Indigenous Sentencing Courts:
a renewed legislative foundation

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In 2011, then Chief Magistrate Hillary Hannam declared Community Courts invalid because they did not meet notice and form requirements for the admission of Indigenous evidence under s 104A of the *Sentencing Act 1995* (NT) as well as s 91 of the then *Northern Territory National Emergency Response Act 2007* (Cth).[1] Community Courts continued to operate in Youth Justice Courts until 2012, when the Northern Territory Attorney-General disbanded the Community Court program. However, this legislative basis has since been partly removed. In April 2014, the Northern Territory Government passed the *Justice and other Legislation Amendment Act 2014* (NT) which amended s 104A to allow Courts to receive information from 'Aboriginal community members (for example elders participating in a community court)', according to the Attorney-General.[2]

Above: Indigenous Sentencing Magistrates Farewell.

Despite this amendment, there has been no move by the Court of Summary Jurisdiction or the Youth Justice Court to reinstate Community Courts. We argue that the benefits of Indigenous involvement in sentencing are numerous and significant. Community Courts should be reinstigated to provide a fairer, more relevant and just sentencing process for Aboriginal defendants and their communities. The removal of the legislative justification for their abolition, provides a space for a principled and practical justification for their operation.

NT Indigenous Sentencing Mechanisms

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Indigenous Community Courts, along with Law and Justice Groups, provide an avenue for greater Indigenous engagement in the justice system and promotes individualised justice and substantive equality. These mechanisms can inform the court of factors relevant to the background and experiences of Indigenous defendants and alternate community-based sentencing options and rehabilitative measures as well as allow Indigenous defendants to more fully understand the ramifications of their offending.

Northern Territory Community Courts

During the 1980s, the Northern Territory experimented with community forums and local Indigenous court advisers to assist the court.[3] Community Courts first commenced in Nhulunbuy (North East Arnhem Land) in 2003/2004 after the respected Yolŋu educator, linguist and community worker Raymattja Marika approached the Court of Summary Jurisdiction requesting Yolŋu participation in the court process.[4] At around the same time, the then Chief Magistrate Hugh Bradley entered discussions with Yilli Rreung Council in Darwin that resulted in a trial 'circle sentencing' project in Darwin, Nhulunbuy and the Tiwi Islands that was titled 'community courts'.

In the Northern Territory, Community Courts sat as the Court of Summary Jurisdiction and in the Youth Justice Court, which precluded Community Courts from addressing serious matters, namely indictable-stream serious violent and sexual offences. The Community Court Guideline 14 excluded sexual assault matters and notes the exercise of caution for offences of violence, domestic violence and where the victim is a child.[5] The Guidelines, which were set down for the Darwin Community Court and have been adapted in the Top End and Central Australia, state that Community Courts seek to provide more 'effective, meaningful and culturally relevant sentencing options, increase community safety, decrease rates of offending, and reduce repeat offending and breaches of court orders'.[6]

The process was designed to not be unduly formal to encourage and to enhance a better understanding of the impact of offending by the offenders, victims, their families and the community. The Community Court panel members in East Arnhem were encouraged to communicate primarily in the local language, especially when addressing the offender.[7] We observed that this was an important factor in engaging the defendant, as well as encouraging the participation of Community Court members. The Guidelines aimed to both achieve community involvement in the sentencing process and to broaden the sentencing process so that a Community Court could examine the underlying issues of offending behaviour and consider the needs of the victim.[8] Community Courts provided an opportunity for victims to have a place in the sentencing process[9] and receive support or some relief, including through reparation from the offender directly to the victim or through community work.[10]

Validity of the Suspension of Community Courts

The previous section 104A of the *Sentencing Act* allowed a sentencing court to receive information about an aspect of Indigenous customary law, or the views of members of an Indigenous community, where certain procedural notice and form requirements have been fulfilled (namely disclosure of the evidence to the other party with reasonable notice and that the evidence be given on oath, by affidavit or statutory declaration).

Our interpretation of the previous s 104A was that it need not have prohibited Community Courts. We contend that where the parties consented to cultural information being adduced by the Community Court, the s 104A(2) requirement is overcome. In this way, either the defence or prosecution could be said to have led the evidence and not the Community Court member. Further, notice and form requirements under s104A could have been fulfilled where the defence or the Community Court convenor give the prosecution affidavits stating panel members' views on possible cultural matters (such as the dispensation of Indigenous law punishment). Alternatively, s 104A may have be satisfied if Community Court members gave cultural evidence on oath, and the prosecution was provided with an outline of the evidence prior to proceedings. This would have given the prosecution an opportunity to test any evidence of customary law or practice that may arise in evidence.

In any event, in April this year, the Northern Territory Government passed the *Justice and other Legislation Amendment Act 2014* (NT) to amend s 104A to give magistrates discretion to follow notice and form procedures for the admission of cultural evidence and has removed the requirement that relevant evidence be received from a party to the proceeding (s 104A(2)). The amendment also removed the s 104A(1)(b) provision that extends the notice and form requirements to the views of Aboriginal community members about the offender or the offence, which arguably include submissions of Community Court panel members.[11] Furthermore, under the amended provision, s 104A no longer applies specifically to Aboriginal defendants and thus the recent amendments have made s 104A compliant with the *Racial Discrimination Act 1975* (Cth).[12]

Moreover, in relation to the arguments regarding the exclusion of evidence of customary law and cultural practice – due to the enactment of s 16AA of the *Crimes Act 1914* (Cth), formerly part of the *Northern Territory National Emergency Response Act 2007* (Cth) – as preluding the operation of Community Courts, we contend that this provision does not exclude all considerations by Community Courts. The provision only limits considerations of customary law and cultural practice in relation to the seriousness of the offence. The Northern Territory Supreme Court in *R v Wunungmurra*[13] explicated that customary law and cultural practice may still be considered in relation to an offender's character, prospects of rehabilitation and the nature of the sentencing options. Community Courts may therefore continue to deliberate on cultural matters in relation to these facts or consider other non-'cultural' matters such as the defendant's likelihood to reoffend.

Law and Justice Groups

Law and Justice Groups are an important conduit for crime prevention and improving relations with the formal arms of the criminal justice system (police, courts and corrections as well as relevant government officials). Originally Law and Justice Groups were recognised in the 1995 Aboriginal Law and Justice Strategy, which was the Northern Territory Government's response to the recommendations of the Royal Commission into Deaths in Custody.[14] The Aboriginal Law and Justice Strategy provided a community justice framework to maximise community participation in the administration of justice,

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including through facilitating Law and Justice Groups and supporting Aboriginal women in dispute resolution practices, night patrols and safe houses. Between 1998 and 2005, the Aboriginal Law and Justice Strategy operated in a number of Warlpiri communities in Central Australia, including Lajamanu,[15] Ali Curung, Yuendumu and Willowra. Law and Justice Groups in these communities came together in 2001 to form the Kurdiji Committee. Government funding of these groups ceased in 2003, although pre-court conferencing, an important aspect of Kurdiji work, continued to be supported by Community Corrections until 2005.

Through the support of the North Australian Aboriginal Justice Agency (NAAJA) and the Central Land Council, there are currently four Law and Justice Groups involved in pre-sentencing in the Northern Territory: Lajamanu's 'Kurdiji' Law and Justice Group (established in 1998 and reinvigorated in 2009)[16] and the Yuendumu Mediation and Justice Group (2006) in Warlpiri communities in Central Australia, Wurrumiyanga's Ponki Mediators in the Tiwi Islands (2009) and Maningrida's Bunawarra Dispute Resolution Elders in the Top End (2012).

The process of writing the reports/references involves the NAAJA community legal educator reading out the court list and, where a matter has been referred to the group by criminal lawyers, the charges, the summary of agreed facts and prior offending. The group then decides the cases for which they are prepared to write a letter of support and writes references outlining the group's knowledge of the offender's background (including their behaviour in the community), views about the offending, the offender's character, and ideas for the offender's rehabilitation and punishment. The letters are provided to the defendant's lawyer before being submitted to the magistrate during sentencing submissions. The community members make themselves available for cross-examination if requested.

Law and Justice Groups in these communities have devoted substantial resources on a voluntary basis to their development and operation. The groups were intended to enable community participation in the justice process and provide a space for interaction between Indigenous and non-Indigenous laws and law makers.[17] They have a broad ambit that includes engagement and participation in the courts, promoting community safety, fostering Indigenous law and authority structures.

Achieving the purposes of sentencing through Indigenous participation

Engaging Indigenous community members in sentencing local offenders can facilitate the realisation of sentencing objectives. The purposes of sentencing in the Northern Territory are to punish, rehabilitate and deter the offender, deter the wider community, denounce the offending, and protect the community (*Sentencing Act* s 5(1)). The matters that a judge or magistrate must take into account include the maximum penalty for the offence, the nature of and harm caused by the offence, the identity and age of the victim, the offender's criminal record, character, age, intellectual capacity, prospects of rehabilitation, remorse and a wide range of aggravating and mitigating factors (ss 5(2), 6A). In determining the character of the offender, relevant considerations are the offender's criminal history, 'the general reputation of the offender' and 'any significant contributions made by the offender to the community' (s 6). It is not only the sentence itself that can meet the aims of sentencing, but also the sentencing process and post-sentence circumstances.

We have observed that Indigenous people in Northern Territory communities, particularly remote communities, have been well positioned to help inform the court's understanding of factors relevant to ss 5, 6 and 6A of the *Sentencing Act.* Namely, they have conveyed to the Magistrate matters in relation to the reputation of the offender, previous offending and its impact on the Indigenous community, the defendant's contributions to the Indigenous community and prospects and best methods of rehabilitation. This has enabled Magistrates to frame sentences that are condign to the particular offender and the offence. It also furthers a recommendation of the Royal Commission into Aboriginal Deaths in Custody, which recognises the disadvantage that Indigenous defendants face before mainstream courts and calls on courts in remote communities to 'consult with Aboriginal communities and organisations as to the general range of sentences which the community considers appropriate for offences committed'.[18]

Members of Community Courts and Law and Justice Groups have also been involved in facilitating sentences that flow from the Community Court process. For example, Elders have worked to ensure the offender's good behaviour, curfews are met, fines are paid or that there is compliance with a community work order. In addition, we have observed how sentences designed and overseen by Indigenous sentencing mechanisms, such as work on country or participation in ceremony, can promote reconciliation between the offender and the community and the offender and the victim. In Nhulunbuy, the Community Court tailored sentences to include public admissions of guilt in relation to offences of family violence before 300 people, with the victim also in attendance, and living on outstations and being counselled by senior clansmen and women. Former Chief Magistrate Blokland noted that whilst 'many of these orders could be made without going through the Community Court process', when there is 'family or community support for an order of the court, there is more confidence that the orders might be complied with'.[19]

Further, s 5(d) of the *Sentencing Act* states that an objective of sentencing is 'to make it clear that the community, acting through the court, does not approve of the sort of conduct in which the offender was involved'. Community Court have been effective in delivering this message because they can convey the wrongfulness of the offence under both Anglo-Australian law (eg aggravated assault as a serious offence) and Indigenous law (eg the need to honour one's partner and skin group through respectful behaviours). The Elders' disapproval is poignant because of their strong role in the remote communities that we have observed.

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The Elders, in the absence of the victim, can also convey the impact on the victim while recognising the circumstances of the offender.[20]

In many cases, the Community Court panel members censured the offender, in language, with the effect of shaming the offenders who would hang their head. In delivering their sentences, the Magistrates often stated that the Community Court has helped deliver the message of the offender's wrongfulness more effectively than they could have done. They recognised that Community Courts further key sentencing objectives of denunciation, general and specific deterrence and community protection.[21]

Empowering communities in the justice process

The involvement of senior members of the local community in the sentencing process harnesses the cultural strength and authority of Indigenous community structures.[22] This in turn empowers and enforces these structures. From our observations and discussions with local Community Court members and Law and Justice Group members, it was apparent that Elders felt more in control of the punitive process and more aware of the issues facing their community. This knowledge was used not only to promote better sentencing outcomes but also to influence the offender's path and shape broader community justice initiatives. Peter Norden's research demonstrates the link between strong, cohesive communities and lawful behaviour through members having a sense of connectedness to their community.[23] Patrick Dodson notes that strengthening Indigenous cultural institutions and authority structures can facilitate Indigenous healing and thereby reduce substance abuse and crime.[24] Vesting Aboriginal communities with greater responsibility in sentencing processes and sentencing outcomes maintains the relevance of Indigenous laws and authority structures.[25] The Australian Law Reform Commission in its report on *Aboriginal Customary Laws* articulated that a 'considerably greater degree of local control' over crime problems was needed to reduce offending in communities.[26] This includes through community-initiated involvement in sentencing.[27]

Indigenous Sentencing - Kurdiji visit October 2013.

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Evaluations of the effectiveness of Indigenous sentencing courts

Evaluation of Northern Territory Community Courts

In relation to the Northern Territory, there have been three evaluations of Community Courts. In August 2006, a survey of users of the Community Courts program in Darwin and the Tiwi Islands found that 60% of respondents believed that the Community Court model increased community participation in sentencing and enhanced the procedures of the Court of Summary Jurisdiction.[28] The role of Elders was also seen to provide valuable assistance within the court process, and to provide a sense of community responsibility and accountability for the joint decisions made by the Court.[29]

The preliminary findings of an evaluation by the Department of Justice in relation to Nhulunbuy Community Court in 2007 indicate that re-offending rates at Community Courts were lower than those of regular courts: a 40% recidivism rate compared to a court average of 60%.[30] These findings are limited due to an insufficient control group of like-offenders. Moreover, there were high levels of satisfaction in the process and outcomes of the Court, particularly the increased use of outstations for probation where the availability of alcohol was greatly reduced.[31]

The final review of Community Courts from 2005-2012 prepared for the NT Department of Justice found that the overall recidivism rates of participants was 51%. This was only slightly lower than the average for Indigenous offenders (53%). The report also found that the breach of order rates of Community Courts participants were also much larger than for mainstream Magistrates Courts. (30% for Community Courts compared to 11% for other Indigenous defendants in mainstream Magistrates Court sittings).[32]

There were several limitations that the report itself highlighted. Firstly, the data was not broken down by community to determine the effectiveness of courts in participation locations. Secondly, the dataset was arguably too low to demonstrate statistical significance. Thirdly, the report acknowledged that recidivism rates of participants need to be compared with comparable controls. The report specifically warns that "directly comparing a second time offender and a sixth time offender within a reoffending rate analysis is problematic when deriving important policy or program assumptions". It would therefore have been preferable to compare Community Court participants' recidivism rates with offenders facing similar charges and with similar priors. Additionally it is appropriate to obtain a control group at the same location where similar policing, support networks and social pressures exist.

The report failed to identify whether the recidivism of Community Court participants was for serious or more trivial offending. The high rates of rates of policing and enforcement of traffic regulations in remote Aboriginal communities leave the recidivism rates open to misinterpretation. A more meaningful analysis of the recidivism figures would have excluded minor traffic offences from this analysis or to only compare the recidivism rates with offenders from that community. Likewise the breach rates identified were not interrogated in any depth. These were not analysed for the seriousness nor compared to like communities and offenders. As mentioned above, Community Court participants were often selected because their histories were more serious and it was felt that intervention was particularly required. The failure to use comparable controls therefore brings into question the utility of this data.

The report did not conduct any interviews or surveys with defendants, victims or community panel members and thus was unable to properly evaluate the goals relating to those groups. It is our contention that a comprehensive analysis of Community Courts would have included an analysis of the other goals, in particular the general deterrence impacts of Community Courts by reference to the offending rates in community and analysis of the offending rates by offence type to determine if there had been reductions.

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Law and Justice Groups

Our preliminary analysis of Lajamanu court lists reveals positive outcomes flowing from the Lajamanu Kurdiji Law and Justice Group. There was a steady reduction in overall offending rates from 1996 to present with the exception of 2007-2009 during which period the Kurdiji did not meet, when the Kurdiji Group had been in operation and took a leading role on a range of justice matters including sentencing, there was a 50% decrease in overall criminal cases and a decline in dishonesty offences and assault cases by 50%.[33] By contrast, Northern Territory imprisonment rates have increased by 72% over the past decade[34] – a rate higher than any other Australian jurisdiction and more than double the national average of 31%.[35] These results are not conclusive because they are not matched with a comparable control group or account for a wide range of variables affecting the reporting and prosecution of crime apart from the role of Kurdiji Group. Nonetheless, the consistent decrease in crime in Lajamanu offers an enticement for further research on the effectiveness of Law and Justice Groups in crime reduction. Indeed, these statistics match our observations that Lajamanu has become a safer community with the operation of Kurdiji because members of the community feel accountable to the Kurdiji and the Indigenous authority structures that support its practices.

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Evaluations in Other Australian Jurisdictions

There is still uncertainly as to the efficacy of circle sentencing in achieving sentencing goals elsewhere in Australia. A number of quantitative studies in other Australian jurisdictions indicate that Indigenous sentencing courts have had a positive impact on specific deterrence by reducing recidivism. These findings have been made in relation New South Wales Circle Sentencing,[36] Victoria's Koori Courts[37] and Murri Courts in Brisbane.[38] However, Fitzgerald's and Marchetti's research reveals that there are a number of limitations to these studies, particularly their lack of an appropriately comparable control group; their inadequate follow up periods and their unreliable court data[39] Even where attempts have been made to account for these limitations, the control groups have not been drawn from the same community in which the Indigenous court resides and fail to account for a range of community variables.[40]

Conclusion

Sentencing is a process premised on individualised justice. Without the full set of information on the offender, the impact of the offence and the effect of sentencing options, it is impossible to give meaning to this concept as well as realise sentencing objectives relating to deterrence, community protection and rehabilitation. The recent amendments to *Sentencing Act 1995* (NT) s 104A open up the opportunity to reinstate Community Courts to provide a fuller picture of the offender and the offence and reengage Indigenous communities in the sentencing process. Any reestablishment of these courts needs to build on the lessons from previous experience, including the importance of community ownership of the process, links between the Community Courts and other community-based justice mechanisms, the selection of appropriate Respected Persons, a responsive Magistrate and the availability of a range of well-resourced community-based sentencing options. The legislative amendment has provided a new legislative foundation for Community Courts; it is now incumbent on justice administrators to work with Indigenous communities to build a structure to give effect to the spirit of inclusive justice.

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(Endnotes)

1. See Hillary Hannam, 'Current issues in Delivering Indigenous Justice: Challenges for the Courts' (Paper presented at Australian Institute of Judicial Administration Conference at University of South Australia, Adelaide, 18 July 2013). Available at http://www.aija.org.au/Ind%20Courts%20Conf%2013/Papers/Hannam.pdf. The Commonwealth provision in relation to Northern Territory sentencing has been replaced with s 16AA(1) of the *Crimes Act 1914* (Cth).
2. John Elferink, Attorney-General and Justice Minister, Justice And Other Legislation Amendment Bill (Serial 69), Presentation and first reading, Northern Territory Legislative Assembly Parliamentary Record No. 10, 12th Assembly, 1st Session, 11 February 2014. Available at http://notes.nt.gov.au/lant/hansard/hansard12.nsf/4d7545924cd0b81f692569a50000643b/545fe67a5fd5536069257cdd0020d6a1?OpenDocument&Highlight=2,104a
3. H. M. Bradley, 'Community Court Darwin Guidelines, and the general sentencing provisions in the *Sentencing Act 2005* (NT)' (Northern Territory Department of Justice, 2005) 1. Available at http://www.nt.gov.au/justice/ntmc/docs/community_court_guidelines_27.05.pdf.
4. Jenny Blokland, 'The Northern Territory Experience' (Paper presented at Australian Institute of Judicial Administration Indigenous Courts Conference at Mildura, 7 September 2007) 7. Available at http://www.aija.org.au/Ind%20Courts%20Conf%2007/Papers/Blokland.pdf.
5. Bradley, above n 3, 3.
6. Ibid 2.
7. From our observations, the Court engaged its own interpreter when one was requested and available, so that discussion between the Community Court participants could be interpreted in English and the local language.
8. Bradley, above n 3, 6.
9. Unlike in mainstream formal court sentencing processes, where victims are generally not invited to participate actively in court with the exception of providing victim impact statements, in Community Courts, the victim can participate to give the offender a full perspective of the effects of their actions on the victim. Most of the process is on shaming the offending, with the discussion on the penalty generally left to the end.
10. Bradley, above n 3, 2.
11. The proposed amendment means that notice and form requirements only apply to parties who seek to present information about customary law or a cultural practice rather than broader views by the Aboriginal community (as may be expressed through Community Courts). Elferink, above n 2.
12. The Attorney-General also described the amendment as responding to the North Australian Aboriginal Justice Agency's concerns about s 104A's 'treatment of customary law being inconsistent with the *Racial Discrimination Act 1975* (Cth).' Elferink, above n 2.
13. *R v Wunungmurra* (2009) 231 FLR 180.
14. Chief Justice Brian Martin, 'Customary Law – Northern Territory' (Paper presented to the Colloquium of the Judicial Conference of Australia, 5 October 2007) 19. Available at http://www.supremecourt.nt.gov.au/media/docs/commonwealth_intervention.pdf.
15. In 1997 the former Lajamanu Community Government Council and the Lajamanu Tribal Council wrote to the Chief Minister of the Northern Territory, the Minister for Police and the Minister for Aboriginal Development to establish a forum to bring their "two laws" together in a practical and meaningful way. The Lajamanu Law and Justice Committee was established in 1998 and the Lajamanu Community Law and Justice Plan was signed by the Territory and Commonwealth Governments and community organisations in 1999. This group set a precedent for other Aboriginal communities in the Northern Territory. On the other Law and Justice Groups, see: Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, *Ampe Akelyernemane Meke Mekarle 'Little Children Are Sacred'* (Final Report to Northern Territory Government, 2007) 175 -179 recommendations 4,7 & 8.
16. See Lajamanu Law and Justice Group, *Kurdiji: 'Shield - to protect and discipline' – Lajamanu Visitor Guide* (Kurdiji Group, March 2014) 6. Available at http://www.clc.org.au/files/pdf/KurdijiNEbook-6.pdf.
17. Harry Blagg, 'Colonial Critique and Critical Criminology: issues in Aboriginal law and Aboriginal violence' in Thalia Anthony and Chris Cunneen (eds) *The Critical Criminology Companion* (Hawkins Press, 2008) 140.
18. Royal Commission into Aboriginal Deaths in Custody, *National Report* (Australian Government Printing Service, 1991) Recommendation 104.
19. Blokland, above n 4, 15.
20. See also Elena Marchetti, 'Indigenous Sentencing Courts and Partner Violence: Perspectives of Court Practitioners and Elders on Gender Power Imbalances During the Sentencing Hearing' (2010) 43(2) *Australian & New Zealand Journal of Criminology* 263.
21. See also Blokland, above n 4, 7.
22. This was a stated objective of Community Courts, which still exists on the Magistrates' Court website. Available at http://www.nt.gov.au/justice/ntmc/specialist_courts.shtml.
23. Peter Norden, 'Community Adversity and Resilience: The Distribution of Social Disadvantage in Victoria and New

South Wales and the Mediating Role of Social Cohesion' (2004) 34 *Just Policy: A Journal of Australian Social Policy* 38.

24. Patrick Dodson, 'Whatever Happened to Reconciliation?' in Jon Altman and Melinda Hinkson (eds) *Coercive Reconciliation: Stabilise, Normalise, Exit* (Arena Press, 2007) 24.
25. Australian Law Reform Commission, *The Recognition of Aboriginal Customary Laws*, Report No 31 (AGPS, 1986); Law Reform Commission of Western Australia, *Aboriginal Customary Laws*, Final Report (Project 94, 2006); Aboriginal and Torres Strait Islander Commission, *Recognition, Rights and Reform*, A Report to Government on Native Title Social Justice Measures (ATSIC, Canberra, 1995); Northern Territory Law Reform Committee, above n 8.
26. Australian Law Reform Commission, above n 25, [688].
27. Ibid [1009]; Law Reform Commission of Western Australia, above n 25, 371.
28. See Blokland, above n 4, 11.
29. Ibid 10-11.
30. Ibid 15.
31. Ibid.
32. Daniel Suggit, *Joining Forces: A partnership approach to effective justice: community-driven social controls working side by side with the Magistracy of the Northern Territory – a review of Community Courts Northern Territory Government Pilot and Program 2005-2012* (A report to the NT Government, 10 August 2012) 26.
33. This is based on court listings data provided by the Northern Territory Supreme Court and discussed in Will Crawford, 'Participatory action research: a tool for community legal education, crime prevention, activism and capacity building' (Paper presented at the National Association of Community Legal Centres conference, Adelaide, 31 August 2012).
34. Mathew Lyneham and Andy Chan, *Deaths in Custody in Australia to 30 June 2011: Twenty Years of Monitoring by the National Deaths in Custody Program since the Royal Commission into Aboriginal Deaths in Custody* (Australian Institute of Criminology, 2013) iii-iv, 3.
35. Australian Bureau of Statistics (ABS), *4517.0 – Prisoners in Australia*, Reissue (ABS, 2 April, 2013) 27; Australian Bureau of Statistics (ABS), *4517.0 – Prisoners in Australia*, (ABS, 2 April, 2012) 9.
36. Cultural and Indigenous Research Centre Australia, *Evaluation of Circle Sentencing Program: Report* (New South Wales Attorney-General's Department, 2008); Ivan Potas, Jane Smart, Georgia Brignell, Brendan Thomas and Rowena Lawrie, *Circle Sentencing in New South Wales: A Review and Evaluation* (Judicial Commission of New South Wales, 2003).
37. See Zoë Dawkins, Martyn Brookes, Katrina Middlin and Paul Crossley, *County Koori Court: Final Evaluation Report* (County Court of Victoria, Victorian Department of Justice and Clear Horizon Consulting, 27 September 2011) 3. Available at http://www.countycourt.vic.gov.au/files/CKC%20Evaluation%20Report_FINAL_27Sep11.pdf; Mark Harris, *'"A Sentencing Conversation": Evaluation of the Koori Courts Pilot Program October 2002-October 2004* (Victorian Department of Justice, 2006).
38. Natalie Parker and Mark Pathe, *Report on the Review of the Murri Court* (Queensland Department of Justice and Attorney General, 2006).
39. Elena Marchetti, 'Indigenous Sentencing Courts' (Indigenous Justice Clearinghouse Research Brief 5, December 2009) 3-4. Available at http://www.indigenousjustice.gov.au/briefs/brief005.pdf; Jacqueline Fitzgerald, 'Does Circle Sentencing Reduce Aboriginal Offending?' *Crime and Justice Bulletin: Contemporary Issues in Crime and Justice* (No 115, BOCSAR, May 2008) 1-12. Available at http://www.bocsar.nsw.gov.au/agdbasev7wr/bocsar/documents/pdf/cjb115.pdf; Anthony Morgan and Erin Louis, *Evaluation of the Queensland Murri Court: Final Report*, Technical and Background Paper no. 39 (Australian Institute of Criminology, October 2010) 12. Available at http://aic.gov.au/publications/current%20series/tbp/21-40/tbp039.html.
40. See Fitzgerald above n 39, 3; Morgan and Louis, above n 39, 18.