

Aboriginal Hearing Day

Study of the partnership between the Aboriginal community and the Heidelberg Magistrate's Court that led to the formation of the Aboriginal Hearing Day.

An Action Learning Project of the
Neighbourhood Justice Centre



NEIGHBOURHOOD
JUSTICE CENTRE



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We acknowledge the Wurundjeri people, the traditional owners of the land that the City of Yarra, the City of Banyule, the Heidelberg Magistrates' Court and the Neighbourhood Justice Centre rests upon.

Terminology

In this document the term 'Aboriginal' refers to both Aboriginal and/or Torres Strait Islander people either in Victoria or in other parts of Australia unless otherwise stated: for example, clan name/s or generic names, which are Koori (VIC, NSW), Murri (QLD), Palawa (TAS), Nunga (SA), Noongar (WA), Torres Strait Islander.

The term 'Koori community' is used in this document as respectful reference to the local Aboriginal community in Victoria.

The NJC acknowledges that within the Koori community there are other Aboriginal and/or Torres Strait Islander persons living, working and gathering in the local area.

Interviewees

Neighbourhood Justice Centre

- Magistrate David Fanning
- Kerry Walker, Director
- Cameron Wallace, Client Services Manager
- Louise Bassett, Manager, Strategy and Innovation
- James Fraser, Senior Koori Justice Worker

Heidelberg Magistrates' Court

- Regional Co-ordinating Magistrate Susan Wakeling
- Magistrate Suzanne Cameron
- Joseph Shields, Senior Registrar

Department of Justice & Regulation

- Ashley Morris, Co-ordinator of Koori Programs
- Travis Lovett, Manager of Koori Courts
- Rosemary Smith, Manager Koori Programs and Initiatives
- Troy Austin, Executive Officer, Northern Metropolitan Regional Aboriginal Justice Advisory Committee

Introduction

The Neighbourhood Justice Centre (NJC) in Collingwood, Victoria was opened in 2007 to service the City of Yarra as part of the State Government's *A Fairer Victoria* policy. It is the first neighbourhood or community justice centre in Australia, and was established to provide new and innovative ways of dealing with crime and other forms of social disorder, disadvantage, and conflict in the City of Yarra.

The Centre offers a range of justice and social services, including: a Magistrates' Court of Victoria with jurisdiction to hear all matters that the Criminal Division hears (except for sex offences) and matters involving Family Violence and Personal Safety Intervention Orders; a Children's Court; a Victims of Crime Assistance Tribunal (VOCAT); and a Victorian Civil and Administrative Tribunal (VCAT) that deals with residential tenancy matters, guardianship matters and a range of other civil disputes.¹

The Centre has a Client Services team that provides assessment, treatment and referral services to persons referred through the Centre's justice processes and to residents of the City of Yarra who self-refer. In addition, a variety of justice and social service agencies have staff located at the Centre. These agencies provide services in an integrated and coordinated fashion within a framework of therapeutic jurisprudence.² They include: mediation, legal advice, employment and housing support, financial counselling, drugs and alcohol counselling, family violence and victim support and mental health services.

1 Ross, S., Halsey, M., Bamford, D., Cameron, N., & King, A., 'Evaluation of the Neighbourhood Justice Centre, City of Yarra, Final Report', (Dec, 2009), p.4.

2 Victorian Department of Justice (2010) Evaluating the Neighbourhood Justice Centre 2007-2009, State Government Victoria.

The NJC was developed to create an integrated and accessible system of justice through engagement with local communities and addressing underlying causes of crime. The approach stresses the importance of community participation, offender accountability and enhancing the quality of the court experience for participants.³

Since its inception the Neighbourhood Justice Centre in Collingwood has been committed to building a partnership with the local Aboriginal community living in and around the City of Yarra in keeping with its community justice approach. The suburbs of Collingwood and Fitzroy have been developed on the land of the *Wurundjeri people*, and whilst the number of Aboriginal people living in the region has decreased over the years, the area remains a significant meeting and gathering place for Aboriginal people.

Aboriginal Elders and service providers were consulted in the Centre's planning stages in relation to appropriate programmatic responses to address the needs of the local community. A Koori Justice Worker is employed to provide cultural and spiritual comfort and case management services to Aboriginal people attending court where such services are needed and to participate in community engagement activities. When concerns arose in 2008 about poor attendance of Koori people at court and lack of engagement with the Centre's services, the community was consulted. These consultations led to the introduction of a monthly Aboriginal Hearing Day where the Victorian Aboriginal Legal Service and Aboriginal support services are in attendance.

3 Blagg, H 'A Problem Shared...?' Some Reflections On Problem Solving Courts And Court Innovation In Australia, Plymouth Law and Criminal Justice Review (2013).

This has improved attendance rates at the NJC Court markedly.

Some of the key community justice principles underlying the NJC's commitment to forming strong partnerships with local communities include the belief that:

- Courts have a key role in helping to shape the quality of community life⁴
- Courts need to connect with community to genuinely understand the issues and concerns affecting local people
- Local communities should be given a voice in shaping the justice system, in order to increase community confidence in the system and the courts accountability to its clients⁵.

After observing the work of the NJC, the development of its relationship with the local Aboriginal community and the implementation of an Aboriginal Hearing Day, Regional Coordinating Magistrate from Heidelberg Magistrates Court (MC), Ms Susan Wakeling, was moved to take action to facilitate the development of a partnership between the Heidelberg MC and the local Aboriginal community serviced by that court. She states she had been concerned for some time that the relationship was not well developed and that Court staff significantly underestimated the number of Aboriginal people attending Heidelberg MC. Magistrate Wakeling requested the support of the NJC to assist with this initiative given their experience and expertise in developing partnerships and innovation.

The focus of this report is on exploring the work undertaken by the NJC, Heidelberg MC and other key

stakeholders in the development of a partnership between Heidelberg MC and the local Aboriginal community serviced by that court and the eventual implementation of an Aboriginal Hearing Day at that court also. It is not an evaluation, nor a strict prescription of how to develop and implement such initiatives as each court has its own nuances and dynamics, but a report that seeks to document key processes and challenges encountered along the way, in order to provide insights for other courts interested in similar initiatives. It also aims to capture learnings about key factors that need to be considered when the NJC is assisting other courts with similar processes.

Heidelberg Magistrates' Court

Heidelberg Magistrates' Court is one of the busiest courts in Melbourne with approximately 750 cases listed each day. It services a large region that includes the City of Banyule and parts of the City of Darebin and the Shire of Nillumbik. The original inhabitants of these areas were the Wurundjeri Willam Aboriginal people. The City of Darebin and the City of Banyule have sizeable Aboriginal populations (Darebin 1168, Banyule 604) compared to other local government areas and many Aboriginal health, welfare and legal support services are now located in these areas, particularly in Darebin.

In 2004 consideration was given to establishing a Koori Court at Heidelberg to provide a culturally appropriate service to the Koori population in the region. However, as the Family Violence Court program was due to commence there in 2005, it was decided the Court was dealing with enough change at that time and the Koori Court would be best placed at Broadmeadows Magistrates Court, despite the fact that there is a smaller

4 D.R. Karp 1999 'Community Justice: Six Challenges', 27 (6) Journal of Community Psychology, p 751-766.

5 Fagan, J & Malkin, V 2002 'Theorizing Community Justice Through Community Courts' Fordham Urban Law Journal, Vol. 30 Issue 3 Article 11.

population of Koori people and fewer Aboriginal services in the Broadmeadows area. Interestingly, Koori Court Unit staff currently estimate that 90% of cases heard in the Broadmeadows Koori Court are adjourned over from Heidelberg MC.

Regional Co-ordinating Magistrate Susan Wakeling states that when she commenced work at Heidelberg MC she soon recognised that court staff weren't aware of the number of Aboriginal people attending Heidelberg court. She could see the same issues that had been prevalent at the NJC prior to the establishment of the Aboriginal Hearing Day there: low attendance rates of Aboriginal people at court; lack of legal representation; poor knowledge of and linkages to culturally specific support services. "Identifying Aboriginal people at Heidelberg MC is not easy. The region is much larger than Yarra, and Heidelberg is a much larger court with multiple courtrooms. The registry staff need to be alert and police have to be educated about the need to inquire whether defendants identify themselves as Aboriginal. Then we needed to have a culturally responsive service to offer."⁶ In an interview with the Senior Registrar at Heidelberg MC, Joseph Shields, observed there was clearly a need for a partnership with the Koori community and the court needed to be more welcoming of the community.⁷

The NJC worked with the Heidelberg Court and the Koori community for two years to support the development of a partnership with the Aboriginal community. Louise Bassett, then Project Manager at NJC, was asked to oversee this mainstreaming project and James Fraser, a Senior Koori Justice Worker at the NJC, was allocated to work on the project part-time. This process is

an example of the *mainstreaming* of innovative community justice practices that have been successfully implemented at the NJC, to other courts and neighbourhoods. The NJC has completed a number of mainstreaming projects including the placement of a Refugee Communities Worker at Dandenong Magistrates' Court, the placement of an African Community Justice Worker at Sunshine Magistrates' Court, and co-funding with the Australian Community Services Organisation (ACSO), a service co-ordination position at Dandenong Magistrates' Court.

Community consultation

A number of important principles underpin good crime prevention policy and practice ... Effective crime prevention involves: Strong and committed leadership at all levels; collaboration between multiple stakeholders to address the wide-ranging causes of crime and draw upon the skills, expertise, resources and responsibilities necessary to address those causes ... promoting an active and engaged community, and being responsive to the diversity and changing nature of communities...⁸

NJC staff state that one of the key pieces of advice they gave to Magistrate Wakeling was to take the time to build a partnership with the Koori community before implementing any specific initiatives to address issues of Aboriginal exclusion – the community needed to be involved in identifying appropriate solutions rather than having them imposed.

Magistrate Wakeling was interested in implementing an Aboriginal Hearing Day model at Heidelberg MC. NJC staff emphasized that the model would

⁶ Magistrate Susan Wakeling interviewed by Delia O'Donohue, October, 2014.

⁷ Joseph Shields interviewed by Delia O'Donohue, April, 2014.

⁸ Australian Institute of Criminology, National Crime Prevention Framework, www.aic.gov.au/media_library/aic/ncpf/ncp_framework_summary.pdf Accessed 24th June 2014.

need to be tailored to the needs of the local community and the community may have other ideas or initiatives they would prefer. She heeded this advice and along with Troy Austin, Executive Officer from the Northern Metropolitan Regional Aboriginal Justice Advisory Committee (RAJAC), Senior Registrar Joseph Shields and James Fraser, made a number of visits to consult with the Aboriginal community about how they felt about the relationship between the Court and the community and to hear their suggestions for change. Feedback from the community was that the court was an unfriendly environment for Aboriginal people and there was a lack of understanding of the structural disadvantages experienced by Aboriginal people. The growing Aboriginal youth population in the region was discussed and the hope that things might somehow be improved for them. They also attended two community meetings – a Statewide Justice Forum and the Northern Region Justice Forum.

Troy Austin states that Magistrate Wakeling engaged the community in genuine conversation and discussed with them options for improving the relationship between the local Koori community and the Court.⁹ A Koori Community Open Day was subsequently arranged at Heidelberg MC in 2012 to welcome the community into the court. The Open Day created momentum and enthusiasm for the further development of the partnership.

Establishment of a Partnership Group

With the assistance of NJC staff a partnership group was formed to strengthen the Heidelberg MC's relationship with the Koori community and to make the court experience more culturally appropriate for the community. The Terms of Reference for the Partnership Group (2012) state:

The Heidelberg Magistrates Court is collaborating with the Koori community, the Neighbourhood Justice Centre and Melbourne Magistrates Court to begin this journey and initiate improvements to current court processes for Aboriginal support services and court users.

Heidelberg Magistrates Court has commenced this work with a well received Koori community day and engagement with Koori agencies about their interest in being part of this Partnership group. The NJC is providing support based on its experience in collaborating with the Koori community to inform and a support court operations. This includes the secondment of the Senior Koori Justice Worker, James Fraser, for 2 days per week until April/May 2013 to assist with the establishment of the Partnership Group.

The work of the Partnership Group aligns with the Victorian Aboriginal Justice Agreement, the Koori Inclusion Action Plan Mingu Gadhaba, 'Beginning Together', Koori Inclusion Action Plan – Courts and Tribunal Services and the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

⁹ Troy Austin interviewed by Delia O'Donohue, March 2014.

Lessons from the NJC informed the establishment of the Partnership Group. The NJC recommended the following key measures to help make the Partnership Group effective:

- co-chairing, as it had proved successful with other groups at the NJC and providing a strong symbolic reflection of partnership.
- clear decision-making structures in the governance of the group, to limit any potential for conflict.
- the court needed to stay open and flexible in its discussions with the community and the Partnership Group, especially when events didn't go to plan.
- as the Partnership Group matured, it may emerge that the community would like a range of initiatives implemented and members should stay open to possibility.

The NJC's experience in developing its own partnership group was that the strength of the relationship between the Centre and the community allowed it to weather the inevitable storms that arise in implementing innovations like the Aboriginal Hearing Day.

Membership for the partnership group was sought from Heidelberg MC magistrates and registry staff, Northern Metropolitan RAJAC, Victorian Aboriginal Legal Service, key Aboriginal health, welfare and support services, Magistrates Court of Victoria, Community Corrections, DHS Youth Justice Koori Unit and Victoria Police (see Appendix 1 List of Members).

The Co-Chairs of the committee are Magistrate Susan Wakeling and Respected Elder and Chairperson of Northern Metropolitan RAJAC, Auntie Linda Bamblett. The terms of reference state that the Partnership Group will adopt a consensus approach to decision-making, wherever possible.

The stated objectives of the partnership group are to:

- improve cultural awareness and confidence of court staff and magistrates in addressing Koori specific issues
- make the court experience at Heidelberg more culturally appropriate for Aboriginal court users
- support the local Aboriginal community to better access the justice system, reduce over-representation within the justice system and improve the confidence of the Koori community in the court
- plan an annual calendar for the court and Koori community
- celebrate and plan for key community events together (eg. NAIDOC week, Law Week)
- create positive experiences and relationships between the court and the Koori community
- increase the court's involvement with the Koori community, awareness of and access to key Koori stakeholders, services and program
- increase knowledge of Koori specific justice issues in the local are, which have an impact on the court
- advocate for dedicated resources for Koori support services at this court.¹⁰

10 Heidelberg Magistrates Court Koori Community Partnership Group, Terms of Reference, State Government of Victoria, 2013.

From the consultations with the Koori community it became clear that the community would welcome the introduction of a regular Aboriginal Hearing Day at Heidelberg MC as well as continued access to the Koori Court model at Broadmeadows MC. Consequently, the initial focus of the Partnership Group was on group formation and the planning and introduction of an Aboriginal Hearing Day at Heidelberg MC. Prior to the first pilot Aboriginal Hearing Day the committee met on a monthly basis four times.

What is an Aboriginal Hearing Day?

The overall aim of an Aboriginal Hearing Day is to make the court system more culturally responsive to the Aboriginal community and to promote better outcomes while still operating within the existing court and legal framework.

The specific objectives of the Aboriginal Hearing Day are to:

- increase appearance rates
- decrease the number of warrants
- increase confidence between the Koori community and the Court.

Key features¹¹ of the model at both the Neighbourhood Justice Centre and now at Heidelberg Magistrates' Court include:

- All matters listed for the Aboriginal Hearing day are heard by a Magistrate who understands the cultural context for Aboriginal clients.
- The Magistrate engages the accused in direct dialogue.
- The court welcomes the involvement of the Aboriginal community in the court process. For example, as part of the sentencing conversation, the Magistrate invites contributions

from community members who are supporting the client.

- A Koori Justice Worker¹² remind clients to attend court in the lead up to Aboriginal Hearing Day, through maintenance of an outreach model, attendance at a number of local Aboriginal events and gatherings, and regular liaison with relevant community support workers and organisations.
- A pre-court meeting is held to discuss the court list, identify any issues or events within the Koori community that may affect court that day (eg. deaths in the community) and to coordinate the provision of support and treatment services to Court users. This meeting is coordinated by the Koori Justice Worker and attended by the duty worker, Court Network volunteer, a representative of Registry, Corrections, any external community workers (where appropriate) and legal representatives from Victorian Aboriginal Legal Service.
- A Koori Justice Worker is present in court at all times to provide support to clients and their families.
- There is an increased focus on the attendance of community support workers from external agencies at court to provide support for clients.
- A post-court meeting is held between the Koori Liaison Worker and the Magistrate to discuss the functioning of the day.
- The physical environment of the court is designed to be as culturally appropriate as possible with Aboriginal and Torres Strait Islander flags and other significant symbols.

11 Bassett, L & Clarke, Y Aboriginal Hearing Day Practice Guide, Neighbourhood Justice Centre, 2012.

12 Bassett, L & Clarke, Y Aboriginal Hearing Day Practice Guide, Neighbourhood Justice Centre, 2012.

One key feature of the Aboriginal Hearing Day program that is often commented on is the engagement of the accused and community members in direct dialogue with the Magistrate.

With the right magistrates it is a strategy that can help break down barriers and build trust. Mark Harris, in writing about this feature of the Koori court process, notes:

One of the most consistent criticisms levelled at the operation of the court system, both in formal and informal processes, is the extent to which the participants (and particularly the defendants) are denied a voice. While the law may have historically demonstrated an incapacity or unwillingness to allow the everyday into the court's official discourse, when such voices are allowed into the narrative the consequences can be of a profoundly therapeutic nature.¹³

The philosophy of therapeutic jurisprudence underpins the development of the Aboriginal Hearing Day model. A therapeutic jurisprudence approach focuses on “the quality of the interaction between judicial officers and individuals who appear before them, with an emphasis on direct engagement, empathy and communication. The core idea is that legal processes have the potential for positive impact on the physical and psychological well being of participants, perhaps ultimately contributing to progressive social change.”¹⁴

The Aboriginal Hearing Day differs from the Koori Court in some key respects:

- the Aboriginal Hearing Day operates within a mainstream court context – it is not a specialist court
- clients do not have to plead guilty to access the Aboriginal Hearing Day
- respected Elders are not a feature of the Aboriginal Hearing Day, but may participate in sentencing conversations.

A specific evaluation of the Aboriginal Hearing Day program has not yet been undertaken but it is widely regarded as a successful model. Internal NJC data suggests there is significantly greater engagement of Aboriginal defendants with 95-100% attendance at Aboriginal Hearing Days.¹⁵

Magistrate Fanning states that the processes are more effective – there is less delay, greater representation, timely resolution of issues that halts escalation of offending behaviour as well as increased confidence in the court system. “The Aboriginal Hearing Day process makes a difference to the way Aboriginal people participate in the justice system. It focuses the mind of registry staff and prosecution staff – prior to the implementation of the Aboriginal Hearing Day, identification of Aboriginal people was often ‘hit and miss’.”¹⁶

13 Harris, M ‘The Koori Court and the Promise of Therapeutic Jurisprudence’ (2006) 1 eLaw Journal (Special Series) 129 https://elaw.murdoch.edu.au/archives/issues/special/the_koori_court.pdf

14 Anleu, S & Mack, K ‘Australian Magistrates, Therapeutic Jurisprudence and Social Change’, in Transforming legal processes in court and beyond, a collection of papers from the 3rd International Conference on Therapeutic Jurisprudence, 7-9 June 2006, Perth, Australasian Institute of Judicial Administration.

15 Fanning, D Delivering Justice Locally – Strengthening the Yarra Community, Non-Adversarial Justice Conference Presentation, Neighbourhood Justice Centre 6 May 2010 www.aija.org.au/NAJ%202010/Papers/Fanning%20D%20PPT.pdf Accessed 23rd May 2014.

16 Magistrate David Fanning, interviewed by Delia O’Donohue, March 2014.

Why have an Aboriginal Hearing Day?

The Sentencing Council of Victoria in their recent research report, *Comparing Sentencing Outcomes for Koori and Non-Koori Adult Offenders in the Magistrates' Court of Victoria*, suggests Victoria's Koori population has been affected by the racially discriminatory Stolen Generations policies and practices to a greater extent than other Australian Indigenous populations. The 2008 National Aboriginal and Torres Strait Islander Social Survey found that 11.5% of Victorian Aboriginal respondents who were living in households with children had been removed from their natural family, and 47.1% had a relative who had been removed. These figures were substantially higher than the national rate of 7.0% of people who had been removed from their family and 37.6% of people who had a family member who had been removed (Department of Education and Early Childhood Development, 2009, p26). This dislocation is thought to have had a significant impact on levels of family violence and child abuse and neglect in Victoria (Victorian Aboriginal Legal Service, 2013).¹⁷

The Sentencing Council report also states that as of 30th June 2012 the rate of imprisonment of Indigenous people in Victoria is 13.4 times higher than the rate of imprisonment of non-Indigenous people and that the over-representation of Indigenous youth in juvenile detention facilities is even more pronounced than it is for Indigenous adults. In Victorian juvenile detention facilities in 2010–11, on an average night the rate of detention for Indigenous youth (aged 10 to 17) was 2.48 per 1,000 young people, while

for non-Indigenous youth the detention rate was 0.12 per 1,000 young people.¹⁸ (2013, p.10)

This over-representation of Aboriginal people in the system cannot be explained by one single cause. Cunneen and the Aboriginal Justice Advisory Council emphasize:

There is a need for a multifaceted conception of Aboriginal over-representation which goes beyond single causal explanations (such as poverty, racism, et cetera). An adequate explanation involves analysing interconnectedness issues, which include historical and structural conditions of colonisation, of social and economic marginalisation, and systemic racism, while at the same time considering the impact of specific (and sometimes quite localised) practices of criminal justice and related agencies (2002, p33).

In recent years a number of initiatives have been introduced in Victoria to try and address the disadvantages experienced by Aboriginal people when participating in the justice system. The Victorian Aboriginal Justice Agreements were first introduced by the Bracks government as a response to the issues raised by the Royal Commission into Aboriginal Deaths in Custody. The Aboriginal Justice Agreement, first formulated in 2000, is a partnership between the Victorian Government and the Koori community, established to achieve improved justice outcomes for Koories. The agreement aims to minimize Koori over-representation in the criminal justice system by improving the accessibility, use and effectiveness of justice-related programs and services.¹⁹

17 Sentencing Council of Victoria 2013 Comparing Sentencing Outcomes for Koori and Non-Koori Adult Offenders in the Magistrates' Court of Victoria, Melbourne, Vic p.4.

18 Ibid, p 10.

19 Department of Justice, Aboriginal Justice Agreement, <http://www.justice.vic.gov.au/home/your+rights/aboriginal+justice+agreement> State Government Victoria, accessed 10/4/2014).

One of the key initiatives that came from the Agreement is the Koori Court program.

The Koori Court Division of the Magistrates Court of Victoria has been in operation since 2002 and there are now eight Koori Magistrates' Courts and nine Children's Koori Courts in Victoria. The Koori Court aims to: increase Koori ownership of the administration of the law and positive participation by Koori offenders in the legal process.

Under the Koori Court model, Elders or Respected Persons, contribute during the court proceeding, providing advice relating to cultural matters. The Koori Court Officer, Koori defendants and their families can also contribute during the Court hearing. This helps to reduce perceptions of cultural alienation and to ensure sentencing orders are appropriate to the cultural needs of Koori offenders, and assist them to address issues relating to their offending behaviour.

The NJC would have liked to have had a Koori Court at the Centre; however, this proposal was not feasible due to government funding constraints and prior commitments to establish Koori Courts in other locations. Nonetheless the NJC still felt something needed to be done to ensure a more culturally appropriate response to Aboriginal people attending court. Hence the development and implementation of the Aboriginal Hearing Day model that costs less to run than a Koori Court as Respected Elders aren't routinely present, but still ensures greater access to Aboriginal legal, health and welfare services and a more culturally sensitive and therapeutic approach to the administration of justice.

Key Activities undertaken by NJC staff working on the Heidelberg MC project

NJC staff encouraged Heidelberg MC to make the court a more welcoming space for Aboriginal people. The Senior Registrar organized the display of Aboriginal and Torres Strait Islander flags, artwork and a poster and there is now an *Acknowledgment of Country* plaque that sits in front of the Magistrates bench in Courtroom 1.

In addition, the NJC took the following actions to support the work of the partnership group:

- seconded James Fraser, Senior Koori Justice Worker from the NJC part-time to Heidelberg MC for a period of eleven months from October 2012 to September 2013. It was agreed that James Fraser would assist with the development of the partnership and the Aboriginal Hearing Day at Heidelberg until such time as Magistrates Court Victoria appointed a Koori Liaison Officer (KLO).
- facilitated access to key Koori stakeholders whose support was needed to make the partnership with the Koori community work
- advised and assisted Magistrate Wakeling on community engagement strategies
- conducted stakeholder analysis
- promoted the initiative with stakeholders and community networks
- recommended the formation of the Partnership Group and advised and supported the Court in forming the group, from governance structure to drafting Terms Of Reference

- advocated for the initiative with the Magistrates Court of Victoria (MCV) and Chief Magistrate, through the Mainstreaming Working Group
- supplied the Aboriginal Hearing Day Practice Guide to Heidelberg MC
- James Fraser provided a handover to the newly appointed KLO, once they commenced in late August 2013.

Koori Liaison Officer role

The Koori Liaison Officer's initial task was to help develop a relationship between the Court and the local Koori community. James Fraser was already known to many of the Aboriginal agencies through his role at the NJC. He started by asking relevant health, welfare and justice agency members if they were interested in joining a partnership group. He found the agencies very responsive.

Another important part of his role was education and capacity building. James Fraser says court staff were not aware of the numbers of Koori people attending court and under-confident about dealing with Aboriginal people. He felt that they lacked knowledge of the breadth of services available for Aboriginal people in the local community.

He was based in the registry area so could answer questions and provide advice as needed. He believes this was a helpful strategy, as while short-term cultural awareness training is valuable, this more informal education role was important for building staff confidence. He ran one formal education session for staff as well, but found informal interaction and relationship building had the most impact. James Fraser says court staff were responsive and open to learning more about Aboriginal culture, communication strategies and relevant services. Magistrate Wakeling notes that James Fraser's presence in the Court and his work with Registry staff, Koori people

and agencies, generated enthusiasm and set a practical example for everyone of how the partnership between the Court and the community could work.

The Koori Liaison Officer's second priority was to support the partnership group and encourage the development and implementation of an Aboriginal Hearing Day model that was appropriate to the needs of the local Koori community and the workings of the Heidelberg MC.

The Koori Liaison Officer duties included:

- identification of specific needs/ issues pertaining to individual Aboriginal offenders
- the amassing of information relating to individual Aboriginal offenders to enable a sentencer to make a better informed decision in relation to disposition
- community liaison
- service liaison
- police liaison
- proactive community involvement to reduce representation of Aboriginal persons in the criminal justice system
- liaison with Regional Aboriginal Justice Advisory Committees
- assistance in the ongoing professional development of magistrates in regard to Aboriginal issues.

While acknowledging that the role of the Koori Liaison Officer is important, the NJC stresses that for such initiatives to be a long-term success, the whole of the court needs to be committed to a culturally responsive approach to the Koori community. This approach is more sustainable than having responsibility reside solely with the Koori Liaison Officer, as it allows for systemic change. Burnout of people in the Koori Liaison

Officer role can be high, if they are not adequately supported by the culture within the court. This is one of the reasons why James Fraser positioned himself within the registry, to build staff capacity and confidence in working with the Koori community. For example, rather than having registrars refer Koori community members to him, he supported staff in their interactions with these community members.

In May 2013, Deputy Chief Magistrate Popovic announced that Magistrates' Court of Victoria (MCV) would take the lead role in supporting Heidelberg MC with the Aboriginal Hearing Day given its work and resources for the Koori Court program.

The NJC welcomed MCV taking this leading role, given its central position in promoting culturally responsive approaches to the Koori community across the courts. The change came at a time when Heidelberg MC was in the midst of planning its second Community Open Day at the court for the Koori community. This meant that on the ground, there was a lack of clarity about which aspects MCV wished the NJC to continue with and which aspects MCV wished to take over. The delays in identifying a more permanent Koori Liaison Officer provided further complications.

At the outset of the partnership group's planning for the Heidelberg MC Aboriginal Hearing Day, the former Manager of Specialist Court Programs at the MCV, Simon McDonald, identified a half-time Koori Liaison Officer role at Geelong, which could support the development of the Aboriginal partnership and the Aboriginal Hearing Day at Heidelberg. Following job cuts under the Sustainable Government Initiative, this proposal was unable to proceed. MCV subsequently identified a Koori Liaison Officer role for the

Dandenong region and proposed that this role be split with Heidelberg MC. This also didn't proceed due to Aboriginal Justice Forum concerns about a lack of consultation with the region. This delayed the departure of James Fraser from Heidelberg MC while the partnership group continued to advocate for a resource at Heidelberg. In September 2013, Ashley Morris from the Koori Court Unit, MCV, took on the project to establish and finalise the Heidelberg Magistrates' Court Aboriginal Hearing Day within his existing role as coordinator of Koori Court programs.

Ashley Morris stated that a large part of his role in this implementation stage was "getting around the service providers – explaining the benefits of the program to them and encouraging them to be at court to support their community on the Hearing Days". His first objective was "to keep people interested and to have a launch and get it happening."²⁰ He developed a fact sheet to go on counters in the court to ensure lawyers and defendants were aware of the Aboriginal Hearing Day option.

Launch of Aboriginal Hearing Day at Heidelberg MC

A launch of the Heidelberg MC Aboriginal Hearing Day was held on 29th November, 2013. There was a Welcome to Country and Traditional Smoking ceremony, dancing, and afternoon tea. Co-Chairperson Auntie Linda Bamblett, Senior Registrar Joseph Shields and Elder Colin Hunter Jnr all spoke. Troy Austin from Northern Metropolitan RAJAC states that the launch was well attended with 60 to 80 people there – court users and their families, services, magistrates and court staff. The launch was widely regarded as a success.

²⁰ Ashley Morris, interviewed by Delia O'Donohue, April 2014.

Two unofficial Aboriginal Hearing Days were then held, over two half days, to test the logistics of the program. Both were well attended with too many cases listed to get through.

The support of the partnership group in ensuring community awareness of and attendance at the Aboriginal Hearing Day launch was vital. Senior Registrar, Joseph Shields states he wants to see the partnership group continue as it is a strong mechanism for receiving ongoing feedback from the Koori community not just in relation to the Hearing Day but in relation to other court processes also and a catalyst for new initiatives.

Judicial support

A starting point to understanding how some Aboriginal and Torres Strait Islander peoples view the criminal justice system is to appreciate the system's historical role in enforcing colonial authority. Some researchers argue that this legacy has led Aboriginal and Torres Strait Islander peoples to be distrustful of and disconnected from the system.²¹

NJC staff state that having Magistrate Wakeling, the Senior Registrar and the Court Coordinator involved in Partnership Group meetings and the planning and operation of the Aboriginal Hearing Day sent a clear message that working with the Koori community is a priority for Heidelberg MC – part of the expectations of a mainstream court, rather than a specialist side offering. Senior Registrar Joseph Shields observed “there was a need for strong support from the top to make this initiative happen as well as buy-in from the community and Magistrate Wakeling provided this support.”²² Magistrate

Wakeling expressed the view was that there's no point in asking court clients if they are Aboriginal if we have nothing to offer them and that some fundamental changes needed to occur to address issues of distrust and disconnection between the Court and the local Koori community.²³

There was support amongst other Magistrates based at Heidelberg MC also for the development of a partnership with the Koori community and the implementation of the Aboriginal Hearing Day program. Importantly some Magistrates there had an understanding of Aboriginal cultural issues and were comfortable with adopting more informal and inclusive court processes in keeping with a therapeutic jurisprudence approach.

John Tomaino in discussing the Aboriginal (Nunga) Courts in South Australia states:

“...it is the careful appointment and training of magistrates that will make the greatest contribution to the enduring success of the (Aboriginal) Courts. If the single, most critical ingredient of the Courts' success had to be identified, it would be the free and open exchange of views and comments that are encouraged by the magistrate. This creates a conversational environment and builds trust and mutual understanding between local courts and Aboriginal communities. In recruiting appropriate magistrates, Mr Boxhall (who presided over the Aboriginal (Nunga Court at Port Adelaide from October 2000 to December 2006) suggests they need to be “not too cynical and be prepared to be informal, interactive, sensitive, empathetic, listen a lot more, (and) be able to liaise with outside providers...”²⁴

21 Smart Justice, Ending over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system (2011).

22 Joseph Shields interviewed by Delia O'Donohue, April 2014.

23 Magistrate Susan Wakeling interviewed by Delia O'Donohue October 2014.

24 Smart Justice, Ending over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system (2011).

Magistrate Suzie Cameron presided over the first three Aboriginal Hearing Days at Heidelberg and is very supportive of the initiative: “What do Aboriginal people think of us as an institution? In order to be effective, we need to engender respect and the Hearing Day is a mechanism for doing this. I was thrilled to sit with the Aboriginal and Torres Strait Islander flags in the courtroom. It drove home how significant symbols are.” She adopted a less formal court style. “I would encourage the defendants to sit at the bar table and it was not uncommon for me to talk directly to them. Members of the community could also speak from the body of the court. It is a more culturally sensitive approach to sentencing, including the defendant and significant community members in direct dialogue.”²⁵

Implementation issues

There are now Aboriginal Hearing Days at Heidelberg every month. Due to high numbers of cases a triage court system has been established. Quick pleas and breaches of Community Corrections Orders are heard but longer pleas and contests are adjourned to be heard in mainstream courts. All accused whether they are pleading guilty or contesting are linked in with appropriate Aboriginal health and welfare services and the Aboriginal legal service. The Koori Liaison Officer, Shirley Annesley, is shared between Broadmeadows MC and Heidelberg MC.

Magistrate Cameron says there is a lot of interest in the Aboriginal Hearing Day. “There was a fast uptake and on the second day it was run, there were more cases than we could get through. With the right people in place and the right approach, there is more

resolution of cases. When frightened, people adjourn.” She adds that while only guilty pleas get referred to Koori Courts, contest mentions are heard at the Aboriginal Hearing Day too, so there is an opportunity to link people into culturally relevant services even if they are contesting cases. She believes having relevant support services and participatory processes in the court, makes a real difference to outcomes.

“For example there was a man with a long history of aggressive behaviour at Heidelberg Magistrates Court. Whenever he came to court the PSO’s would always be alerted. Once he had the opportunity to participate in the Aboriginal Hearing Day his behaviour and attitude completely changed. He felt part of the process. There are no longer any problems managing him at court.

Another Aboriginal man came that was without any support at all and lacked any understanding of his roots. He was referred to Link-Up so they could help him trace his family. People who are contesting cases are being linked into services on the day. Not just those pleading guilty. It’s that sort of work that can be done that gets missed, if you don’t have such a day.”²⁶

Magistrate Cameron states that cultural training for Magistrates is available but limited – “it’s all about time and resources.” She has done some cultural training herself but also has a personal interest in Aboriginal culture and history that has clearly assisted her in her role on the Aboriginal Hearing Days. She emphasizes that the Aboriginal Hearing Day needs real commitment if it’s going to work long-term.

Ashley Morris states that one of the main benefits of the Hearing Day is that “everyone gets to speak to someone

²⁵ Magistrate Suzanne Cameron interviewed by Delia O’Donohue, April 2014.

²⁶ Magistrate Suzanne Cameron interviewed by Delia O’Donohue, April 2014.

from a support service. Sometimes community members stand up in court and give advice on available and culturally appropriate services". He believes people are being linked into services more often and more effectively and that warrants have been avoided where the KLO has been able to get in contact with the accused to remind them of their court hearing.

There was one guy who came in who had a real problem with drug use. We linked him in with Uncle Bootsie from Nhwala Willumbong, the AFL Sports Ready Indigenous Employment Program and the Aboriginal Health Service. He got out on bail and has the strength of community and service support now. Last I heard he's doing really well, doing training, has an understanding now of ICE and it's effects.²⁷

There was concern from some people that if Heidelberg MC offered an Aboriginal Hearing Day, then numbers for the Broadmeadows Koori Court would decrease. Magistrate Wakeling and NJC staff felt that the Koori Court model and the Aboriginal Hearing Day model could be complementary and one didn't have to detract from the other – what was important was to ensure a culturally responsive service, no matter which court the client elected to have their case heard. Magistrate Cameron explained that while some Aboriginal people elect to go to the Koori Court at Broadmeadows, others don't necessarily want to go there and appear before the Elders. There is "the tension of straddling two worlds," but they would still like to participate in a system that is culturally sensitive and have access to Aboriginal legal and other support services.

Service support

On all the major indicators such as health, housing, education and employment Indigenous people are significantly worse off than other Australians. So access to culturally appropriate support services in the local community is vitally important. Ensuring court staff are knowledgeable about such services and that courts assist in facilitating access to them where possible, is one step the justice system can take towards addressing this disadvantage. The Aboriginal Hearing Day provides a forum for legal, health and welfare support services to connect with Koori people who are in need of assistance and who are often at their most vulnerable.

Troy Austin from RAJAC and Magistrate Cameron both commented on the fact that Aboriginal support services are "stretched" and that it will take real commitment for them to support the Hearing Day on an ongoing basis and that you need to have the day monthly to have "traction". Magistrate Wakeling states "the services need to be aware that if you want to reach your community, then this is the day to do it."

The Koori Liaison Workers emphasize that there needs to be a dedicated court and a dedicated time when only Aboriginal cases are heard – that way services know when to be at court. If other matters are also being heard, the services may feel their time is being wasted.

²⁷ Ashley Morris, interviewed by Delia O'Donohue, April 2014

Court administration

While the inclusion of an Aboriginal Hearing Day at such a busy court as Heidelberg has benefits, it has also presented challenges. While all matters listed for the Aboriginal Hearing Day have been heard in one court, they have not been in a separate list. Matters involving non-Aboriginal defendants have also been listed in the same court to ensure continuity of throughput, while Aboriginal defendants' cases are stood down for consultation between lawyers and community members and/or service representatives.

Magistrate Cameron observed that in her view a separate list would work better. She expressed concern that having mainstream cases also listed in the same court meant that "there could be a perception of inequitable treatment," as more informal approaches were being adopted in the hearing of Aboriginal matters, although the sentencing outcomes were the same. "There is some messiness because of this. It would be more effective to have all Aboriginal matters in a separate list."

Senior Registrar Joseph Shields states that "any therapeutic model takes time and some courts have greater capacity for this. You have to balance meeting the needs of the community with the realities of the larger workload – getting through the cases. It's challenging in the bigger courts. However, on the first official Aboriginal Hearing Day we were inundated with cases, so we are now starting to consider whether there is a need for a dedicated court, one day per month."²⁸

There has also been some concern about how to accommodate staff from support services with the Senior Registrar commenting that facilities at the court

are very tight and the lack of office space for support staff can sometimes be an impediment in such a busy court. Numerous agencies attend that don't have an office to use. Court staff are supportive of the day and do their best to manage the situation.

Ashley Morris believes that the NJC played a useful role in "being someone to lean on" through the developmental phase. Now he would like to see the Heidelberg Partnership Group meet again and write up the Heidelberg Aboriginal Hearing Day program model, so there is more clarity about the procedures on the Hearing Day and the Koori Liaison Officer's role on a day-to-day basis. NJC has a program model but he says Heidelberg MC needs its own, that is written taking into account the local needs, goals and requirements.²⁹ The NJC agrees and its Aboriginal Hearing Day Practice Guide stresses the need for the model to be adapted to take account of the local context.

Funding, resources and the need to innovate

The establishment of the Aboriginal Hearing Day took considerable time. The Senior Registrar states it was largely because "there was not a committed resource on an ongoing basis and I wasn't prepared to start such a program without knowing there was someone available to support it on an ongoing basis."³⁰

Magistrate Wakeling states that it was always understood that the NJC Koori Liaison Officer was seconded to Heidelberg on a temporary basis only and that the partnership group would

²⁸ Joseph Shields interviewed by Delia O'Donohue, April, 2014.

²⁹ Ashley Morris interviewed by Delia O'Donohue, April, 2014.

³⁰ Joseph Shields interviewed by Delia O'Donohue, April, 2014.

need to advocate for a permanent Koori Liaison Officer resource. Once Heidelberg Court had engaged with the community and formed the Partnership Group, she could then show that the court was serious about wanting to implement an Aboriginal Hearing Day and promote the need for resources within MCV. Likewise the NJC was able to advocate on Heidelberg's behalf at the Mainstreaming Working Group and together with Magistrate Wakeling at the Aboriginal Justice Forum.

As noted earlier, initially, Simon McDonald at the MCV identified a couple of positions that could potentially be shared with Heidelberg MC, one in Dandenong and one in Geelong, but for these reasons outlined earlier these proposals didn't proceed. However, these negotiations were not known to all of the parties and as a result, one of the contentious issues surrounding the implementation of this project has been the fact that no specific additional funding has been made available for it and the Broadmeadows Koori Liaison Officer is now shared across two courts to support the Koori Court at Broadmeadows and the Aboriginal Hearing Day at Heidelberg MC. While this increased sharing and flexibility of staff is now common across court programs given funding cuts in the last few years, some people who were interviewed for this report felt that specific funding for a Koori Liaison Officer at Heidelberg MC should have been sourced before the option of such a program was discussed with the Koori community.

NJC staff express the view that the desire for a commitment of ongoing funding for resources needs to be balanced against the need to create momentum and to demonstrate commitment from both the court and the community to trying something new.

Louise Bassett from the NJC notes that Andrew Jackomos, the former Director, Koori Justice Unit, DOJ emphasized at one of the earliest planning meetings about the work, courts are operating in a different funding context compared to the days of the first Koori Courts. Lack of funding shouldn't stop courts from innovating or forming a relationship with the Koori community. But it does call for greater creativity and innovation in approach.

Key learnings

As part of the NJC's reflective practice approach, it is important to identify some of the key learnings from this project that may be useful for NJC staff to consider in other mainstreaming projects of this type and for other Courts to consider if they are considering developing partnerships with local Koori communities and/or the introduction of the Aboriginal Hearing Day model.

- Committed, determined leadership at a senior level is integral to the successful development of community partnerships and the introduction of new Court programs like the Aboriginal Hearing Day.
- For such initiatives to be a long-term success, the whole of the court needs to be committed to a culturally responsive approach to the Koori community. Education of all Court staff (registry, magistrates, and volunteer staff) in relation to cultural issues and effective communication skills is essential if systemic change is to occur. Informal, supportive education and role modelling over a sustained period may be more effective, than short-term training workshops.

- Consultation and collaboration should occur with all major stakeholders. Partnership groups should be broadly representative and not just consist of those who are already 'on board'.
- All key stakeholders/partnership members need to be aware of negotiations that are occurring in relation to funding and resources.
- Co-chairing of partnership meetings with an Aboriginal Elder from the local community provides a strong symbolic reflection of partnership.
- There needs to be clear decision-making structures in the governance of the group, to limit any potential for conflict.
- Courts need to stay open and flexible in discussions with the community and the Partnership Group, especially when events don't go to plan. Solutions shouldn't be imposed but reached jointly.
- Any community justice initiatives that are being introduced into a mainstream Court need to be adapted taking into account the needs and nuances of the local community and the mainstream Court's priorities and processes. Administrative demands and concerns need to be carefully considered but shouldn't impede innovation in the longer term.
- Evaluation of partnership processes and outcomes needs to occur at regular intervals and ideally be planned in the partnership formation stage.
- As Partnership Groups mature, it may emerge that the community would like a range of initiatives implemented and members should stay open to possibility.
- Partnerships need to be nurtured and valued and shouldn't be allowed to just dissipate after the introduction of one program (unless that was the sole purpose of the partnership arrangement).
- Be mindful that Aboriginal support services and Aboriginal programs in mainstream services are stretched so requests for program support need to be negotiated. Asking services to attend court on a regular day per month is likely to be a more viable option than expecting more frequent attendance.
- Support worker roles need to be clarified and reviewed in both the developmental and the implementation stages of a project with specific duties identified so expectations are clear and understood by everyone in the partnership group.

Conclusion

The NJC's work in supporting Heidelberg MC to develop a partnership with their local Koori community and to introduce an Aboriginal Hearing Day program at Heidelberg Court is positive evidence of its efforts to meet two of the Centre's founding objectives "to contribute to cultural and procedural change in the justice system" and "to be a flagship for driving change in the way that justice is dispensed."³¹

Whilst a formal process and outcome evaluation of the Aboriginal Hearing Day program needs to occur to identify specific benefits of the program, it is clear that the NJC's sharing of knowledge and expertise has contributed to some fundamental changes in the way Heidelberg MC now deals with Aboriginal people attending court.

It was generally agreed by all those interviewed for this report that the Court is now a more welcoming place for Koori people; there is now greater access to culturally relevant legal representation and service support and there appears to be a more therapeutic approach to the administration of court cases involving Koori people.

Difficulties were encountered along the way, including resource issues and the administrative complexities of introducing a new program into such a busy court, that meant the project took much longer to implement than anticipated and some of the administrative arrangements are still being worked through, however all those interviewed for this report were in agreement that this has been a worthwhile initiative.

It has recently been announced that the Children's Koori Court will now sit at Heidelberg MC on a regular basis. Magistrate Wakeling states that the Court is now in a position to take this program on, in addition to having the Aboriginal Hearing Day in the adult jurisdiction, as the groundwork has already been done through the NJC/Heidelberg MC partnership project. The cultural and systemic changes that were required to happen are already in progress – the partnership with the Koori community, the staff training, changes to the physical appearance of the court and the availability of a Koori Liaison Officer.

³¹ Magistrates Court of Victoria, Magistrates Court of Victoria 2011-2012 Annual Report, State of Victoria, 2012.

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