

TASMANIA
LAW REFORM
INSTITUTE

Circle Sentencing

Research Brief

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Contents

About the Tasmania Law Reform Institute.....	ii
1.1 Background and scope of Research Brief.....	1
1.2 Imprisonment.....	1
1.3 Circle sentencing.....	4
References.....	14
Appendix A.....	16

About the Tasmania Law Reform Institute

The Tasmania Law Reform Institute is Tasmania's peak independent law reform body. The Institute was established on 23 July 2001 by agreement between the Government of the State of Tasmania, the University of Tasmania and The Law Society of Tasmania. The creation of the Institute was part of a Partnership Agreement between the University and the State Government signed in 2000. The Institute is based at the Sandy Bay campus of the University of Tasmania within the Faculty of Law. The Institute undertakes law reform work and research on topics proposed by the Government, the community, the University and the Institute itself.

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- i. the modernisation of the law; and/or
- ii. the elimination of defects in the law; and/or
- iii. the simplification of the law; and/or
- iv. the consolidation of any laws; and/or
- v. the repeal of laws that are obsolete or unnecessary; and/or
- vi. adopting new or more effective methods for administering the law and dispensing justice; and/or
- vii. providing improved access to justice; and/or
- viii. uniformity between laws of other states, territories and the Commonwealth; and/or
- ix. the codification of laws; and/or
- x. promoting equality before the law.

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The Board oversees the Institute's research, considering each reference before it is accepted, and approving publications before their release.

1.1 Background and scope of Research Brief

This Research Brief has been prepared by the Tasmania Law Reform Institute. It has been prepared with a view to assist interested Tasmanian agencies explore the possibility of circle sentencing in Tasmania. Interested agencies have been indicated to include the Office of the Director of Public Prosecutions (DPP), the Tasmanian Aboriginal Legal Service (TALS), the Department of Education, Children and Young People (DCEYP), and several not-for-profit organisations.

The Research Brief provides an overview of circle sentencing, and outlines literature that has identified the strengths and weaknesses of circle sentencing. Circle sentencing is a model of sentencing adult offenders that reflects the incorporation of a restorative justice approach into the traditional sentencing process with the ‘aim to address over-representation of Indigenous people in the criminal justice system’ (CIRCA, 2008: 18). In Australia, most jurisdictions have sought to modify existing court processes to include Indigenous justice processes¹ and incorporation of Indigenous justice practices into formal sentencing to two main approaches:

- (1) the circle sentencing model which exists in New South Wales (NSW) and the Australian Capital Territory (ACT) (based on Canadian circle sentencing) or
- (2) the Nunga court structure, which exists in Victoria (Koori Courts), Queensland (Murri Courts), South Australia (Nunga Courts), and the Northern Territory (Community Court) (CIRCA, 2008).²

The focus of this paper is on the circle sentencing model.

1.1.1 This Paper also sets out information about the use of imprisonment as a sentence in Tasmania and the impacts of imprisonment (focused on adult offenders).

1.1.2 This Research Paper contains a description of the relevant literature and data but does not provide comment on this material. It provides a brief overview of recent literature in relation to circle sentencing to provide a basis for preliminary discussions on sentencing Tasmania. Links to key literature are contained in the Appendix (**Appendix A**).

¹ These include ‘the implementation of Indigenous cultural practices such as shaming, the involvement of Indigenous Elders to provide assistance and support in the sentencing process, the increased use of conferencing and Sentencing Circles, and the use of programs based on Indigenous models of supervision as alternatives to prison’ (CIRCA, 2008: 10). In the Tasmanian context, for example, it is noted that the *Youth Justice Act 1997* (Tas) s 11 allows for formal cautions to be administered by an Aboriginal Elder or representative, and s 14(2)(ii) requires community conference facilitators to invite an Elder or community representative if the youth is a member of an Aboriginal Community. The same requirement applies if a community conference is ordered by a court instead of proceeding to sentencing (ss 37, 38(2)(e)).

² It is noted that a specialist First Nations court in some courts was discontinued, and the only specialist court is the Barndimalgu Aboriginal Family Violence Court in Geraldton (see Law Society of Western Australia, 2021). For more detail on the Community Court, which is available on Groote Eylandt, see Northern Territory Local Court, *Community Court in the Northern Territory*: <https://localcourt.nt.gov.au/court-updates/community-court-northern-territory>.

1.2 Imprisonment

Structure of sentencing in Tasmania

A sentence of imprisonment is a sanction of last resort (Warner, 2002; *DPP v King* [2020] TASCCA 8). This means that imprisonment is only imposed if no other type of sentence is appropriate in the circumstances of the case. In Tasmania, there are two level of courts:

- the Supreme Court; and
- the Magistrates Court.

The Supreme Court hears the most serious ('indictable') offences such as murder, rape, sexual offences involving children, and other offences involving serious violence. Many of the offences dealt with in the Supreme Court are contained in the *Criminal Code* (Tas), where the maximum penalty for all crimes in the Code, other than murder and treason, is imprisonment for 21 years, or a fine or both.

Most people are sentenced in the Magistrates Court (approximately 97% of all people sentenced). The Magistrates Court deals with less serious matters ('summary offences'), such as minor driving offences, theft and minor assault. These offences are contained in several statutes, where the maximum penalty is generally set out in the provision creating the offence. There is also a limit to the length of a sentence that a magistrate can impose for an indictable offence, which is up to three years imprisonment for a first offence and five years for a subsequent offence.³

Adult offenders (and, in limited circumstances, youth offenders) are sentenced under the *Sentencing Act 1997* (Tas). This sets out a range of sentencing options for courts from imprisonment, suspended sentences (partly and fully suspended), and non-custodial sentences (from home detention to low-end sentencing orders such as a dismissal or discharge). Most people do not receive a sentence of imprisonment (10.2% or 820 people sentenced in 2022–23) (ABS, 2024a).⁴ This accounted for 33% of matters sentenced in the Supreme Court and 9% of matters sentenced in the Magistrates Court. Of those sentenced to custody in a correctional institution, the majority are sentenced in the Magistrates Court (79.5%).

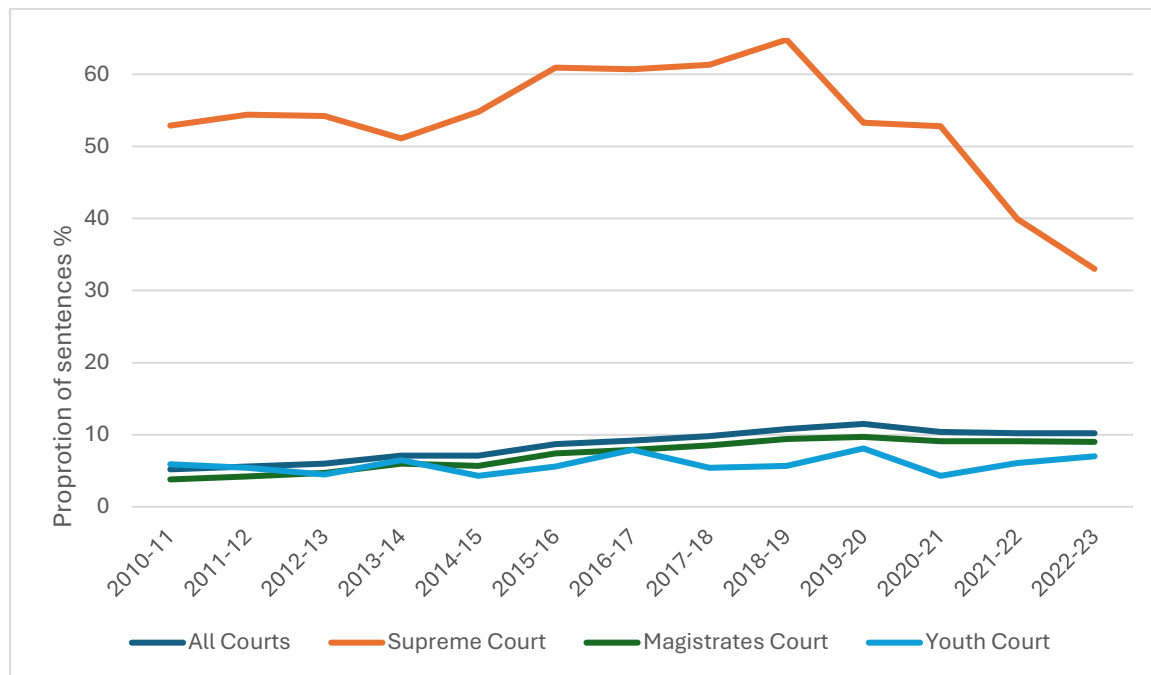
Rates of imprisonment

The use of imprisonment as a sentencing option in Tasmania (and other Australian jurisdictions) has increased over recent years. Figure 1 sets out the proportion of sentences of custody in a correctional institution imposed in Tasmania courts in the period 2014–15 to 2022–23. It is noted that over this period, while the proportion of sentences comprising custodial sentences has increased, the total of matters finalised in Tasmanian courts has significantly decreased from 19,786 defendants to 10,563 (ABS, 2024a).

³ *Sentencing Act 1997* (Tas) s 13.

⁴ In the ABS data, this is counted as custody in a correctional institution, which includes sentences of immediate imprisonment, partly suspended sentences of imprisonment, sentences of detention and partly suspended sentences of determination and secure hospital detention.

Figure 1: Sentences of custody in a correctional institution imposed on offenders sentenced, most serious sentence, Tasmanian courts, 2014–15 to 2022–23



There has also been an increase in the prison population in Tasmania reflecting, among other things, sentencing practices of courts (use of imprisonment as a sentencing option and length of sentence) as well as an increase in the number of people held on remand. In the period 2013 to 2023, the average daily number of the prison population in Tasmania has increased from 481 prisoners to 751 prisoners (a 56.1% increase). Over this period, the proportion of prisoners who were unsentenced (on remand) increased from 24.1% of the prison population to 38.7% (ABS, 2024b). In 2023, 65.5% of adults in Tasmanian prisons had previously been imprisoned (ABS, 2024b).

Data on imprisonment shows that, in 2023, Aboriginal and Torres Strait Islander adults: (a) are approximately 6.4% more likely to be in prison than the non-Aboriginal adult population nationally; and (b) make up 22.5% of the Tasmanian prison population (ABS, 2024b). It is noted that the majority of Aboriginal and Torres Strait Islander people have never been imprisoned (AIHW, 2024). However, data shows that the rate of imprisonment is much higher than that for non-Indigenous Australians. In 2023, the rate for Aboriginal and Torres Strait Islander Tasmanians in prison is 884.5 per 100,000 adults in comparison to 132.4 per 100,000 for non-Indigenous Tasmanians.

Impact of imprisonment

Prisons exist in all liberal democratic societies in one form or another. They play a role in achieving some objectives of sentencing for serious offending, particularly with regards to denunciation (i.e. demonstrating the community's condemnation of certain behaviour) and punishment (i.e. the community's expectation that offences receive a level of punishment that is proportionate to their seriousness).

Across Australia there are 89 government-run prisons and a further 9 prisons that are operated independently (SCRGs, 2023). Many factors can influence prison conditions – such as over-crowding, resourcing, fluctuations in external drug markets, pandemics and so forth – so it cannot be assumed that the impact of imprisonment is static over time, or that it is the same between prisons in Australia. It must also be noted that the impact that prison has upon any one individual will depend on many factors, including the length of the sentence they receive, and the social stigma associated with the main offence for which they were incarcerated.

Empirical literature notes very few positive impacts of imprisonment. There is some evidence that incapacitating certain types of offenders, including extremely dangerous and high-frequency offenders (Travis, Western & Redburn, 2014), reduces the levels of crime reported in the community (Weatherburn, Hua & Moffatt, 2006). It is also possible to find reports that prison can help some inmates to break cycles of drug addiction (Woodall, 2011), or to acquire qualifications,⁵ or improve aspects of their health (Travis, Western & Redburn, 2014).

By contrast, multiple studies using different methods have pointed to the negative effects of imprisonment for inmates and the broader community. Some of these effects are described here. Economic analyses have clearly demonstrated the substantial fiscal burden that prisons place on the public purse. Prison may be criminogenic for inmates. That is, it may increase the likelihood that they reoffend (Travis, Western & Redburn, 2014). The reasons for this are multifaceted.

- In prison inmates may forge new social networks which encourage them into certain types of crime (e.g. drug trafficking, burglary) post-release (Damm & Gorinas, 2020).
- Family connections and relationships with intimate partners are protective factors against offending. However, imprisonment places these relationships under strain, or contributes to their disintegration (Apel, Blockland, Nieuwebeerta et al., 2010), making reintegration into society post-release more difficult – and increasing the attraction of any social networks formed in prison. Not surprisingly, imprisonment also creates challenges for families too, including social stigma, and loss of income. Parental imprisonment is considered to be a risk factor for childhood substance misuse, offending, mental health issues, and poor educational outcomes (see Murray & Farrington, 2008).
- Like family connections, employment is a major protective factor against offending. Many studies have underscored that imprisonment may reduce inmates' future employment prospects, or at least reduce their future earnings (e.g. Morgan, 2018; Travis, Western & Redburn, 2014).
- Securing stable housing post-release can be extremely difficult for former prisoners (Martin et al. 2021), further compounding potential problems related to family bonds and employability.
- Compared with the general population, people who are sentenced to prison are more likely to have existing mental health problems (AIHW, 2023). These can be exacerbated, or caused by, the prison environment, particularly if inmates suffer sexual (Richters et al., 2012) or physical (Goulding, 2007) violence.
- Prisons with strong drug markets enable inmates to maintain or develop substance misuse behaviours. Substance misuse represents a significant risk for recidivism (Payne & Gaffney, 2012) and a major barrier to the reintegration of inmates into the community when they are released from prison. That is because substance misuse is strongly associated with criminal behaviour, unemployment, and relationship instability (Makkai & Payne, 2003). When injecting drug use occurs in prison it can contribute to the rate of blood-borne virus infections in the community (Levy et al., 2007). Established prison drug markets are also often associated with increased levels of violence and intimidation (McSweeney, 2008).

The impacts of imprisonment on Aboriginal and Torres Strait Islander people, who are grossly overrepresented in the Australian prison system, can be particularly acute:

Imprisonment compounds existing social and economic disadvantage and affects family, children, and the broader community with intergenerational effects. This cycle can lead to a normalisation of incarceration where prison is no longer a deterrent but instead a fact of life.

⁵See, eg, <https://prisonerseducation.org.uk/story/garrys-story-studying-for-a-degree-in-prison/>.

Imprisonment also has social and health effects following release, such as adverse employment, financial, housing, and mental health or other health consequences (AIHW, 2023).

Judicial perspectives on imprisonment

In *DPP v King* [2020] TASCCA 8 at 60 Wood J stated:

Imprisonment is severe punishment (*Power v The Queen* (1974) 131 CLR 623 at 627) and should be the last available punitive resort in any civilised system of criminal justice (*Mainwaring v The Queen* [2009] NSWCCA 207 at [71]). It is a fundamental principle of sentencing that a custodial sentence is a punishment of last resort and should not be imposed unless it is ‘necessary’, and when no other punishment is appropriate: *Underwood v Schiwy* [1989] Tas R 269 per Nettlefold J; *James v Turner* [2006] TASSC 54, 15 Tas R 375 at [6] per Evans J; *Parker v Director v of Public Prosecutions Public Prosecutions* (1992) 28 NSWLR 282 at 296.

Her Honour stressed that the harm associated with imprisonment does not only apply to an offender but also extends to the community more generally, and this harm is the explanation as to why imprisonment should be considered a penalty of last resort (*DPP v King* [2020] TASCCA 8, 61–62):

The disadvantages and cost to the individual and the community associated with imprisonment were referred to in Boulton:

“[107] Importantly for present purposes, these features of the restrictive prison environment also have the consequence that the opportunities, and incentives, for rehabilitation are very limited. For example, there is no access to sustained treatment for psychological problems or addiction. Access to anger management and sex offender treatment programs is rationed, and such programs are often unavailable to those sentenced to short prison terms.

[108] In addition, imprisonment is often seriously detrimental for the prisoner, and hence for the community. The regimented institutional setting induces habits of dependency, which lead over time to institutionalisation and to behaviours which render the prisoner unfit for life in the outside world. Worse still, the forced cohabitation of convicted criminals operates as a catalyst for renewed criminal activity upon release. Self-evidently, such consequences are greatly to the community's disadvantage.”

1.3 Circle sentencing

What is circle sentencing?

Circle sentencing is ‘an alternative sentencing option with the full sentencing powers of a traditional court, for Aboriginal offenders that meet a specific set of conditions’ (Yeong & Moore, 2020: 2). It includes the local Aboriginal community in the sentencing process, which in practice means that usually the magistrates work with ‘a group of Aboriginal elders, victims, respected members of the community and the offender’s family to determine the appropriate sentence’.

Informed by principles of restorative justice, circle sentencing (and other restorative justice programs for Aboriginal Australians), arose following the recommendations of the Royal Commission into Aboriginal Deaths in Custody (Yeong & Moore, 2020: 2). The intention is to address negative

experiences of Indigenous people with the justice system, recidivism and the over-representation of indigenous people in prison (Yeong & Moore, 2020). Circle sentencing originally developed in Canada, and the model seeks to address crime prevention issues by adopting a holistic approach, involving significant others (such as family or Elders), developing community ownership responsibility and capacity building, and having a culturally appropriate response (CIRCA, 2008).

Operation of circle sentencing in Australia

Circle sentencing exists in NSW and the ACT. The structure of these programs is set out in Table 1. As recognised by Daly, Barratt and Williams, circle sentencing courts have dual criminal justice and community building aims. The criminal justice aims are to reduce recidivism, improve court appearance rates and reduce the over-representation of Indigenous people in the criminal justice system. The community building aims are to provide a culturally appropriate process, increase community participation and contribute to reconciliation (Daly, Barrett & Williams, 2020). Circle sentencing is not intended to be (and nor is it structured to operate as) a ‘soft option’ (Daly, Barrett & Williams, 2020: 11).

In Australia, the largest program is the Circle Sentencing program in NSW. It was introduced in 2002 with eight objectives as set out in the *Criminal Procedure Regulations 2017* (NSW) reg 39:

- (a) to include members of Aboriginal communities in the sentencing process,
- (b) to increase the confidence of Aboriginal communities in the sentencing process,
- (c) to reduce barriers between Aboriginal communities and the courts,
- (d) to provide more appropriate sentencing options for Aboriginal offenders,
- (e) to provide effective support to victims of offences by Aboriginal offenders,
- (f) to provide for the greater participation of Aboriginal offenders and their victims in the sentencing process,
- (g) to increase the awareness of Aboriginal offenders of the consequences of their offences on their victims and the Aboriginal communities to which they belong,
- (h) to reduce recidivism in Aboriginal communities.

Table 1: Overview of circle sentencing programs in Australia

		Eligibility	Participants in circle sentencing group	Powers/purpose	Availability	Legislation
New South Wales	Circle Sentencing Intervention Program ⁶	- Aboriginal person - Pleaded guilty in relevant Local Court - Agree to participate - Assessed as suitable for participation by an Aboriginal Community Justice Group - Court considers that person likely to serve a relevant sentence (imprisonment, including intensive corrections order, community corrections order or a conditional release order) - Not an excluded offence (these include rape and other sexual offences, assault occasioning grievous bodily harm, child pornography offences, offences involving the use of firearms, some drug offences)	- Magistrate - Offender and legal representative - Offender's community members (4 Aboriginal Elders) - The police officer - A police prosecutor - Sometimes family members or victim	- Determine appropriate plan (if any) for treatment or rehabilitation - Recommend appropriate sentence (full sentencing powers of Local Court are available). It is usually the case that by majority rule the penalty is determined but magistrate retains final say - Collaborative and culturally sentence approach to determine most appropriate sentence	Selected local courts	<i>Criminal Procedure Act 1986</i> (NSW) Pt 4 Division 2 <i>Criminal Procedure Regulations 2017</i> Pt 7
	Walama List Court (pilot)	- Aboriginal person - Pleaded guilty	Sentencing conversation attended by: Judge	The purpose of a sentencing conversation is to discuss: (a) the nature of the offending behaviour;	Sydney District Court	<i>District Court Criminal</i>

⁶ In NSW, there is a Youth Koori Court that is for young people under the age of 18 years. It has similarities with circle sentencing (see Ienna, 2023).

		Eligibility	Participants in circle sentencing group	Powers/purpose	Availability	Legislation
		- Agreed to statement of facts - Agreed to participate - Referral to list and then a 'sentencing conversation' to be held to determine whether an offender is suitable (factors set out in practice direction) - Not a prescribed sexual offence, conspiracy to murder or attempted murder, wounding or grievous bodily harm with intent or choking suffocation and strangulation	- Offender and legal representative - Prosecution - Allocated Community Corrections Officer and/or caseworkers - Two Aboriginal or Torres Strait Islander Elders or Respected Person - Support person for the offender (discretion of judge) - Senior Aboriginal Client and Community Support Officer - Any other person Judge considers appropriate including but not limited to any victim(s) and their support person	(b) the implications of that offending behaviour on the victim(s); (c) the offender's family and community; (d) the offender's background; (e) the offender's need for treatment and/or a rehabilitation program, and the availability of a suitable program/s; (f) the offender's willingness to comply with a Walama Case Plan; and (g) any other matter relevant to sentencing. This operates as a deferral of sentence (so conditions are imposed through bail). The offender undertakes 'Walma Case Plan' and upon completion of the Plan, the offender is sentenced.		<i>Practice Note 26⁷</i>
ACT	Warrumbul Circle Sentencing Court	- Aboriginal or Torres Strait Islander - Pleaded guilty	Family Conference, which is attended by: Magistrate or Registrar	The Court aims to divert young people away from criminal behaviour by having the young person engage with their culture and community, surrounded by their family and	ACT Childrens Court	<i>Practice Direction Childrens Court 2⁸</i>

⁷ See https://districtcourt.nsw.gov.au/documents/practice-notes/221121District_Court_Criminal_Practice_Note_26.pdf.

⁸ See https://www.courts.act.gov.au/_data/assets/pdf_file/0007/1413781/Practice-Direction-2-of-2019_Warrumbul-Court.pdf.

		Eligibility	Participants in circle sentencing group	Powers/purpose	Availability	Legislation
		• Agreed to participate and acknowledges that did something wrong • Offence is within the jurisdiction of the court and is not a sexual offence • Aged 10–17 years • Appropriateness assessed at a Family Conference	• Court Coordinator • Panel of Elders • Young person • Young person’s parents, caregiver or support person • Young person’s lawyer (if requested by young person) May have Rehabilitation Pathway Conference (RPC), attended by: • Magistrate • Court Coordinator • Panel of Elders • Young person • Young person’s parents, caregiver or support person • DPP • Member of AFP	relevant support agencies to identify rehabilitation pathways or sentencing options. Intended to identify underlying issues that contributed to a young person’s offending behaviour, facilitate appropriate rehabilitation, reduce the risk of reoffending, and promote Aboriginal and Torres Strait Islander communities’ confidence in the court process. Appropriateness of circle sentencing is decided by Elders based on Family Conference and this is provided to magistrate or registrar. Based on this, the matter is listed before RPC, circle sentencing or back before Childrens Court. Following successful completion of rehabilitation pathway, a charge may be dismissed (if appropriate) or the young person will be sentenced at a Circle Sentencing Hearing The Circle Sentencing Hearing is to finalise the matter by imposing sentence		

		Eligibility	Participants in circle sentencing group	Powers/purpose	Availability	Legislation
			- If relevant, representative of government agency(s) - Young person's lawyer Circle sentencing attended by same as RPC			
	Galambany Circle Sentencing Court	- Aboriginal or Torres Strait Islander - Pleaded guilty - Agreed to have suitability assessed and to participate fully - Offence is within the jurisdiction of the Magistrates Court and is not a sexual offence	Magistrate Panel members and Elders Victim (if victim wishes)	Aimed to enhance relationships between Aboriginal and Torres Strait Islander community and the ACT criminal justice system. It aims to: - involve Aboriginal and Torres Strait Islander communities in the sentencing of Aboriginal and Torres Strait Islander defendants - Increase confidence of communities in the sentencing process - Reduce barriers between the Magistrates Court and community - Provide culturally appropriate, restorative and effective sentencing options - Provide support services to assist overcome offending behaviour	Magistrates Court	<i>Practice Direction Galambany Court</i> ⁹ –

⁹ See https://www.courts.act.gov.au/_data/assets/pdf_file/0004/2554627/Practice-Direction-Galambany-Court.pdf.

		Eligibility	Participants in circle sentencing group	Powers/purpose	Availability	Legislation
				• Provide support to victims of crime and enhance their rights and participation in the sentencing process • Reduce the risk factors related to re-offending by Aboriginal and Torres Strait Islander defendants		

Potential benefits of circle sentencing

There are several advantages of circle sentencing identified (reflected in the aims and purposes of the circle sentencing programs in NSW and the ACT) and generally supported by research that has focused on the benefits to offenders and communities. The following benefits are identified from the 2020 NSW Bureau of Crime Statistics research by Yeong and Moore, the 2020 cost benefit analysis conducted by Daly, Barratt and Williams in the ACT and the 2008 CIRCA NSW report. The 2020 cost benefit analysis from the ACT concludes that the court ‘delivers substantial economic benefits far exceeding the costs’ and provides ‘a strong support for continued investment’ (Daly, Barrett & Williams, 2020: 41).

Links to these documents are contained in the Appendix (**Appendix A**).

(1) Reduces sentences of imprisonment

Research examining the use of circle sentencing in New South Wales between 2005 and 2018 (published in 2020) found that offenders who participated in circle sentencing were 51.7% less likely to receive a sentence of imprisonment than those sentenced in the usual way (Yeong & Moore, 2020).¹⁰ This may potentially be attributed to the circle group having ‘a deeper insight into the circumstances of the offence’, and that this may lead to reduced recidivism by the imposition of ‘different, potentially more effective penalties’ (Yeong & Moore, 2020: 15).

In the ACT, Daly, Barrett and Williams (2020: 33–34) observed that the court ‘provides a net economic benefit ... by diverting offenders from the mainstream courts and prison to community-based programs’.

(2) Reduced recidivism

The NSW Bureau of Crime Statistics found that offenders participating in circle sentencing were 9.6% less likely to reoffend than offenders who did not participate (measured by offending within 12 months) and that offenders participating in circle sentencing took longer to reoffend when they did commit a new offence (10.3% longer) (Yeong & Moore, 2020). This was contrary to the findings of earlier 2008 NSW Bureau of Crime Statistics research, which found that participation in circle sentencing had no effect on a reduction in the frequency of re-offending, the time to reoffence or the seriousness of re-offending (Fitzgerald, 2008). Yeong and Moore (2020) suggested that this difference may reflect the resolution of teething issues in the early years of the program (such as inadequate and alcohol support services) and/or a larger sample size used in the 2020 study. In 2008, the Cultural and Indigenous Research Centre Australia, observed that the information provided to them in qualitative interviews about the impact of circle sentencing on recidivism did not match the reality of the 2008 BOSCAR data (which showed no impact), and that ‘the common perception identified in the qualitative consultations among stakeholders is that Circle Sentencing is having an impact on reoffending, or that it is too early to tell’ (CIRCA, 2008: 7). It was noted that it was ‘important to consider the balance between the weight given to the many objectives of Circle Sentencing that have a broader community benefit (and that are to some extent difficult to measure statistically) and the weight given to the objective specifically related to recidivism’ (CIRCA, 2008: 7).

Yeong and Moore make two caveats in relation to these 2020 data: (1) the estimates cannot be interpreted causally; (2) even if the recidivism estimates could be interpreted causally, there was some (limited) evidence to indicate that circle sentencing may be associated with an increase in violent recidivism. The authors noted that ‘[w]hether the net benefits of a net reduction in (non-violent) crime exceeds the cost of an increase in violent crime is beyond the scope of this paper but is an important avenue for future research’ (Yeong & Moore, 2020: 14). However, they observe that if circle sentencing

¹⁰ Yeong and Moore note that there is a need to understand why circle groups assign different penalties when compared to a magistrate working in isolation. They also suggest future research to investigate the link between circle sentencing and health outcomes.

can achieve the goal of lowering the Indigenous incarceration rate, ‘without adversely affecting recidivism, the net benefit to society is difficult to overstate’ (Yeong & Moore, 2020: 15).

(3) Reduce perceived barriers between Aboriginal people and the courts

Daly, Barrett and Williams (2020: 4), write that:

Galambany Court has strengthened the justice system’s connection with Aboriginal and Torres Strait Islander offenders, while reducing demands on government agencies (such as police, courts, hospitals, foster care, emergency housing etc).

It is seen to benefit the justice system by improving relationships with the Aboriginal and Torres Strait Islander community, improving awareness and understanding of Aboriginal and Torres Strait Islander people and providing for better communication and relationships between community members and legal professionals (Daly, Barrett & Williams, 2020). The Court was also seen to provide offenders and their families with a voice in the justice system (Daly, Barrett & Williams, 2020).

(4) Increase awareness by offenders of the consequences of their actions

(5) Increase confidence within Aboriginal and Torres Strait Islander communities in sentence

(6) More appropriate sentencing outcomes

Daly, Barrett and Williams (2020: 15) observe that: the court’s ‘ability to delve deeper into the underlying reasons to the offender’s attitude and subsequent behaviour, enables Galambany Panel Members to prescribe more pertinent sentencing options’.

Other potential benefits that have been included in Australian research include the positive impact of participation on many of the Elders involved, and the involvement and increased responsibility of the community through its involvement (CIRCA, 2008).

Risks/issues to be considered

There have been risks to the successful operation of circle sentencing and issues identified in NSW and the ACT. In NSW, Yeong and Moore (2020) noted several issues that had been identified in prior research, particularly relating to the early stages of implementation. Many of these risks to be avoided or potential issues were also identified in the ACT.

(1) Need to be appropriately supported by resources

These resources include availability and access to drug and alcohol support services (Yeong & Moore, 2020; see also CIRCA, 2008: 8). There is also a need for the program to be appropriately and sufficiently supported by resources more generally through the community (e.g. the involvement of Elders) and court resources (Yeong & Moore, 2020). It has been noted that circle sentencing is resource-intensive for the Magistrates, Project Officers and Elders (CIRCA, 2008). There is a need for the circle sentencing court to have access to extra community services (Yeong & Moore, 2020).

(2) Need for better data keeping, particularly in relation to involvement of victims

Early evaluations of circle sentencing noted the need for better data keeping (Yeong & Moore, 2020; CIRCA, 2008).

(3) The circle not proceeding as planned (e.g. the defendant not listening to or following the advice of the Elders) (Yeong & Moore, 2020).

In the CIRCA (2008: 7–8) research, a concern was expressed in one location that the ‘Elders express their personal values during a Circle, and that these views are “pushed” onto the offender’.

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