

Inquiry into Racism, Hatred, and Violence directed at Aboriginal and Torres Strait Islander people.

Submission

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This Submission responds to Terms of Reference Number 3:

Initiatives that are effective in combatting racism targeted at First Nations people, reducing individual and collective harm

Koori courts as an antidote to racism

Recommendation:

Aboriginal sentencing courts,

- 1. supported by senior Aboriginal elders and Aboriginal Justice Officers,**
- 2. should be the subject of legislation in every jurisdiction and**
- 3. should be supported by adequate funding.**

Commentary:

The Aboriginal community in Victoria have been formally working with the government and community on justice initiatives in courts since 2000. This follows the work of organisations such as the Victorian Aboriginal Child Care Agency and the Victorian Aboriginal Legal Service which started a dialogue with the Victorian police as early as the 1970s.

This work over decades has not reduced the number of people coming into contact with the legal system or the number of children being removed from their families. The number of Aboriginal women incarcerated has risen exponentially.

While that is the case it is important not to abandon efforts at reducing racism in legal settings and making the legal system

- fairer,
- more inclusive,
- less racially selective, and
- less culturally oppressive.

This Inquiry provides the opportunity to argue that the establishment of inclusive, elder-informed court systems should be expanded and further embedded.

In 2000 the Victorian Aboriginal Justice Agreement put forward community-driven initiatives to improve the presence of Aboriginal people in the justice sector. These included

1. Establishment of Koori Courts
2. Establishment of roles for Aboriginal court advisers –
 - a. An Aboriginal Justice Officer attached to the Koori Court, and
 - b. Aboriginal Liaison Officers in courts more generally
3. Establishment of a cohort of Aboriginal Bail Justices

No one would suggest that the Koori Court and associated initiatives have solved the problem of the over-representation of Aboriginal people in courts or in places of detention, and there is much more to do.

I am attaching an article that Daniel Briggs (the first Victorian Aboriginal Justice Officer attached to the Shepparton Koori Court) and I (the inaugural Koori Court magistrate in Shepparton) published about our experience of the Victorian Koori Court.

The content is as relevant today as it was in 2004.

Briggs and Auty, 20024, **Koori Court**, in *Law Text and Culture* found at <https://www.uowoajournals.org/ltc/article/848/galley/847/view>

Koori Courts – their attributes and potential to address racist stereotypes and racism

Aboriginal Sentencing Courts/Koori Courts demonstrate that the involvement of Aboriginal people in the issues that impact them does much to reduce particular racist conduct and stereotyping.

For example:

1. Koori Courts bring **very senior and respected Aboriginal people** into justice processes in a manner that impacts the perception court officers, corrections staff, and police have of Aboriginal people in general and in particular cases. The promotion of a respectful dialogue in court settings palpably reduces racist stereotyping.
2. Situating senior Aboriginal people on the bench with the judicial officer sends a message to everyone, and particularly those who appear in the courts as accused or supporters, that this is an **environment where it is safe** to express concern about racism and stereotyping; selective policing; and generalised and unmediated racial targeting. This environment actively promotes a conversation about policing history and racism. At the same time it also promotes a broader understanding of what constitutes community safety (in all its manifestations).

3. These courts expose relatively insular court staff to senior Aboriginal people in a way that creates an atmosphere that **cultivates respectful exchanges at the court** which is often the only place where people interact.
4. The **awareness training** that precedes the operation of the courts – for court staff, police, and corrections officers – informs non-Aboriginal people about the social, economic, political and historical issues facing Aboriginal people as a function of colonialism and post-colonial administrations.
5. **Cultural awareness training**, ideally conducted by Aboriginal people from the Country in which the court is operating, grounds the operations of the court in cultural practices – in the court, at the front counter, and in all other interactions (phone etc).
6. These courts provide an **opportunity for family and community groups** and also for those impacted by conduct to be involved in the legal process, opening the legal process up to community scrutiny.
7. These courts immerse people who are charged with an offence/s in a process in which they **feel they are seen and heard**. By engaging respectfully, these courts promote a better understanding amongst those who appear of the ramifications of their conduct on their own community. They build a more mature understanding about responsibilities and reactions. They also provide an opportunity for the exposure of racist assumptions and actions in an environment of safety.
8. Because these courts are **public they are open to scrutiny** and as such potentially result in better understanding of the impact of colonialism and its intergenerational impacts; the selectivity of contemporary policing; and the personalised meaning and implications of policies of assimilation, segregation, and child removal.

I have personally witnessed the following outcomes in courts where senior Aboriginal sit with the judicial officer –

- a. **Court staff** actively engage with the court process, are more polite to Aboriginal people at the counter, warm to the opportunity to share the work of the court with Aboriginal people, volunteer for the court room work of clerking, gain both personal and professional benefits from the cultural awareness training that is offered, and build relationships with elders and Koori Court staff.
- b. **Prosecutors** (police) have expressed the view that they are treated with more friendly respect when they work in these courts, they gain understanding from the cultural awareness training, and they benefit socially and psychologically from being able to speak to elders and those who appear in the courts in a more informal manner.
- c. **Judicial officers** who often don't know much about the Traditional Owners of country where they hold court find that the cultural awareness training informs them about the exposure of Aboriginal people to selective policing. The training they receive makes them better at tailoring sentences, sometimes for better effect for the whole community. That makes the role infinitely more satisfying and potentially makes for better judgement.
- d. **Senior Aboriginal people** have told me that they regard the courts as breaking down racist stereotypes. They have also advised that the professional training they received about the legal process provided them with information which they relayed to the community about whether justice was being done.
- e. **Aboriginal Justice Officers** attached to the courts advised that being in the court meant they could mediate matters producing fairer outcomes. They also gained qualifications as lawyers and in other disciplines which have benefited their communities and which directly undermine narrow racist stereotyping.

Professor Kate Auty

