the practice of diversion.



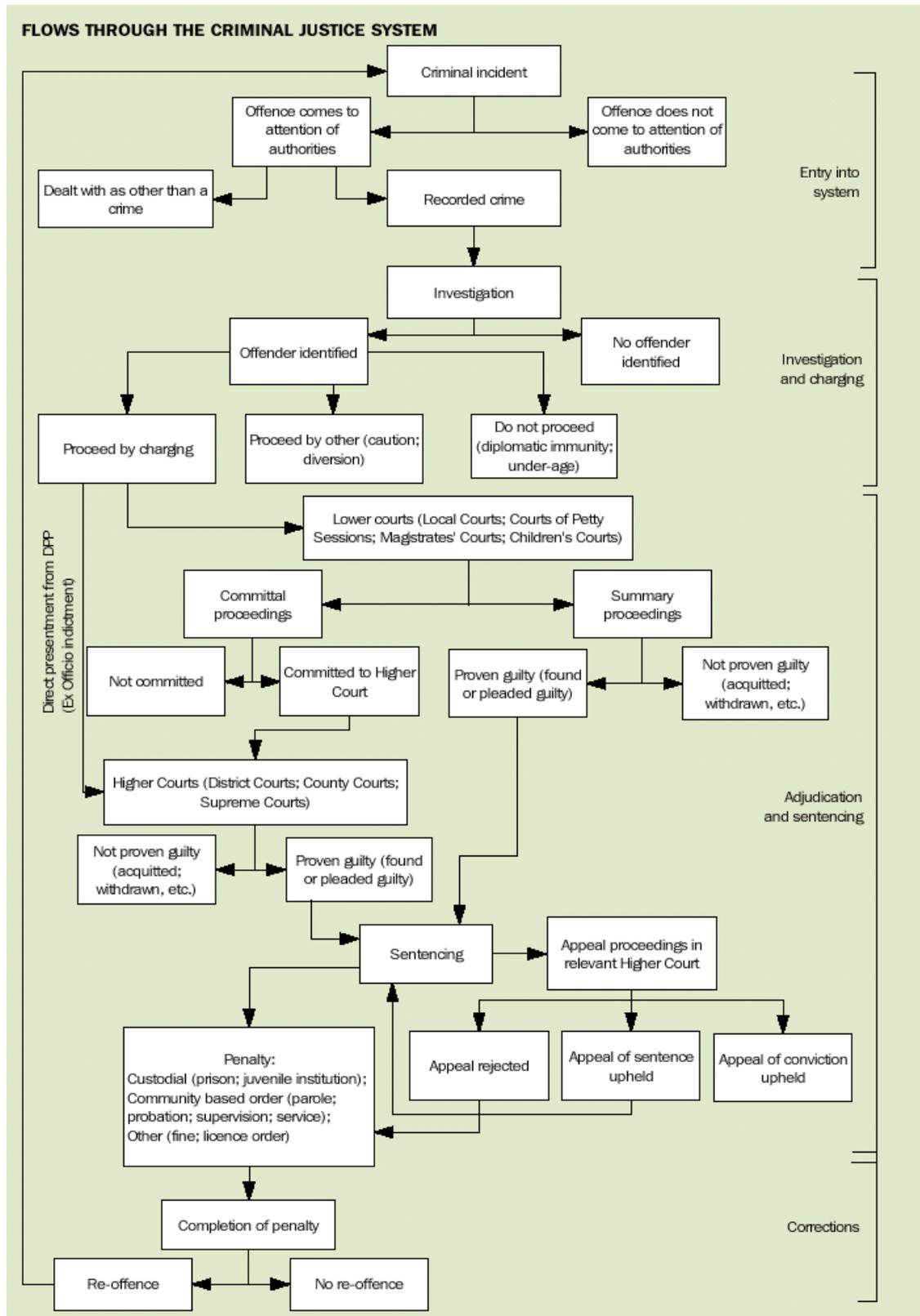
Source: Australian Bureau of Statistics, 2001, *Measuring Wellbeing: Frameworks for Australian Social Statistics*, 2001, Catalogue No. 4160.0, Canberra.

Criminal offences are divided into two categories: summary and indictable offences. Summary offences are heard in the lower courts (Local or Magistrates courts), whereas indictable offences are generally heard in District/County or Supreme courts. These courts are referred to as ‘mainstream’ courts, and hear most criminal cases prosecuted in all Australian jurisdictions.

The lowest level of criminal court is the Magistrates' Court (or Court of Summary Jurisdiction). The majority of criminal cases are heard in these courts. Cases heard in Magistrates' Courts do not involve a jury and a magistrate determines the guilt or innocence of the defendant. This is known as a summary proceeding. The higher courts deal with the more serious offences (Australian Law Reform Commission 2017:191).

Once charged, the accused is assessed by a lower court (Magistrates Court) to determine if their offence requires them to be committed (Committal Proceeding) to a higher court (Supreme Court) or face Summary Proceedings in the lower court. Magistrates hear ACT offences, carrying a maximum sentence of two years imprisonment or less, and Commonwealth offences with a maximum penalty of less than one year. These types of offences are referred to as summary offences. More serious offences are heard in the Supreme Court.

Diversion programs diverting a defendant or offender out of the criminal justice stream assist some Aboriginal and Torres Strait Islander people who come before the courts (Fletcher & Dao 2012). The courts can divert the accused from the criminal justice system, particularly by granting bail, community-based orders and fines (see figure below).



Source: Australian Bureau of Statistics, 2001, Measuring Wellbeing: Frameworks for Australian Social Statistics, 2001, Catalogue No. 4160.0, Canberra.

The diversionary practices available to the police include:

- A decision to issue caution or warning rather than charge;
- Upon arresting and charging, an officer could decide to use court summons rather than detaining the offender in police cells until the preliminary hearing; or

- The officer could refer the offender to community-based services, for example drug and alcohol rehabilitation services, housing, mental health.

In general, Aboriginal and Torres Strait Islander offenders are less likely to be diverted by cautioning than non-Indigenous offenders. (ACTCOSS & AJC 2008:55).

Growing problems of Australian imprisonment have encouraged reforms in judicial processes. Specialty courts were introduced in Australia in the late 1990s as part of the recognition that the social problems which may have contributed to a defendant's behaviour may require social or therapeutic, rather than a legal solution (Freiberg 2001 & 2003, Wexler & Winick 1996 & 2003, Phelan 2003 & 2004, Payne 2006 & King *et al.* 2014).

For Aboriginal and Torres Strait Islander peoples, mainstream courts can be inaccessible or alienating. This impairs access to justice, and can diminish the impact of judicial deterrence, punishment and rehabilitation, on Aboriginal and Torres Strait Islander defendants (Auty & Briggs 2004 & Harris 2004). Specialist courts providing more inclusive and culturally suitable approaches to sentencing Aboriginal and Torres Strait Islander offenders have been developed in response.

Galambany Court is better able to implement diversion because it has access to cultural authority through the involvement of Elders and Respected Persons.

### **Circle Sentencing Courts**

*The core elements animating these courts - improved communication, citizen knowledge/control and appropriate penalties - could be applied to all court processes and all defendants. These new justice practices may indeed be signalling the way of the future, and transforming our courts as we now know them (Marchetti & Daly 2004:5).*

Circle sentencing is a specialist court based upon the traditional practices conducted by Indigenous communities in Canada (Green 1989). In 1985, in Canada, the Hollow Water Ojibway First Nation community established healing processes that works with victims of crime, victimizers and their families in a holistic manner. These processes are known as Community Holistic Circle Healing (CHCH) and integrate federal and provincially funded services (i.e., policing, justice, corrections, health and social services) (Million 2013).

Circle sentencing was reintroduced in the Yukon Territory and other Canadian communities in 1992 and was adopted in the United States in 1996. Circle sentencing places the sentencing court in a community setting in order to achieve the following goals (Bazemore & Umbreit 2001:6):

- promoting healing for all affected parties;
- providing an opportunity for the offender to make amends;
- empowering victims, community members, families and offenders by giving them a voice and a shared responsibility in finding constructive resolutions;
- addressing the underlying causes of criminal behaviour;
- building a sense of community and community capacity for resolving conflict; and
- promoting and sharing community values.

The process is as much about the needs of victims and communities as it is about addressing offending. It is about resolving problems, building stronger relationships and preventing further offending from occurring. The 'circle' involves judges, lawyers, police officers, offenders, victims and community members coming together to determine an appropriate sentence for the offender (Larsen 2014:16).

Aboriginal and Torres Strait Islander courts based on circle sentencing have been established in New South Wales, Victoria, Queensland, Western Australia, South Australia and the Australian Capital Territory to provide a more culturally responsive and appropriate alternative to the mainstream courts (see figure below). The Aboriginal and Torres Strait Islander courts provide a culturally appropriate process in which Aboriginal and Torres Strait Islander offenders and their communities can participate. By increasing the cultural relevance of the court process for Aboriginal and Torres Strait Islander offenders, these courts dispense sentences that are more appropriate and more likely to have an impact on reoffending, thereby leading to a reduction in the rate of Aboriginal and Torres Strait Islander imprisonment.

In Australia, circle sentencing recognises that the local Aboriginal and Torres Strait Islander community is best placed to solve its own problems. Local Aboriginal and Torres Strait Islander people actively take responsibility for their community's problems of violence, substance abuse, domestic violence and crime. They have authority to make decisions about solutions, and the power to implement them. By empowering the community, circle sentencing provides an opportunity to raise the dignity, self-esteem, pride, and integrity of Aboriginal and Torres Strait Islander people. This benefit is not restricted solely to the Aboriginal and Torres Strait Islander community but shared by the wider community (Potas *et al.* 2003:53).

The presence of Elders and respected persons in court can be effective in imparting a positive and constructive notion of shame, which comes from Aboriginal and Torres Strait Islander people speaking to and supporting an offender, rather than from a more distant legal authority, who may make offenders feel afraid and bad about themselves (Potas *et al.* 2003). Appearing in mainstream court and speaking about one's offending can be an embarrassing, fearful and meaningless experience for many Aboriginal and Torres Strait Islander offenders (McRae *et al.* 2003).

### Australian Aboriginal and Torres Strait Islander Sentencing Courts

Jurisdiction	Locality	Name of court	Date established	No. of elders or respected persons sitting with magistrate	Layout of the courtroom
New South Wales	Nowra	Circle Court	Feb 2002	Four, selected from the community	Held in South Coast Aboriginal Cultural Centre; sit in a circle (no desk); closed court
	Dubbo	Circle Court	Aug 2003	Four, selected from the community	Sit in a circle (no desk); closed court
Queensland	Brisbane	Murri Court	Aug 2002	One, selected from a pool of 15	Normal magistrates' courtroom decorated with Indigenous paintings
	Rockhampton	As yet unnamed; includes three groups (Aboriginal people, Torres Strait Islanders and South Sea Islanders)	Jun 2003	One, selected from a pool of 8-10, but as many elders as possible turn up and observe	Normal magistrates' courtroom decorated with a painting and other insignia that reflects the participation of the three groups
South Australia	Port Adelaide	Nunga Court	Jun 1999	Three, selected from community (in 2003); previously one elder sat with the magistrate	Normal magistrates' courtroom with separate entrance decorated with Indigenous paintings
	Murray Bridge	Nunga Court	Jan 2001	One, selected from the community	Normal magistrates' courtroom
	Port Augusta	Special Aboriginal Court	Jul 2001	One, selected from the community	Normal magistrates' courtroom
	Port Augusta	Youth Aboriginal Court	May 2003	One, selected from the community	Normal magistrates' courtroom
Victoria	Ceduna	Aboriginal Court	Jul 2003	One, selected from the community	Normal magistrates' courtroom
	Shepparton	Koori Court	Oct 2002	Two, selected from a pool of 7; legislation permits just one to assist in the hearing	Remodelled courtroom with an oval table, 3 flags (Australian, Aboriginal and Torres Strait Islander), Indigenous paintings and noticeboard
	Broadmeadows	Koori Court	Mar 2003	Two, selected from a pool of 4; legislation permits just one to assist in the hearing	Remodelled courtroom with an oval table, 3 flags (Australian, Aboriginal and Torres Strait Islander) and Indigenous paintings

Source: Marchetti & Daly 2004:3

In Australia specialist courts for Aboriginal and Torres Strait Islander offenders seek to achieve active participation of the defendant and community. Specialist courts aim to increase active participation through the inclusion of key community members, such as Elders, and the use of plain English to ensure that processes and requirements imposed by the court are well understood by the person appearing.

The Koori Courts in Victoria have a legislated purpose of ‘ensuring greater participation of the Aboriginal community in the sentencing process’<sup>15</sup>. The legislative aims of NSW Circle Sentencing include increased participation of Aboriginal offenders, victims, and community members in sentencing processes, and to improve community confidence in sentencing processes. These courts change mainstream court environments, for example using a round table, or the display of the Aboriginal and/or Torres Strait Islander flag (Australian Law Reform Commission 2017).

### **Galambany Court**

In the ACT, the Circle Sentencing Court is known as Galambany Court<sup>16</sup>. Galambany Court was established in 2004 in the ACT Magistrates Court to assess and sentence Aboriginal and Torres Strait Islander people (adults and youth) who plead guilty to an offence. Galambany is a Ngunnawal word meaning ‘*I, we all, including you.*’ (ATSICRG 2012:6). Galambany Court is governed by Practice Direction No. 1 of 2012. Galambany Court is modelled on the Circle Sentencing Court in Nowra, NSW.

The purpose of Galambany Court is to provide a culturally relevant sentencing option in the ACT Magistrates Court for eligible Aboriginal and Torres Strait Islander people who have offended. Galambany Court gives the ACT Aboriginal and Torres Strait Islander community an opportunity to work collaboratively with the ACT criminal justice system to address over representation issues and offending behaviour.

#### **Galambany Court process has three steps:**

**STEP ONE:** The matter commences in the ACT Magistrates Court. The offender must plead guilty before the matter can be referred to Galambany Court.

**STEP TWO:** Once the matter has been referred, it is adjourned for an initial assessment of the offender’s suitability made by Panel Members. Where the Panel deems the offender suitable, the matter is adjourned for three months. The Panel may recommend the offender complete programs or engage with certain services in these three months. The Panel can also make referrals to support services, such as rehabilitation programs or counselling.

**STEP THREE:** After the three-month adjournment the offender returns for a sentence to be handed down. At this stage the defence and prosecution make submissions on sentence, the offender is asked a number of questions by the Panel and then the Panel take a short break to deliberate. Following deliberation, the Panel makes sentencing recommendations to the Magistrate. The Magistrate then has the power to accept the Panel’s recommendations, and impose a sentence consistent with this, or impose a sentence that he/she deems appropriate.

Galambany Circle Sentencing Court is an alternative pathway through the criminal justice system. The Court is presided over by one Magistrate who has been appointed as Galambany Circle Sentencing Court Magistrate. The Court incorporates a panel of 2-4 Aboriginal and Torres Strait Islander community members (Panel Members). The Panel Members are Aboriginal and Torres Strait Islander Elders and Respected Persons living in the Canberra community. In assessment

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<sup>15</sup> <https://www.magistratescourt.vic.gov.au/koori-court>.

<sup>16</sup> In May 2011, the name was officially changed, under the *Legislation Amendment Bill 2011*, from Ngambra to Galambany Court.

sessions the Panel Members determine offenders' eligibility for Galambany Court. In sentencing sessions the Panel makes recommendations to the Magistrate about sentencing options. The Magistrate hands down the sentence.

The Court's purpose is to determine and impose an appropriate sentence for the offender. Sentencing in Galambany Court looks at the healing process, moving on from the offence, and helping the offender address a range of issues that could potentially change their offending behaviour. Galambany Court addresses offending behaviour within a culturally sensitive framework that recognises the continuing disadvantage experienced by many Aboriginal and Torres Strait Islander people in the criminal justice system.

Galambany Court uses a less formal courtroom setting and encourages a 'conversation' style approach to handling matters. The offender is encouraged to explain to the Panel why they committed the offence and the Panel asks the offender questions about background, antecedents and reasons for offending behaviour. The panel makes sentencing recommendations that are aimed at rehabilitating the offender in the community and thereby reducing recidivism.

Galambany Court differs from mainstream sentencing processes in several ways:

- The Circle Court Magistrate sits alongside Panel Members who are invited by the Magistrate to contribute to the sentencing process;
- Panel Members contribute substantially to the Court process and have a major role in explaining culturally relevant details to the Court; and
- Panel Members inform the offender that they do not accept or tolerate criminal behaviour in the Aboriginal and Torres Strait Islander community. They explore with the offender ways in which criminal behaviour can be avoided in the future.

Galambany Court's Panel Members participate in the assessment and sentencing process to:

- involve the Aboriginal and Torres Strait Islander community in the sentencing of Aboriginal and Torres Strait Islander defendants;
- increase the confidence of the Aboriginal and Torres Strait Islander community in the sentencing process;
- reduce barriers between the ACT Magistrates Court and Aboriginal and Torres Strait Islander community;
- provide culturally relevant and effective sentencing options for Aboriginal and Torres Strait Islander defendants;
- provide Aboriginal and Torres Strait Islander defendants with support services that will assist them to overcome their offending behaviour;
- provide support to victims of crime and enhance their rights and participation in Galambany Court process; and
- reduce repeat offending by Aboriginal and Torres Strait Islander defendants.

An application for referral to Galambany Court must be made in the ACT Magistrates Court. The Magistrate, prosecution or defence can do this. A referral to Galambany Court means an eligible defendant has agreed to be assessed and sentenced by a Panel of Aboriginal and Torres Strait Islander Elders and Community members. Only the Magistrate can make a referral.

To be eligible for referral:

- the defendant must identify as an Aboriginal or Torres Strait Islander person and have ties to an Aboriginal and Torres Strait Islander community, either in the ACT or elsewhere;
- the offence can be finalised in the Magistrates Court;
- the offence is not a sexual offence;

- the defendant has entered a plea of guilty; and
- the defendant consents to be assessed to determine their suitability for circle sentencing and agrees to participate fully in the processes of Galambany Court.

When an offender has given their consent to be referred, Galambany Court Coordinator will contact the offender to organise an assessment by a panel of 2 to 4 Aboriginal and Torres Strait Islander Elders or Community members. The assessment determines whether an offender is suitable to be sentenced through Galambany Court. The panel of Elders or Community members discuss the circumstances around the offence and how it has affected the victim, the offender and the wider community. Additionally, the offender's cultural background and current social situation is discussed. The assessment generally takes 45 minutes to an hour.

Those present at an assessment are:

- The offender and support persons
- Lawyer (not mandatory)
- The Panel
- Galambany Court Coordinator

Galambany Court has the same sentencing powers as the ACT Magistrates Court and has the same restrictions on maximum sentences that it can impose. The Court can sentence an offender on each offence to a term of imprisonment up to two years. If the defendant has given consent to jurisdiction on a summary / indictable offence, the maximum sentence is five years imprisonment. The ACT Supreme Court hears appeals from Galambany Court.

Galambany is an open court and any member of the public may observe its proceedings. There are also dedicated corrections officer and ALS support workers who attend Galambany as well as a representative from Relationships Australia.

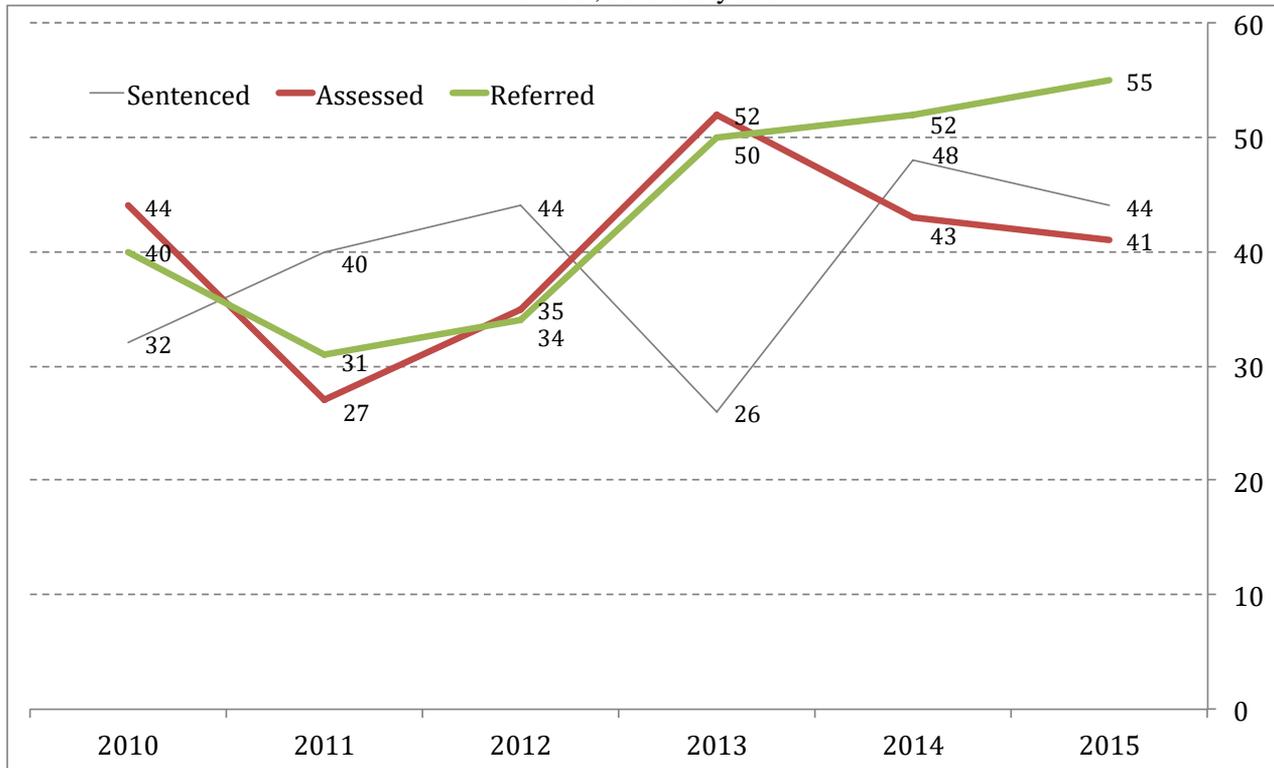
When the court is sitting for sentencing the following people may be present:

- The appointed Galambany Circle Sentencing Magistrate;
- A Magistrate's associate;
- Galambany Court facilitator;
- Panel members;
- The offender;
- The offender's legal representative;
- The offender's support people: and
- A prosecutor.

The number of Aboriginal and Torres Strait Islander people referred to Galambany Court has varied from 31 to 55 over the 6 years, 2010 to 2015. The numbers are growing (see figure below).

Most offenders referred are adult males. In 2013-14 referrals were 50 adults (40 male and 10 female) and 2 young people (1 male and 1 female). In 2014-15 the number of Aboriginal and Torres Strait Islander people referred to Galambany Court were 62 adults (46 male and 14 females) and 2 young people (2 males).

**Aboriginal and Torres Strait Islander offenders in Galambany Court,  
number, calendar years**



Source: ACT Criminal Justice Statistical Profile - September 2016

**Impact of Galambany Court**

The evaluations of Aboriginal and Torres Strait Islander courts have shown substantial benefits for offenders, their families, victims, governments and the wider community.

A qualitative evaluation conducted by the Cultural and Indigenous Research Centre (2008) found the program had a number of positive outcomes for the community (including that barriers between Aboriginal and Torres Strait Islander people and the courts were lowered, perception among participants that Circle Sentencing had an impact on reoffending and changes in offender behaviour such as drug/ alcohol use, employment and relationships) and met seven of eight legislated objectives:

- the format allowed for community involvement;
- empowered Aboriginal communities in the sentencing process;
- provided support to Aboriginal victims of crime;
- increased confidence in the sentencing process;
- reduced barriers between Aboriginal communities and courts;
- provided more appropriate sentencing options; and
- provided effective support to Aboriginal defendants (Larsen 2014:17).

This was confirmed in a further evaluation conducted in 2008 (Daly & Proietti-Scifoni 2009).

Analysing data supplied by ACT Corrective Services and the JACS legislation, Policy and Programs branch we have found that Galambany Court keeps a very high proportion of offenders out of prison and has a very low level of reoffending. In 2014/15, there were 51 cases sentenced in Galambany Court, of these cases there were three offenders with two cases sentenced, giving 48 offenders sentenced in 2014/15. At least 13 were held in remand (probably some of the 5 imprisoned offenders could be added to that 13).

Of the 48 offenders sentenced, five were sentenced to imprisonment, 32 offenders were sentenced to Community Orders (including Good Behaviour Orders: only 11 of these were subsequently breached), and 11 offenders received sentences not involving ACTCS (fines).

### Aboriginal and Torres Strait Islander Offenders sentence in Galambany Court in 2014-15

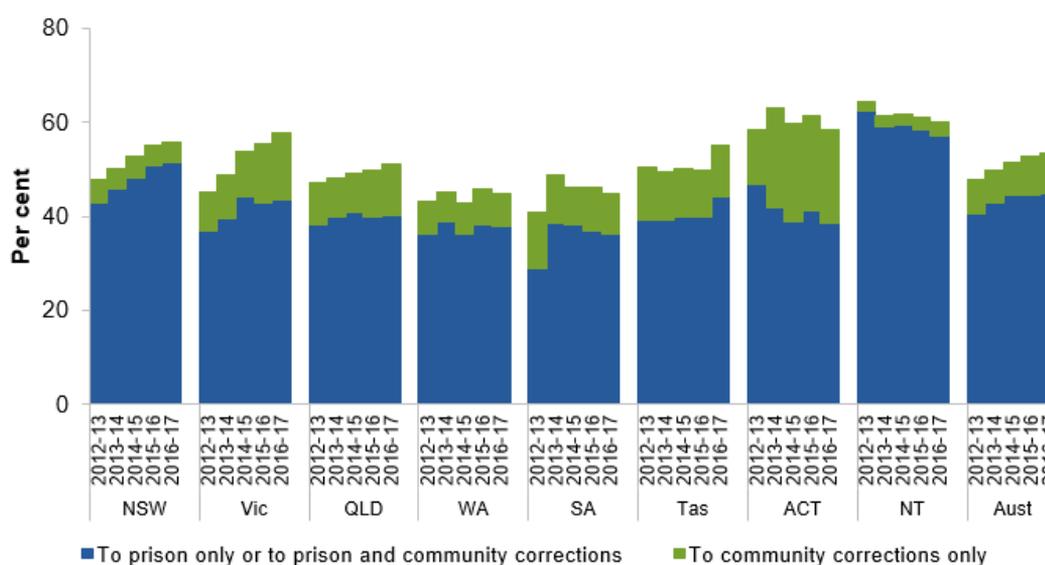
	2014-15 Sentence	Sentenced in subsequent two years	% change
Imprisonment	5	4	-20%
Community Order	32	12	-63%
Non-ACTCS	11	29	62%
Not applicable	0	2	-
Still in custody	-	1	-
Total	48	48	0

Note: Of the 4 reoffenders sentenced to new imprisonment, by 30<sup>th</sup> June 2017, 2 of these were on an Intensive Correction Order.

The ACTCS data reveals an imprisonment rate (for Galambany sentenced offenders) of 10% in 2014/15, falling to 8% for reimprisonment in the following two years. The rate of Community Orders was 67% in 2014/15, falling to 25% for new Community Orders in the following two years. Unfortunately, the data does not distinguish between former offenders receiving non-ACTCS sentences and not offending, but in 2014/15 the rate of non-ACTCS sentences was 23% and for the following two years non-ACTCS sentences and non-offending combined was 60%.

In contrast, around 60% of the wider ACT population of offenders experiencing prison or community orders returns to ACTCS within two years. See the table below.

### Prisoners returned to corrective services with a new correctional sanction within two years of release (per cent)



Rates for a financial year relate to prisoners released two years prior to that reporting period who returned within two years of their release date.  
Source: SCRGSP 2018

This ACTCS data strongly supports the growing body of evidence indicating that restorative justice can reduce reoffending (Weatherburn & Macadam 2013:1 & Larsen 2014:26). This research literature is summarised in Attachment D. This CBA report supports those findings.

## Attachment D

### Economic costs and benefits of sentencing circles: review of the literature

Cost Benefit Analysis is a comprehensive way of determining the degree to which the economic value of society's benefits from Galambany Court exceeds the economic costs to society. Cost Benefit Analysis answers the question *Does Galambany Court add to the net economic wellbeing of society?*

This attachment summarises the relevant research literature underpinning the valuations adopted in this CBA. Cost Benefit Analysis typically estimates economic valuations based on the research literature. This methodology is known as Benefit Transfer (Boutwell & Westra 2013 & Johnson *et al.* 2015). Where available we use meta-analysis, or the "study of studies", to provide a more thorough and statistically valid value estimate for use in a benefit transfer.

Most economic valuation focuses on areas that can be easily measured, avoiding assessment of difficult and problematic interventions for example justice system diversion (Wood & Leighton, 2010, Teles & Schmitt 2011). The difficulties for evaluation of Galambany Court include:

1. The complexity of public policymaking
2. The role of external forces and conditions
3. Problems of attribution
4. The long time frame needed for changes to occur
5. Shifting strategies and milestones
6. Low capacity and interest in evaluation from social organisations

Justice services are merit goods<sup>17</sup>. A merit good's value is determined on the basis of the concept of social need, rather than ability and willingness to pay of the consumer. To value a merit good it is necessary to look at the individual consumers willingness to pay for the good, but to also include the benefits that accrue to the wider society (externalities). Cost Benefit Analysis provides the framework for this more comprehensive valuation. Public and philanthropic funding for justice reflects its value as a merit good and measures the importance that society places on equality and social inclusion (Ver Eecke 2003 & 2007).

Justice services are not provided in a market where price balances suppliers and consumers. It is provided as a right without a price. This presents particular challenges for the economic valuation of justice services. Many of the benefits of justice services are difficult to measure. However by focusing on how justice services change people's lives it is possible to identify tangible and measurable impacts for economic valuation (Wood & Leighton 2010).

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<sup>17</sup> Merit goods and services create positive externalities when consumed. These third-party spill over (externality) benefits can have a significant effect on social welfare. A merit good is under-consumed (and under-produced) in the free market economy. This is due to two main reasons:

1. When consumed, a merit good creates positive externalities (an externality being a third party/spill-over effect which arises from the consumption or production of the good/service). This means that there is a divergence between private benefit and public benefit when a merit good is consumed (i.e. the public benefit is greater than the private benefit). However, as consumers only consider private benefits when consuming merit goods, it means that they are under-consumed (and so under-produced).
2. Individuals are myopic, short-term utility maximisers and do not take into account the long-term benefits of consuming a merit good and so they are under-consumed.

Despite the concerns noted above, it is both possible and often even mundane to estimate economic values for the impacts of justice services. There are several methods relevant to assessing the economic value of justice services, including cost effectiveness analysis (CEA), cost benefit analysis (CBA), and social return on investment (SROI) (Fleming, 2013).

Galambany Court impacts on hospitalisation, imprisonment, criminal justice proceedings, unemployment, lost family life for offenders, nursing home use, etc. are amenable to economic valuation in a Cost Benefit Analysis framework.

*The research has shown that community healing processes have the real potential to use traditional values, culture and spiritual practices to improve treatment for offenders, their victims, families and the community. The research also points to the value to governments for the funds invested in community healing processes.*

Ed Buller 2001:18

Some examples of CBA valuations of justice services include:  
Specialty courts in the justice system free economic resources for other uses.

Examples include:

- a KPMG evaluation of the Victorian Youth Justice Conferencing Program found that “for every \$1 invested by the Department of Human Services on the Program, at least \$1.21 is saved in the immediate and short term” (KPMG, 2010:62).
- Baldry *et al* (2012) estimated pathway costing using a dataset on Mental Health Disorders and Cognitive Disability in the Criminal Justice System of lifelong interventions and interactions with all NSW criminal justice and some human services agencies. Life course institutional costs, for 11 case studies, aged between 23 and 55, range from around \$0.9 million to \$5.5 million. Estimated benefit cost ratios in the case studies range from 1.4 to 2.4. For every dollar spent on the early investment, between \$1.40 and \$2.40 in government cost is saved in the longer term (Baldry *et al* 2012:12). Typically, early care and protection and early intervention did not occur in any substantial or sustained way. The lack of early and adequate services caused costly criminal justice, health and homelessness interactions and interventions later in their lives. Millions of dollars in crisis and criminal justice interventions continue to be spent on these vulnerable individuals whose needs would have been better addressed in early support in a health, rehabilitation or community space (Baldry *et al* 2012:6).
- The Canadian Hollow Water Community Holistic Circle Healing process cost the federal and provincial governments approximately \$C2.4 million over ten years. A conservative estimation of replacing the Hollow Water Community Holistic Circle Healing with traditional government services (pre-incarceration, prison, probation, and parole) is between \$C6.2 and \$15.9 million. The higher estimate includes the costs of housing inmates. For every \$1.00 the Provincial and Federal government spent, Canada receives well over \$2.60 to \$6.60 in benefits. It is likely that the value of Community Holistic Circle Healing benefits to both the government and community has been significantly understated. Traditional government services do not have the community capacity building or healing effect of Community Holistic Circle Healing processes, nor do they include a community development component. Further, these estimates do not include cost savings associated with reduced victimizer re-offending, nor victims requiring additional assistance (Couture 2001).
- An analysis of a similar Canadian healing circle, the Biidaaban healing process, of the Mnjikaning First Nation in Ontario estimated a \$C2.60 return on each \$C1 invested (Buller 2001:15).
- In 2017, the Washington State Institute for Public Policy estimated that for intensive supervision (surveillance and treatment) courts<sup>18</sup> in Washington State per participant total benefits were

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<sup>18</sup> Intensive supervision probation/parole (ISP) emphasizes a higher degree of surveillance than traditional supervision in the community. ISP is delivered in lieu of incarceration, as a conditional release from incarceration in the form of

\$US13,210 (excluding direct benefits to participants), total costs were \$US813 , giving a net benefit of \$US12,397 and a benefit cost ratio of \$16.25. (<http://www.wsipp.wa.gov>).

- In 2017, the Washington State Institute for Public Policy estimated that for re-entry courts<sup>19</sup> in Washington State per participant total benefits were \$US16,912 (excluding direct benefits to participants), total costs were \$US4,922 giving a net benefit of \$US11,990 and a benefit cost ratio of \$3.44 (<http://www.wsipp.wa.gov>).

- In 2017, the Washington State Institute for Public Policy estimated that for drug offender alternative sentencing courts (for persons convicted of drug offenses) in Washington State per participant total benefits were \$US22,656 (excluding direct benefits to participants), total costs were \$US1,629 giving a net benefit of \$US21,027 and a benefit cost ratio of \$13.91 (<http://www.wsipp.wa.gov>).

- In 2017, the Washington State Institute for Public Policy estimated that for drug offender alternative sentencing courts (for persons convicted of property offenses) in Washington State per participant total benefits were \$US12,348 (excluding direct benefits to participants), total costs were \$US1,629 giving a net benefit of \$US10,721 and a benefit cost ratio of \$7.59 (<http://www.wsipp.wa.gov>).

### Quantities

Benefit Transfer is used to estimate the unit value of the impacts of Galambany Court. These unit values need to be applied to estimates of the physical quantities to which the unit values are applied. Combining unit values and the relevant physical quantities estimates the total value the impact of Galambany Court. For example, the number of Aboriginal and Torres Strait Islander offenders sentenced in Galambany Court is used to scale up the average benefits to total benefits per year.

Galambany Court sentences around 45 Aboriginal and Torres Strait Islander offenders each year but only a proportion of those would be thereby diverted from imprisonment as Community Service Orders are also used in the standard Magistrates Court for Aboriginal and Torres Strait Islander offenders.

#### **Aboriginal and Torres Strait Islander offenders sentenced in Galambany Court. number**

Year	2011	2012	2013	2014	2015
Offenders	40	44	26	48	44

Source: ACT Criminal Justice Statistical Profile - September 2016

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parole, or as a probation sentence. Conditions of supervision vary, but often include urinalysis testing, increased face-to-face or collateral contacts, or required participation in treatment. Persons who are supervised can incur violations, or sanctions, when these conditions are not followed.

<sup>19</sup> The purpose of re-entry courts is to help facilitate successful reentry into the community for formerly incarcerated individuals. These specialized courts utilize a judge and other court staff to impose comprehensive supervision, graduated sanctions, and incentives as well s coordinate services (e.g. substance abuse treatment) to defendants.

## Galambany Court Costs

### Cost Summary: Galambany Court

2017-2026 Total Present Value (2017 dollars discounted by 2% over ten years).

Galambany Court	\$2,536,000
Longer in remand	\$360,000
Extra community services	\$405,000
<b>Total Costs</b>	<b>\$3,300,000</b>

### Galambany Court: labour, services and supplies

The resources consumed to operate Galambany Court will not be available for other uses and therefore there is an opportunity cost to society. These costs would not have arisen without Galambany Court.

The resources used by Galambany Court will be purchased in competitive markets where prices are a good estimate of economic value. Therefore, these costs are valued at market prices as used in the JACS budget.

The internal budget reported by JACS for Galambany Court for 2017-18 is \$147,415. The budget includes the cost of the full time Galambany Court Coordinator, panel member reimbursements, training expenses, ICT charges and a small budget for tea/coffee/snacks in the courtroom.

Overhead costs of JACS administration incorporate a proportion of salary costs for the Executive, Director, Manager, Senior Policy Officer and Governance/Administration officers who all hold responsibility for overseeing/administering the court. In 2017-18, this is expected to add \$86,505 to the cost of providing Galambany Court.

Galambany Court Magistrate normally sits 10 days per year. Distributing the annual remuneration of \$344,084 for ACT Magistrates, determined by the ACT Remuneration Tribunal, over 260 working days gives a total cost for Galambany Court's 10 sitting days of \$13,234 per year. Adding 100% for costs of an Associate, court recorders, utilities and audio, gives a total of \$27,000 per year.

Galambany Court uses a meeting room that could have alternative uses. The most likely alternative use of this space is for offices. The space could accommodate a four person workspace and a web search identified the typical rent for this type of space at \$400 per week giving an annual rent of \$21,000.

This gives a total cost to run Galambany Court is \$282,000 per year.

**2017-26 Total Present Value: \$2,536,000** (2017 dollars discounted by 2% over ten years)

### Galambany Court offender use of extra community services

Galambany Court will recommend or require offenders to use specific community services. Offenders sentenced in the mainstream Magistrates Court would have accessed some of these services, but others will be extra. The extra resources consumed by community services will not be available for other uses and therefore are an opportunity cost to society. These costs would not have arisen without Galambany Court.

The resources used by the community services will be purchased in competitive markets where prices are a good estimate of economic value. Therefore these costs are valued at market prices.

The extra community services are valued at \$1,000 per offender. For the 45 Galambany Court sentenced offenders this gives an extra community service cost of \$45,000 for each year of Galambany Court's operation.

**2017-26 Total Present Value: \$405,000** (2017 dollars discounted by 2% over ten years)

### **Galambany Court offenders may stay longer in remand**

Galambany Court process involves an extra stage compared to the mainstream Magistrates Court and there may be some extra cost to the prison if Galambany Court results in longer periods in remand for some offenders. Extra resources would be consumed by the AMC will not be available for other uses and therefore are an opportunity cost to society. These costs would not have arisen without Galambany Court.

The resources used by the AMC will be purchased in competitive markets where prices are a good estimate of economic value. Therefore these costs are valued at market prices.

Based on the research literature summarised in the section on prison costs (below), this CBA estimates an extra cost to the AMC of \$400 per adult prisoner per day. Some Galambany offenders in remand would have received a custodial sentence in the mainstream Magistrate's Court and therefore there is no extra time in prison. Assuming conservatively that 10 offenders are imprisoned for an average of 10 extra days (Galambany Court typically sits once a month) gives an extra 100 days of imprisonment.

There is an extra cost to the AMC of \$40,000 for each year of Galambany Court's operation.

**2017-26 Total Present Value: \$360,000** (2017 dollars discounted by 2% over ten years)

## Galambany Court benefits

### Benefit Summary: Galambany Court

2017-2026 Total Present Value (2017 dollars discounted by 2% over ten years)

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#### Output gains

Employment	\$3,372,000	
Offender life span	\$1,079,000	
Prevention of Deaths in Custody	\$469,000	not included in the body of this CBA (see explanatory note below)
Education	\$252,000	

#### Resources freed for alternative use (cost savings)

Justice system	\$5,332,000
Health	\$180,000
Education	\$135,000
Child protection	\$135,000
Accommodation	\$117,000
Violence against women	\$111,000

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**Total Benefits** **\$11,182,000**

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**Galambany Court** improves both:

- the output of offenders and their families, and
- the productivity of public services.

The greater output of offenders can be measured by their greater production in the workforce. Cost savings can be measured by the economic resources freed for their next best use.

Output enhancements are valued first and then cost reducing enhancements are valued.

#### Output gains

Galambany Court increases ACT output by allowing offenders and their families to be more productive. Galambany Court improves physical and mental health, academic achievement, and reduces violence, suicide, and substance abuse.

#### Output gains from increased employment of offenders

Galambany increases employment and thereby increases the output available to society. The research literature valuing that increased output is summarised below.

Galambany Court, directly and indirectly, assists Aboriginal and Torres Strait Islander offenders to engage more fully in the workforce, both paid and unpaid. The economic value of employment gains is a benefit to society (increased output) and is therefore included as a benefit in this Cost Benefit Analysis.

Galambany Court improves offender's workforce outcomes in several ways, including:

- a reduction in unemployment, that is, an offender that would not otherwise secure employment is able to get (or keep) a part-time or full-time job;
- a reduction in underemployment, that is, an offender gets a job that makes the most of their skills and abilities; and
- there is an increase in productivity, where the offender is be employed but has difficulty being fully productive at work.

This CBA takes a conservative approach of only valuing the reduction in unemployment. Increased output in existing employments is likely to be substantial but a lack of data makes it more difficult to measure.

The benefits of reducing unemployment can be measured as the contribution this makes to output, valued by measures of average weekly earnings (human capital approach). The human capital approach values the economic output of human life as the present value of expected future earnings (Schultz 1997). Earnings measure the value of a worker's output (net of other costs) in competitive markets where employers have no incentive to pay above the net value of a worker's output.

Reducing unemployment also increases Government taxation revenue and reduces reliance on unemployment benefits, however these are transfers from one stakeholder to another (distribution) rather than a net benefit (output). Accordingly, these benefits are not included as to do so would result in double-counting (Wilkins *et al.* 2012). However they do have an impact on the distribution of benefits. In particular governments benefit from increased tax revenue and lower benefit payments.

In the CBA literature, employment output is often valued at the minimum wage rate. This provides a conservative estimate of a person's wage and thereby an estimate of the value of output (net of other input costs) produced by that person.

The human capital approach used in a CBA of Queensland disability interventions. The Queensland valuation of the benefit from full-time employment for a person with disability was \$30,644 per annum or \$658,000 in Present Value terms (at a 3% discount rate) over a 35 year working life. Their valuation of the benefit from part-time employment (25 hours per week) for a person with disability was \$19,153 per annum or \$412,000 in Present Value terms (at a 3% discount rate) over a 35 year working life (Synergies Economic Consulting 2012:71-72). The Queensland valuations using the average wage were substantially higher.

Bauer *et al.* (2013:8) used the minimum wage approach in a UK study.

Masur and Posner (2012) estimate that US workers who are laid off lose an average of US\$100,000 in wages over the course of their lifetimes even after reemployment due to the loss of firm or industry specific human capital, and thus the loss of employee productivity. These wage losses are social costs. The loss to the workers from unemployment is measured by taking their current market wage and subtracting the market wage that they will earn in their next job and any transition costs (moving costs, retraining costs, etc.).

While greater output from increased employment is commonly included in Cost Benefit Analysis there are also direct non-monetary benefits to people gaining employment (or losses from unemployment) (Adler 2013). Regardless of the loss of wages, unemployment also carries with it significant hedonic and transition costs. Workers who lose their jobs typically suffer substantial hedonic penalties - the loss of a great deal of happiness that persists even after they have found new employment. They are also more likely to suffer a variety of health problems and to die earlier, even controlling for their lower income. Additionally, the worker's dependents typically suffer costs and losses from the worker's unemployment (Posner & Masur 2012:2). Maintaining employment would reverse these losses into benefits.

Imprisonment has a negative impact on the productivity of prisoners and thereby society's economic welfare. There is an immediate negative impact on production as prisoners are taken out of the workforce. But there are also substantial long-term negative impacts on ex-prisoner's

productivity and society's overall economic welfare. In a recent US audit experiment, researchers randomly assigned a criminal record to otherwise identical job applications and found that applicants with criminal records were 50 per cent less likely to receive an interview request or job offer, and differences were larger for Black applicants (Pager 2003; Pager, Western, & Sugie 2009).

Hunter & Borland (1999) and Borland & Hunter (2000) found similar results in Australia. They examined the effect of an arrest record on Indigenous employment prospects using data from the 1994 National Aboriginal and Torres Strait Islander Survey (NATSIS). Controlling for age, years completed at high school, post-school qualifications, whether the respondent had difficulty speaking English, alcohol consumption and whether the respondent was a member of the Stolen Generations, they found that an arrest record reduced Indigenous employment for males and females by 18 and 13 percentage points respectively.

US research suggests that there are substantial negative labour market consequences to having any spell of incarceration (Nagin and Waldfogel 1998). US research, comparing individual earnings before and after an arrest, demonstrates that arrests can decrease earnings and employment (Grogger 1998). Even after controlling for a broad range of characteristics like education and demographics, the former offenders earn substantially less than other workers: 10 to 40% less (Geller, Garfinkel, & Western 2006; Pew Charitable Trusts 2010).

Bushway (cited in Fagan & Freeman 1999) using data from a representative sample of 1,725 American adolescents aged 11–17 in 1976, found that, within three years of arrest, offenders worked seven weeks less and earned US\$92.00 per week less than would otherwise be expected.

Longer incarceration sentences may also be associated with greater skill loss and higher costs to re-integrate in the labour market, though these costs may be partially offset by participation in rehabilitation or correctional education programs (Kling 2006, and Landersø 2015). Research using variation in random judge assignment in Texas found large negative impacts of sentence length on employment; in this setting, a one year increase in sentence length reduces employment by 4 percentage points and reduces earnings by approximately 30 per cent after release (Mueller-Smith 2015). Individuals that cannot find sustainable employment given labour market barriers to re-entry may also have a higher risk of re-offending. US States with more flexible labour market conditions for individuals with criminal records have lower recidivism rates (Hall, Harger and Stansel 2015).

Incarceration results in lost networks, employer prejudice and a diminished skills base. Recent work by Pew Charitable Trusts (2010) estimates that former prisoners face reductions of up to 40% of their lifetime earnings. There are also long-term impacts on re-offending and on client's health, education and employment generating substantial costs. Intergenerational, family and community impacts of the interaction with the justice system include the increased likelihood of children of parents with a criminal record also having a record.

The happiness impacts of employment/unemployment have been measured and valued using happiness surveys. Blanchflower & Oswald (2004) estimate that in Great Britain and the United States compensation of US\$60,000 is required to restore the happiness of unemployed men to the level of the employed. These happiness improvements from reduced unemployment are not included in this CBA making our estimate of total benefits a conservative under-estimate. This strengthens our conclusion that Galambany Court has a net positive impact on Canberra's economic welfare.

Based on the above research, this CBA uses the following conservative estimates.

This CBA assumes that Galambany Court diverts 10 Aboriginal and Torres Strait Islander offenders to non-custodial sentences (avoiding imprisonment). Of these 10 offenders, 5 are assumed to retain existing employment and gain the long-term impact of lifetime employment.

The immediate impact on retaining existing employment for 5 offenders, for an average of 3 months of imprisonment, on the minimum wage of \$3,000 per month, results in extra employment output of \$9,000 per offender, giving a total of \$45,000 for the 5 offenders.

The long term impact means that 2 offenders are (as a result of Galambany Court) able to obtain work for an extra 5 years at the minimum wage of \$35,000 pa. When this increased output is discounted (back to the year of sentencing) by 2% pa (annuity factor of 4.7135), the present value of the increase in employment output is valued at \$330,000 for both offenders.

This gives a total employment benefit of \$45,000 plus \$330,000 giving a total of \$375,000 for each year of Galambany Court's operation.

**2017-26 Total Present Value: \$3,372,000** (2017 dollars discounted by 2% over ten years).

### **Output gains from improved offender health outcomes (longer life)**

Aboriginal and Torres Strait Islander people generally have significantly poorer health than other Australians and typically die at much younger ages. This is exacerbated by imprisonment.

By avoiding imprisonment Galambany Court improves the general health of Aboriginal and Torres Strait Islander offenders and increases their lifespans. This longer life is an economic benefit of Galambany Court.

Incarceration is associated with poor health outcomes for prisoners, including a relatively higher risk of dying after release. Prison, rather than ameliorating trauma, tends by its very nature (institutional, de-humanising, punishing, adversarial and deeply stressful) to compound it. The health impact of employment/unemployment has been measured using the Human Capital Approach and mortality data

Estimates of the value of a human life<sup>20</sup> should ideally include both the productive value of a human life (Human Capital Approach) and the consumption benefit of a human life (willingness-to-pay) (Viscusi 2008 & Hammer 1997).

Consumptive valuation techniques estimate of how much people would be willing to pay (or accept) for changes in mortality risk. To address this broader perspective, economists use empirical estimates of the monetary value that people place on their lives. The general approach entails computing the value of a statistical life (VSL). The VSL estimates are almost always much larger than the lost earnings from the human capital approach because VSL measures the total monetary value that people place on reduced risks of death, or the amounts that they are willing to accept for increased levels of mortality risk, and lost labour market earnings are only a portion of those valuations.

There are two general approaches used to calculate VSL:

(1) the *revealed preferences* estimated from compensating wage differentials, and

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<sup>20</sup> Rights based approaches to human life embodied in ethics, law and religion regard human life as priceless. Therefore the economic value of a human life is only a portion of its wider value.

(2) the *stated preferences* elicited from people in surveys on how much they would be willing to pay to reduce the risk of death.

The two approaches produce estimates within similar ranges. Cropper, *et al.* (2011) reviewed both approaches and found that the revealed preference studies produce estimates of \$2 million to \$11 million (2009 US), and that the stated preference studies produce VSL's in the range of \$2 million to \$8 million (2009 US) per life.

Economic estimates of the consumptive value of life typically are several million dollars (Abelson 2003 & Viscusi & Aldy 2003). Sullivan & von Wachter (2009) used a US\$5 million value of a statistical life. The Department of Prime Minister and Cabinet (2014) estimates that the Australian value of a statistical life is \$4.2 million in 2014 dollars. These willingness-to-pay estimates of the consumption benefit of a human life would be as high for Aboriginal and Torres Strait Islander offenders as for the rest of the population.

In contrast, the Human Capital Approach values a human life as the present value of lifetime labour market earnings (Nomaguchi *et al.* 2017). In addition to lost labour market earnings, analysts sometimes include values of lost household production, valued at labour market rates.

Estimates of the productive value of a life, based on the Human Capital Approach are generally much lower than those based on consumptive valuation techniques. These value of life estimates only measure the productive value of a human life and as such are minimum estimates.

To be conservative a very low estimate for the average productive value of a human life is used in this CBA and the consumptive value is omitted.

This CBA assumes that 5 of the 40 Aboriginal and Torres Strait Islander offenders sentenced by Galambany Court gain an average of one extra year of working life (after on average 19 years working) and values this extra year at \$35,000. Discounting back to the present at 2% per year (discount factor of 0.673) gives \$24,000 per person per year and \$120,000 for the total 5 people.

**2017-26 Total Present Value: \$1,079,000** (2017 dollars discounted by 2% over ten years).

### **Output gains from improved educational outcomes for offender's children**

Galambany Court improves the educational performance of the children of Aboriginal and Torres Strait Islander offenders and therefore those children's lifetime contribution to the labour force. The economic value of output gains from these education based employment improvements are a benefit to society (increased output) and are included in this Cost Benefit Analysis. The research literature valuing the education's impact on employment output is summarised below.

Education for Aboriginal and Torres Strait Islander children is even more important for their future incomes than it is for the wider community (Biddle 2010). Avoided imprisonment allows offenders to be more actively engaged in their children's school activities. This parental involvement is an important contributor to educational achievement of children (Hill & Tyson 2009).

Parental incarceration is a strong risk factor for several adverse outcomes for their children, including antisocial and violent behaviour, mental health problems, school dropout, and unemployment (Murray and Farrington 2008). In its 2012 report to the US Attorney General, the National Task Force on Children Exposed to Violence found that traumatic events, including parental arrest and incarceration increases the risk of post-traumatic stress disorder in children (Listenbee *et al.* 2012). US researchers have found that these effects extend to child behaviour

outcomes. Wildeman (2010) finds that paternal incarceration is associated with higher levels of physical aggression among boys as young as five years old. Similarly, Johnson (2009) finds that parental incarceration is associated with behavioural problems in children, and that these effects are largest if the parent is incarcerated while the child is a teenager.

The high rate of imprisonment of Aboriginal and Torres Strait Islander people has substantial negative impacts on their families (Rao 2017). During imprisonment families are broken. On return ex-prisoners bring major physical and mental health problems contracted in prison back to families often lacking appropriate support facilities.

Galambany Court allows offenders more parental involvement reducing absenteeism, performance problems, and misbehaviour thereby raising years of schooling (Eivers *et al.* 2000:8-9). Friedli and Parsonage (2007, 2009) estimated the lifetime UK cost of a child leaving school without any qualifications at £58,000 and estimated the lifetime cost of behaviour problems at £75,000 per case for moderate problems (90 per cent of cases) and £150,000 per case for severe problems (10 per cent of cases).

Based on the research literature summarised above, this CBA conservatively assumes the benefits of Galambany Court to be a 2% increase in lifetime average earnings for children of Aboriginal and Torres Strait Islander offenders.

The number of children of offenders assisted by Galambany Court is very conservatively estimated as 5% of the 45 Aboriginal and Torres Strait Islander offenders sentenced by Galambany Court, giving 2 students.

The median total personal income for Aboriginal and Torres Strait Islander persons in the ACT is \$792 per week in the 2016 ABS census (see Attachment E). In 2017, the minimum wage was \$695 per week, or \$18 per hour (Saunders & Bedford 2017). On this basis we assume a conservative annual average wage of \$35,000 over a 30 year working life. This is discounted by 2% (annuity factor of 22.3965) giving a total present value of the lifetime's employment output as \$784,000. Increasing this lifetime output by 2% produces an extra \$16,000 per student over their working life. For the 2 students assisted each year this results in an improved productivity valued at \$32,000.

The students may not begin working for several years. Therefore, the benefit \$32,000 will not begin in the year of sentencing but from the year of first employment. This CBA assumes a delay of 6 years. Discounting by 2% pa (discount factor of 0.888) back to the year of sentencing results in present value benefit of \$28,000 for the two students for each year of Galambany Court's operation.

**2017-26 Total Present Value: \$252,000** (2017 dollars discounted by 2% over ten years).

**Productivity gains from avoided deaths in custody** (this is not included in the main CBA above)

*Note: This CBA has not placed a value on preventing deaths in custody in the body of this report however the economic modelling is included below.*

As noted in the body of this report this CBA has not placed a value on preventing deaths in custody in the body of the report. This was in order to avoid causing any offence or distress to the families of those persons who have died at AMC. However the economic modelling is included below. It should be noted that economic valuations of life are averages and do not apply to any particular

individual, nor are they indicative of the quantum that may be placed on the value of any particular individual's life through compensatory or legal processes.

Aboriginal and Torres Strait Islander prisoner have high rates of prisoner mortality. However, over the past two decades they have been lower than other Australians. By avoiding imprisonment Galambany Court reduces the likelihood of Aboriginal and Torres Strait Islander prisoner deaths from all causes. Recommendation 92 of the Royal Commission into Aboriginal Deaths in Custody established the principle that imprisonment ought to be a last resort as a sanction for Aboriginal and Torres Strait Islander people.

The AMC has a history of serious assaults and mortality. There have been five deaths of detainees in Australian Capital Territory Corrective Services custody since the AMC commenced accepting detainees on 30 March 2009. Two were Aboriginal detainees (Moss 2016:15). In 2014-15 there was one serious assault on an AMC Aboriginal and Torres Strait Islander detainee but in 2014-15, in 2014-15 there were two, and in 2013-14 there was one serious assault (Moss 2016:45). The Moss Inquiry (2016:70) notes that the apprehension of attacks and reprisals persists at the AMC and that only some assaults lead to prosecution or disciplinary charges. It is important to note that the Moss report is now over 12 months old. Significant progress has been made against all of the recommendations resulting in major changes at the AMC. The Moss report does not now accurately reflect the operations of the AMC 21.

This CBA assumes that over ten years one of the 100 Aboriginal and Torres Strait Islander offenders who, without Galambany Court, receives a custodial sentence (10 per year over 10 years) and died in prison (from all causes) over the 10 years covered by this CBA.

To be conservative, a very low estimate for the average productive value of a human life is used in this CBA and the consumptive value is omitted. The same methodology is used to value the productivity gains from improved health outcomes of offenders (see above).

Assuming the death occurs in year 10, that the prisoner dying would have had 20 years of working life, and valuing this lost output at \$35,000 per year and summing back to the year of mortality using a discount rate of 2% per year (discount factor of 16.3514) gives \$572,000 in year 10.

**2017-26 Total Present Value: \$469,000 (2017 dollars discounted by 2% over ten years).**

### **Cost savings (freeing resources for alternative uses)**

Galambany Court increases productivity of public services through cost savings: freeing economic resources for their next best use. Galambany Court assists offenders to find the most appropriate services (health, justice system, accommodation, education, etc). Typically these appropriate services are less expensive (over the life of the offender) than the services that would be used without the assistance of Galambany Court. The Commonwealth or State governments provide most of these services and therefore the net benefits flow directly to reductions in government

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<sup>21</sup> On 20 February 2018, the Minister for Corrections delivered a Ministerial Statement to the Legislative Assembly and tabled an Annual Report against the implementation of each of the recommendations.

See this link: <http://www.justice.act.gov.au/news/view/1750/title/moss-review-implementation-progress-annual> Since the Minister's statement and Annual Report, two further recommendations have now been implemented. Those being Recommendation 7 (Health Services Commissioner's report) and Recommendation 8 (Appointment of an Inspector of Correctional Services).

budget deficits or can be used to support other government priorities. The resources freed by this efficiency improvement are available for other uses in the Australian economy.

### **Education cost savings**

Galambany Court reduces the cost of running the education system, thereby saving society's resources. Galambany Court helps integrate students of Aboriginal and Torres Strait Islander offenders into the general education system. Galambany Court achieves education cost savings. These savings are a benefit to society and therefore are included in the CBA. Galambany Court frees education resources for alternative uses and those uses can be valued by the market prices paid for them, principally wages, transport, accommodation, and other services and supplies.

The cost of special education per child in New South Wales is \$27,500 and in Victoria is \$21,000 (Patty 2011). The average cost of primary and secondary education in Queensland in 2011-12 was \$11,513. The average cost of service to students with disabilities was \$26,881 (Queensland Government 2011).

In 2014-15, the recurrent cost to educate a student in government schools was \$20,532 in the ACT but was \$24,394 in the Northern Territory (SCRGSP 2017:Table 4A.11). The \$4,000 per student extra cost of education in the Northern Territory is in part due to the higher proportion of Aboriginal and Torres Strait Islander students and gives an indication of the potential cost savings. This CBA assumes a saving of only 5% giving \$1,000 per student per year.

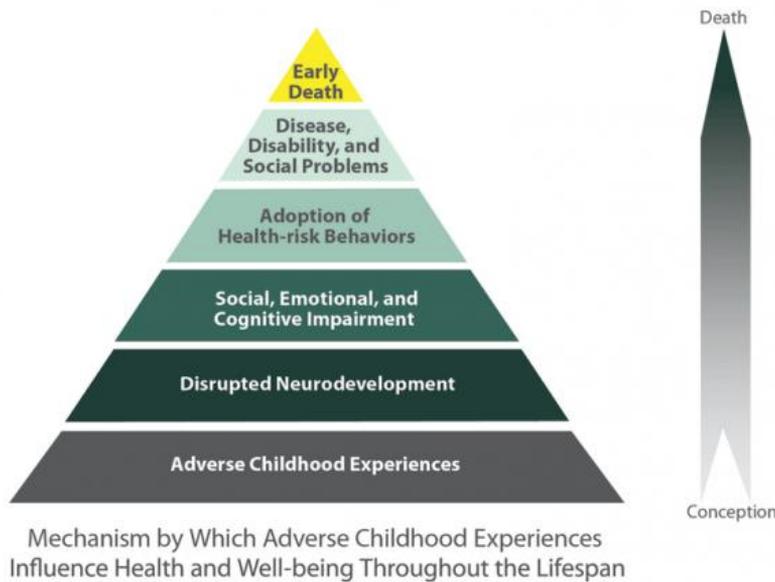
The number of students of Aboriginal and Torres Strait Islander offenders sentenced by Galambany Court is very conservatively estimated as 10 students. This CBA assumes that 30% of those students (3 students) will require less educational assistance at a saving per student of \$1,000 pa. Over an average of six years of schooling, the \$1,000 pa is valued in present terms as the lump sum value of an annuity of \$1,000 pa for six years discounted by 2% pa (annuity factor of 5.6014) giving a present value of \$5,000 per student per annum. For all 3 students this sums to \$15,000 for each year of Galambany Court's operation.

**2017-26 Total Present Value: \$135,000** (2017 dollars discounted by 2% over ten years).

### **Child protection cost savings**

Child protection gained by Galambany Court saves society's resources (lowers costs). Galambany Court helps Aboriginal and Torres Strait Islander offenders maintain their families and helps offenders (who are unable to maintain their families) to keep contact with their children and strengthen the placement stability of their looked-after-children. This is more effective and less costly than legalistic child protection processes. These savings are a benefit to society and therefore are included in the CBA.

Adverse impacts in childhood flow through to negative health and well-being outcomes over a lifetime. Children with an incarcerated parent commonly experience a similar pattern of traumatic events, often witnessing their parent's crime and arrest, losing a parent, the disruption of their family environment, and the difficulties associated with visiting their parent within the prison system. Children with parents in prison are also more at risk of abusing drugs and alcohol, dropping out of school and exhibiting aggressive and/or antisocial behaviours (Parliament of Australia 2013:22).



Source: Felitti *et al.* 1998.

Galambany Court assists offenders to maintain a place in their children's lives thereby providing greater child placement stability. Placement stability has been identified and repeatedly confirmed as a lead contributor to improved outcomes for looked-after-children (Pecora 2010). Placement stability is a good predictor of school performance. Research shows that children who have had an unstable placement history over 18 months are twice as likely to develop behaviour problems as those children who achieved early stability in their foster placements (Rubin *et al.* 2007). Friedli and Parsonage (2007, 2009) estimated the lifetime costs of behaviour problems as £75,000 per case for moderate problems (90 per cent) and £150,000 per case for severe problems (10 per cent). Other costs that may be avoided, when a placement is stable, are short-term costs to the child welfare system for arranging new placement (Price *et al.* 2008) and having to arrange (at least temporarily) for care home provision.

Galambany Court has freed child protection resources for alternative uses and those uses can be valued by the market prices paid for them. The research literature valuing these resources is summarised below.

Family services costs are substantial (Raman *et al.* 2005b:130-140) and include:

- \$24 per maternal and child health visit;
- \$30 per group session;
- \$31 per family day care session;
- \$46 per parenting group day;
- \$60 per FC visit;
- \$180 per family counselling visit;
- \$1,447 per child protection;
- \$9,112 per substantiation; and
- \$29,298 per out of home per case per year.

Estimates of the cost of child protection include:

- Cost of programmes vary substantially (an average estimate by Bonin *et al.* (2011) is £1,750 per case with a present value of long-term cost savings to society estimated substantially higher at up to £18,000 per case.

- The average cost per year for the provision of adoption services based on UK national expenditure data was £83,585 for statutory and £85,045 for independent provision (Curtis 2014:95).
- In a UK study based on five case studies with troubled young people and their families, the average cost of a successfully provided intensive family intervention was about £35,000 and the cost savings from prevented expenditure over five years was £280,000 per person so that the return on investment over a five years period was estimated at 800% (Flint *et al.* 2011).
- Holmes *et al* (2010:15) estimate average English Local government child protection costs from initial contact to core assessment at £1,177 per case and care proceedings at £2,463 per case.
- Salman (2012) estimated that advocacy intervention regarding child safeguarding costs around £1,000 to complete a needs assessment, an average of £489 for foster care, and calls to a duty desk cost around £50 an hour; but that advocacy can lead to an alternative costing only £60 per week producing a substantial net benefit in resource savings.
- Bauer *et al* (2013:13-15) estimates the UK the cost of child placement in care homes £136,214 pa and foster care £20,800 pa and a net average cost reduction to the public sector of £3,760 per annum per person assisted with advocacy on parenting programmes from a reduction in safeguarding activities care proceedings and care provision.
- Out-of-home care represents a cost to the Victorian Government in around \$286 per day per person (VEQHRC 2013:95).

*Increasing numbers of individuals and families are being drawn into the cycle of criminalisation, child protection, poverty and despair – at great cost to the state. At the same time, they are being drawn away from social and economic productivity and contribution.*

Sisters Inside

The cost to government from people who have left the formal child protection care system is an average of \$40,000 per person per annum. Typical pathway costs range from \$800 to \$100,000 per person per annum. For the general Australian population these Government costs are \$3,000 per annum (Morgan Disney & Associates 2006:8).

Raman *et al.* (2005) found that the average weekly income of individuals between 16 and 24 years of age who have been in child protection care is \$250 a week (\$13,000 per annum) compared with the average weekly income of \$408 for all persons in this age group (\$21,216 per annum). The comparable figures for the 26 to 60 age group were \$408 per week and \$673 per week respectively (converting to \$21,442 and \$34,996 per annum respectively).

Based on the research literature summarised in above, this CBA conservatively estimates a net cost reduction to the public sector of \$3,000 per annum per child that avoids child protection services. This CBA assumes that of the 40 Aboriginal and Torres Strait Islander offenders sentenced by Galambany Court there are 5 children that avoid child protection because the custodial parent is not sentenced to imprisonment. This achieves a total annual saving of \$15,000 for each year of Galambany Court's operation.

**2017-26 Total Present Value: \$135,000 (2017 dollars discounted by 2% over ten years).**

### **Medical cost savings**

Imprisonment has substantial negative impacts on the health of offenders and their families. Imprisonment increases the likelihood of death and hospitalisation on release typically due to suicide, motor vehicle accidents, circulatory system diseases and drug overdoses (Parliament of Australia 2013:24). Galambany Court reduces imprisonment and thereby health costs, releasing

resources for alternative uses (Gaetz 2013 & Razzouk 2017). Those uses can be valued by the market prices paid for them. The research literature valuing these costs is summarised below.

Examples of the typical cost savings are:

- Raman *et al.* (2005b:130-140) estimates

General health costs in Australia of:

\$40 per bulk billed GP visit,

\$40 per script,

\$105 per outpatient service,

\$281 per A&E visit, and

\$871 per public hospital inpatient day.

Mental health unit costs are estimated to be:

\$46 per group session,

\$180 per counselling session, and

\$529 per adult inpatient day.

Drug & Alcohol treatment costs are estimated to be:

\$102 per adult detox day,

\$180 per D&A counselling session,

\$402 per D&A case worker visit,

\$1,200 per court ordered assistance,

\$6,896 per youth detox care episode and

\$14,606 per year of methadone maintenance

- Alcohol treatment intervention can substantially reduce public sector costs. Godfrey (2005) estimates a net reduction in cost of between £590 and £800.

- Petrou *et al.* (2006) values public sector cost savings from depression preventative primary care intervention at £1,760 per month based on willingness to pay. Layard *et al.* (2007) estimates a cost saving of £1,820.

- Community-based treatment is much cheaper than hospital-based acute residential treatment for patients with substance use and psychiatric disorders. Timko *et al.* (2006) in the US estimate the average cost for hospitalised patients at US\$25,462, and the cost for community-based patients at US\$12,174, a saving of US\$13,288 per person.

- Mental health service use and costs for persons with severe mental illness are typically reduced with improved long-term employment. Bush *et al.* (2009) estimate an average cost reduction of US\$166,350 per participant for outpatient services and institutional stays for those in the steady-work group compared with a minimum-work group over ten years

Based on the research literature summarised above, this CBA conservatively estimates a net cost reduction to in health expenditure of \$2,000 per annum for each of the 10 Aboriginal and Torres Strait Islander offenders who would, without Galambany Court, receive a custodial sentence. This achieves a total annual saving of \$20,000 for each year of Galambany Court's operation.

**2017-26 Total Present Value: \$180,000** (2017 dollars discounted by 2% over ten years).

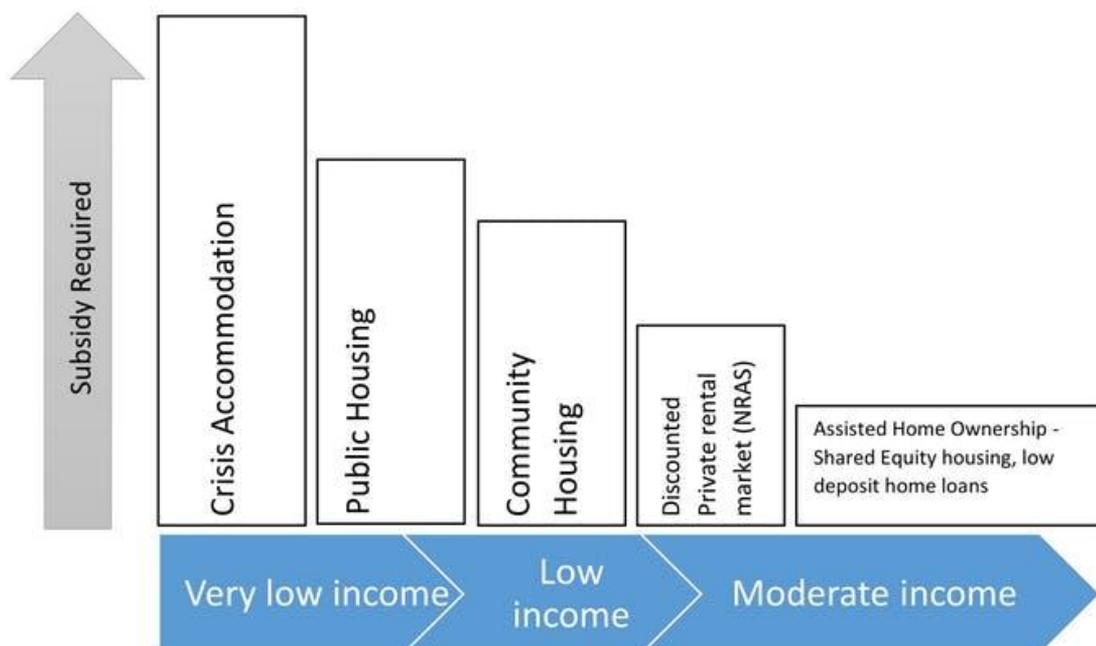
### Accommodation cost savings

Imprisonment increases the likelihood that offenders will become homeless<sup>22</sup>. Galambany Court helps Aboriginal and Torres Strait Islander offenders retain their access to housing. Aboriginal Australians experience four times the rate of homelessness compared with non-Indigenous Australians, and made up 9 per cent of the total homeless population in 2008–09 (Australian Institute of Health and Welfare 2011).

Galambany Court has helped offenders to retain low cost accommodation resources freeing the higher cost homeless oriented accommodation resources for alternative uses. Those uses can be valued by the market prices paid for them. The research literature valuing these costs is summarised below.

The cost of homelessness is high (Rosenheck 2000). Hospitalisation, medical treatment, incarceration, police intervention, and emergency shelter expenses make homelessness very expensive for governments and taxpayers. Culhane *et al.* (2002) established that persons placed in supportive housing achieve marked reductions in shelter use, hospitalisations, length of stay per hospitalisation, and time incarcerated.

As the figure below demonstrates, the cost of accommodation is highest for the people outside the standard housing market. Ironically, homeless people consume very expensive accommodation. Raman *et al* 2005b:130-140) estimate housing support unit costs at \$44 per Supported Accommodation Assistance Program support day and \$93 per Crisis Rental Assistance day. Rental crisis accommodation is much more expensive than other forms of housing. Galambany Court helps offenders keep their existing accommodation by reducing imprisonment. Homelessness is a common outcome of imprisonment.



Source: Rowley & Phibbs 2017.

<sup>22</sup> Assistance with Housing ACT is provided to detainees in the AMC who are a tenant in a HACT property. Provided their sentence is less than 26 weeks, they can apply to HACT for a housing rebate.

Homelessness increases the use of police, prison, probation, parole, courts, emergency department, hospital-admitted patients, ambulance, mental health and homelessness services. Being housed rather than homeless for a year in Australia is estimated to reduce:

- criminal offending by 52%,
- being a victim of crime by 54%,
- time spent in police custody by 40%,
- use of short term crisis accommodation by 99%, and
- mental health service use by 65%

Over a year, Australian homeless people each used state government funded services that cost approximately \$48,217. In contrast, if they were tenants of permanent supportive housing, the same people used state government services that cost only \$20,788 plus a further \$14,329 for providing the supported housing. Therefore programs like Galambany Court that keep people in their existing housing and out of homelessness could be expected to save around \$27,429 per year (Parsell et al. 2017).

Estimates of the economic costs that homeless people in Canada generate vary from C\$30,000 to C\$134,642 (Ly & Latimer 2015). A study of 5000 homeless people in New York City, valued average annual service use costs at US\$40,500 per person (Culhane *et al.* 2002).

The institutional costs of a female Aboriginal offender with a history of homelessness, drug and alcohol misuse, family violence and mental illness is \$1,118,126 (Baldry et al. 2012).

People experiencing homelessness are more likely to access the most costly health care services. Many homeless people also suffer from disability and homelessness inhibits their care. Housing instability often detracts from regular medical attention, access to treatment, and recuperation. This inability to treat medical problems can aggravate health problems, making them both more dangerous and more costly. For example:

- Salit *et al.* (1998) found in the US, homeless people spent an average of four days longer per hospital visit than comparable non-homeless people at an extra cost of approximately US\$2,414 per hospitalisation.
- Martell *et al.* (1992) found that homeless people in Hawaii had a rate of psychiatric hospitalisation over 100 times higher than their non-homeless cohort. The estimated excess cost for treating these homeless individuals was US\$3.5 million or about US\$2,000 per person.

People who are homeless spend more time in jail or prison, which is very costly. For example:

- Diamond and Schneid (1991) estimate that each homeless Texan costs taxpayers US\$14,480 per year, primarily for overnight jail.

Galambany Court assists chronically homeless offenders, by referring them to appropriate services, to transition to permanent supportive housing freeing emergency accommodation resources for other uses. Examples include:

- Larimer *et al.* (2009) followed the progress of the Seattle Downtown Emergency Service Center. All the residents at this Housing First-styled residence had severe alcohol problems and varying medical and mental health conditions. Considering all costs – including housing costs – the participants in the 1811 Eastlake program cost US\$2,449 less per person per month than those who were in conventional city shelters.
- Mondello *et al.* (2009) found that in rural Maine, permanent supportive housing allowed people with disabilities to access significantly more efficient and appropriate housing and service delivery with tangible cost savings. Permanent supportive housing also improved quality of life for all involved. The benefits included a:

- 57% reduction on expenditures for Mental Health Services, from a shift away from expensive psychiatric inpatient care to less expensive outpatient community-based services

Permanent supportive housing placements reduced service costs;

- 99% reduction on expenditures for accommodation;
- 14% reduction on expenditures for emergency room,
- 95% reduction on expenditures for incarceration, and
- 32% reduction on expenditures for ambulance transportation.

The saving per person was US\$18,629 over six months. Net of the permanent supporting housing cost (US\$4,577 per half year) this provides a US\$1,348 benefit per person in cost avoidance.

- Connelly (2014) found in Brisbane that an investment of \$500,000 in the Homeless to Home Healthcare After-Hours Service reduced both inpatient admissions and Emergency Department presentations saving nearly \$7,000,000 in hospital costs and providing a net social benefit of over \$12,000,000 per year.
- Flatau *et al.* (2008) estimated that in Western Australia, homelessness programs produced an annual cost reduction of \$1,739 per client from reduced use of justice services and potential annual whole-of-government savings of at least twice the annual cost of delivering effective homelessness programs; e.g. single male homelessness assistance costs only \$4,625 per client compared to average extra health and justice costs of \$10,212 while homeless.
- Meehan *et al.* (2010) estimate that the recurrent cost of accommodating the average client in supported accommodation for 12 months: is \$74,000 less expensive than a community care unit and \$178,000 less expensive than an acute inpatient unit.
- Meehan *et al.* (2011) estimate an average annual cost per person with a disability for supported accommodation of \$61,580 (including 20 hours personal care, GP/case management services and allocation for 10 day admission to acute care). This is much lower than the cost of keeping the same client in an acute inpatient unit (\$246,700) or a community care unit (\$133,225).
- In Denver, PSH saved \$15,733 per year, per person in public costs for shelter, criminal justice, health care, emergency room, and behavioural health costs. The savings were enough to completely offset the cost of housing (US\$13,400) and still save taxpayers US\$2,373.

Salman (2012) values crisis centre accommodation at a weekly cost of £1,300. In contrast, help-at-home schemes offer a mix of community support with the aim to address a range of wellbeing needs at a much lower cost (Bauer *et al.* 2017). Reducing homelessness provides substantial public sector cost savings (Thomson *et al.* 2001). Department for Communities and Local Government (2012), found savings to housing based on reduced expenditure for temporary accommodation and cost for re-housing.

Based on the research literature summarised above, this CBA conservatively estimates a net cost reduction to the public sector of on average \$8,000 per person assisted out of crisis accommodation per year (assuming five weeks per person per year). In addition appropriate housing also has positive impacts on health, education and employment (valued at an additional \$5,000 per year).

For each of the 10 Aboriginal and Torres Strait Islander offenders who would, without Galambany Court, receive a custodial sentence, it is assumed that one would have become homeless for a year. This gives a saving of \$13,000 for each year of Galambany Court's operation.

**2017-26 Total Present Value: \$117,000** (2017 dollars discounted by 2% over ten years).

### **Costs avoided from reduced violence against women by offenders**

Galambany Court assists in the reduction of violence against women.

Violence against women has substantial negative economic impacts on society. By reducing violence against women Galambany Court provides a benefit to the ACT

Violence against women and their children costs the Australian economy an estimated \$14 to \$26 billion each year (National Council to Reduce Violence against Women and their Children, 2009, Access Economics 2004, Laing 2001, Walby 2004, Snively 1995 & KPMG 2016:11-13).

In 2007-08, for every woman whose experience of violence can be prevented, \$20,766 in costs across all affected groups in society are avoided (National Council to Reduce Violence against Women and their Children, 2009).

**Violence against women: Cost categories** (cost per woman, 2007-08)

- **pain**, suffering and premature mortality costs associated with the victims/ survivors experience of violence (\$10,040)

- Costs of premature mortality measured by attributing a statistical value to years of life lost.

- **health** costs include public and private health system costs associated with treating the effects of violence against women (\$1,150)

- Includes private and public health costs associated with treating the effects of violence on the victim, perpetrator and children.

- **production**-related costs, including the cost of being absent from work, and employer administrative costs (for example, employee replacement) (\$1,570)

Includes costs associated with:

- lost production (wages plus profit) from:

- absenteeism

- search and hiring costs

- lost productivity of victim, perpetrator, management, co-worker, friends and family

- lost unpaid work

- retraining costs

- permanent loss of labour capacity.

- **consumption**-related costs, including replacing damaged property, defaulting on bad debts, and the costs of moving (\$4,720)

Includes costs associated with:

- property replacement

- settlement of bad debts.

- **second generation** costs are the costs of children witnessing and living with violence, including child protection services and increased juvenile and adult crime (\$370)

Includes private and public health costs associated with:

- childcare

- changing schools

- counselling

- child protection services

- remedial/special education

- increased future use of government services

- increased juvenile and adult crime.

- **administrative** and other costs, including police, incarceration, court system costs, counselling, and violence prevention programs (\$1,440)

Includes private and public health costs associated with:

- legal/forensic services

- temporary accommodation

- paid care

- counselling

- perpetrator programs
- interpreter services
- funerals.
- **transfer** costs, which are the inefficiencies associated with the payment of government benefits. (\$1,470)

Includes ‘deadweight loss’ to the economy associated with:

- government payments and services
- victim compensation
- lost taxes.

Source: National Council to Reduce Violence against Women and their Children, 2009.

### Components of the cost of violence against women

<b>Pain, suffering and premature mortality</b>	Costs attributed to lost quality of life
<b>Health costs</b>	Costs to deliver health services to victims of violence. It covers the costs associated with the extended health effects of violence and not just the treatment of the initial trauma for example the costs associated with the treatment of depression and anxiety.
<b>Production related costs</b>	Lost production through absenteeism, being late or attending court. These costs are incurred not only by the victim but also by the perpetrator and employers.
<b>Consumption related costs</b>	This category is comprised of a short term costs of damage to property and belongings and long term costs of lost economies of scale that victims of domestic violence would experience due to being less likely to be in further relationships in the future. In calculating costs for non-partner violence, it was assumed that this category is not applicable.
<b>Second generation costs</b>	This category includes the costs associated with the care or Government intervention for children who were in households experiencing violence. It was also assumed that this cost will not be incurred by those experiencing violence by non-partners.
<b>Administrative and other costs</b>	This category is comprised of the criminal justice costs for police, the courts and to incarcerate indicted perpetrators. It also includes the costs of other services such as interpreters, funerals and temporary accommodation.
<b>Transfer Costs</b>	Costs such as income support, victim compensation and lost taxes are not lost costs to society per se but are instead shifts in the economic powers of consumption from one part of society to another. This shift in transfer results in a loss of economic efficiency to occur which is known as a deadweight loss. It can also be thought of as the cost of the excess burden of taxation.

Source: Price Waterhouse Coopers 2015:46.

The 2007-08 estimates have been up-dated to 2014-15 by Price Waterhouse Coopers (2015:15).

- The cost of pain, suffering and premature mortality costs \$10,075 per victim.
- Following a violent event, a victim would seek to utilise healthcare services to treat not only the immediate pain and suffering but also will return to the health system to treat their longer term effects of their trauma which is estimated to cost \$1,312 for every victim.
- Victims are also more likely to be late to work or to be absent altogether and similarly for perpetrators although for entirely different reasons. This contributes to a total loss in productivity per victim of \$1,969.
- Victims of partner violence are typically less likely to form future relationships and therefore lose the benefit of living in a larger household that can pool their resources and enjoy the resulting economies of scale. This forms a large part of the consumption cost per victim of \$9,179.
- Police may also seek to arrest and incarcerate perpetrators of violent crime while other victims would seek civil court avenues to divorce partners, fight for child custody or to place apprehended violence orders against perpetrators. The resulting cost for is approximately \$1,879 for victims of partner violence and \$1,490 for violence perpetrated by non-partners.
- For victims who experience violence from their partners, their children do not escape these effects as they end up changing schools, and may be separated from their parents following child protection interventions and in the longer term are themselves predisposed to crime. This costs a total of \$639 per victim but may be an underestimate of the true costs facing the children in care of victims.
- Government, community groups, friends and family help victims of violence through temporary accommodation, income and welfare support and financial support. Whilst there is not necessarily a

net loss to society, this disruption however introduces a deadweight loss to the economy and the resulting per victim cost is \$1,726. Deadweight loss estimates are controversial and therefore are not used in this CBA.

### Estimated annual per person cost for each woman experiencing violence

Annual cost per victim (2014-15 real)	All violence
Pain, suffering and premature mortality	10,075
Health	1,312
Production related	1,969
Consumption related*	9,179
Administrative and other	1,879
Second generation*	639
Transfer costs	1,726
<b>Total</b>	<b>26,780.2</b>

\* Costs only applicable to partner violence.  
Source: Price Waterhouse Coopers 2015:14.

Making the conservative assumption that Galambany Court removes one woman from violence every second year and using the unit cost of \$25,000 gives a saving of \$12,500 for each year of Galambany Court operation.

**2017-26 Total Present Value: \$111,000** (2017 dollars discounted by 2% over ten years).

### Economic costs of the justice system

The economic costs of the justice system fall principally on the offenders and the government.

In the justice system, Aboriginal and Torres Strait Islander people experience substantial costs including lost productive and consumptive activities, health impacts, and reductions in their future productivity. These costs can be valued to establish their economic cost to the ACT.

Government provision of justice system services to Aboriginal and Torres Strait Islander people uses substantial economic resources. Justice system services include policing, courts and incarceration, all using resources such as labour, energy, materials, etc. These resources can be valued to establish their economic cost to the ACT.

The high number of Aboriginal and Torres Strait Islander people inappropriately placed in the justice system has led to considerable strain on police, court and prison services and related costs. Substantial economic resources are used up in the justice system (Edgar and Rickford 2009, & McCausland *et al.* 2013). Australian governments spent nearly \$15 billion dollars on the justice system in 2013-14, 68% on the police, 23% on prisons and 9% on the courts (SCRGSP 2015a:C.8). A major benefit of Galambany Court identified in this CBA is a reduction in the use of justice system resources, freeing them for their next best use.

Aboriginal and Torres Strait Islander people (in the absence of Galambany Court and alternative pathways) are often pressed into the criminal justice system early in life. Once caught up in a cycle

of charges, court appearances and incarceration, Aboriginal and Torres Strait Islander people use up substantial resources (Baldry et al 2015:52). Substantial costs fall on the individual Aboriginal and Torres Strait Islanders, their families and communities, as well as the government. These costs increase over time, as Aboriginal and Torres Strait Islander people become entrenched in the criminal justice system and are further disadvantaged.

Galambany Court provides a net economic benefit to Australia by diverting offenders from the mainstream courts and prison to community-based programs. Offender diversion saves police, court and prison resources (freeing resources for other uses). Diverting offenders improves their productivity, creating new resources for the ACT economy.

Justice system diversion programs, including Galambany Court, reduce re-arrests, increase median time to first arrest, and reduce the likelihood of post-program imprisonment (compared to those who did not complete the diversion program) (Crime Research Centre 2007:9). Diversion influences important areas of an offender's life and can produce substantial economic savings for publicly funded services such as health and welfare (Welsh 2004:12). Benefits of diverting justice system clients include improvements in education, employment, health, social service use, and illicit substance use.

Justice system clients, both victims and offenders, use substantial resources to participate in the justice system. Friends and relations of the participants also use substantial resources to support the victims and offenders. These resources include their time and travel costs. Economic costs to victims of crime are tangible (e.g., lost wages/production, medical expenses) and intangible (e.g., pain, suffering, lost quality of life, fear of future victimisation) (Welsh 2004:10).

Aboriginal and Torres Strait Islander offenders often have complex and intersecting needs. They experience multiple and intense forms of disadvantage, including: disability, homelessness, substance abuse, poverty, ill health and violence. Many Aboriginal and Torres Strait Islander offenders have complex needs that originate from the systemic failure of services to appropriately support Aboriginal and Torres Strait Islander people who experience intense social disadvantage. Research has established that in the absence of appropriate service provision, these individuals are criminalised and cycle in and out of the criminal justice system more rapidly and more frequently compared to those without complex needs.

The economic and human costs, of entrenchment in the criminal justice system, to governments, communities, and Aboriginal and Torres Strait Islander offenders and their families are significantly greater than the financial cost of providing appropriate services to support offenders in the community.

*Circle Sentencing has a very good reputation, and has had a lot of positive outcomes. My son was the first person to get the opportunity to go to Circle Sentencing, it changed the way he looked at life and he didn't commit any further offences.*  
Uncle John, Elder, Nowra

*The greatest achievements have been bringing down the barriers between the courts and the Aboriginal community, gaining mutual respect and also gaining knowledge around the root causes of crime within Aboriginal communities.*

Gail Wallace, former Nowra Circle Sentencing Coordinator, Law Society of NSW, 2014

Values of economic resources used in the police, courts and prisons have been estimated in several recent studies. The research literature relevant to this CBA of Galambany Court are summarised below.

**Policing cost savings**

Police use substantial resources in their interactions with the Aboriginal and Torres Strait offenders. Galambany Court supports offenders and reduces their subsequent interactions with police including reoffending, saving police resources.

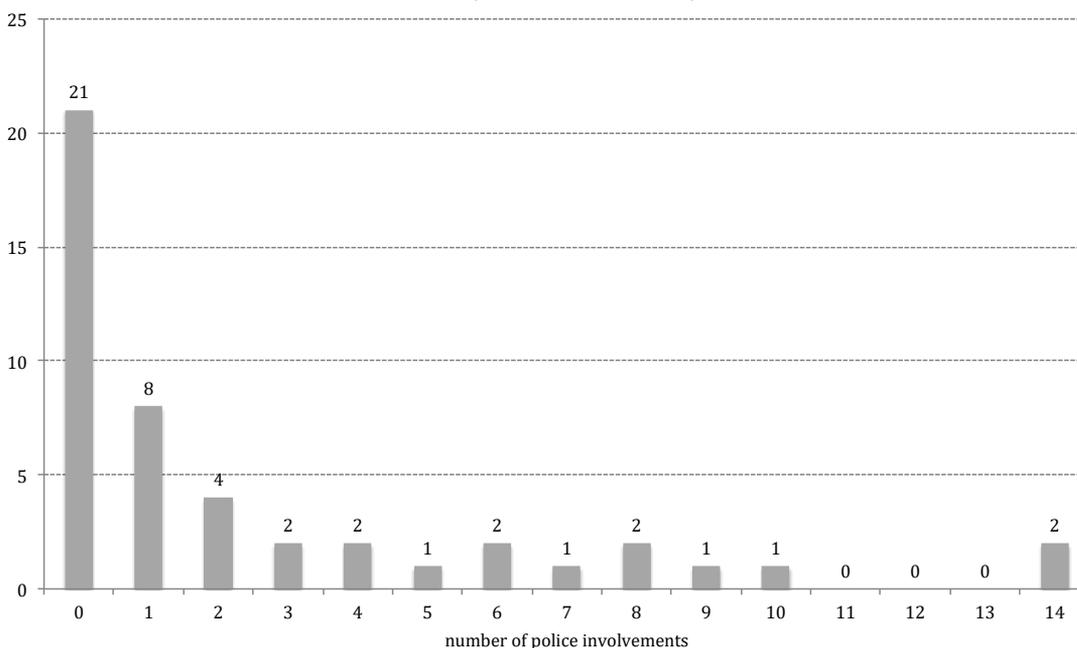
Galambany Court frees police resources for their next best use. Those uses can be valued by the market prices paid for them, principally wages and services prices

Based on the research literature summarised below, this CBA makes the conservative assumption that Galambany Court results in 12 fewer police interventions per year.

As shown in the figure below, most offenders (21 of 47 or 45%) sentenced in Galambany Court have no further involvement with the police in the two years following their sentencing in 2014-15. A further 35% have only 1 to 4 involvements with the police. The total number of police involvements is 117 over the two years. Not all of these involvements will have resulted in a charge. Typically the involvements will be on a matter of lesser impact than the matter for which the offender was sentenced in Galambany Court. This highlights Galambany Court’s focus on reducing offending behaviour through sentences that are appropriate to Aboriginal and Torres Strait Islander offenders.

Based on the data summarised in the figure below this CBA makes the conservative assumption that, due to Galambany Court, police involvements have been reduced by 10% to the 117 involvements in the figure below. This is a reduction of 12 police involvements.

**Police involvements**, within 2 years of sentence date, number of offenders sentenced in Galambany Court between July 2014 and June 2015



Source: Personal communication, ACT Policing

The research valuing policing resources is summarised below.

Browning (2011:31) based on Mason and Robb (2010) use a value of \$570 per Mornington Island Queensland Police call out in 2008-09 dollars. This is based on one car and two police officers for half day and is consistent with the staff cost per Queensland police officer of around \$100,000 per year. A call out involving two cars, four police officers and one day to resolve and complete paper work would use economic resources valued at \$2,300 on average. A street offence involving one police officer for half a day and resulting in arrest would use economic resources valued at \$212 on average (Mason and Robb 2010:55).

The economic resources used in issuing warrants and summons and laying charges varies with the time taken. A minor case (issuing warrants and summons, laying charges) using 3 days of police time (at \$425 per day) is valued at \$1,300 per case, a medium case using 10 days is valued at \$4,250 per case and a major case is valued at \$8,500 per case. Police resources used in preparing for court include \$180 per day for custody or remand services (Mason & Robb 2010:55).

KPMG (2010:60) estimated policing costs of \$363 per person associated with the Victorian Youth Justice Group Conferencing Program for 2008/09.

In this CBA, based on the research literature summarised above, police resources used are valued at \$500 per minor case and \$2,000 per major case. This value is based on the more conservative of the estimates above.

The 10 fewer minor cases and 2 fewer major cases have a total value of \$8,000 per year.

Galambany Court reduces the need for Police resources and frees these resources for other productive uses.

### **Court cost savings**

Galambany Court frees court resources for their next best use by making more efficient use of court resources and reducing the number of re-offenses and appeals.

Galambany Court offenders (compared to the mainstream Magistrates Court) are more likely to:

- appear in Court as scheduled,
- experience fewer repeat convictions, and
- experience fewer appeals.

This saves Court resources required to reschedule appearances and reconvene the Court, and reduces the number of offenders requiring the courts.

### ***Rescheduling***

Non-appearance at court creates additional work for criminal justice agencies in determining the whereabouts and apprehension of offenders who have failed to abide by their bail conditions. It also results in offenders being more likely to be arrested on warrant and increases the likelihood that bail will be refused and the offender remains in custody (Sarre & Sparrow 2004).

Reduced court rescheduling is supported by research in Morgan & Louis (2010). The proportion of offenders who absconded subject to warrant on at least one occasion while in Murri Court (12%) was substantially lower than the proportion absconding from court appearances prior to referral to the Murri Court (40%). The proportion of court appearance events in Murri Court that result in a warrant being issued was also substantially lower than for court appearance events prior to referral (Morgan & Louis 2010:85). For court appearance events within Murri Court, the proportion of

offenders for whom a warrant was ordered (9%) and the proportion of events resulting in a warrant being ordered (4%) are substantially lower than both the period prior to Murri Court and the control group (Morgan & Louis 2010:88).

Tomaino (2004) reported that attendance rates had improved in the South Australian Nunga Courts. Failure to appear rates and the rate at which court orders had been breached were both low among Victorian Koori Court participants (Borowski 2009). In the Nunga and Koori Courts a higher proportion of defendants show up on the day (Marchetti & Daly 2004:5). This has reduced court costs.

On this basis, this CBA assumes five avoided non-appearances requiring rescheduling each year.

### ***Reoffending***

Based on the reoffending research literature summarised below, this CBA assumes that Galambany Court results in one less repeat conviction per year.

Holland *et al.* (2007) found that 50 per cent of Koori prisoners returned to prison within two years

Reducing reoffending is difficult. In the meta-analysis of 571 evaluations of crime reduction programs (Aos *et al.* 2006), summarised in the table below, many programs have no impact but of the successful programs the impact typically is between a 5 and 20% reduction in crime (or reoffending). Applied to the around 45 offenders per year sentenced in Galambany Court this would give a reduction of 2 to 9 fewer repeat offenses. Therefore, this CBA's assumption of one fewer repeat offenses is very conservative.

## Reducing Crime With Evidence-Based Options: What Works, and Benefits & Costs

Washington State Institute for Public Policy Estimates as of October, 2006	Effect on Crime Outcomes	Benefits and Costs				
		(Per Participant, Net Present Value, 2006 Dollars)				
		Benefits to Crime Victims (of the reduction in crime)	Benefits to Taxpayers (of the reduction in crime)	Costs (marginal program cost, compared to the cost of alternative)	Benefits (total) Minus Costs (per participant)	
Notes: "n/e" means not estimated at this time. Prevention program costs are partial program costs, pro-rated to match crime outcomes.	Percent change in crime outcomes, & the number of evidence-based studies on which the estimate is based (in parentheses)	(1)	(2)	(3)	(4)	(5)
<b>Programs for People in the Adult Offender System</b>						
Vocational education in prison	-9.0% (4)	\$8,114	\$6,806	\$1,182	\$13,738	
Intensive supervision: treatment-oriented programs	-16.7% (11)	\$9,318	\$9,369	\$7,124	\$11,563	
General education in prison (basic education or post-secondary)	-7.0% (17)	\$6,325	\$5,306	\$962	\$10,669	
Cognitive-behavioral therapy in prison or community	-6.3% (25)	\$5,658	\$4,746	\$105	\$10,299	
Drug treatment in community	-9.3% (6)	\$5,133	\$5,495	\$574	\$10,054	
Correctional industries in prison	-5.9% (4)	\$5,360	\$4,496	\$417	\$9,439	
Drug treatment in prison (therapeutic communities or outpatient)	-5.7% (20)	\$5,133	\$4,306	\$1,604	\$7,835	
Adult drug courts	-8.0% (57)	\$4,395	\$4,705	\$4,333	\$4,767	
Employment and job training in the community	-4.3% (16)	\$2,373	\$2,386	\$400	\$4,359	
Electronic monitoring to offset jail time	0% (9)	\$0	\$0	-\$870	\$870	
Sex offender treatment in prison with aftercare	-7.0% (6)	\$6,442	\$2,885	\$12,585	-\$3,258	
Intensive supervision: surveillance-oriented programs	0% (23)	\$0	\$0	\$3,747	-\$3,747	
Washington's Dangerously Mentally Ill Offender program	-20.0% (1)	\$18,020	\$15,116	n/e	n/e	
Drug treatment in jail	-4.5% (9)	\$2,481	\$2,656	n/e	n/e	
Adult boot camps	0% (22)	\$0	\$0	n/e	n/e	
Domestic violence education/cognitive-behavioral treatment	0% (9)	\$0	\$0	n/e	n/e	
Jail diversion for mentally ill offenders	0% (11)	\$0	\$0	n/e	n/e	
Life Skills education programs for adults	0% (4)	\$0	\$0	n/e	n/e	
<b>Programs for Youth in the Juvenile Offender System</b>						
Multidimensional Treatment Foster Care (v. regular group care)	-22.0% (3)	\$51,828	\$32,915	\$6,945	\$77,798	
Adolescent Diversion Project (for lower risk offenders)	-19.9% (6)	\$24,328	\$18,208	\$1,913	\$40,623	
Family Integrated Transitions	-13.0% (1)	\$30,708	\$19,502	\$9,665	\$40,545	
Functional Family Therapy on probation	-15.9% (7)	\$19,529	\$14,617	\$2,325	\$31,821	
Multisystemic Therapy	-10.5% (10)	\$12,855	\$9,622	\$4,264	\$18,213	
Aggression Replacement Training	-7.3% (4)	\$8,897	\$6,659	\$897	\$14,660	
Teen courts	-11.1% (5)	\$5,907	\$4,238	\$936	\$9,208	
Juvenile boot camp to offset institution time	0% (14)	\$0	\$0	-\$8,077	\$8,077	
Juvenile sex offender treatment	-10.2% (5)	\$32,515	\$8,377	\$33,064	\$7,829	
Restorative justice for low-risk offenders	-8.7% (21)	\$4,628	\$3,320	\$880	\$7,067	
Interagency coordination programs	-2.5% (15)	\$3,084	\$2,308	\$205	\$5,186	
Juvenile drug courts	-3.5% (15)	\$4,232	\$3,167	\$2,777	\$4,622	
Regular surveillance-oriented parole (v. no parole supervision)	0% (2)	\$0	\$0	\$1,201	-\$1,201	
Juvenile intensive probation supervision programs	0% (3)	\$0	\$0	\$1,598	-\$1,598	
Juvenile wilderness challenge	0% (9)	\$0	\$0	\$3,085	-\$3,085	
Juvenile intensive parole supervision	0% (10)	\$0	\$0	\$6,460	-\$6,460	
Scared Straight	+6.8% (10)	-\$8,355	-\$6,253	\$58	-\$14,667	
Counseling/psychotherapy for juvenile offenders	-18.9% (6)	\$23,126	\$17,309	n/e	n/e	
Juvenile education programs	-17.5% (3)	\$41,181	\$26,153	n/e	n/e	
Other family-based therapy programs	-12.2% (12)	\$15,006	\$11,231	n/e	n/e	
Team Child	-10.9% (2)	\$5,759	\$4,131	n/e	n/e	
Juvenile behavior modification	-8.2% (4)	\$19,271	\$12,238	n/e	n/e	
Life skills education programs for juvenile offenders	-2.7% (3)	\$6,441	\$4,091	n/e	n/e	
Diversion progs. with services (v. regular juvenile court)	-2.7% (20)	\$1,441	\$1,034	n/e	n/e	
Juvenile cognitive-behavioral treatment	-2.5% (8)	\$3,123	\$2,337	n/e	n/e	
Court supervision vs. simple release without services	0% (8)	\$0	\$0	n/e	n/e	
Diversion programs with services (v. simple release)	0% (7)	\$0	\$0	n/e	n/e	
Juvenile intensive probation (as alternative to incarceration)	0% (5)	\$0	\$0	n/e	n/e	
Guided Group Interaction	0% (4)	\$0	\$0	n/e	n/e	
<b>Prevention Programs (crime reduction effects only)</b>						
Nurse Family Partnership-Mothers	-56.2% (1)	\$11,531	\$8,161	\$5,409	\$14,283	
Nurse Family Partnership-Children	-16.4% (1)	\$8,632	\$4,922	\$733	\$12,822	
Pre-K education for low income 3 & 4 year olds	-14.2% (8)	\$8,145	\$4,644	\$593	\$12,196	
Seattle Social Development Project	-18.6% (1)	\$1,605	\$4,341	n/e	n/e	
High school graduation	-10.4% (1)	\$1,738	\$2,851	n/e	n/e	
Guiding Good Choices	-9.1% (1)	\$570	\$2,092	n/e	n/e	
Parent-Child Interaction Therapy	-3.7% (1)	\$268	\$784	n/e	n/e	

Source: Aos et al 2006:9.

Imprisonment encourages repeat convictions. Strang *et al.* (2013: 25) identifies 7% to 45% fewer repeat convictions or arrests from diversion interventions.

In NSW, 74 per cent of Indigenous prisoners eventually return to prison, compared with 52 per cent of non-Indigenous prisoners (Weatherburn et al., 2009). Other States have similar rates of reoffending (Broadhurst & Maller, 1990). While not exactly comparable, the 45% of Galambany Court offenders who have had no further involvement with police after two years is an impressive reduction in reoffending.

In Victoria, in the Koori Courts, evaluations of the pilot program showed reduced reoffending from 29.4% in mainstream courts to 12.5% for offenders who went through the Koori Court system (2006a:83).

Holding all other variables constant, the logistic regression model of Victorian Adult Murri Court sentencing demonstrates that offenders sentenced in an Adult Murri Court who were not already serving a period of imprisonment were not significantly more likely than offenders sentenced in a mainstream Magistrates Court to receive a custodial sentence (Morgan & Louis 2010:98).

One commonly mentioned effect of the Nunga and Koori Courts is that a higher proportion of defendants show up on the day. This has led to reductions in arrests for non-appearance by offenders on bail (Marchetti & Daly 2004:5).

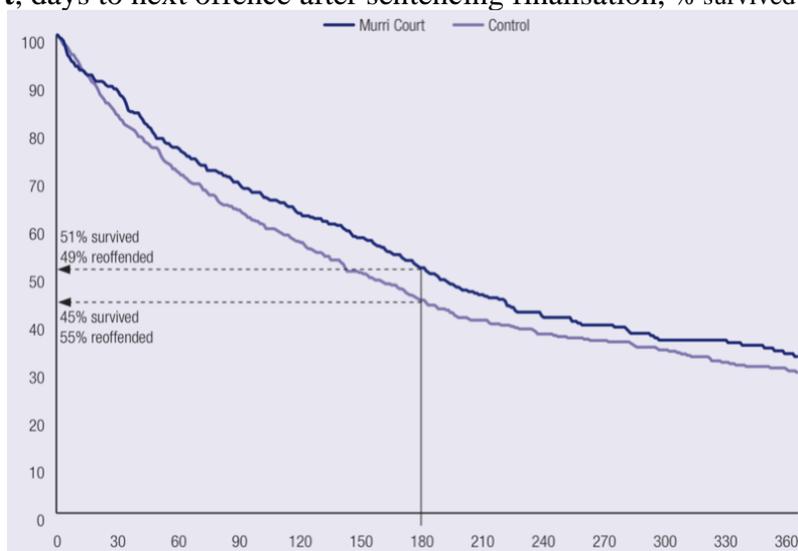
Fitzgerald (2008) compared Aboriginal and Torres Strait Islander offenders sentenced in Circle Sentencing (two thirds in Dubbo) and in the mainstream courts. She found no effects on the frequency of offending, the time taken to reoffend and the seriousness of further offending. However, it was acknowledged that the program’s objectives go beyond reducing recidivism and that it did not focus on rehabilitative services.

Research on the South Australian Aboriginal Sentencing Courts finds no statistically significant difference between reoffending rates or time to first re-offence for offenders sentenced in the Aboriginal and mainstream courts (Cultural & Indigenous Research Centre Australia 2013:80).

Queensland’s Murri Courts have reduced Aboriginal and Torres Strait Islander reoffending by around 6% compared to offenders in the mainstream Magistrates Court, measured at 6 months after the original sentencing finalisation. However, the gap reduces over the following 6 months (see figure below) and was not found to be statistically significant. Applying the 6% reduction in offending to the 45 offenders sentenced by Galambany Court results in an estimate of 3 fewer offenders reoffending each year of Galambany Courts operation.

Compared with Queensland’s Murri Courts, Galambany Court has been much more successful in reducing reoffending. After two years, 45% of Galambany Court offenders have had no further involvement with the police. In contrast after only 12 months, around 70% of Murri Court offenders have reoffended.

**Murri Court**, days to next offence after sentencing finalisation, % survived (not reoffended)



Note: The vertical axis shows the percentage of offenders not reoffending. The horizontal axis shows the days since previously sentenced.

Source: Morgan & Louis 2010:104.

Research by KPMG (2010:39) on restorative justice group conferencing for juveniles in Victoria found that within 24 months of completing a Group Conference, 19% of participants had reoffended, compared to 43% per cent of young people in the control group.

The NSW Bureau of Crime Statistics and Research estimated that youth justice conferencing reduced reoffending by 15-20% across different offence types and regardless of the gender, criminal history, age and culture of the offenders (Luke & Lind 2002).

Clearly reducing reoffending is not a simple matter. Qualitative research undertaken by Daly and Proietti-Scifoni (2009) with NSW circle sentencing participants found evidence that reducing reoffending was a gradual process and that a number of factors outside of the court process influenced whether a person would continue to offend and to what extent. These included:

- whether the person had a problem with drug or alcohol abuse,
- whether there were family responsibilities or relationships that motivated them to change their behaviour, and
- whether the participant was ready to change or prepared to accept responsibility for their behaviour.

Snowball & Weatherburn (2006) found that informal social controls, such as the opinions of families and friends, are more effective in controlling criminal behaviour than criminal justice responses.

The importance of culturally appropriate programs and services for Aboriginal and Torres Strait Islander offenders is widely acknowledged (Willis 2008). Limited sentencing options for non-custodial sentences result from inadequate the local infrastructure (ie rehabilitative programs, counselling etc) to support offenders while serving community-based orders. Sentencing options need to tackle low levels of employment, issues relating to school attendance, further education, drug and alcohol problems, housing stability, providing support to individuals to overcome stressful events, and family instability.

Galambany Court has provided sentencing options associated with reduced reoffending. Therefore, the assumption of 10 reduced re-offenses is conservative.

On this basis, this CBA assumes five avoided non-appearances requiring rescheduling, one avoided appeal, and one avoided repeat offense each year.

Courts use substantial resources in their interactions with Aboriginal and Torres Strait Islander offenders. Those uses can be valued by the market prices paid for them, principally wages and legal services prices. Based on the research literature summarised below, this CBA applies a cost reduction to the ACT courts of \$450 per case for minor cases and \$3,000 for major case per annum per court attendance avoided.

Estimates of the unit cost of court resources from the research literature include:

- Raman *et al.* (2005b:130-140) estimated unit court costs as \$250 per fine administered, \$300 per Magistrates case finalised, \$750 per police service to a judicial process, and \$1,200 per diversion program.
- Lind *et al.* (2002:24) estimate the value of economic resources used in NSW courts. For sentencing in a local court economic resources worth on average \$200 are used. For appearances in the NSW Drug Court, pre-program appearances use economic resources worth on average \$440, on program appearances \$250 and termination appearances \$840. These include overheads of \$80 per appearance and client (non-court) costs of \$92 per appearance.

- In Western Australia, economic resources used by magistrates are valued at \$370 per hour and for administration at \$51 per hour. The economic resources used by the WA court based Indigenous Diversion Program are estimated to be worth on average around \$3,400 per client. The general cost of community supervision in 2005/2006 was \$23.22 per day (Crime Research Centre 2007:124-128).
- In Queensland, for major prosecutions taking 20 days, legal aid resources were valued at \$9,000 per case. A Queensland Police prosecutor's time was valued at \$550 per day (Mason & Robb 2010:56-58).
- The average value of economic resources used per criminal finalisation in the ACT Magistrates Courts (excluding the Children's Court) was estimated as \$1,787 in 2015-16 (SCRGSP 2017: Table 7A.31).
- Browning (2011:31), based on Mason and Robb (2010), uses an economic value of \$450 per case for Queensland legal aid for minor offences requiring one day in 2008-09 dollars.
- KPMG (2010:60) estimated court costs of the Victorian Youth Justice Group Conferencing Program 2008/09 as total expenditure per Conference (per individual) of \$5,022 and court expenditure per person of \$1,279.

Based on the research literature summarised below, this CBA applies a cost reduction to the ACT courts of \$450 per case for minor cases and \$3,000 for major case per annum per court attendance avoided.

Assuming five avoided non-appearances requiring rescheduling each year saving a minor case valued at \$450 gives an annual saving of \$2,000.

Assuming one avoided repeat offense per year as a major case, the saving is \$3,000 for each year of Galambany Court's operation.

Assuming one avoided appeal per year as a major case, the saving is \$3,000 for each year of Galambany Court's operation.

This gives a total Court cost saving of \$8,000 for each year of Galambany Court's operation.

Galambany Court reduces the number of people appearing in court and frees court resources for other productive uses.

### **Imprisonment cost savings: direct**

Galambany Court provides a net economic benefit to Australia by diverting Aboriginal and Torres Strait Islander offenders from imprisonment to community-based programs. This has freed resources for alternative uses.

The respect shown to the ACT Aboriginal and Torres Strait Islander community by Galambany Court has built up social capital (respect) underpinning the operation of the justice system in the ACT. Due to a reduction in Aboriginal and Torres Strait Islander resentment and conflict within the justice system fewer resources are required for its operation.

Those resources can be valued by the market prices paid for them.

Based on discussions with stakeholders, this CBA assumes that 10 Aboriginal and Torres Strait Islander offenders do not receive a custodial sentence due to Galambany Court's diversion to community-based sentences. Based on the research literature on reoffending (see above) this CBA assumes 1 Aboriginal and Torres Strait Islander offender does not reoffend and receive a custodial sentence due to Galambany Court's diversion to community based sentences

Based on the cost of corrections research literature summarised below, this CBA estimates a cost reduction to the public sector of \$400 per adult prisoner per day for the 10 Aboriginal and Torres Strait Islander offenders who would, without Galambany Court, receive a custodial sentence. This value is based on the more conservative of the estimates below. Assuming an average 120-day sentence this gives an annual saving of \$528,000 for each year of Galambany Court's operation.

The assumption of a custodial sentence of 120 days is consistent with the experience of the AMC. In the period 2009-10 to 2013-14, the time served by sentenced detainees in custody increased from 111 to 334 (mean) days, and from 88 to 219 (median) days ACT Auditor-General 2015:64)

Based on the research literature summarised below, this CBA estimates a cost reduction to the corrections sector of \$400 per adult prisoner per day.

Typically, an economic valuation of the cost of an extra prisoner (or the cost saving of one less prisoner) would use a marginal rather than an average cost. Some examples are:

- In Canada, the difference between marginal and average cost for federal corrections is substantial. For the year 1999-00, the Correctional Service of Canada reported that the cost per male inmate averaged about \$67,686 per year. For female inmates, the average cost was \$115,465. In contrast, the marginal cost of adding one additional inmate into the federal system averaged \$13,720 during the same period. The cost of supervising an offender on parole in his or her community has been estimated at \$13,000 per year (Buller 2001:5 & 14).
- In NSW, the prison cost savings (per prisoner) from reducing prisoner numbers are likely to vary depending on the number of prisoners diverted from prison. Small reductions in the number of prisoners only produce savings in items like food and clothing. Larger reductions in prisoner numbers produce more substantial marginal savings because they permit staff reductions, the closure of prison wings and (ultimately) the closure of whole institutions. Weatherburn et al (2009:5) use estimates of around \$12 per prisoner per day for up to 100 fewer prisoners rising to \$110 per prisoner per day for up to 1,300 fewer prisoners in NSW. Due to the much smaller size of the ACT's prisoner population these do not represent the true marginal cost of extra ACT prisoners. In the ACT an extra 100 prisoners would require a major expansion of the AMC.

It is likely that extra prisoners in the ACT have a marginal cost that is greater than their average cost due to the continuing need to expand the AMC. From its opening capacity of 300 prisoners in 2009 the AMC has expanded by 80% to 539 beds in 7 years to 2016 (ACT Auditor-General 2015). Therefore, the \$400 saved per imprisonment avoided is a conservative estimate.

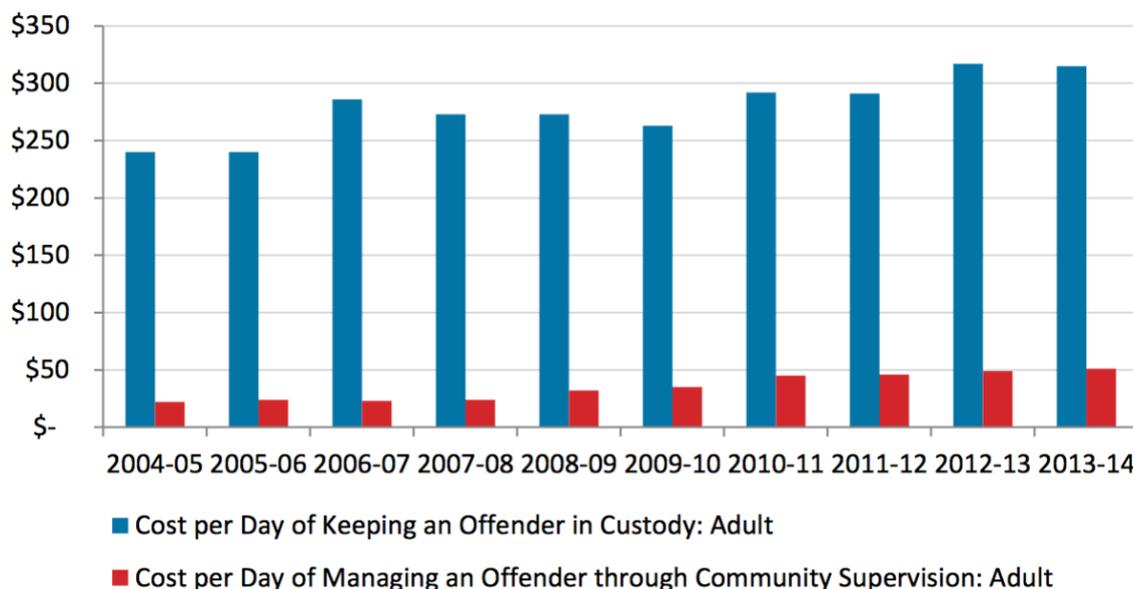
Galambany Court diverts Aboriginal and Torres Strait Islander offenders from prison freeing economic resources for other uses. Estimates from the research literature of the unit value of the corrections services resources saved include:

- Raman *et al* (2005b:130-140) estimated unit prison costs as \$11 per day in community correction, \$120 per day in remand, and \$204 per day in prison.
- KPMG (2010:60) estimated corrections costs of the Victorian Youth Justice Group Conferencing Program 2008/09 as an average cost of a Community Based Order in 2008/09 of \$9,495 per individual and an average cost of a three month period in custody per individual of \$48,221 or \$536 per day.
- Substantial economic resources are spent on correctional custodial facilities in Australia. These resources are valued at annual average of \$315 per prisoner per day for 2012–13 (ANCD 2013:viii). The ANCD (2013) report, prepared by Deloitte Access Economics, estimated that resources worth \$111,000 are saved per year per offender by diverting non-violent Indigenous offenders with substance use problems into treatment instead of prison. The report further estimates that additional

resources worth \$92,000 per offender will be saved due to lower mortality and better health related quality of life outcomes.

- Recent US survey data suggest that yearly average recurrent costs of imprisonment range from US\$14,000 to US\$60,000 per adult prisoner and US\$40,000 to US\$350,000 per juvenile detainee across US States (Henrichson & Delaney 2012; Justice Policy Institute 2014). In Australian dollars this would be approximately \$52 - \$236 per day for adult prisoners and \$156 - \$1,592 per day for juvenile prisoners.
- McCausland *et al.* (2013:5) estimate that in NSW a prisoner’s interaction with the corrections system costs \$9,235 per admission for an Indigenous juvenile and \$4,658 per non-Indigenous. For adults the life-time cost per person is estimated as \$361,238 per person rising to \$450,000 per person for those with previous juvenile admissions. Case studies estimate that over a lifetime the cost of prison and crisis support are as high as \$1 million per annum per person.
- Lind *et al.* (2002:32) estimate the value of economic resources used in NSW prisons. For women’s imprisonment economic resources worth around an average of \$220 per day are used and for men \$170 per day. In contrast, supervision in the community uses economic resources worth only around \$3 per day.
- The NSW Department of Correctional Services estimated that the resources it used to imprison the average prisoner were worth \$188 per day in 2003-04 (Public Accounts Committee 2005:1).
- In NSW, in 2014, the operating and capital costs of imprisoning an adult was on average \$250 per day but for juveniles this rose to an average of around \$780 per day (NSW Auditor-General 2014:14).
- The recurrent cost (excluding payroll tax and less revenues raised) of imprisoning Queenslanders was around \$180 per prisoner per day in 2013-14. Including capital costs increases this to around \$300 per prisoner per day. In contrast, community corrections cost around \$14 per offender per day (SCRGSP 2015b:Table 8A.7). In Queensland, the \$311 full cost per prisoner per day in 2012-13 was made up of operating expenditure 64%, capital cost 34% and transport and escort costs 2% (ANCD 2013:46).
- In WA the average cost of imprisonment is around \$300 per day while the cost of community supervision is around \$50 per day (WACOSS *et al.* 2014:1).

**Cost per day of keeping a WA offender in custody vs community supervision**



Source: WACOSS *et al.* 2014:18.

The treatment costs for a female offender completing treatment for drug/alcohol dependence in a facility that allows her children to live with her in a semi-independent environment is \$1,798 or the equivalent of 5.3 days in prison (VEQHRC 2013:93).

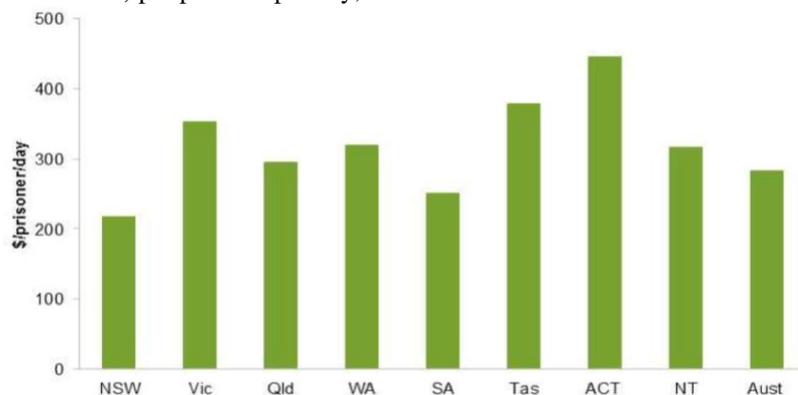
**Victorian costs of diversion options, \$ per prisoner per day**

Prison	339
Community Corrections Order	27
Residential drug and alcohol treatment	205-285
Residential mental health service	338
Wulgunggo Ngalu Learning Place	131
Restart program- post-release supported housing	70

Source: VEQHRC 2013:94.

The ACT has the highest total prison cost (net operating expenditure, depreciation, debt servicing fees and cost of capital) at \$445 per prisoner per day in 2015-16. See the figure below. In contrast community corrections cost only \$35 per offender per day (SCRGSP 2017:8A.18<sup>23</sup>).

**Total cost, per prisoner per day, 2015-16**



Source: SCRGSP 2017:8.20.

Based on the cost of corrections research literature summarised above, this CBA estimates a cost reduction to the public sector of \$400 per adult prisoner per day for the 11 Aboriginal and Torres Strait Islander offenders who would, without Galambany Court, receive a custodial sentence. Assuming an average 120-day sentence this gives an annual saving of \$528,000 for each year of Galambany Court’s operation.

Research shows that the programs, like Galambany Court, have been successful in changing attitudes in the community, particularly people’s opinions of the justice system. Galambany Court has encouraged offenders to accept responsibility for their behaviour and provided a place where the opinions of Aboriginal and Torres Strait Islander Elders and respected persons have reduced reoffending. Based on the research literature summarised above, this CBA makes the conservative assumption that Galambany Court results in one fewer re-offense per year.

The AMC’s high utilisation levels (in terms of planned, design and total capacity) over much of its operation have provided ACT Correctional Services (ACTCS ) officers with very limited operational flexibility to accommodate new detainees. These levels have also presented challenges in maintaining good order for existing detainees (ACT Auditor-General 2015:34).

<sup>23</sup> Also known as ROGS.

The respect shown to the ACT Aboriginal and Torres Strait Islander community by Galambany Court has built up social capital underpinning the operation of the justice system in the ACT. Due to a reduction in Aboriginal and Torres Strait Islander conflict with the justice system the cost of operating the AMC is reduced by \$50,000 per year.

The total corrections saving (initial and repeat imprisonments) is \$528,000 plus \$50,000 giving \$578,000 for each year of Galambany Court's operation.

The total Justice System cost saving is \$594,000 per year.

**2017-26 Total Present Value: \$5,332,000** (2017 dollars discounted by 2% over ten years).

## Attachment E

### Setting the Scene for the Interview Comments from Galambany Participants

#### Aboriginal and Torres Strait Islander People in the Criminal Justice System

*No one gets heard by the Magistrate in the mainstream. They're locking you up and you don't get to say anything. And I am not the only person who feels like this.*

- Interview comment from a male defendant appearing at Galambany Court

This section sets out an overview of issues that Galambany Court was established to address and which include:

- the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system;
- the consequences of high rates of over-imprisonment and incarceration including mental health issues;
- the impacts on the families of those who have been subject to custodial detention; and
- the types of services that have been identified as necessary to support people to meaningfully address the causes of their offending behaviour.

One of the key recommendations of the Royal Commission into Aboriginal Deaths in Custody was that imprisonment should be a sanction of last resort. At the time of the Commission's final report in 1991, Aboriginal and Torres Strait Islander people were eight times more likely to be imprisoned than non-Aboriginal people. Today, on average across all jurisdictions, they are 13 times more likely to be imprisoned. However in the ACT, the overall imprisonment rate is even higher than the national average, with Aboriginal and Torres Strait Islander people 18 times more likely to be imprisoned. This means that whilst the ACT population of Aboriginal or Torres Strait Islander people is approximately 1.6% of the total population, almost 25% – or about one in four prisoners – in the Alexander Maconochie Centre (AMC) are Aboriginal or Torres Strait Islanders.<sup>24</sup>

While the imprisonment of Aboriginal and Torres Strait Islander people has increased markedly since

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<sup>24</sup> Source Australian Bureau of Statistics 2016 Census Figures  
<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2016~Main%20Features~Imprisonment%20rates~12>

the Royal Commission into Deaths in Custody, according to the *Over-represented and overlooked Report* by the Human Rights Law Centre and the Change the Record Coalition, the situation has dramatically worsened for Aboriginal and Torres Strait Islander women. The report's authors identified that:

*Aboriginal and Torres Strait Islander women are the fastest growing prisoner population in Australia. In the quarter of a century since the landmark Royal Commission into Aboriginal Deaths in Custody, the rate of Aboriginal and Torres Strait Islander women's imprisonment has grown 248 per cent.*<sup>25</sup>

Research conducted by the Australian Institute of Criminology (AIC), has also found that, Aboriginal and Torres Strait Islander people are more likely to be subjected to imprisonment because they are subject to harsher penalties than non-Aboriginal and Torres Strait Islander people for the same offences. In the AIC report titled *The Sentencing of Indigenous Offenders in the Lower Courts: A Study of Three Australian Jurisdictions* found that in New South Wales, South Australia and Western Australia, Aboriginal and Torres Strait Islander offenders were more likely to be sentenced to prison than non-Aboriginal and Torres Strait Islander offenders for the same type of offence. According to the research, 17% of Aboriginal and Torres Strait Islander offenders in New South Wales compared with 15% of non-Aboriginal and Torres Strait Islander offenders received a prison sentence. In South Australia and Western Australia the rates were 11% compared with 5%, and 13% compared with 8%, respectively.<sup>26</sup>

### **The Broader Research Context**

Research from the Australian Institute of Aboriginal and Torres Strait Islander Studies has considered the issue of the over-imprisonment of Aboriginal and Torres Strait Islander people. In a paper titled '*The problem of Indigenous over-representation in prison,*' the authors consider a cohort born in 1984 and detail their rate of interactions with the criminal justice system. They note that:

*by the time they reached the age of 23, more than three quarters (75.6 per cent) of the New South Wales Indigenous population had been cautioned by police, referred to a youth justice conference or convicted of an offence in a New South*

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<sup>25</sup> *Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment.* Human Rights Law Centre and the Change the Record Coalition May 2017.

<sup>26</sup> *The Sentencing of Indigenous Offenders in the Lower Courts: A Study of Three Australian Jurisdictions,* Australian Institute of Criminology October 2011.

*Wales criminal court. The corresponding figure for the non-Indigenous population of New South Wales was just 16.9 per cent. By the same age, 24.5 per cent of the Indigenous population, but just 1.3 per cent of the non-Indigenous population, had been refused bail or given a custodial sentence (control order or sentence of imprisonment).*

*The authors go on to state that:*

*There is nothing unusual about those born in 1984 and nothing unusual about New South Wales. Similar findings have been obtained in South Australia (Skrzypiec 2005) and Western Australia (Harding et al. 1995).<sup>27</sup>*

As noted earlier Aboriginal and Torres Strait Islander people are subject to harsher penalties than non-Aboriginal and Torres Strait Islander people for the same offences. In the ACT they are 18 times more likely to be imprisoned than non-Aboriginal and Torres Strait Islander people despite repeated recommendations including those of the Royal Commission into Aboriginal Deaths in Custody that imprisonment should be a sanction of last resort.

Specialist courts, including circle-sentencing courts such as Galambany, are a key component of justice strategies to address the over-representation of Aboriginal and Torres Strait Islander people in the prison system. Many of these courts including the NSW Circle Courts, the Victorian Koori Court Division of the Magistrates' Court, the Victorian County Koori Court, the Victorian Children's Koori Court, the Queensland Murri Courts, the Western Australian Kalgoorlie Aboriginal Sentencing Court and the SA Nunga Courts have been the subject of previous evaluations.<sup>28</sup>

Our study raised a number of issues as noted in these previous studies including:

- the cultural significance of the presence of Elders and respected members of the community;
- the significant physical and mental health issues faced by participants;
- the need for ongoing support services; and

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<sup>27</sup> *The Problem of Indigenous Over-representation in prison*  
[https://aiatsis.gov.au/sites/default/files/products/book/arresting-incarceration-sample\\_2.pdf](https://aiatsis.gov.au/sites/default/files/products/book/arresting-incarceration-sample_2.pdf)

<sup>28</sup> *Elena Marchetti & Kathleen Daly- Indigenous courts and justice practices in Australia* Published 1 May 2004 Last modified 3 November 2017 Australian Institute of Criminology  
<https://aic.gov.au/publications/tandi/tandi277>

- the perceived fairness and effectiveness of the Galambany Court compared to mainstream.

For many of those interviewed for this evaluation there was a palpable sense of the unfairness of the mainstream court system, the disparities between sentences handed down and the sense that the criminal justice system is stacked against Aboriginal and Torres Strait Islander people. Although we did not seek to specifically interview participants about their experiences in, or opinions of, the prison system, a number of those interviewed raised these issues. Those interviewed stated they saw that mainstream court would automatically result in their imprisonment whereas Galambany delivered fairer and more considered sentencing even if this included imprisonment.

In their 2013 submission to the ACT Human Rights Commission on the treatment of women at the Alexander Maconochie Centre, the Castan Centre for Human Rights Law at Monash University noted that, on the whole:

*...women tend to be imprisoned for short sentences ... and Indigenous women serve shorter sentences, meaning they are imprisoned for very minor offences – such as driving infringements and non-payment of fines – and they are more likely than non-Indigenous women to be on remand.<sup>29</sup>*

Another significant concern is raised by research conducted by the University of New South Wales in their *Indigenous Australians with Mental Health Disorders and Cognitive Disabilities in the Criminal Justice System* (IAMHDCCD) Project which has found that far too many Aboriginal and Torres Strait Islander people with mental health and cognitive disabilities end up in prison because they are not supported early by specialised and community-based services. According to the findings from the IAMHDCCD Project too many are being imprisoned because:

*... they're from poor and disadvantaged backgrounds and from areas with no real alternatives to custody. Some are there indefinitely because courts consider them unfit to plead. ... The human costs of managing Aboriginal people with mental and cognitive disability via the criminal justice system are devastating.<sup>30</sup>*

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<sup>29</sup> *Human Rights Audit and Review of Treatment of Women at AMC* - submission to the ACT Human Rights Commission, Castan Centre for Human Rights Law at Monash University August 2013

<sup>30</sup> *Indigenous Australians with Mental Health Disorders and Cognitive Disabilities in the Criminal Justice System* Project (IAMHDCCD), 2017 University of New South Wales, Sydney  
<https://www.mhdcd.unsw.edu.au/indigenous-australians-mhdcd-cjs-project.html>

The IAMHDCD Project researchers also note that the cost of this criminalisation of mental health and cognitive disability, which leads to people becoming entrenched in the system is extraordinarily expensive and result in amounts in excess of \$1 million per year for some people with complex support needs.<sup>31</sup>

Imprisonment, even when it is of short duration, has numerous adverse consequences. The thought of what might happen to a family member who is imprisoned is never far from the mind of family members. Rates of mental illness including anxiety, depression, substance abuse and psychotic disorders are much higher for Aboriginal and Torres Strait Islander people who are imprisoned than for both the general population and the general prison population. Research in Queensland, into the mental health of Aboriginal and Torres Strait Islander people, published in a report titled *Inside Out – The Mental Health of Aboriginal and Torres Strait Islander People in Custody Report* found that the prevalence of mental health disorders was approximately 73 per cent in males and 86 per cent in females.<sup>32</sup>

The Report's authors note that many Aboriginal and Torres Strait Islander people experience:

*high rates of psychological distress, life stressors, (and) problematic drinking. Even amongst children, rates of significant emotional and behavioural difficulties, and serious suicidal ideation have been reported to be high ... and the process of incarceration may only compound experiences associated with (these) mental health problems.*

The Inside Out researchers found that for Aboriginal and Torres Strait Islander men who were imprisoned:

*.... the prevalence of mental health disorders was significantly higher than the estimated prevalence among males in the Australian community. It was nearly two times higher for anxiety disorders, nearly three times higher for depressive disorders, nine times higher for substance use disorders and 17 times higher for psychotic disorders.*<sup>33</sup>

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<sup>31</sup> *Ibid*

<sup>32</sup> *Inside Out – The Mental Health of Aboriginal and Torres Strait Islander People in Custody Report* Published by the Queensland Government (Queensland Health), February, 2012

<sup>33</sup> *Ibid*

A key point that was emphasised repeatedly by those interviewed for the Galambany evaluation was the absence of services in the ACT community to support people in a timely manner to address a range of issues including drug and alcohol dependence and other mental health issues. Those interviewed stated repeatedly that these services were essential to supporting people to address offending behaviour and to reducing the over-imprisonment and incarceration rate of Aboriginal and Torres Strait Islander people in the ACT.

This also fits with findings from the IAMHDCD Project that:

*Communities are overwhelmed with the kind of support needed by people who experience mental and cognitive disability as well as drug and alcohol dependency. Different diagnoses and disorders can become meshed together and masked by each other, which is sometimes called 'complex support needs'.<sup>34</sup>*

On one of the days the evaluators observed Galambany Court three out of the four people appearing had both an Acquired Brain Injury (ABI) and mental health issues. Several of those interviewed noted that the Panel are asked to address what is an extraordinarily complex set of circumstances and many of the referral options available do not work in a holistic way with people instead focusing on aspects of the care needed. These observations fit with the IAMHDCD Project statement that:

*It is difficult for Aboriginal people with complex support needs to get appropriate help, because services often focus on only one area – like mental health, or disability, or drug and alcohol dependency – and also because of racism.<sup>35</sup>*

As part of the Qualitative Evaluation we did not seek to specifically interview participants about their experiences in, or opinions of AMC, however a number chose to raise concerns about their perceived lack of services available within AMC. Some research participants identified they had experienced delays in being able to access the appropriate support and services whilst in AMC and that this was particularly difficult for people held on remand. This was a concern for those interviewed as they felt that access to services was essential to addressing the causes of their offending behaviour and to

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<sup>34</sup> *Indigenous Australians with Mental Health Disorders and Cognitive Disabilities in the Criminal Justice System Project (IAMHDCD)*, 2017 University of New South Wales, Sydney  
<https://www.mhdcd.unsw.edu.au/indigenous-australians-mhdcd-cjs-project.html>

<sup>35</sup> *Ibid*

ensuring the Galambany panel could see them taking active responsibility for their behaviour and seeking to change it.

According to the September 2017 ABS Corrective Services data, the largest increases in the Australian prison population have been among women, Aboriginal and Torres Strait Islander people and those on remand.<sup>36</sup> The ABS has found that 33% of all those in custody are there on remand and this has grown by 87% between 2012 and 2017.<sup>37</sup>

People can be held on remand while awaiting sentencing or as an unsentenced prisoner awaiting trial. Unsented prisoners are remanded into custody for a number of reasons, such as the severity of the offence or the likelihood they might abscond, or the lack of appropriate accommodation options such as residential drug and alcohol treatment services, or secure mental health services.<sup>38</sup>

According to the ABS in 2017 the ACT had the highest number of unsentenced prisoners in the nation and this was across both the Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander populations. ABS statistics also show that the ACT had the highest rate of prisoners experiencing reimprisonment with three quarters of ACT prisoners having previously been imprisoned under sentence as compared to the national average of 57%.<sup>39</sup>

The ACT is a small jurisdiction, which has only one correctional facility. As a consequence people held on remand can be mixed in with the general prison population and this may be a significant source of stress and anxiety. As was noted earlier Aboriginal and Torres Strait Islander women are more likely to be on remand than non-Indigenous women. The Inside Out Report found that in every instance Aboriginal and Torres Strait Islander women in custody – whether on remand or serving a custodial sentence – struggle with an even greater burden of mental illness with:

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<sup>36</sup> Corrective Services Data September 2017 Australian Bureau of Statistics  
<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4512.0?OpenDocument>

<sup>37</sup> *Ibid*

<sup>38</sup> *Aboriginal and Torres Strait Islander Health Performance Framework 2014 Report*  
<https://www.pmc.gov.au/sites/default/files/publications/indigenous/Health-Performance-Framework-2014/tier-3-health-system-performance/311-access-alcohol-and-drug-services.html>

<sup>39</sup> Corrective Services Data September 2017 Australian Bureau of Statistics  
<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4512.0?OpenDocument>

*... the prevalence of anxiety disorders nearly three times higher, more than four times higher for depressive disorders, more than 20 times higher for substance use disorders and more than 50 times high for psychotic disorders.*<sup>40</sup>

Mental health impacts were noted by those interviewed, each of whom spoke of their distress in being caught up in, or seeing their family member involved with, the mainstream justice system. Those interviewed detailed confronting and painful experiences. When family members, and particularly mothers, go to prison, families and communities are affected by the loss of parents, role models, childcare and family income. As the *Over-represented and Overlooked* Report notes:

*... it is estimated that some 80 per cent of Aboriginal and Torres Strait Islander women in prisons are mothers. Women are often the primary or sole carer of their own children and the children of extended family members, as well as caring for the sick and elderly. When women are taken into custody, even for short periods, the impacts ripple throughout families and communities and can have 'long-term cumulative effects'.*<sup>41</sup>

The report also details findings from the Australian Human Rights Commission, which stated that:

*Mothers that are prisoners experience difficulties in maintaining their relationship with their children and suffer disruptions to family life, which can lead to their children suffering from emotional and behavioural problems.*<sup>42</sup>

Imprisonment of a parent or family member also lays the foundation for intergenerational cycles of imprisonment. The Inside Out research, which looked at the mental health of Aboriginal and Torres Strait Islander people held in custody throughout Queensland, found that:

*Nearly 65 per cent of participants stated they had a family member in custody, more males (74 per cent) than females (56 per cent) reported having a family member in*

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<sup>40</sup> *Inside Out —The Mental Health of Aboriginal and Torres Strait Islander People in Custody Report* Published by the Queensland Government (Queensland Health), February, 2012

<sup>41</sup> *Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment.* Human Rights Law Centre and the Change the Record Coalition May 2017.

<sup>42</sup> *Ibid*

*custody ... and over half of the males (52.2 per cent) and a third of the females (37.5 per cent) reported having spent time in youth custody.*<sup>43</sup>

According to the *Over-represented and Overlooked* Report, whilst there are a number of key reasons to be concerned about the growing number of Aboriginal and Torres Strait Islander women entering prisons, of particular concern are the impacts on children and the creation of intergenerational cycles of imprisonment. They identify that:

*Children whose mothers spend time in prison are more likely to have a disrupted education, poor health and unstable housing – factors that heighten the risk of a young person entering child protection or justice systems. Aboriginal and Torres Strait Islander children are already grossly over-represented in child protection systems across Australia. Once in the child protection system, the risks of entering the criminal justice system increase considerably and according to data published by the Australian Institute of Health and Welfare young people on child protection orders are 27 times more likely to be under a youth justice supervision order in the same year.*<sup>44</sup>

The Australian Institute of Family Studies notes the growing number of research papers, which document the importance of children being able to maintain:

*... consistent, supportive and interactive relationships with adult caregivers.*<sup>45</sup>

The likelihood of maintaining *consistent, supportive and interactive relationships* is clearly compromised when a child enters either the child protection or justice systems – which is much more likely to happen when a parent has been imprisoned.

For Aboriginal and Torres Strait Islander people the legacy of colonisation is the legacy of trauma. Incarceration is itself, both the result of trauma, and the cause of further trauma. Circle Sentencing

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<sup>43</sup> *Inside Out —The Mental Health of Aboriginal and Torres Strait Islander People in Custody Report* Published by the Queensland Government (Queensland Health), February, 2012

<sup>44</sup> *Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment.* Human Rights Law Centre and the Change the Record Coalition May 2017.

<sup>45</sup> *Effects of child abuse and neglect for children and adolescents* 2014 Australian Institute of Family Studies Canberra <https://aifs.gov.au/cfca/publications/effects-child-abuse-and-neglect-children-and-adolescents>

Courts such as Galambany Court offer the chance to interrupt imprisonment cycles by providing culturally appropriate processes and advice at the sentencing phase. This in turn offers the chance to address some of the sources of trauma particularly those experienced by the children whose parents are the subject of custodial detention.

Circle sentencing also recognises and creates space for the authority of Elders and other senior respected Aboriginal and Torres Strait Islander people within the criminal justice system. A fact, which all those interviewed for the Galambany Court evaluation saw as absolutely fundamental to its effectiveness. The value of culturally relevant and appropriate approaches for Aboriginal and Torres Strait Islander people cannot be overstated. As one of the Galambany Panel members explained there is a sense of connection and understanding that connects all Aboriginal and Torres Strait Islander people in a way that non-Aboriginal people cannot understand. The Panel member referred to the idea of an intuitive sense of ‘knowing’ other Aboriginal people even when they are not known to each other and explained this is a ‘shared kindredness’, which is shaped by a shared sense of history, common experiences and connections to ideas about country, culture and belonging.

The importance of cultural values and approaches, including the role of Elders was seen as critical by those interviewed about their experience as defendants or family members of defendants and central to this was the sense of feeling that at Galambany Court they would be understood, that the ‘shared kindredness’ with the Panel would enable them to be seen as a person and not just a set of offences. This seemed to be, for many, an essential component of being able to accept responsibility and move towards changing the behaviours that had led to them being in front of the Galambany Court panel. This sense of being seen for who they were, created a sense of connection to culture and a responsibility to do better.

As participants in the Inside Out research also emphasised:

*... cultural values and practice are as important in any rehabilitation process.* <sup>46</sup>

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<sup>46</sup> *Inside Out —The Mental Health of Aboriginal and Torres Strait Islander People in Custody Report*  
Published by the Queensland Government (Queensland Health), February, 2012

All those interviewed for the Galambany Court evaluation noted that they saw Galambany Court as offering a more culturally appropriate service than that of the mainstream court and that this was also an essential component of its effectiveness.

The evaluation found many similarities between those who were interviewed about their experiences at Galambany Court and those who were interviewed about their experiences of the Nowra Circle Court. In their article *'The Elders Know ... The White Man Don't Know': Offenders' Views of the Nowra Circle Court*, the authors Kathleen Daly and Gitana Proietti-Scifoni note that the positive experience of offenders centred on the following aspects:

*... compared to regular courts, there is greater informality, more open information sharing, welcome change in white- Indigenous power relations, a meaningful and constructive censuring process, and sentencing outcomes that balance punishment and rehabilitation. For most, the Circle was a deep, emotional, and spiritual experience mainly because the Elders were there. The Elders knew them and could be tough on them, but they were also encouraging and supportive.*