

## **COMMUNITY COURT DARWIN**

### **GUIDELINES**

#### **PURPOSE**

1. The purpose of these guidelines is to establish procedures for the Magistrates Court of the Northern Territory when it sits with community members participating in the sentencing process to be referred to as a "Community Court".

#### **BACKGROUND**

2. The establishment of a Community Court is intended to recognise that in some cases community, cultural or other factors play a significant role in reaching a sentencing outcome which is more beneficial to the community. The concept for the Community Court grew out of discussions between the court and the Yilli Rreung Council in 2004 but the Community Court is not restricted to indigenous defendants.
3. Interstate courts and programs of this type appear to have succeeded in drastically lowering the rates of recidivism for offending so it is hoped that this will be just one of the benefits to be achieved out of the Community Court in the Northern Territory. In the Territory we have additional problems of language which overlay the difficulties of many people with significantly different cultural backgrounds.
4. In the same way as special drug courts for offenders with drug addictions have shown good results, this court will hopefully provide better outcomes for the community by taking into account social community and cultural factors behind offending. The court will be a Court of Summary Jurisdiction assisted by respected persons and family and support members for both the offender the victim.
5. Whilst in the 1980's the Territory led with community forums and additional court advisers to assist the court in understanding the particular problems of indigenous communities, that program has only recently been revived in the Northern Territory. Other jurisdictions have, in the interim established various forms of Aboriginal Community Courts to deal specifically with offenders of indigenous descent.
6. Whilst it is anticipated that the indigenous offenders will make up the vast majority of defendants appearing in court, it is not intended that the court will be limited to indigenous offenders. Anyone who fits the criteria will be entitled to apply to be sentenced by the Community Court in Darwin.
7. For indigenous offenders, the Community Court will involve people of indigenous cultural or community background. For non- indigenous offenders, trained respected persons will participate in the Community Court sentencing process. Where offences against public order are committed in the Darwin area then respected Larrakia persons may be deemed appropriate community participants.

8. The Community Court will provide an informal atmosphere in order to allow greater participation by the community, to make the court processes easier to understand and be more meaningful to offenders.
9. Offenders from outside Darwin or from circuit courts may apply to participate in the Community Court. It is recognised that there are difficulties in their appearing in Darwin for the process and the availability of relevant community members who can attend the Community Court for the sentencing process.
10. Sentencing will ultimately be the decision of the Magistrate pursuant to the provisions of the Sentencing Act and will be appellable in the usual way. It is not anticipated that the sentences will be more lenient but will meet the needs of the victim, the offender and the community more effectively.

### **AIMS OF THE COMMUNITY COURT**

11. From the criminal justice perspective, the Community Court aims to
  - 11.1 provide more effective, meaningful and culturally relevant sentencing options
  - 11.2 increase community safety
  - 11.3 decrease rates of offending
  - 11.4 reduce repeat offending and breach of court orders
12. From a community perspective, the Community Court aims to
  - 12.1 increase community participation in the administration of the law and sentencing process
  - 12.2 increase community knowledge and confidence in the sentencing process
  - 12.3 increase the accountability of the community, families, and offenders
  - 12.4 provide support to victims and enhance the rights and place of victims in the sentencing process
  - 12.5 enhance the offender's prospects of rehabilitation and reparation to the community

### **PARTICIPANTS**

13. The Community Court will comprise the following participants
  - 13.1 **Magistrate** – As the community court is an extension of the Magistrates Court jurisdiction, the Magistrate will preside over, participate in, and facilitate the proceedings. The sentence will ultimately be determined by the Magistrate, not the community members.

- 13.2 **Community Representatives** – There should be at least one or more members from the community sitting with a Magistrate in a Community Court. They will discuss aspects related to the offence and background of the offender and victim/s (if present), explain how the offending behaviour has breached the community code of conduct and will consider an appropriate sentence. These members are the key to empowering the victim/s, offender, support persons and the community in the sentencing process by developing a shared responsibility.
- 13.3 **Offender** – He or she must commit to the Community Court process and his/her rehabilitation and will be given the opportunity to discuss any and all aspects of the offence. The offender may be accompanied by support person or family member as well as his lawyer.
- 13.4 **Victim** – The offender's understanding of the impact of the offence is an essential part of the Community Court process and the victim/s will be encouraged to participate in the community court with a support person, family member or to nominate a representative.
- 13.5 **Prosecutor** – The prosecutor will present the facts of the case, the relevant legislation and penalties and make submissions as to the appropriate sentence.
- 13.6 **Community Court Officer** – A new position of Community Court Officer has been established to co-ordinate the process of the Community Court. The position will involve, inter alia, liaising with all participants, providing assessment and monitoring the offender after sentence.
- 13.7 **Correctional Services** – Officers of this section should be present to appreciate fully the role they will be required to fulfil after the sentence is given. Other service providers may attend if required.

## **TYPES OF OFFENCES**

14. The categories of offences dealt with in a Community Court are to be kept as broad as possible. Except for sexual assaults, any offence that can be heard and finalised in the Magistrates Court would be eligible for consideration in the Community Court. Caution needs to be exercised for offences of violence, domestic violence and offences where the victim is a child.

## **OFFENDER**

15. An eligible offender may be a juvenile or an adult except where the offender is currently on parole for another/other offences.

## **OFFENDER PARTICIPATION IN COMMUNITY COURT**

16. Subject to this direction, a referral to the Community Court should only be made if each of the following criteria is satisfied, namely
  - 16.1 The offence or offences are within the jurisdiction of the Court of Summary Jurisdiction of the Northern Territory
  - 16.2 The offender has pleaded guilty or been found guilty of the offence or offences for which he or she is before the Court
  - 16.3 The offender consents to being assessed and agrees to participate fully in the Community Court
  - 16.4 The offender has sufficient community ties so as to ensure the effectiveness of any Community Court decision, and
  - 16.5 The offender must not be suffering from any serious mental disorder

## **REFERRAL TO COMMUNITY COURT**

17. The procedure on an application for referral to the Community Court shall be as follows
  - 17.1 An application is made in open court. Either the prosecutor or the offender may make an application and make submissions on the application.
  - 17.2 Facts to be agreed
  - 17.3 Matters to be taken into account when considering an application include
    - effect of the offence on a community,
    - the interest of the community in participating
    - the prevalence of the offence
    - likely benefit to the community
    - cultural issues relevant to sentencing
    - offender's understanding of and willingness to participate in the process
    - relevant community members available
    - family and community support for the offender and for supervision of any conditional order
    - offender must not be subject to other supervisory orders already in existence and which may conflict with the process,
    - history of offender's previous compliance or non-compliance with court orders or supervision
    - the views of the victim or victims regarding the referral of the offender to the Community Court
    - any other relevant matter

- 17.4 If it appears to the Magistrate upon application or of his own motion that the offender may be suitable for referral to the Community Court, the Magistrate may bail an offender with conditions requiring the offender's co-operation with a Community Court Officer or such other person as directed by the Magistrate, in order to assess the suitability of the offender.
- 17.5 The Community Court Officer
- Informs the offender/s of the process
  - Contacts members of community to assess their suitability/availability to assist in the Community Court in relation to the offender
  - Provides the appropriate Victim Contact Person *with details of the defendant, of the alleged offence/s and the name (when known) and contact details of the victim/s*. Where there is no Victim Contact Person then the Community Court Officer may act as the Victim Contact Person.
  - Contacts interested community members
  - Provides a report to the Court assessing the suitability of the offender for the Community Court process which shall include the victims views
- 17.6 Upon receipt of details of the defendant, the alleged offence and the victim, the Victim Contact Person
- Contacts the victim
  - Informs the victim of the process
  - Provides a report to the Community Court Officer court of the views of the victim to the referral of the matter to the Community Court. The report will indicate whether or not the victim intends to participate in the process, and if participating, how the victim will participate e.g. in person and with what support person or through a representative.
- 17.7 When the Victim Contact Person contacts a victim or victims of a person who has been referred for assessment, he/she should explain the process, invite their participation and provide assistance in
- preparing the victim for participation in the community court,
  - providing support during the process and
  - Identifying whether the victim requires a representative or support person, and if so, assist in locating a suitable representative, and inform the representative of the process and how they may participate on behalf of the victim.
- 17.8 After considering the report the Magistrate may refer the offender to the Community Court for sentencing.
- 17.9 The Magistrate may order a pre-sentence report or other reports and assessments (oral or written) for consideration by the Community Court.

## **VICTIM PARTICIPATION**

18. The rights of victims must be taken into account so that victim's participation in the Community Court is to be encouraged.
- Victims will only participate in the process with their consent
  - Victims are entitled to have a support person at the proceedings
  - Victims will be able to have a representative in the proceedings without having to attend personally
  - Where the victim participates in the proceedings the Magistrate will ensure that the victim has an opportunity to be heard either directly or through their support person
  - A victim's impact statement, if tendered, will be kept on the court file

## **CONFLICT OF INTEREST**

19. Defendants and victims have a right to object to the participation of a community representative in the proceedings on the basis there is a conflict of interest, and the Magistrate will decide whether that individual may participate.

## **COURT**

20. The Court aims to achieve community involvement in the sentencing process and to broaden the sentencing process so that the court can examine the underlying issues of offending behaviour and consider the needs of the victims. All participants, including the victim and other members of the community, have an opportunity to be heard about the offending behaviour.
21. The Court should be conducted in a way that is not unduly formal and encourages and enhances the reaching of an agreement about a sentence to be imposed on the offender.

## **PROCEDURE**

22. Generally the process of the court will include:
- The seating of participants to be arranged in a circle
  - Court begins by the Magistrate opening the Court and explaining the role of community members and the process to be followed.

- The participants in the Court introducing themselves, explaining who they are, their relationship with the offender or victim or their interest in the offence.
  - The charges being read and plea of guilty confirmed
  - The prosecutor reading the agreed facts and details of the offender's background.
  - The Magistrate deciding the order of proceedings, thereafter.
  - Victim, offender and other parties attending invited to speak.
  - Only one person speaking at a time.
  - General discussion as to the impact of the offending and the appropriate sentence.
  - Offender's formal submissions.
  - Prosecutor's formal submissions.
  - Community Members comments.
  - Sentence by the Court.
23. In sentencing the offender after participation in the Community Court, whether an outcome has been achieved or not, the Magistrate shall take into account the fact that the offender has participated in the Community Court process.
24. The Magistrate may at any time refer the matter back to the Court of Summary Jurisdiction.

### **COURT OUTCOMES**

25. The Community Court is a Court of Summary Jurisdiction.
26. It is intended, however, that the procedures adopted in the Community Court will lead to a better understanding of the court processes and the impact of offending by the offenders, their families and the community.
27. It is anticipated that there may be new or different types of supervisory orders monitored by correctional Services and/or community members or family.

Dated this 27<sup>th</sup> day of May 2005

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**H. B. Bradley**

**Chief Magistrate**