

# Aboriginal Hearing Day

Practice Guide

# Aboriginal Hearing Day

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**We would like to acknowledge the Wurundjeri people, the traditional owners of the land that the City of Yarra and the Neighbourhood Justice Centre rests upon.**

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

The term 'Koori community' used throughout this document respectfully refers to the local Aboriginal community in Victoria. Within the Koori community, the NJC acknowledges there are also other Aboriginal and/or Torres Strait Islander persons residing, working and gathering in the local area.

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## Introduction

This document sets out the background and context to the development of the Aboriginal Hearing Day, as well as summarizing the objectives, key principles and processes involved. It is not intended to be a 'how to' guide for establishing an Aboriginal Hearing Day, but it does use the NJC's experience with the Aboriginal Hearing Day as 'food for thought'. An Aboriginal Hearing Day will differ depending on the community in which it is located, with factors such as the court environment, the local Aboriginal community, the availability of community service agencies, the nature of existing relationships and community demographics, varying from location to location while the principles and philosophy underlying the Aboriginal Hearing Day will remain consistent.

## Context

The context for Aboriginal Hearing Day is best understood by examining the over-representation of Aboriginal people in the criminal justice system and related reforms to address this issue, alongside the development of 'community justice'.

### **The Royal Commission into Aboriginal Deaths in Custody**

In 1991, the *Royal Commission into Aboriginal Deaths in Custody* presented its final report. One of its most significant findings was that the disproportionate number of Aboriginal deaths in custody related to Aboriginal people's over-representation in the criminal justice system. It also found that that over-representation was not only in the number of Aboriginal people taken into custody, but extended to their contact with police, the court system, juvenile justice centres and correctional facilities.

The Royal Commission identified that the overwhelming reason for Aboriginal peoples' over-representation in the criminal justice system was their social, economic and cultural disadvantage.

Subsequently, the Royal Commission recognised that "Aboriginal people were generally disadvantaged in their ability and opportunity to present a case against their imprisonment". It considered ways in which court processes, including sentencing and legislative underpinnings, affected this over-representation.

### **The Victorian Aboriginal Justice Agreement**

The Victorian Aboriginal Justice Agreement (VAJA) is a partnership between the Koori Community and the Victorian Government. Phase One of the VAJA was launched in 2000 and Phase Two in 2006. The VAJA responds to the issues and recommendations made by the Royal Commission and aims:

To minimise Indigenous over-representation in the criminal justice system by improving accessibility, utilisation and effectiveness of justice-related programs and services in partnership with the Aboriginal community.<sup>1</sup>

It is designed to ensure that "Indigenous Australians should have access to the same rights and experience the same justice outcomes as other Victorians".<sup>2</sup> A core principle of the VAJA is the need to work in partnership with the Koori community to break the cycle of disadvantage and improve justice outcomes. This

<sup>1</sup> VAJA, p.25

<sup>2</sup> VAJA, p.3

means maximising participation by the Koori community in the design, development and implementation of justice policies and programs.

The VAJA Phase 2 identifies that relatively few Kooris utilise justice-related services because they are not responsive to Kooris' cultural and personal needs. The complexities of the justice system, cultural and spiritual isolation, mechanisms and costs often contribute to the unwillingness of Kooris to use the police and courts to protect and exercise their legal and civil rights. Therefore, a key priority is the need to ensure mainstream justice-related services respond better to the needs of the Koori community, are more inclusive and culturally appropriate.

### **The Community Justice Model**

“Community justice’ broadly refers to all variants of crime prevention and justice activities that explicitly include the community in their processes...”<sup>3</sup>

A community justice model involves the following key elements:

- **Neighbourhood:** community justice operates at a neighbourhood level. Local issues are best served, under a community justice model, by local justice mechanisms that respond in a holistic way to the conditions and profile of the local area.
- **Community engagement:** it involves citizens in the justice process - from the defendant and victims of crime through to the wider community - and ways are sought to engage with a range of people (including victims of crime) in a constructive manner to improve justice outcomes.
- **Early Intervention:** the importance of diverting people away from both crime and court processes is embedded in the model and in practice through stressing prevention, mediation and other alternative dispute resolution processes.
- **Integrated client services:** the need to create a navigable and accessible system for all clients and the community. Justice and community agencies work together, as needed, to ensure better justice outcomes across the system.
- **Problem solving:** traditional criminal law is defined as a contest between the defendant and the state. Under community justice, crime is not a contest to be won but a series of problems to be solved.
- **Therapeutic jurisprudence and restorative justice:** the therapeutic and restorative approaches to justice are critically important to a community justice model. These approaches stress the importance of using the justice system as a mechanism for restoring individuals and communities, after the criminal act.
- **Community & multijurisdictional court:** creating a focus of a local court serving the local community in multiple ways, as a means for delivering an integrated service.

Community justice approaches are inherent in the development and establishment of the Aboriginal Hearing Day with a strong emphasis on engagement with the Koori community and service providers, in addition to justice and community agencies working together to problem solve and provide integrated client services to the Koori community. The Aboriginal Hearing Day honours the aims of the VAJA by working in partnership with the local Koori community to provide more culturally appropriate, accessible justice services and improved justice outcomes.

<sup>3</sup> Karp and Clear (2000), *Community Justice, A Conceptual Framework*

# Aboriginal Hearing Day

## Objectives

The Aboriginal Hearing Day aims to:

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

## The need for an Aboriginal Hearing Day

In 2008 the Neighbourhood Justice Centre identified gaps in its successful delivery of accessible justice and services to the local Aboriginal community. The Centre was finding that:

- there were low attendance rates of Aboriginal clients to court.
- there was often no representation from the local Aboriginal legal service for clients, even when there were clients in custody.
- the local Koori community were not accessing the services available through the Centre.

As well as addressing these concerns the Centre also sought to build stronger links with the local Koori community, in line with its community engagement approach, in order to address the underlying causes of offending.

The local Koori community was an increasingly high profile group who were particularly marginalized. The issue of public drinking, which resulted in the introduction of Local Law 8<sup>4</sup> in December 2009, was of principal concern to traders and community residing in and around Smith Street, Collingwood, and was perceived to be an issue that predominately involved the Koori community. As well as concerns over public drinking, there were concerns around alcohol-fuelled violence, mental health issues, family violence and child protection.

## Community consultation

The Centre recognised the importance of engaging respected elders and leaders within the Koori community in order to build trust in the Centre. The Centre already had a strong relationship with Aunty Denise Lovett, an active member of the Centre's Community Liaison Committee. Aunty Denise was a strong advocate for the Centre and the importance of the Koori community making use of the Centre

The Centre hosted a "community yarn and BBQ lunch" to facilitate a discussion with the Koori community about the reasons they did not attend court. Homeground, a local housing service provider who provided a weekly free lunch for the Koori community held its regular lunch at the Centre instead of at its usual location,

<sup>4</sup> Local Law 8 empowered police to request that people drinking in unlicensed areas at any time of the day stop drinking or pour out opened drinks. Police are able to issue \$100 fines if people do not follow a direction to cease consuming alcohol, or seal a container of alcohol, or pour out the alcohol, or surrender any opened container of alcohol.

resulting in attendance of 40-50 local Aboriginal community members. The Magistrate, local Aboriginal service providers, client service staff, lawyers and Koori Justice Workers also attended.

An open discussion was held around the reasons people did not attend court. The discussion also touched on what time would best suit for court, whether free transport would assist in getting people to court, and what other support structures people would like. A survey was given to all attendees covering the same issues.

Centre staff also engaged the Victorian Aboriginal Legal Service (VALS) to discuss how the Centre could best meet their needs.

### **Development of the Aboriginal Hearing Day model**

The community consultation found that the reasons Aboriginal people did not access the Centre or attend court were mainly around suspicion of the Justice system, and ignorance around the court process. The community did not identify that timing of the Hearing (morning or afternoon) or transport were issues in Court attendance. Rather, knowing that culturally appropriate support will be available from Koori workers and organizations were identified as positive ways of increasing court attendance.

As VALS are a statewide service, they sometimes struggle to resource adequate legal support for their clients. VALS sought to have identified 'days' at each Court to ensure that a VALS solicitor could be present, rather than having to brief out several barristers to attend on different days.

As it was not feasible to establish a Koori Court, the Centre sought to develop a sustainable solution that supported the local Koori community and increased access to the relevant services. The Aboriginal Hearing Day was in part modeled on the "Tuesday Court" list at the Melbourne Magistrates Court<sup>5</sup>. The regular monthly scheduling of the Aboriginal Hearing Day aimed to assist in the coordination of external support agencies to attend at the Centre to provide additional support for the client/s and relevant information to the Court.

### **Key Features of Aboriginal Hearing Day**

The following are key features of the Aboriginal Hearing Day at the NJC:

- All matters relating to Aboriginal clients are scheduled and adjourned to the monthly Aboriginal Hearing Day, and are prioritized in the court listing.
- All matters are heard by a Magistrate who understands the cultural context for Aboriginal clients.
- The court welcomes the involvement of the Aboriginal community in the court process. For example, as part of the sentencing conversation, the Magistrate invites contributions from community members who are supporting the client.

<sup>5</sup> *The Tuesday Court supports people charged with non-violent drug and street sex offences in the City of Port Philip. The Tuesday Court began in 2003 when it was noted that the majority of defendants listed to appear at the Magistrates' Court with 'loitering for the purpose of prostitution' were not appearing when charged. The Court has increased the rate of court attendance by sex workers and the Tuesday Court has become an important point of engagement for service providers with women who do not generally use structured health services.*

- Koori Justice Workers remind clients to attend court in lead up to Aboriginal Hearing Day, through maintenance of an outreach based model of case management, attendance at a number of local Aboriginal events and gatherings, and regular liaison with relevant community support workers.
- A pre-court meeting is held to discuss the court list, identify any issues or events within the Koori community that may affect court that day (e.g. deaths in the community) and to coordinate the provision of support and treatment services to Court users. This meeting is coordinated by the Koori Justice Worker and attended by the duty worker, Neighbourhood Justice Officer, Court Network volunteer, a representative of Registry, Corrections, any external community workers (where appropriate) and legal representatives from Victorian Aboriginal Legal Service.
- A Koori Justice Worker is present in court at all times to provide support to clients and their families.
- There is an increased focus on the attendance of community support workers from external agencies at court to provide support for clients.
- A post-court meeting is held between the Koori Justice Workers and the Magistrate to discuss the function of the day.
- The physical environment of the court is designed to be as culturally appropriate as possible.
- A free culturally appropriate lunch is provided for court clients, such as kangaroo burgers.
- Culturally appropriate videos are shown on the AV system on the court floor and culturally appropriate materials are used.

*Note: It is recognised that some features of the Aboriginal Hearing Day at the NJC would need to be varied in other locations. For example, there may not be Koori Justice Workers on site. However, Koori community workers may be able to fulfil some, or all, of this role, in partnership with court or other staff.*

### **Comparison to the Koori Court**

The Aboriginal Hearing Day is founded on similar principles to those that underpin the community building aims of the Koori Court. The Aboriginal Hearing Day shares similar goals to the Koori Court, such as:

- increasing the cultural appropriateness of Centre's Court processes and proceedings
- increasing the engagement of Aboriginal clients in the criminal justice system
- increasing the Aboriginal Community's understanding of the criminal justice system.

Unlike the Koori Court, Respected Elders are not a feature of the Aboriginal Hearing Day. However, as with other sentencing approaches at the NJC, sentencing conversations are a key component of the Aboriginal Hearing Day. Sentencing conversations involve a dialogue with the client, his or her family, the support services and the Koori Justice Worker. The purpose of sentencing conversations is to

- gain the client's commitment to the outcome, particularly if there is a therapeutic component to the sentence (e.g. with a Community Based Order)
- increase understanding and acceptance of the sentence and strengthen the likelihood of the therapeutic component of a sentencing outcome being supported by the client, their family and their support network.



## Step By Step: The Aboriginal Hearing Day

Process	Responsibility	Timeline
<b>Step 1: Preparation and review of Court List</b>		
Preparation of Court List, communicating date of Aboriginal Hearing Day to all stakeholders	Registry	Ongoing
Review and assess the Aboriginal Hearing Day court list	Koori Justice Worker(s)	Two weeks prior to AHD
Liaise with Registry regarding: <ul style="list-style-type: none"> <li>prioritising clients in custody</li> <li>prioritising Aboriginal client matters over non-Aboriginal client court matters</li> </ul>	Koori Justice Worker(s)	
Maintain communication with Registry regarding any changes and identification of individuals who will attend the Aboriginal Hearing Day in custody	Koori Justice Worker(s)	
<b>Step 2: Co-ordination of AHD pre-meeting</b>		
Contact external support workers and legal representatives regarding Aboriginal Hearing Day and availability of NJC resources	Koori Justice Worker(s)	One week prior to AHD
Regularly liaise with other support workers for further information regarding the client, including Case managers, Legal representatives, Community outreach workers and Elders	Koori Justice Worker(s)	
Collate and prepare relevant information regarding clients	Koori Justice Worker(s)	
Coordinate time and location of Aboriginal Hearing Day pre-court meeting	Koori Justice Worker(s)	Two days prior to AHD
<b>Step 3: Aboriginal Hearing Day</b>		
Attend Aboriginal Hearing Day pre-court meeting to allow for the coordination of support services/relevant agencies before the start of court and provide information regarding client/s	<ul style="list-style-type: none"> <li>Koori Justice Workers(s)</li> <li>Duty worker</li> <li>Court Network Registry</li> <li>Corrections</li> <li>community workers</li> <li>Neighbourhood Justice Officer</li> <li>legal representative</li> </ul>	Day of AHD 9.15-9.45am.

Process	Responsibility	Timeline
Ensure corrections presence to provide assessment and advice to court and clients	Corrections	
Prioritise service delivery to individuals remanded in custody and will engage relevant supports as required (e.g. Legal Representatives, Duty worker, etc)	<ul style="list-style-type: none"> <li>• Koori Justice Worker(s)</li> <li>• Registry</li> </ul>	
Liaise with Victoria Police managing the person in custody throughout the course of the AHD	Koori Justice Worker(s)	
Provide support and advice where appropriate to the Aboriginal clients	Koori Justice Worker(s)	
Provide information and advice to the Magistrate by being located at the Bar Table (NJC Court Officer position) to assist with the operation of the AHD list	Koori Justice Workers(s)	
Be present to provide further assistance to community members and relevant support services outside of the NJC Magistrate's Court	Koori Justice Worker(s)	
Provide immediate referrals of clients to client services and to external agencies	Clients services	
Provide culturally appropriate lunch	Court cafe	
<b>Step 4: Evaluation of Aboriginal Hearing Day</b>		
Meet with Magistrate to have constructive reflection and discuss: <ul style="list-style-type: none"> <li>• functioning of the court</li> <li>• functioning of Aboriginal Hearing Day list</li> <li>• issues and concerns</li> <li>• future suggestions for improving practice</li> </ul>	<ul style="list-style-type: none"> <li>• Magistrate</li> <li>• Koori Justice Worker(s)</li> </ul>	Day after AHD
Collate attendance data and maintain appropriate records	Koori Justice Worker(s)	

## Impact

An evaluation of the Aboriginal Hearing Day, including its impact on recidivism and perceptions from the Aboriginal community, is currently being developed. Anecdotal evidence however, has indicated a number of benefits from the implementation of this innovative model:

The pre-meetings on Aboriginal Hearing Day provide information to relevant parties on any particular client needs on the day, and who is representing them. This is very helpful as it can assist in determining which matters should take priority, for example, if clients have their children with them they are given a priority, which means less stress for the clients as their matters can be dealt with quickly. It is an open forum to allow communication between key parties. There is usually also a de-brief at the end of the day to pinpoint how any issues arising throughout the day can be tackled.

The atmosphere on Aboriginal Hearing Day is welcoming and accepting. The Magistrate acknowledges the traditional owners, as he does every day. Clients can watch DVDs, have a yarn and are provided with lunch, which cultivates a pleasant experience and can therefore create a more positive perception of the Court, without detracting from matters being taken seriously in Court.

### ***Registrar, Neighbourhood Justice Centre***

The Aboriginal Hearing Day has provided an excellent opportunity to broaden networks and gain a fuller understanding of the local Koori community. From a case management perspective, having matters adjourned to the one day has increased client attendance for both breach Hearing and Court Reviews. Given the dates are fixed, it also makes the listing of breach matters for Aboriginal clients more streamlined.

Furthermore, clients are able to see their case manager in a more relaxed atmosphere. The presence of support workers has provided an excellent opportunity for Community Correctional Services (CCS) to network with Koori organisations and have a yarn about clients in an appropriate manner. This process personalises interactions rather than phoning or emailing which can be limiting. It could be suggested that the clients seeing these positive interactions may assist in breaking down stereotypes of CCS staff who they can see are working collaboratively with the Koori Community.

### ***Leading Community Corrections Officer, Neighbourhood Justice Centre***