Evaluating the aims, methods and results of indigenous courts

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# Table of Contents

1 Introduction ......................................................................................................................................... 6
2 Method ................................................................................................................................................. 6
3 Existing evaluations of indigenous courts ..................................................................................... 7
   3.1 Navajo Peacemaking ......................................................................................................................... 8
   3.1.1 The Navajo Peacemaking process ................................................................................................. 8
   3.1.2 Research aims ............................................................................................................................... 9
   3.1.3 Methods ........................................................................................................................................ 9
   3.1.4 Findings/conclusions ..................................................................................................................... 9
   3.2 Koori Courts, Victoria ..................................................................................................................... 10
   3.2.1 The Koori Court process ............................................................................................................... 10
   3.2.2 Research aims ............................................................................................................................... 10
   3.2.3 Methods ........................................................................................................................................ 10
   3.2.4 Findings/Conclusions ..................................................................................................................... 11
   3.3 Children’s Koori Courts, Victoria ................................................................................................. 11
   3.3.1 The CKC process .......................................................................................................................... 11
   3.3.2 Research aims ............................................................................................................................... 12
   3.3.3 Methods ........................................................................................................................................ 12
   3.3.4 Findings/Conclusions ..................................................................................................................... 12
   3.4 Nowra Circle Sentencing, New South Wales ............................................................................. 13
   3.4.1 Nowra Circle Sentencing process ................................................................................................. 13
   3.4.2 Research aims ............................................................................................................................... 13
   3.4.3 Methods ........................................................................................................................................ 14
   3.4.4 Findings/Conclusions ..................................................................................................................... 14
   3.5 Murri Court in Queensland ............................................................................................................. 14
   3.5.1 The Murri Court process ............................................................................................................... 14
   3.5.2 Research aims ............................................................................................................................... 15
   3.5.3 Methods ........................................................................................................................................ 15
   3.5.4 Findings/Conclusions ..................................................................................................................... 15
   3.6 Queensland and New South Wales indigenous sentencing courts ............................................. 17
   3.6.1 The indigenous sentencing court process ..................................................................................... 17
   3.6.2 Research aims ............................................................................................................................... 18
   3.6.3 Methods ........................................................................................................................................ 18
   3.6.4 Findings/Conclusions ..................................................................................................................... 18
   3.7 Kooti Rangatahi ............................................................................................................................ 19
1 Introduction

There are a number of alternative judicial innovations that have been developed and implemented, including restorative justice approaches, problem-solving courts (sometimes known as solutions-focused courts), and indigenous courts. Indigenous courts have arisen as part of a judicial response to the overrepresentation of indigenous peoples within the criminal justice system internationally. The first indigenous courts emerged in the United States in 1982, and were then established in Australia (1999), Canada (2001) and Aotearoa New Zealand (2008).

Despite the length of time these courts have been in operation, much of the existing literature is outdated and/or comprised of commentaries, critical discussion or conference papers. There is, however, a small but growing body of research literature on indigenous courts, which is encouraging given the need for rigorous scrutiny of the incorporation of indigenous approaches within prevailing Western judicial systems. This report examines each of the eight indigenous courts that have been subjected to evaluation research. By synthesising the existing literature, this review attempts to highlight the strengths and limitations of existing studies, thereby informing future research of indigenous courts.

2 Method

The databases Medline, PsychInfo, Web of Science, JSTOR, Expanded Academic, Academic Research Library, Brokers Online and the search engine Google Scholar were searched using the following keywords: Māori/first; nation/native; American/indigenous/aboriginal in combination with courts/problem-solving/therapeutic jurisprudence. Academic papers and technical reports published before November 2012 were included if they were research-based and focused specifically on indigenous courts. Papers that provided reviews of literature, commentaries or were theoretical in nature were excluded. This review was not designed to consider the conceptual underpinnings or legal frameworks of each court in any depth, rather the focus was on existing evaluations of these courts.

A total of eight studies met the criteria for inclusion, comprised of four academic publications and four technical reports. All but two of the research papers/reports originated from Australia, with one report from New Zealand and the other from the United States.

The literature review that follows is divided into eight sections; one for each court. Each section begins with a brief outline of the operation of the court as described within each report of the study findings. This is followed by a detailed review of the aims, methodologies and key findings from each research paper.
3 Existing evaluations of indigenous courts

Defining exactly where indigenous courts fit within alternative adjudication systems is complex. Frieberg (2005) distinguishes indigenous courts from restorative justice and problem-solving courts but maintains that they are a specialist court with problem-solving and therapeutic principles including participation, coordination of services and community involvement. Marchetti and Daly (2007), however, assert that the Australian Indigenous Sentencing Courts deserve a unique theoretical and jurisprudential category of their own, principally as they seek to achieve cultural and political transformation of the law.

Definitional problems are exacerbated by the fact that indigenous courts vary across jurisdictions according to their structure and authority. The Navajo Indians Peacemaking courts, for example, are completely controlled by the Navajo people, comprising a Navajo Council, judges and police force (Coker, 2006). This system has been incorporated into American Indian law giving it significant authority. The Australian indigenous justice system, in contrast, has subsumed Aboriginal peoples, and their practices, into existing court processes and is largely led by non-Indigenous leaders (judges, magistrates) who hold authority. There is a fundamental difference, therefore, in the level of sovereignty permitted to indigenous peoples in each of these jurisdictions.

In consideration of the dearth of evaluations of indigenous courts available, this report largely considers indigenous courts which have been subjected to some level of evaluation within the Commonwealth and United States. This section reviews eight studies that have investigated the operation of indigenous courts in the United States, Australia and New Zealand, these include:

**United States**
- Navajo Indians Peacemaking courts, Navajo Nation

**Australia**
- Koori Courts, Victoria
- Children’s Koori Courts, Victoria
- Nowra Circle Sentencing Court, New South Wales
- Murri Court, Queensland
- Queensland and New South Wales indigenous sentencing courts

**New Zealand**
- Kooti Rangatahi

The Navajo People of the United States has the oldest established judicial system for an indigenous people in the world; a survey conducted with participants of the Navajo Peacemaking Court provides some insight into these courts procedures and results (Gross, 2001). In Australia there is a growing body of work on indigenous courts, including an early evaluation of the Koori Courts in Victoria (Harris, 2006) and further research on the Children’s Koori Courts in Victoria (Borowski, 2010, 2011), the Nowra Circle Sentencing Court, and eight Circle Sentencing Courts in New South Wales (Potas, Smart, Brignell, Thomas, & Lawrie, 2003). More recently, research has also explored the Murri Court in Queensland (Morgan & Louis, 2010) and the Indigenous Sentencing Courts across five sites: Dubbo and Nowra in New South Wales and Mount Isa, Rockhampton and Brisbane in Queensland. In New Zealand an
evaluation of the Ngā Kooti Rangatahi (marae-based Māori youth court) was recently completed (Ministry of Justice, 2012).

The following provides a review of each study, outlining (1) the processes of each court in brief; (2) the research methods used; and (3) the key findings, including areas for further improvement and lessons for the on-going development of indigenous courts. Appendix one presents a table of studies that summarises the key findings from each study.

3.1 Navajo Peacemaking

Gross (Gross, 2001) evaluated the Navajo Peacemaking process in the Navajo Nation district, United States.

3.1.1 The Navajo Peacemaking process

Navajo Peacemaking is a type of restorative justice that aims to restore the relationship between those in conflict. Peacemaking is not defined by a particular type of crime or demographic, instead crime is conceptualised as an event that involves the whole community. Peacemaking procedures are aimed at getting at the heart of the event and guiding people to adjust or rebuild their relationships to restore balance (Yazzie, 1996; Zion & Yazzie, 1997). Peacemaking is based on ensuring discussion, achieving consensus and providing for relative need and healing (Yazzie, 1996, p. 6). It is not focused on a ‘one-time’ incident, rather an essential component of Navajo thinking is that it is ‘a way of life’ (Bluehouse & Zion, 1993).

Peacemaking occurs outside the formal justice system, although referrals are made from mainstream courts. There are no lawyers or judges involved in the Peacemaking process. The Navajo word naat’ááni translates the role of the Peacemaker as a “leader, teacher, and healer” (Gross, 2001, p. 5); the Peacemaker is not impartial but instead works with emotion within the Navajo way of life with the emphasis placed on looking for ways to heal, rather than to punish (Gross, 2001; Nielsen, 1999). The aim is to achieve hózhó, a concept likened to a “condition of solidarity, balance, and harmony”, however, unlike the English translation, hózhó is a dynamic constantly changing process.

The following is a description of a Peacemaking session appended to the research study reviewed for this report (Gross, 2001). It is included because it provides an example of how these sessions operate. This observation involved a family violence case of a young man who had physically abused his mother. The young man’s parents, his brother’s family, his girlfriend and their young child, a naat’ááni (Peacemaker), and Peacemaker Liaison were in attendance. A prayer was spoken first. Then the victim spoke uninterrupted for over 50 minutes about her hopes and dreams for her son, his childhood, and how proud she was of him. During this time she did not discuss the assault, but asked that her son appreciate her as his mother. Then the father spoke in a similar way. There was a great deal of weeping during these talks.

The Peacemaker reflected on his own experience of caring for his father as a way to bring balance to the world as a measure of reciprocity. Then the brother spoke with intense sincerity and, like his parents, shared his hopes and dreams for his brother and provided a message about the redemptive power of Christ. The brother had also had a troubled past, but had found his way through the addiction and violence issues to have a happy and healthy family of his own.

Finally, the victim spoke. The young man then recounted his life of alcohol abuse, trouble with the law, the offence in question and shared a story of wanting to be an artist dedicated to painting “only rising suns”. He spoke directly to his mother, touching her hand and vowing to never drink alcohol or abuse anyone. The naat’ááni then asked everyone to link arms in a
connected circle and intoned a prayer in Navajo. Then the naat’ááni ended the session as he had begun it; with a joke that brought smiles and laughter to the room.

3.1.2 Research aims
Gross (Gross, 2001) evaluated the effect of Peacemaking as an intervention in family conflict by comparing it to traditional family court intervention, including recidivism within the subsequent year as an outcome measure. A specific focus of the research was on the participants’ perception of fairness and hózhó, the term implies a “more global sense of satisfaction” (Gross, 2001, p. 20).

3.1.3 Methods
A survey was designed and translated in Navajo with the assistance of cultural advisors familiar with the Peacemaking processes. The survey data were collected from two separate population groups: (1) the control group which consisted of complainants and respondents from the family court using a Western approach and (2) the test group consisting of petitioners and respondents drawn from Peacemaking process. All survey respondents lived within the Navajo Nation district (n=94). Groups were matched for education, income and social environment. Qualitative interviews with court staff suggested that there was no pattern of differences between the two groups (control and test groups). All survey data were collected coded and analysed using SPSS.

The distribution and collection of the survey data required the assistance of the local people familiar with the environment and fluent Navajo speakers. The local researchers were able to ask the survey questions in Navajo, which was then translated into English.

3.1.4 Findings/conclusions
Ninety-four respondents completed surveys, with 57 respondents from the Peacemaking process and 37 from the family court. In terms of achieving a sense of perceived justice and fairness, the Peacemaking participants overwhelmingly reported that this was achieved. Peacemaking participants also expressed achieving hózhó or a sense of global satisfaction with the process and not only the outcome. This was especially true for those who had previously been through the family court process. The survey also asked the family court participants if they would have used the Peacemaking process if they had known about it beforehand. Forty-seven per cent (n=37) agreed they would have had they known about it. The Peacemaking cohort also reported higher approval in the variables of “fairness, voicing feelings and clarity of explanation.” The results found that whilst there were no statistically significant differences in case settlement for each of the groups, the Peacemaking group experience was of ‘settlement’ or a feeling that the issue had been settled to everyone’s satisfaction. The survey also showed that high approval of the Peacemaking process was attributed to the role of the naat’ááni, however, the role was viewed as facilitating a good outcome for the participants, rather than providing a good outcome as judges in the family courts do.

Peacemaking participants reported that their alcohol consumption had declined or stopped after the hearing, while the family court participants reported that where they had made changes to their alcohol consumption it was motivated by factors not associated with the family court process. Overall, the rate of reoccurrence of problems for the Peacemaking respondents was lower than the family court respondents (29% compared to 64%).

It was acknowledged that more research in this area is required to confirm these findings. However, this study demonstrated that the Peacemaking program had performed well in meeting its objectives of addressing issues of family and community conflict, creating confidence and satisfaction for its participants.
3.2 Koori Courts, Victoria

Harris (2006) conducted one of the first evaluations of the Australian indigenous courts following the commencement of the Koori Courts in 2002 in two areas of Victoria; rural Shepparton, and Broadmeadows, Melbourne.

3.2.1 The Koori Court process

Koori is the collective self-identification used by indigenous Australians in the south east of Australia. Koori Courts have an informal, accessible atmosphere to allow greater participation by the Aboriginal community in the sentencing process. The aim of these courts is to ensure that a cultural context is considered when addressing offending and its consequences, moving beyond a focus on legal perspectives alone. Koori Courts deal with sentencing for summary offences, traffic offences and a significant number of indictable offences. An indigenous Koori court officer takes a central role including facilitating the operation of the court and supporting the offender and family before, during and after the court hearing.

In the Koori Courts the judge sits with two elders or respected persons at a table in the centre of the courtroom. The elders are identified by the indigenous community and appointed by the secretary of the Department of Justice. They provide background information on the history and kinship of the defendant, and locate the offending in the cultural context. The defendant, prosecutor, defence lawyer and family members also sit at the table, along with any support workers who are involved with the defendant. Wider family members, support people and community members may also be present in the courtroom. Aboriginal artworks are on the walls and the Australian, Aboriginal and the Torres Strait Islander flags displayed. The courts are “smoked” in accordance with custom and tradition prior to the first sitting and this is carefully explained to each offender prior to the court commencing.

A magistrate opens an adult Koori Court by acknowledging the traditional owners and the elders or respected persons present. The magistrate then acknowledges all others present and briefly explains each person’s role. The police prosecutor then presents the charges and provides the court with a summary. The defence lawyer then provides a response to the charges on behalf of the defendant. Family, the elders and support people are invited to speak. At this point, any others in the court are also invited to comment, including the victim who may be invited to attend the court proceedings by the prosecutor (with prior approval from the magistrate and defence lawyer). The defendant is then invited to comment, after which the elders engage in discussions with them about their actions and the consequences. The magistrate will then check with the elders about the appropriate course of action in full view of all those present providing complete transparency in the decision-making about an appropriate penalty. The magistrate then hands down the sentence and the defendant is given an opportunity to respond. The Koori Court processes are often highly emotional and dynamic, with sufficient time allocated to ensure that everyone involved has the opportunity to be heard and fully acknowledged.

3.2.2 Research aims

This evaluation aimed to determine whether the program was effective in meeting its stated goals, primarily exploring whether the Koori Court could reduce the over-representation of Aboriginals in the criminal justice system, improve access to justice-related services, and promote greater awareness of civil, legal and political rights for Aboriginal peoples.

3.2.3 Methods

This evaluation of Shepparton and Broadmeadows Koori Courts was undertaken over a two year period. Data were drawn from a number of sources, including: the case records collected by the Koori Court officers; Office of Corrections court records (COURTLINK) and information from the Victorian Police Law Enforcement Assistance Program (LEAP). Qualitative interviews were also
conducted with a number of participants of the court, including magistrates, elders/respected persons, Koori Court officers, police prosecutors, defence solicitors, community corrections, regional aboriginal justice advisory committees, Aboriginal community organisations, support services, court staff, victim representative, and the Department of Justice.

3.2.4 Findings/Conclusions
The evaluation found that the Shepparton and Broadmeadows Koori Courts had met their specified goals and made the overall recommendation for the expansion of the Koori Court model. During the study period the Shepparton and Broadmeadows Koori Courts finalised 167 and 90 matters respectively. The offences were similar in nature across both courts, many were traffic and property related offences. Both courts imposed penalties of fines, good behaviour bonds and community based orders.

Harris reported the Koori Courts reduced recidivism rates for defendants. The Shepparton Koori Court had a recidivism rate of approximately 12.5%, and the Broadmeadows recidivism rate of 15.5%. These rates compared well to the general level of recidivism of 29.4 % (Harris, 2006). Additionally, the Koori Courts achieved significant reductions in the breach rates for community corrections orders and failure to appear for court dates also improved as compared to general levels. It is important to note that no control group was used in this evaluation, so further research is required to confirm the findings. This study has been criticised for its methodological issues including using inadequate follow-up periods, counting court files rather than individual defendants and employing an inappropriate comparison group (Borowski, 2010).

Finally, the interviews with defendants found that the court provided a mechanism for the integration of cultural matters, reinforcing the authority and status of the elders and respected persons and strengthening the Koori community.

3.3 Children’s Koori Courts, Victoria
Borowski conducted a process and outcome evaluation study of the Children’s Koori Court (CKC) in Melbourne, Victoria (2010, 2011).

3.3.1 The CKC process
The first CKC was established in Melbourne in 2004, and a second followed in rural Mildura in 2007. Offenders attending these courts are aged between 10 and 18 years of age at the time of their offending. The makeup and process of the CKC is similar to the adult Koori Court, with the addition of a Koori youth justice worker to the personnel. The CKC is premised on the notion that the sentencing hearing process and the services to which defendants may be linked as part of court disposition can influence the future behaviour of defendants. The objectives of the CKC are to reduce the failure-to-appear rate at court by Koori youth, the rate at which court orders are breached, and the rate and seriousness of reoffending, to build a culturally responsive juvenile justice system for Koori youth.

Although the processes of the CKC are similar to that of the adult Koori Court, there is more opportunity and flexibility for the elders to speak with the defendant and their supporters. Before a defendant can access the CKC, he/she will have admitted their guilt or been found guilty in a mainstream children’s court, and multiple charges would have been consolidated into one offence for sentencing. The defence lawyer responds to the charges on behalf of the defendant but in the CKC the defendant then speaks to these charges, offering some insights into their background. The defendant’s parents and/or support persons are then invited to speak. The elders follow on by speaking with the defendant and their parents and/or support people,
followed by the CKC worker, the Koori youth justice worker and any others present in the court (Borowski, 2010, 2011).

3.3.2 Research aims
The evaluation sought to address the following questions: (1) To what extent have the CKC’s objectives been realized? (2) Does the CKC serve its target population? (3) Has the CKC been implemented according to its design? (4) How do the members of the courtroom workgroup and the defendants and their families experience the CKC? (5) What improvements should be made to the CKC?

3.3.3 Methods
The first method used in this study employed a single-group, post-test-only, non-experimental outcome evaluation design. Defendants who appeared in the CKC on two particular breaches at the beginning of the evaluation period were identified and tracked if they re-offended during the evaluation period (2 years). Both sets of data were obtained on two databases – court and police databases. A total of 62 defendants were tracked, with the defendants who appeared at the beginning of the evaluation followed up for the full 2 years and those who appeared later in the evaluation being tracked for at least 6 months.

The process evaluation involved two researchers observing six hearings to gain a better understanding of the court’s operation (Borowski, 2011). An observational protocol was then designed and used in further observation. Concise notes describing the order of proceedings, the roles and interactions of those in attendance were written and checked with an independent researcher following each observation. The length of CKC hearings observed ranged from 25 minutes to 2 hours.

It was noted by the researcher that “judgments about whether failure-to-appear rates, court-order breach rates and recidivism that were low, moderate or high were partially informed by the findings of previous studies and by the views of the members of the study’s Research Advisory Committee” (Borowski, 2010, p. 472).

3.3.4 Findings/Conclusions
Of the 62 defendants (46 males and 16 females) studied in this evaluation, thirteen (21%) had no subsequent offences. However, those tended to be defendants who appeared later in the evaluation and were therefore tracked for a shorter time. Defendants who were tracked over the 24-30 month evaluation period recorded more subsequent proven offences (37: 59%). Of the 37 defendants who had reoffended, 43% were less serious and 24% were no more serious than the initial principal offence. Only 12 reoffenders (33%) committed more serious offences when compared to their principal offence. The author deemed this long term recidivism rate was within the realm of what was expected of a group of offenders with a highly disadvantaged background (Borowski, 2010). The evaluation also found low rates of failure-to-appear and breaches of court orders were modest. Seven (11%) court participants failed to appear in court and eight (13%) reappeared in the CKC for breaching an order. The evaluation found that the CKC succeeded in its aim to reduce the failure-to-appear rate, the court-order-breach rate and both the rate and seriousness of reoffending, and that whilst these rates remained concerning, they were lower or similar to evaluations of comparable youth offending.

Observational data collected from 19 CKC hearings indicated the process worked well. The evaluation noted that elders were prominent in the proceedings. Although they did not always engage in discussions with the magistrate, they did take the opportunity to admonish the behaviour of the defendant in a caring way. The informality of hearings was also observed, including a reflection on the court environment, the casualness in which anyone could contribute
to the discussions, and the social aspects witnessed during breaks in court proceedings. The magistrate was noted for being at ease in conducting the hearings with minimal formality.

Although the evaluation found the CKC to be culturally responsive, it identified a number of recommendations that, if implemented, could further strengthen community engagement and ownership. The recommendations identified included ensuring:

- The defendant has family or supporters in attendance
- A representative from the indigenous community is present
- Magistrates engage directly with the defendants rather than through their lawyer
- Elders and lawyers receive training in how to engage with youth.

Finally, Borowski concluded that the CKC could continue to demonstrate its cultural responsiveness by prioritising the prominence of indigenous culture to mainstream court attendees (Borowski, 2011).

3.4 **Nowra Circle Sentencing, New South Wales**

Potas, Smart, Brignall and colleagues (2003) evaluated the Nowra Circle Sentencing Court in New South Wales.

### 3.4.1 Nowra Circle Sentencing process

The Circle Sentencing Court (CSC) is an adult court based on the principles of circle sentencing that encourages informality, the imposition of indigenous community sanctions to influence the offender, and support for the victims. An aboriginal elder and the offender’s family participate in the CSC, but the presiding magistrate has ultimate control of the process. An aboriginal project officer liaises with the local Aboriginal community and is responsible for the organisation of the court. He or she also maintains contact with victims and defendant, and provides any follow-up requested during the circle. The CSC aims to empower Aboriginal communities in the sentencing process, provide more relevant and meaningful sentencing options for Aboriginal defendants, improve the support provided to victims of crime and promote healing and reconciliation, and break the cycle of recidivism (Potas, et al., 2003).

 Defendants are eligible for the Nowra CSC if they have pleaded guilty or have been found guilty of an eligible offence (strictly excluding indictable sexual or drug offences). The processes in a Nowra CSC are similar to those in the Koori Courts in that the magistrate leads the formalities of welcoming, leading the introductions and explaining the function of the court. A hearing may begin with the facts of the case being stated, to which the defendant and/or their lawyer respond. A victim impact statement is then presented, followed by a circle discussion between the prosecutor, defendant, victim, elders, and community representatives. The topics of conversation may include talking about the offence and the impact of the offence on the victim and community. Discussions about resolutions may include what sentence should be imposed and what supports are available for both the defendant and victim. The circle aims to reach a consensus on an outcome but the magistrate will provide some direction to an acceptable sentencing option that fits within sentencing policies of the local courts. Before delivering the sentence, the magistrate summarises the discussion that took place in the circle. A date is then set to review the defendant’s progress and the magistrate formally closes the circle.

### 3.4.2 Research aims

The evaluation of the Nowra CSC sentencing aimed to monitor and assess its implementation with the view of ascertaining whether the aims of this court were being met. Survey data aimed to gauge the level of key court participants’ satisfaction with the Nowra CSC and to assess whether it can make a contribution to the administration of criminal justice in NSW (Potas, et
al., 2003). The key court participants included defendants, victims, lawyers, community representatives, and support persons, police prosecutors and the presiding magistrate.

### 3.4.3 Methods

Two methods of data collecting were used. This included collecting case examples from 13 Nowra CSC hearings between 5 February 2002 and 4 March 2003. Notes were taken and the hearings were recorded and transcribed. Survey data were also collected by a local Aboriginal person in 2002, which asked key court participants to reflect on their ability to communicate within the circle and the perceived impact of their involvement in the circle. Key court participants were asked their views of the circle decision-making processes and to comment on whether the CSC had contributed to behavioural changes for the defendant. Finally, all key court participants were asked for their overall impressions of the CSC process.

### 3.4.4 Findings/Conclusions

Of the 13 Nowra CSC hearings, eight were selected for analysis in order to provide some insights into its operation, although the rationale for this specific selection was unclear in the report. The authors concluded that the case examples demonstrated that the Nowra CSC had succeeded in reducing the barriers between the courts and Aboriginal people. The CSC had led to the improved provision of victim support which aided the healing and reconciliation process, and, in turn, increased confidence and empowerment of Aboriginal persons in the community. The evaluation also found that the Nowra CSC introduced sentencing options that included significant on-going support from the elders, who were instrumental in breaking the cycle of recidivism. The CSC was noted as being less formal and the defendant was more receptive and responsive to the impact their actions had on the victim.

Forty-two key court participants were surveyed. The data revealed a high level of satisfaction with the CSC process and all key court participants agreed that the process met their expectations for hearing all perspectives and imposing meaningful sentences. Key court participants’ responses varied in their level of understanding as to what was happening during the CSC, however, victims and community members reported being overcome by emotion during the proceedings because of the high level of personal communication during the circle. The key court participants reported that seeing the impact on the victim led to behavioural changes in the defendant. The victim also reported positively in taking part in this process. All key court participants reported that the make-up of the CSC and their levels of participation were appropriate. When asked about their levels of satisfaction with the outcomes of the CSC, key court participants generally agreed that they were satisfied and reported they enjoyed the open forum of the proceedings. The presence and role of the Elder was recognised as pivotal to the CSC model and the positive knock on effect to the local Aboriginal and broader community was noted.

The evaluation concluded with a recommendation that the CSC model should be expanded to other regions of the State (Potas, et al., 2003).

### 3.5 Murri Court in Queensland

The Australian Institute of Criminology evaluated the operation and effectiveness of five Queensland Murri Circle Sentencing Court (Murri Court) (Morgan & Louis, 2010).

#### 3.5.1 The Murri Court process

The Murri are indigenous Australians that traditionally occupied most of modern-day Queensland. The Murri Courts were established as the result of a joint venture between magistrates, government departments, service providers and local indigenous communities. The Murri Court aims to address indigenous over-representation in the criminal justice system
through the greater involvement of indigenous elders and respected persons in a sentencing process. Within the courtroom, elders sit alongside the magistrate and assist in facilitating communication with the defendant and offer advice to the magistrate. The processes of the Murri Court are less formal that traditional courts in an attempt to foster a less intimidating environment for all court participants. The final sentencing decision remains with the magistrate and there is a strong emphasis placed on rehabilitation over imprisonment. There are currently more than 14 Murri Courts across Queensland operating within adult magistrate courts and/or the children’s courts.

The Murri Court sentences indigenous offenders who plead guilty to an offence that would normally fall within the jurisdiction of a Magistrates Court. Although the general focus of the Murri Courts across the state of Queensland is similar, Morgan and Louis indicated there are considerable differences in how each of the courts operates at a micro level. These authors, however, were able to identify nine key stages in the Murri Court process across the five sites: (1) The defendant appears in a mainstream Magistrates or Children’s court and eligibility for a referral to the Adult or Youth Murri Court is determined. (2) The defendant has their first appearance before the Murri Court where their eligibility is considered and a pre-sentence assessment is ordered. (3) The pre-sentence assessment is then carried out while the defendant is on bail or remand. This process involves the defendant being interviewed by the court partners (including an elder and representatives of community justice, Queensland corrective services, and department of communities/service provider) who prepare a written or verbal pre-sentence assessment that assists the magistrate in making his or her final sentencing decision. (4) An elder again interviews the defendant on the day of their first appearance in the Murri Court and (5) the pre-sentence assessments are presented to the magistrate and elders. At this stage the defendant may be granted bail to participate in pre-sentence supervision or a final sentence may be decided. (6) If the defendant is granted bail to undergo pre-sentence supervision they may be required to participate in a formal bail programme and (7) appear again before the Murri Court for a progress review. (8) Following the consideration of the assessment reports and submissions from court partners, the magistrate and elder will speak to the defendant about their offending behaviour and then the defendant is sentenced. (9) The defendant is subjected to court ordered monitoring of their community based order.

3.5.2 Research aims
The evaluation aimed to review the operation and outcomes of the Murri Court system over a two year period. Specifically, the evaluation aimed to assess whether the Murri Courts are meeting their objectives of reducing the over-representation of indigenous offenders in the criminal justice system; reducing failure to appear rates; decreasing recidivism rates, and strengthening partnerships between magistrate courts and indigenous communities.

3.5.3 Methods
The evaluation combined quantitative and qualitative research strategies that aimed to improve current and future monitoring of the impact of Murri Courts. The evaluation components of the study were then conducted which involved an implementation, process and impact assessment of the Murri Courts.

The evaluation was conducted over five phases. In phase one, an offender profile questionnaire and dedicated Murri Court database was developed initially in close consultation with key stakeholders of the courts. The offender profile questionnaire aimed to collect specific information about defendants of the Murri Courts. The defendants were surveyed prior to their

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3 Brisbane Adult and Youth Murri Court (2002, and March 2004 respectively); Rockhampton Adult and Youth Murri Court (June 2003, October 2004); Mount Isa Adult Murri Court (February 2004, then December 2005) and Youth Murri Court (July 2006); Caboolture Adult and Youth Murri Court (July 2008, February 2006); and Townsville Adult and Youth Murri Court (March 2006, February 2006).
participation of the Murri Court and then six months following the final sentencing process. The questionnaire covered such topics as living arrangements, family circumstances, education and employment, community involvement, recent stressors, drug and alcohol use, health, income and expenditure and attitudes towards the criminal justice system and Murri Court. A Murri Court database was then developed that held the offender profile data, as well as information held in existing criminal justice systems regarding defendant’s criminal history and new information regarding their progress through the Murri Court.

Phase two involved examining the operation of Murri Courts across the five locations through consultations with key stakeholders. The aim of this section of the study was to gain insights into what the differences between the processes of each court and how these differences might affect any assessments of outcomes. The strengths and weaknesses of the Murri Courts were also identified at this stage, with the view of each court being able to make any improvements to their practices processes.

A qualitative assessment of the impact of the Murri Court program was conducted in phase three. Data were obtained through interviews with key stakeholders at three time points during the evaluation period to generate insights into their perceptions about whether the court processes were fair and culturally appropriate, the degree of community trust in the court, the level of involvement from the indigenous community and its impact on outcomes for the offender, and the contribution of the indigenous community. Observation of the Murri Court by the evaluators was used to validate the accounts shared by the court stakeholders. These observations also enabled the interactions between the court stakeholders to be recorded by the evaluators, enabling differences between sites to be noted.

Finally, in phase four a quantitative assessment of the impact of the Murri Court Program was obtained from the database set up in phase one of the evaluation. The analysis of this data allowed for a longitudinal view of the impact of involvement with the Murri Court that could be compared with a control group. The control group was carefully identified through various stages and comprised indigenous defendants participating in mainstream court processes that would have been eligible to the Murri Court processes. They were also matched on their indigenous states, gender, age, number of proved offences, and the existence of a previous imprisonment order. The authors note that despite the careful process used for matching the Murri Court sample with the control group, several limitations remained. In part, the authors noted, this was to do with the careful process employed: “Restricting the control group selection process to achieve a close match on the specified selection criteria may have inadvertently resulted in differences across other variables not included in the selection process” (2010: 20). The rate of non-attendance breaches and reoffending was measured, along with a comparison of the relative proportion of defendants sentenced in a Murri court and mainstream courts, and a comparison of reoffending rates. A cost/savings analysis focused on comparing the Murri Court with the control group in terms of the time taken to finalise a matter, the costs associated with the operation of programs and due to the relative outcomes related to reductions in recidivism.

3.6.4 Findings/Conclusions
The implementation evaluation indicated that the Murri Court process was resource intensive when compared with mainstream court process. Many stakeholders voiced concerns over the longevity of the courts given the lack of resources available to support programmes, particularly indigenous-specific programs, in the long term. The court partners were found to be enthusiastic about the Murri Court, but were not funded for their participation despite being crucial for pre-sentence assessing and monitoring of bail conditions.
The impact evaluation found fewer Murri Court defendants absconded or did not appear in court than the control group. The authors commented that the reduction in the issuing of warrants was significant, given it reduces the likelihood of defendants being remanded prior to sentencing, thereby also reducing the over-representation of indigenous peoples in prison. Young Murri Court defendants were found to be less likely than those who went through the mainstream Children’s Court to receive a custodial sentence. Overall, the numbers of those incarcerated in both youth Murri and mainstream courts were low. Adult Murri Court defendants who received a custodial sentence were slightly higher than the control group, but when this was adjusted for offenders who were already in custody at the time of sentencing there was no difference between the groups. In addition, adult Murri Court defendants were more likely to receive a custodial penalty sentence with an immediate parole release date, suspended sentence, or non-custodial community supervision and work order. When examining the recidivism rates, there was no significant difference between the youth and adult Murri Court defendants and mainstream court defendants in the time taken to reoffend. After consideration of the varying observation times and time spent in custody, there was also little evidence of change in the seriousness of offending or the frequency of offending in the periods before and after the main court appearance.

The qualitative data indicated the Murri Court had been successful at increasing indigenous community participation and forging collaborative relationships. All stakeholders’ perceived the process to be fair and culturally appropriate for dealing with indigenous defendants. The participation of community justice groups and elders was experienced as a valuable aspect of the court, and thought to be vital to its success.

The simple comparison of the savings found that the Murri Court process not only took longer to finalize matters, but generally also needed extra time to prepare for and organize than mainstream court processes. There were also added costs related to the collaborative nature of the court that required a range of individuals and organisations to provide support and supervision in the progress of a court participant. Other costs were also reported to cover the Murri Court coordinators, magistrate relief, and an allowance for the elders. These findings confirm that the Murri Court is a resource intensive program, which again raised concerns about the long term viability of the court (Morgan & Louis, 2010).

An important limitation for this evaluation was inconsistency in completing the offender profile, sentencing details and referrals across all the participating courts, including the Youth Murri Courts discontinuing their use of the offender profile. As with many other evaluations of courts, data reliability was a key factor, however, the authors appropriately identified the potential impact of this limitation in the reporting of the study’s findings. The difficulties in matching the control group with the Murri Court sample were also described in detail.

### 3.6 Queensland and New South Wales indigenous sentencing courts

Marchetti investigated the indigenous sentencing courts in the New South Wales cities of Nowra and Dubbo and the Queensland cities of Brisbane, Rockhampton and Mount Isa (Marchetti, 2010). The investigation had a particular focus on examining gender power imbalances that might occur in these courts when considering intimate partner violence.

#### 3.6.1 The indigenous sentencing court process

As the above reviews have begun to illustrate, indigenous sentencing courts vary in their practices and processes according to the custom being followed. This study focused on courts across two States in Australia, with the New South Wales courts practising according to the
Of importance to this research was how the different models used in the indigenous sentencing courts might affect how cases involving intimate violence are approached. In the Circle Courts, for instance, elders are much more involved in each hearing and participants sit in a Circle rather than a normal courtroom (Marchetti & Daly, 2007). Circle Courts are restricted to those participating in the proceedings and sentencing is officially handed down by the magistrates in a mainstream court within a couple of weeks following the Circle Court hearing. The Circle Courts place emphasise on the involvement of the victim, while this is not the case with the Nunga Court hearings. Circle Courts do not take place in mainstream courts as Nunga Court hearings do, rather they are held in a location of cultural significance. Both court models attempt to ensure elders are matched by gender to the defendants, although there is recognition that more female elders are likely to be involved generally.

Despite these variances, Marchetti summarised common practices across the courts. The offenders that come before all the indigenous sentencing courts must be indigenous, and have pled guilty to a crime that would have been heard within the jurisdiction of a mainstream court of equivalent level. The setting for the hearings is different to mainstream courts. Even those hearings that take place in traditional courts have been remodelled so that all participants sit around a bar table. Although the number of elders present can vary between courts, they all participate in the hearings, talking directly to the defendant but to varying degrees. An indigenous court worker is employed in all the courts to coordinate interactions between all participants in the hearings.

3.6.2 Research aims
Some literature has pointed to the idea that the use of alternative justice practices, such as indigenous sentencing and restorative justice, risk reinforcing gendered power imbalances by allowing abusive and controlling behaviour towards the victim to continue (e.g. silencing victim, use of intimidating language and behaviour). Scholars have noted that alternative justice approaches can “threaten to ‘re-privatize domestic violence’ with families and community representatives” who may not be reluctant to oppose behaviour that reinforces power imbalances (Marchetti, 2010, p. 270).

The study examined the presence of gendered power imbalances in hearings before the Indigenous Sentencing Courts that considered intimate partner violence cases. It also sought to find out whether the presence of the elders in court helped address possible gender imbalance and to identify whether the needs of the victim were being fully considered (Marchetti, 2010).

3.6.3 Methods
Thirty-nine semi-structured interviews took place with those involved with the operation of the courts in each of the sites. Each interview took, on average, approximately 45 minutes. The fieldwork also included observations of two family violence cases at each of the court sites in Brisbane, Rockhampton and Mt Isla and one family violence hearing was observed in each of Nowra and Dubbo. Each hearing lasted from between half an hour to two hours. The number of observations was noted as low by the author due to the lack of readily available information about when family violence cases were due to take place. Notes recorded relating to the setup of the room, the nature of the offences, the demeanour of the participants and the discussions that took place.

3.6.4 Findings/Conclusions
This study confirmed that gendered power imbalances were often present and not always addressed in the Indigenous Sentencing Courts. The majority of interviewees (75%), however,
believed the presence of the elders allowed the imbalance of power to be equalised. An elder shared that their role is to give “power back to that woman.” Although the power imbalance between the defendant and victim were not always addressed at the hearings, the elders did have a chance to speak about the defendant and admonish their behaviour as being unacceptable. The act of an older man speaking to a younger man across the table was noted as carrying particular ‘power’. The study concluded that although there was room for improvement in training provision and allocation of time to family violence cases, the presence of authority figures, such as the elders, allowed those involved being able to participate in open discussions that were beneficial for both the victim and defendant (Marchetti, 2010).

3.7 Kooti Rangatahi

A recent evaluation of the Rangatahi Courts (Kooti Rangatahi) was undertaken in New Zealand. Kooti Rangatahi was a judicial initiative informed by the Koori Courts in Australia (Ministry of Justice, 2012). This section provides an in-depth description of the processes involved in the Kooti Rangatahi and evaluation due to it being the sole piece of research on indigenous courts in New Zealand.

3.7.1 Kooti Rangatahi process

A rangatahi (youth) can be referred to a Kooti Rangatahi by the Family Group Conference. Following the approval of a youth court judge as to the eligibility of the rangatahi to have their case monitored by the Kooti Rangatahi, the rangatahi is remanded to reappear at the next available sitting. Before appearing, the lay advocate/social worker will support the rangatahi to learn their pepeha (formulaic tribal-based introduction) which will inform the judge and kaumātua (koroua – male elder, or kuia – female elder) about who they are and where they are from.

On the day of the Kooti Rangatahi sitting, a pōwhiri (welcome ceremony) process occurs. Each marae where Kooti Rangatahi sits has unique tikanga (protocols). All of those participating in Kooti Rangatahi hearings are expected to be present. The process involves a karanga (calling the visitors onto the marae), whereby all manuhiri (visitors) are called onto the marae by tangata whenua (people of the marae). As the visitors are called, they move onto the paepae (place where speakers sit) and the whaikōrero (speeches) begin as part of the pōwhiri process. Speakers from both sides are invited to speak following the local marae kawa (procedures). After the whaikōrero and waiata (song), participants take part in the hongi (nose pressing in greeting) and make their way to the wharekai for a shared morning tea.

The formal court process commences in the wharenui (main meeting house). The rangatahi is invited by the judge to stand up and present their pepeha in te reo Māori (the Māori language), telling the kaumātua and others at the hearing who they are and where they are from. They are also required to introduce their whānau (family) and the professionals in attendance. After this, the process is similar to that carried out in a mainstream Youth Court, where the judge requests the rangatahi, and as appropriate, youth justice professionals (youth advocate, lay advocate, supporting service providers, police and Child, Youth and Family youth justice co-ordinator) to give an update on the progress the rangatahi is making against the agreed Family Group Conference Plan. The judge will usually ask each of key stakeholders for feedback on the feasibility of the proposed steps. The judge then sums up the progress the rangatahi has made and the rangatahi is remanded until their subsequent hearing. The judge consults with the court taker to agree when the rangatahi will return; this is verbally confirmed with the rangatahi and their whānau.
Before completing the hearing, the judge invites the kaumātua to address the rangatahi. This may take several forms depending on the marae and/or the kaumātua. After being addressed by the kaumātua, the rangatahi, their whānau, and support people are invited to hongi with the judge, kaumātua and attending youth justice professionals before leaving the room. Where the judge has requested a change in bail conditions, the rangatahi is required to wait outside the wharenui while bail bond papers are prepared. At the completion of the day’s hearing the attending kaumātua (typically the koroua/male elder) are invited to close the court sitting with a karakia (prayer).

3.7.2 Research aims
The evaluation used qualitative methods to assess the implementation of Kooti Rangatahi and identify the early outcomes for those rangatahi who have had their Family Group Conference Plan monitored through the court. The study aimed to develop an outcomes framework to guide the evaluation, document the processes being implemented, and to identify any challenges and areas to improve in the future operation of the Kooti Rangatahi.

3.7.3 Methods
The methods adopted in the Kooti Rangatahi court evaluation first included the development of an outcomes framework that was informed by interviews with key informants: the Principal Youth Court Judge and three judges who sit in Kooti Rangatahi; the Ministry’s Evaluation Advisory Group and other key informants identified in the Ministry of Justice, the Ministry of Social Development and Child, Youth and Family.

Next, site visits took place across five Kooti Rangatahi in West, Central and South Auckland, Hamilton and Whakatane. Sites with larger numbers were visited twice over a four month period. Twenty-nine site observations were undertaken and notes were taken according to a checklist that had been developed for another Ministry of Justice youth court project.

Semi-structured interviews were undertaken to obtain the perceptions, experiences and early outcomes amongst four distinct groups: (1) young people who had appeared in Kooti Rangatahi (n=20); (2) whānau/caregivers of 16 rangatahi (n=22 whānau members and 3 caregivers); and (3) Kooti Rangatahi professionals, such as judges, court staff, police prosecutors, youth advocates, Child Youth and Family (n=36); (4) marae representatives including kaumātua and marae managers (n=18) (Ministry of Justice, 2012).

3.7.4 Findings/Conclusions
This evaluation found several successful early outcomes for rangatahi. First, the evaluators noted the importance of a marae setting in increasing attendance by rangatahi and whānau. Rangatahi discussed feeling welcomed and respected on the marae. The relationships between rangatahi, youth justice professionals and the marae community were reported as being strengthened through Kooti Rangatahi. Secondly, rangatahi had an opportunity to connect with their culture and self-identity, with many reporting experiencing a sense of pride and achievement in delivering their pepeha, growing their knowledge and feeling connected to their culture. Thirdly, rangatahi left court with a sense of purpose and improved understanding of the court processes, and an acceptance of the monitoring system as legitimate. Finally, the unanticipated early outcomes for rangatahi were improved communication skills, established connections with the marae community and enhanced opportunities to take on mentoring roles.

The early outcomes for whānau mirror much of the rangatahi feedback, however, for those whānau who had nearly completed the monitoring process, they also reported improved communication and stronger relationships within the whānau.
The agencies involved in Kooti Rangatahi and the marae community also reported positive outcomes for rangatahi and whānau. They reported Kooti Rangatahi assisted in developing networks with the wider Māori community; building relationships with whānau; and increasing the cultural competency of rangatahi and their whānau. Kooti Rangatahi also created an opportunity for marae, kaumātua, trustees, and management to learn about the operations of a court. Critical to the success of Kooti Rangatahi was the cultural significance of the marae and the positive engagement of rangatahi and whānau in this setting. The kaumātua role was found to be a key factor in eliciting respect and positive behaviour by the rangatahi. The role of lay advocate\(^2\) was acknowledged as crucial in forming relationships with the rangatahi and whānau so that additional background information could be presented to the Judge for consideration.

The evaluation also provided areas for improvement. The inclusion of representatives from the Ministry of Health, Ministry of Education and Child, Youth and Family Services in the assessment of rangatahi before their first court appearance was recommended. Other improvements included providing the youth justice professionals and marae representatives with information about Kooti Rangatahi. Access to training on the development of cultural competency and marae orientation applicable for the Kooti Rangatahi setting was suggested as another method to enhance the system. The availability of appropriate tikanga and support programmes affiliated with the marae to refer rangatahi to once they have completed their Family Group Conference plan was noted as problematic for the judges.

Due to the sample size of the Ministry of Justice evaluation, the findings cannot be generalised to the wider population. Thus, the findings may not be applicable to the experience of all stakeholders in every Kooti Rangatahi. Smaller Kooti Rangatahi sites were not included in the evaluation due to time constraints; however, they may have presented some valuable insights into the experiences of defendants living in those areas. In addition, the sampling technique was not systematic; rather, the range and type of rangatahi and whānau interviewed depended solely on who was appearing in court on the day of the site visits.

In conclusion, the evaluation consisted of court observations and interviews with young people who had appeared in Kooti Rangatahi, their whānau/caregivers, and Kooti Rangatahi professionals. It was found that Kooti Rangatahi improved communication skills, strengthened relationships between the rangatahi, youth justice professionals and the marae community. In addition, Kooti Rangatahi promoted cultural and self-identity and encouraged a mentoring scheme.

\(^2\) A lay advocate is appointed by the court to support the young person. This is a person appointed by the court who is not a lawyer. Their job is to support a child or young person in court, make sure that the court knows about all relevant cultural matters, and represent the interests of a child or young person’s family if they are not already represented. They particularly assist the rangatahi (where able) to prepare their pepeha by researching their whakapapa and connecting them with their culture (Ministry of Justice, 2012)
4 Discussion and conclusion

The studies reviewed in this report indicated that an indigenous approach has utility in addressing intimate violence, offending by young people and in the sentencing of adults. All the courts reviewed were accepting of an indigenous worldview, illustrated by the inclusion of elders or respected persons who held some authority and the incorporation of cultural practices, language or setting (e.g. marae based). In many studies, the elders were seen as being instrumental in restoring peace, balance or healing throughout the proceedings.

Many of the characteristics that assisted the courts to achieve their positive outcomes paralleled restorative justice approaches that occur in some mainstream courts, but with the added shaping of cultural practices and knowledge. Some studies, for example, reported how the courts open and close the proceedings with a prayer; have an informal atmosphere that encouraged open, two-way communication; provided ample time for questions from all parties; created a space for transparent decision-making; facilitated a casual process that was flexible, rather than rigid; and encouraged relationship building and accountability for responsibilities to take place within the context of the wider community.

There were also some limitations noted in the studies reviewed. Firstly, the eligibility rules for accessing indigenous courts varied between jurisdictions to the detriment of some parties. In New Zealand, Kooti Rangatahi eligibility is not restrictive and is available to Māori and non-Māori rangatahi. In contrast, legislation in Australia restricts indigenous courts to those who are of Aboriginal or Torres Strait descent. Secondly, in both the New Zealand and Australian courts the offender must have pleaded guilty to a charge before being considered for eligibility by the presiding judges. Thirdly, the inclusion of the victim in the proceedings was not always expected. Some courts involved the reading of a victim impact statement, while the Navajo courts facilitated the sharing of healing stories between the victim and offender, which appeared to be an integral factor in their success. Fourthly, the review indicated that the indigenous courts were, in many cases, an emotional process for the offender, their family and, where applicable, the victim. It was not always clear from the studies what safeguards were in place to provide support for any negative experiences of such emotional processes. Finally, although the Australian indigenous courts involve the presence of elders or respected persons, these courts are led by non-indigenous magistrates and as such the acceptability of these courts is open to criticism.

The studies provided useful insights into the development of appropriate methodologies for evaluating indigenous courts. A strength of three studies looking at the Navajo Peacemaking, Murri Courts, and Kooti Rangatahi, for example, was the inclusion of a cultural advisor throughout the research project (Gross, 2001; Ministry of Justice, 2012; Morgan & Louis, 2010). These advisors were instrumental in helping to design an appropriate evaluation framework and aided in the data collection where non-English speaking persons were required (Ministry of Justice, 2012). In other studies, the formation of a collaborative relationship between the researchers and relevant government department was essential in designing databases and collecting quantitative data.

There are also lessons to be learnt from the difficulties faced in many of the studies. Recruitment problems and issues related to administering surveys to indigenous populations were experienced in the Navajo Peacemaking Court evaluation (Gross, 2001). The survey used in this study was difficult to administer with the sample of Navajo nation people, with the participants not easily located and requiring the assistance of a translator and/or reader and writer to complete the survey. It is unclear why a translated copy of the survey was not created, although
other research shows that a face-to-face interview is preferred with many indigenous people (Smith, 1999). Further, this study failed to get approval from the Navajo Council because the evaluators proposed use of the randomised assignment was believed to negate their view that all Navajo offenders should have the right to take part in the traditional Navajo court processes.

Qualitative methods were used to collect data in the majority of studies. Interviews took place in all but one of the studies reviewed and allowed for in-depth consideration of a variety of perspectives from most participants of indigenous courts. Ethnographic observation methods were used in four of the studies reviewed. In these studies, observations provided an opportunity to validate the accounts shared by the court stakeholders and enabled the interactions between the court stakeholders to be recorded. The Children’s Koori Court study provided the most detailed account of this method, where observations were used to design and test an observational protocol called a court observation schedule. The court observation schedule was then used by each researcher to take concise notes that were then checked with an independent researcher (Borowski, 2011). All hearings were also transcribed, providing added rigour to the analysis.

Quantitative data collection was effective where the aim of the studies reviewed was to obtain the widespread views from a large number of people, including the defendants, their family members and court staff. Additionally, surveys appeared to have the advantage of allowing for a number of questions ranging from overall impressions, level of satisfaction, ability to communicate, level of involvement and impacts after attending an indigenous court (Harris, 2006). Statistical analysis of data collected by government agencies offered the added rigour of comparing key outcomes between indigenous courts in different jurisdictions and/or mainstream court processes. Overall, however, the quantitative approach appeared to be most effective when complemented with qualitative data collecting, such as interviews and observation. Two of the Koori court evaluations, for example, drew on multiple sources of data including court, police and corrections records and qualitative data obtained from participants of the court (Harris, 2006).

Although none of the studies presented here carried out thorough costs/savings analysis, one study did use a simple comparison of the savings generated by the Murri Court relative to its investment on top of the operation of the existing mainstream courts. The cost/savings comparison is based on the time taken to finalise a matter in the Murri Court with that of a Mainstream Magistrates or Children’s Court. More evaluation that takes into account complex cost/benefit analysis would be useful in the indigenous court context.

It is important to note that these courts have all been developed relatively recently, so the evaluations to date do not include enough data to draw final conclusions about overall efficacy. Most of these early evaluations lacked an appropriate comparison groups to determine the impact of particular indigenous courts and in some case there was a lack of adequate data collected on a routine basis by the courts that could be used for evaluations. The evaluations did not offer a longitudinal view of the courts. This means the long-term impact of the courts in producing positive outcomes, such as sustained reductions of recidivism, could not be assessed.

Many lessons, therefore, can be learnt from the small but growing body of literature on indigenous courts. Specific issues to consider in future evaluations include:

- The availability of adequate data for the specific purpose of evaluation
- Formal processes for on-going monitoring and evaluation of the operation and effectiveness of the court
• The fostering of an environment where data collection and evaluation processes become an everyday part of court processes
• Evaluation design that includes quantitative and qualitative methods so that a range of outcomes can be investigated
• Develop a range of outcomes beyond using recidivism as the only marker of effectiveness

These lessons are important to consider in relationship to any evaluations of indigenous courts in New Zealand.

* In conclusion, Daly, Hayes, and Marchetti (2006) have argued that although indigenous justice practices vary between countries, indigenous peoples have always had methods by which they have been able to govern themselves through their own unique culture, laws, values, religion and spiritual beliefs. The studies reviewed in this report suggest indigenous courts are one illustration of an attempt to encourage such self-governance.
References


### Appendix one: Table of studies on indigenous courts

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<thead>
<tr>
<th>Court</th>
<th>Author(s)</th>
<th>Methods</th>
<th>Findings</th>
</tr>
</thead>
</table>
| Navajo Peacemaking| Gross (1999) | • A survey was designed and translated in Navajo  
• Data were collected from two separate population groups: (1) the control group which consisted of complainants and respondents from the family court using a Western approach and (2) the test group consisting of petitioners and respondents drawn from Peacemaking process  
• All survey respondents lived within the Navajo Nation district (n=94)  
• Groups were matched for education, income and social environment  
• Qualitative interviews with court staff | • In terms of achieving a sense of perceived justice and fairness, the Peacemaking participants overwhelmingly reported that this was achieved  
• Peacemaking participants also expressed achieving hózhó or a sense of global satisfaction with the process and not only the outcome  
• The Peacemaking cohort also reported higher approval in the variables of “fairness, voicing feelings and clarity of explanation”  
• Whilst there were no statistically significant differences in case settlement for each of the groups, the Peacemaking group experience was of ‘settlement’ or a feeling that the issue had been settled to everyone’s satisfaction  
• Overall, the rate of reoccurrence of problems for the Peacemaking respondents was lower than the family court respondents (29% compared to 64%)  
• It was acknowledged that more research in this area is required to confirm these findings |
| Koori Court       | Harris (2006) | • Evaluation of Shepparton and Broadmeadows Koori Courts was undertaken over a two year period  
• Data were drawn from a number of sources, including: the case records collected by the Koori Court officers; Office of Corrections court records and information from the Victorian Police Law Enforcement Assistance Program  
• Qualitative interviews were also conducted with a number of participants of the court, including magistrates, elders/respected persons, Koori Court officers, police prosecutors, defence solicitors, community corrections, regional aboriginal justice advisory committees, Aboriginal community organisations, support services, court staff, victim representative, and the Department of Justice  
• No control group was used in this evaluation, so further research is required to confirm the findings | • Both Koori Courts had met their specified goals and made the overall recommendation for the expansion of the Koori Court model  
• Koori Courts reduced recidivism rates for defendants. The Shepparton Koori Court had a recidivism rate of approximately 12.5%, and the Broadmeadows recidivism rate of 15.5%  
• Koori Courts achieved significant reductions in the breach rates for community corrections orders and failure to appear for court dates also improved compared to general levels  
• Interviews with defendants found that the court provided a mechanism for the integration of cultural matters, reinforcing the authority of the elders and respected persons and strengthening the Koori community |
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<th>Court</th>
<th>Author(s)</th>
<th>Methods</th>
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<tr>
<td>Children’s Koori Court (CKC)</td>
<td>Borowski (2010)</td>
<td>• Experimental outcome evaluation design</td>
<td>Of the 62 defendants (46 males and 16 females) studied in this evaluation, thirteen (21%) had no subsequent offences</td>
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<td>• Defendants who appeared in the CKC on two particular breaches at the beginning of the evaluation period were identified and tracked if they re-offended during the evaluation period (2 years)</td>
<td>Of the 37 defendants who had reoffended, 43% were less serious and 24% were no more serious than the initial principal offence</td>
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<td>• Both sets of data were obtained on two databases – court and police databases</td>
<td>Only 12 reoffenders (33%) committed more serious offences when compared to their principal offence</td>
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<td>• A total of 62 defendants were tracked, with the defendants who appeared at the beginning of the evaluation followed up for the full 2 years and those who appeared later in the evaluation being tracked for at least 6 months</td>
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<td></td>
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<td>• The process evaluation involved two researchers observing six hearings to gain a better understanding of the court’s operation</td>
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<td>• An observational protocol was then designed and used in further observation</td>
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<td>Nowra Circle Sentencing</td>
<td>Potas et al (2003)</td>
<td>• Case examples from 13 Nowra CSC hearings between 5 February 2002 and 4 March 2003</td>
<td>The case examples demonstrated that the Nowra CSC had succeeded in reducing the barriers between the courts and Aboriginal people</td>
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<td>• Key court participants were asked to reflect on their ability to communicate within the circle and the perceived impact of their involvement in the circle, their views of the circle decision-making processes and to comment on whether the CSC had contributed to behavioural changes for the defendant</td>
<td>The CSC had led to the improved provision of victim support which aided the healing and reconciliation process, and, in turn, increased confidence and empowerment of Aboriginal persons in the community</td>
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<td>The Nowra CSC introduced sentencing options that included significant on-going support from the elders, who were instrumental in breaking the cycle of recidivism</td>
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<td>The CSC was noted as being less formal and the defendant was more receptive and responsive to the impact their actions had on the victim</td>
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<td>Murri Court</td>
<td>Morgan and Louis (2010)</td>
<td>• Impact evaluation</td>
<td>The implementation evaluation indicated that the Murri Court process was resource intensive</td>
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<td></td>
<td></td>
<td>• Assessment of Murri Courts</td>
<td>Fewer Murri Court defendants absconded or did not appear in court than the control group</td>
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<td></td>
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<td>• Quantitative and qualitative assessments</td>
<td>Young Murri Court defendants were found to be less likely than those who went through the mainstream Children’s Court to receive a custodial sentence. Overall, the numbers of those incarcerated in both youth Murri and mainstream courts were low</td>
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<td>Court</td>
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| Queensland and New South Wales Indigenous Sentencing Courts | Marchetti (2007)         | Thirty-nine semi-structured interviews took place with those involved with the operation of the courts in each of the sites | • Adult Murri Court defendants who received a custodial sentence were slightly higher than the control group, but when this was adjusted for offenders who were already in custody at the time of sentencing there was no difference between the groups  
• When examining the recidivism rates, there was no significant difference between the youth and adult Murri Court defendants and mainstream court defendants in the time taken to reoffend  
• The Murri Court had been successful at increasing indigenous community participation and forging collaborative relationships  
• All stakeholders’ perceived the process to be fair and culturally appropriate for dealing with indigenous defendants |
| Kooti Rangatahi                           | Ministry of Justice (2012)| Early court evaluation  
Site visits and semi-structured interviews were undertaken to obtain the perceptions, experiences and early outcomes amongst four distinct groups: (1) young people who had appeared in Kooti Rangatahi (n=20); (2) whānau/caregivers of 16 rangatahi (n=22 whānau members and 3 caregivers); and (3) Kooti Rangatahi professionals, such as judges, court staff, police prosecutors, youth advocates, Child Youth and Family (n=36); (4) marae representatives including kaumātua and marae managers (n=18) | • Gendered power imbalances were often present and not always addressed in the Indigenous Sentencing Courts  
• The majority of interviewees (75%) believed the presence of the elders allowed the imbalance of power to be equalised  
• The evaluators noted the importance of a marae setting in increasing attendance by rangatahi and whānau  
• Rangatahi had an opportunity to connect with their culture and self-identity, with many reporting experiencing a sense of pride and achievement in delivering their pepeha, growing their knowledge and feeling connected to their culture.  
• Rangatahi described leaving the court with a sense of purpose and improved understanding of the court processes, and an acceptance of the monitoring system as legitimate  
• The unanticipated early outcomes for rangatahi were improved communication skills, established connections with the marae community and enhanced opportunities to take on mentoring roles |