
**NSW ATTORNEY GENERAL'S
DEPARTMENT**

**EVALUATION OF CIRCLE SENTENCING
PROGRAM**

REPORT



**CULTURAL & INDIGENOUS RESEARCH
CENTRE AUSTRALIA**

May 2008

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1. EXECUTIVE SUMMARY

Introduction and objectives

Circle Sentencing – commonly referred to as just 'Circle' – commenced in New South Wales in February 2002 in Nowra Local Court. Since then the program has been expanded to Armidale, Bourke, Brewarrina, Dubbo, Kempsey, Lismore, Mount Druitt and Walgett Local Courts. As of September 2007, about 230 Aboriginal offenders had participated in a Circle Sentence.

Schedule 4 of the *Criminal Procedure Regulation 2005* sets out the eight objectives of Circle Sentencing:

- To include members of Aboriginal communities in the sentencing process
- To increase the confidence of Aboriginal communities in the sentencing process
- To reduce barriers between Aboriginal communities and the courts
- To provide more appropriate sentencing options for Aboriginal offenders
- To provide effective support to victims of offences by Aboriginal offenders
- To provide for the greater participation of Aboriginal offenders and their victims in the sentencing process
- To increase the awareness of Aboriginal offenders of the consequences of their offences on their victims and the Aboriginal communities to which they belong
- To reduce recidivism in Aboriginal communities.

Circle Sentencing allows for input from the victim and offender, and directly involves Aboriginal people in the sentencing, with the goal of empowering Aboriginal communities through their involvement. It is an alternative sentencing tool for NSW Magistrates and promotes the sharing of responsibility between the community and the criminal justice system. Circle Sentencing attempts to address the causes of criminal behaviour and to develop solutions to issues raised, and it also actively involves the community in solving its own problems.

In 2007 the Cultural & Indigenous Research Centre Australia (CIRCA) conducted an evaluation of the Circle Sentencing program. The aim of this evaluation was to review Circle Sentencing to:

- Assess whether the program is achieving the stated objectives
- Asses the program's effectiveness in reducing reoffending

- Identify any unintended positive or adverse effects of the approach
- Identify any factors influencing acceptance and non-acceptance within local Aboriginal and non-Aboriginal communities
- Suggest ways to improve the effectiveness and cost-efficiency of the program.

The method

The evaluation methodology included a comprehensive qualitative approach, the analysis of existing data on Circle Sentencing offenders and Local Court data, and a literature review of Australian trends with regard to Indigenous sentencing programs and existing evaluations.

The evaluation included the following elements:

- A range of literature on Indigenous crime prevention and justice programs was sourced to inform the evaluation.
- Site visits were conducted at all nine Circle Sentencing locations, and access to research participants was facilitated through the Project Officer in each location. In locations where Circle Sentencing had been operating for a longer time (Nowra, Dubbo and Brewarrina), two site visits were conducted. The initial site visits in Nowra, Brewarrina and Dubbo were conducted in April 2007, and the remainder of the fieldwork was conducted between September and November 2007.
- The research had a significant and critical observational component. Ten Circles were observed across a range of locations, and this observation was important as it allowed for the analysis to extend beyond the feedback provided by key stakeholders to include commentary on the implementation of the program. Observations of Circles were conducted in Nowra (one Circle), Lismore (two), Dubbo (three), Mt Druitt (three) and Kempsey (one).
- Face-to-face depth interviews and group discussions were conducted with stakeholders in each location. Several telephone interviews were also conducted to accommodate the availability of some of the research participants. In total, 115 people participated in the evaluation, with the following groups being included:
 - Circle Sentencing Project Officers (referred to as Project Officers in this report)
 - Elders
 - Offenders

- Victims
 - Local Court Magistrates
 - Police Prosecutors
 - Police
 - Legal representatives, including Aboriginal Legal Services and Legal Aid
 - Community-based services
- The NSW Bureau of Crime Statistics and Research (BOCSAR) analysed data from the Reoffending Database to assess whether Aboriginal people participating in Circle Sentencing have lower rates of recidivism.

The results

The results, in brief, for each of the evaluation objectives are detailed below.

Has Circle Sentencing achieved its stated objectives?

Based on the qualitative analysis, the evaluation suggests that each of the objectives of Circle Sentencing is being met (excluding recidivism objectives, which are discussed in the following section). For most of the people involved in the evaluation, confidence in the sentencing process is high. Elders, Project Officers and offenders also indicated that barriers between Aboriginal people and the courts have reduced to some extent, and that the sentencing outcomes are culturally appropriate when compared to the Local Court.

The evaluation did identify a few limitations with regard to Circle Sentencing meeting these objectives:

- Participation of offenders in Circle Sentencing is significant, although when compared to the total number of Aboriginal people with a proven offence in the Local Court, the number involved in Circle Sentencing is limited
- In most locations the support services available to address related issues such as alcohol and other drug use are not adequate, which it was felt limited the effectiveness of the Circle Sentencing approach
- The number of victims included in the evaluation was limited (n=6), and therefore it is difficult for the evaluation to be conclusive regarding the level of support provided to victims, especially with regard to victims of domestic violence. This issue requires further investigation

- Related to this is the fact that insufficient data is collected to allow for an understanding of the level of involvement of victims based on offence type and location. To allow ongoing monitoring of victim participation it would be beneficial if the Project Officers uniformly collected this information.

Has Circle Sentencing been effective in reducing reoffending?

The BOCSAR analysis found that Circle Sentencing did not influence the rate of reoffending, or the seriousness of the offence for those who reoffended. On the other hand, 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. Many provided specific examples of cases where Circle Sentencing had influenced a dramatic change in circumstances for the offender, or noted that only a few of those who had been through Circle Sentencing had reoffended. There appears to be a conflict between people's perceptions of the impact of Circle Sentencing on recidivism and the reality of the data.

The results of the evaluation indicate that it is 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. This is important, as reducing recidivism is one of eight objectives of Circle Sentencing as identified in Schedule 4 of the *Criminal Procedure Regulation 2005*.

Are there any unintended positive or adverse effects of Circle Sentencing?

One of the most important unintended benefits of Circle Sentencing is the positive impact that participation has had for many of the Elders involved. Many of the Elders included in the research had a strong sense of achievement as a result of their participation, with discussions about the impact on their levels of pride, confidence and community status.

Other unintended benefits include perceptions that community members take more responsibility for the actions of other members through their involvement in Circle Sentencing. It was also suggested in one location that Circle Sentencing has reduced the impact of factional issues. Several stakeholders highlighted the benefits of Circle Sentencing as a community-based approach for addressing domestic violence within Aboriginal communities, although more research is needed on this issue.

Two unintended negative effects of Circle Sentencing were identified in the research. One related to concerns that in some cases Elders express their personal values during a Circle, and that these

views are 'pushed' onto the offender. This was only raised in one location. Another adverse effect of Circle Sentencing was the resource-intensive nature of the approach and the resource implications this has for the Magistrates, Project Officers and Elders involved.

What factors influence acceptance and non-acceptance of Circle Sentencing within local Aboriginal and non-Aboriginal communities?

The two factors that appear to have the greatest impact on acceptance of Circle Sentencing are the skills and commitment of the Project Officer, and the support and attitude of the Magistrate.

Other factors that influenced acceptance of Circle Sentencing (to a lesser extent) included the nature of the factions in the community, with examples given where Circle Sentencing had a positive impact on these factions, and others where historically Circle Sentencing had been linked to particular factions, which had a negative impact on levels of acceptance.

The research also suggests that concerns about the resources required for Circle Sentencing influenced levels of acceptance in the non-Aboriginal communities, as did perceptions that Circle Sentencing is a 'soft option'.

What suggestions are there for ways to improve the effectiveness and cost-efficiency of Circle Sentencing?

The research identified a range of factors that could improve the effectiveness of Circle Sentencing. These include:

- Assisting Project Officers to increase the number of Elders involved in Circle Sentencing. Ideally it would be beneficial if this were the responsibility of the Project Officers and the Magistrates
- Providing support for Project Officers with regard to debriefing or counselling (if relevant). This support should also be available to Elders where relevant
- Providing additional administration and process support for Project Officers, such as standardised forms, information-sharing across locations, and consistent approaches for tasks such as updating of Elders, post-sentence follow-up and monitoring
- Developing a formal and consistent orientation program for Elders
- Covering the out-of-pocket expenses of Elders

- Improving the data collection and ongoing monitoring of Circle Sentencing, including the participation of victims and the monitoring of offenders post-sentencing. This could be assisted by establishing formal communication mechanisms between the community sector, Probation and Parole, and the Project Officers. As part of this monitoring, Elders should be informed of the progress of offenders
- Improving the availability of support services for offenders.

2. INTRODUCTION

It is well documented that Indigenous people are over-represented in the prison systems of all Australian jurisdictions.

In response, most jurisdictions have developed programs seeking to modify existing court processes and include Indigenous justice processes. These modifications have taken a number of forms, including 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.

Some of the fundamental principles that underpin Indigenous programs that seek to effectively address crime prevention issues are:

- Adopting a holistic approach incorporating different strategies
- Involvement of significant others, such as family and community Elders
- Community ownership, responsibility and capacity-building, and
- Culturally appropriate programs and staff.

Circle Sentencing commenced in New South Wales in February 2002 in Nowra Local Court. Since then the program has been expanded to Armidale, Bourke, Brewarrina, Dubbo, Kempsey, Lismore, Mount Druitt and Walgett Local Courts. As of June 2007, about 230 Aboriginal offenders had participated in a Circle Sentence.

Schedule 4 of the *Criminal Procedure Regulation 2005* sets out the eight objectives of Circle Sentencing:

- To include members of Aboriginal communities in the sentencing process
- To increase the confidence of Aboriginal communities in the sentencing process
- To reduce barriers between Aboriginal communities and the courts
- To provide more appropriate sentencing options for Aboriginal offenders
- To provide effective support to victims of offences by Aboriginal offenders

- To provide for the greater participation of Aboriginal offenders and their victims in the sentencing process
- To increase the awareness of Aboriginal offenders of the consequences of their offences on their victims and the Aboriginal communities to which they belong
- To reduce recidivism in Aboriginal communities.

Circle Sentencing allows for input from the victim and offender, and directly involves Aboriginal people in the sentencing, with the goal of empowering Aboriginal communities through their involvement. It is an alternative sentencing tool for NSW Magistrates and promotes the sharing of responsibility between the community and the criminal justice system. Circle Sentencing attempts to address the causes of criminal behaviour and to develop solutions to issues raised, and it also actively involves the community in solving its own problems.

The aim of this evaluation was to review the Circle Sentencing Program to:

- Assess whether the program is achieving the stated objectives
- Asses the program's effectiveness in reducing reoffending
- Identify any unintended positive or adverse effects of the approach
- Identify any factors influencing acceptance and non-acceptance within local Aboriginal and non-Aboriginal communities
- Suggest ways to improve the effectiveness and cost-efficiency of the program.

3. METHODOLOGY

The evaluation methodology included a comprehensive qualitative approach, the analysis of existing data on Circle Sentencing offenders and Local Court data, and a literature review of Australian trends with regard to Indigenous sentencing programs and existing evaluations.

This approach was used to gather feedback on levels of community acceptance of Circle Sentencing, operational issues, and the extent to which the program has met its objectives in relation to addressing crime issues cooperatively within Aboriginal communities and improving the communities' confidence in the judicial system.

This section outlines each aspect of the evaluation methodology and also discusses limitations that should be considered in the interpretation of the research findings.

3.1 LITERATURE REVIEW

A range of literature on Indigenous crime prevention and justice programs was sourced to inform this evaluation. The following sources provided relevant information for the evaluation:

- NSW Aboriginal Justice Advisory Council
- Judicial Commission of NSW
- Aboriginal Affairs Department
- Australian Institute of Health and Welfare
- Australian Institute for Aboriginal and Torres Strait Islander Studies (AIATSIS)
- National Crime Prevention Unit (Attorney General's Department)
- NSW Bureau of Crime Statistics and Research.

In particular, evaluations conducted on Indigenous sentencing courts across Australia were reviewed and documented to ensure the evaluation considered what is already known with regard to the effectiveness of this model.

3.2 QUALITATIVE CONSULTATIONS

Consultations were conducted with a range of individuals and representatives at each Circle Sentencing location, including:

- Circle Sentencing Project Officers (referred to as Project Officers in this report)
- Elders
- Offenders
- Victims
- Local Court Magistrates
- Police Prosecutors
- Police
- Legal representatives, including Aboriginal Legal Services and Legal Aid
- Community-based services.

Site visits were conducted at all nine Circle Sentencing locations, and access to research participants was facilitated through the Project Officer in each location. In locations where Circle Sentencing had been operating for a longer time (Nowra, Dubbo and Brewarrina), two site visits were conducted. The initial site visits in Nowra, Brewarrina and Dubbo were conducted in April 2007, and the remainder of the fieldwork was conducted between September and November 2007.

Importantly, the research had a significant and critical observational component. Ten Circles were observed across a range of locations, and this observation was important as it allowed for the analysis to extend beyond the feedback provided by key stakeholders to include commentary on the implementation of the program. Observations of Circles were conducted in Nowra (one Circle), Lismore (two), Dubbo (three), Mt Druitt (three) and Kempsey (one).

Face-to-face depth interviews and group discussions were conducted with stakeholders at each location. Several telephone interviews were also conducted to accommodate the availability of some of the research participants.

Table 1 details the consultations conducted in the evaluation. In total, 115 depth interviews/group discussions were conducted with a wide range of stakeholders.

Table 1 – Number of interviews conducted by location and stakeholder group

Location	Circles observed	Interviews conducted					
		Project Officer	Elders	Offenders	Victims	Court officials	Other
Armidale	0	1	7	1	0	2 – Police Prosecutor and Magistrate	2 – Police, AMS
Bourke	0	1	5	1	1	2 – Magistrate and Aboriginal Client Service Specialist (ACSS)	1 – Private Solicitor
Brewarrina	0	1	3	1	0	2 – Magistrate and Local Court Registrar	1 – Aboriginal Legal Services
Dubbo	3	1	4	8	2	2 – Magistrate and Local Court Registrar	2 – Aboriginal Legal Service, Domestic Violence Service
Kempsey	1	1	10	0	0	3 – Magistrate, Aboriginal Client Service Specialist (ACSS), Police Prosecutor	3 – Offenders' Support (parents), Victims Support Group, NSW Police Domestic Violence Liaison Officer
Lismore	2	1	4	2	0	3 – Magistrate, Lismore Court Registrar, Police Prosecutor	2 – Support person, Legal Aid Solicitor
Mt Druitt	3	1	6	3	0	2 – Police Prosecutor and Magistrate	2 – Aboriginal Legal Service, Men's Shed Program
Nowra	1	1	4	5	3	2 – Police Prosecutor and Magistrate	1 – Rehabilitation Centre
Walgett	0	1	4*	0	0	0	0
TOTAL	10	9	47	21	6	18	14

* This was conducted via a teleconference

3.3 ANALYSIS OF CRIME DATA

The NSW Bureau of Crime Statistics and Research (BOCSAR) analysed data from the Reoffending Database to assess whether Aboriginal people participating in Circle Sentencing have lower rates of recidivism. To do this, a group of Aboriginal offenders dealt with through the Circle Sentencing process was compared with a control group of Aboriginal offenders sentenced through the ordinary court process. The Circle Sentencing group comprised 147 individuals Circle Sentenced between February 2002 and June 2007¹ (their reference court appearance). The control group comprised 21,343 Aboriginal adults found guilty in NSW courts outside Sydney between February 2002 and June 2007 (their reference court appearance) who did not participate in a Circle Sentence. The control group was drawn from courts outside Sydney because most Circle Sentences have been held outside Sydney.² The control group did not include individuals whose reference court appearance involved offences ineligible for Circle Sentencing.

A more detailed description of the method of analysis and a discussion of the results can be found in Section 7.2.

3.4 EVALUATION QUESTIONS

Below are examples of issues explored as part of this evaluation:

- Community and individual perceptions about the role and impact of Circle Sentencing:
 - The role Circle Sentencing plays in providing support for Aboriginal offenders
 - The role Circle Sentencing plays in supporting victims
 - The role Circle Sentencing plays in healing and reconciliation
 - The role Circle Sentencing plays in the handling of crime and related social issues
 - Perceptions about the relevance and meaningfulness of sentencing options under Circle Sentencing
 - Resolution of community conflicts

¹ BOCSAR was provided with details of 153 Circle Sentences from courts operating the program. Six of these individuals were excluded as their Circle Court appearance could not be located in the Local Court database. This could be because many of the courts in which Circle Sentencing operates are not computerised and court finalisations are recorded on paper forms and mailed to the Bureau of Crime Statistics and Research. It is possible that forms were not received for the Circle Sentencing appearances that could not be located. For the four people Circle Sentenced more than once, their first Circle Sentence was taken as the reference appearance.

² The Circle Sentencing group included only two people (1.4% of the Circle Sentencing group) who had been Circle Sentenced in Sydney. Both were dealt with at the Mt Druitt Local Court in 2007.

- Awareness of, understanding of and confidence in the overall judicial process:
 - Barriers that currently exist between courts and Indigenous people
 - Improvement in the level of support for Indigenous offenders and victims of crime
 - Levels of confidence in the process
 - Perceived gaps in the process
 - Identifying the relevant position of Circle Sentencing within the overall judicial process
 - Levels of understanding of Circle Sentencing and the process (community and individual perceptions)
- Behavioural changes:
 - Acceptance of responsibility for criminal behaviour by offenders
 - Pride in culture and self-confidence of offenders after leaving the Circle
 - Increased awareness of the consequences of offences
- Sustainability:
 - What happens with changes in staff (e.g. Aboriginal Project Officer), generational changes within the community, etc
 - Assessment of the continued ability to reflect community needs and maintain relevance
- Crime rates:
 - Level of juvenile and other offences in the community since inception
 - Court appearances
 - Number of completed court orders
 - Reoffending data.

3.5 LIMITATIONS

3.5.1 *Qualitative nature of the evaluation*

A large number of consultations were conducted in all locations with a range of stakeholders. Qualitative approaches such as these are effective in ensuring the voice of key stakeholders is adequately captured. However, as with any research of this kind, involvement is often skewed towards those with a positive perception of the program, due to the voluntary nature of the research process. This is especially true of the consultations with Elders and offenders, as the research accessed those

with a tendency to be passionate about the program. Participants were recruited through the Project Officers, and this also has implications in terms of potentially skewing the results.

There are also limitations in terms of hearing the voices of victims in this research. Compared to all other stakeholder groups, fewer victims were consulted, and this needs to be considered in the interpretation of the research results.

3.5.2 *Recidivism data*

Qualitative evaluations are challenging for a number of reasons, with the most common criticism being the lack of 'hard' or 'measurable' evidence provided. While the analysis conducted by BOCSAR of offending data for those who have attended a Circle aimed to address this to some extent, there were limitations.

One of the objectives of Circle Sentencing is to reduce recidivism. To draw conclusions about reductions in recidivism, analysis requires a control group that can be used as the point of reference when assessing the reoffending rates of Circle offenders versus those who have not attended a Circle. Given that the focus in each location varies widely in terms of the type of offences that come before Circle, and the extent of offending history, identifying a control group is very challenging. As well, the number of people attending Circle is relatively small when compared to the total number of Aboriginal offenders in each of the locations, which limits the robustness of the sample.

It should also be noted that data collection in each Circle Sentencing location varied, and therefore it is difficult for reoffending to be monitored on an ongoing basis. This is an area where improvements could be made to increase the ability of the Attorney General's Department and BOCSAR to monitor reoffending rates on a regular basis.

4. LITERATURE REVIEW

This literature review aims to provide the evaluation with a summary of what is already known about the effectiveness of Circle Sentencing and similar Indigenous justice practices nationally.

4.1 CURRENT APPROACHES TO INDIGENOUS SENTENCING COURTS IN AUSTRALIA

Over the last 15 years there have been moves occurring in most Australian states and territories towards incorporating the benefits of rehabilitative/restorative justice measures, which aim to address over-representation of Indigenous people in the criminal justice system, into mainstream justice practices. The measures ultimately seek to address disproportionate incarceration rates, as well as endeavouring to address excessive levels of violence and other forms of antisocial behaviours experienced by many Aboriginal communities.

Current Indigenous justice practices have been introduced in response to the recommendations of the Royal Commission Into Aboriginal Deaths in Custody (1991) (RCIADIC). Less formally, Indigenous justice practices have been taken into account by courts for many decades,³ with the move towards formal recognition of Indigenous cultural practices in sentencing processes a more recent occurrence.

The Nunga Court, piloted in 1999 in South Australia, was the first formal approach to acknowledge and incorporate Indigenous justice practices into formal sentencing without diminishing the rights of the offender or the integrity of the Court.

The motivation for establishing Indigenous courts is not to elevate the pre-eminence of customary law over conventional western legal frameworks, but rather to adapt mainstream court processes to one that is more culturally responsive and relevant for Aboriginal people. This review therefore will not examine the current discourse on customary law defences in Australian courts, except to say that there are, in certain cases, mitigating culturally specific circumstances that need to be taken into when considering appropriate sentencing decisions.

Since the introduction of the Nunga Court in 1999, all jurisdictions (except Tasmania and the Federal Court) have established justice practices aimed at addressing the over-representation of Indigenous people in the criminal justice system. The structure of Indigenous sentencing courts varies across jurisdictions, although most states and territories have adopted the Nunga Court structure, except NSW and the ACT, where the structure of the Circle Court is based on Canadian Circle Sentencing.

While approaches vary among jurisdictions, all Indigenous justice practices involve Elders and/or respected persons from Aboriginal communities, as well as the offender and their family/support persons, and the victims and their support persons. Another aspect of the Aboriginal sentencing courts is that they are conducted in less formal settings than the usual court surroundings. These aspects of Indigenous court practices allow for culturally appropriate processes to be adhered to, as well as to deliver sentences that are culturally relevant and which take into consideration the history and circumstances of the defendant.

4.2 CIRCLE SENTENCING IN NSW

Circle Sentencing was first introduced in Nowra in 2002 as an initiative of the Aboriginal Justice Advisory Council (AJAC) and the NSW Attorney General's Department (AGD). It has since been expanded to nine locations across NSW.

The category of offences eligible for Circle Sentencing is broad, with the main criterion being that it must be a matter that can be finalised in a Local Court, that it can carry a term of imprisonment, and that a term of imprisonment is judged a possible outcome. Strictly indictable offences, such as serious robberies, sexual assault or indictable drug offences, are ineligible.

The New South Wales Aboriginal Justice Advisory Council has summarised the benefits of Circle Sentencing as follows:⁴

- The Circle Court receives information about the whole community, the offender's background, the impact of the offence on the victim, and the problems experienced by the local community
- The community input in determining the sentence greatly improves the potential for workable solutions and promotes sharing of responsibility between the community and the criminal justice system. As well, causes of criminal behaviour are considered, with attempts made to address these causes
- The Circle Court allows for the community to be collectively responsible for determining the outcomes, and this shared responsibility is carried beyond to the implementation of the sentence
- Circle Sentencing allows for the values of Indigenous people and the structure of the western justice system to be merged.

³ For more detail see Australian Law Reform Commission (1986) *The Recognition of Aboriginal Customary Laws* and Law Reform Commission of Western Australia (2005) *Aboriginal Customary Laws Discussion Paper*.

⁴ Aboriginal Justice Advisory Council (2000b) *Circle Sentencing Discussion Paper*, New South Wales Aboriginal Justice Advisory Council, Sydney.

In its 2003 review of the NSW Circle Sentencing pilot, the Judicial Commission noted that:

*The flexible framework of the model was designed to reflect the diversity of Aboriginal communities in NSW and to allow for local community control of the process. Specifically the model was designed to allow local Aboriginal communities to adapt processes to meet their own local culture and experiences.*⁵

The review continues:

*Circle Court deliberations are typified as power-sharing arrangements. It is recognised that if the community does not have the confidence that the power-sharing arrangements will be honoured, the prospect that Circle Sentencing will be successfully implemented is likely to be diminished. The fundamental premise underlying the philosophy of Circle Sentencing is that the community holds the key to changing attitudes and providing solutions.*⁶

The review concluded that overall there was a very high level of satisfaction with Circle Sentencing among participants. One of the main findings was that all participants valued their role in contributing to the justice process and achieving a final outcome that was acceptable to all. Of further significance was the finding that Aboriginal community members unanimously felt that the process had a strong impact on the offenders and that it went some way to redressing their offending behaviour.⁷

However, the review did highlight the costs (human and financial) of Circle Sentencing, and raised the question 'what price justice?' This is an important question that is yet to be answered when exploring all of the reviews that have been conducted to date.

4.3 OTHER JURISDICTIONS

Other reviews and evaluations of Aboriginal courts have also concluded that the general perception is that they provide a more culturally appropriate justice approach, and that the involvement of the Elders is highly valued and considered critical to the success of the program.

⁵ Potas I et al, *Circle Sentencing in New South Wales – A review and evaluation*, Judicial Commission of NSW & NSW Aboriginal Justice Advisory Council, Sydney, 2003, p4.

⁶ *ibid.*

⁷ *ibid.*

4.3.1 Nunga Court (South Australia)

'Aboriginal Court Day' or the 'Nunga Court' has been operating in the Port Adelaide Magistrate's Court since June 1999. It was the first formal Aboriginal sentencing court to be established in Australia. The Court deals with Aboriginal people who plead guilty to an offence. The structural setting of the Court sees the Magistrate sitting off the bench, at eye level with the offender and all other participants. An Aboriginal Elder or an Aboriginal Justice Officer is seated next to the Magistrate to advise on cultural and community matters.⁸

An information bulletin providing a brief review of the Nunga Court concluded that one of the Court's aims of improving Aboriginal attendance rates had been achieved, with more than three-quarters of the cases dealt with in 2003-04 presenting. While figures were not available on the attendance rates in mainstream courts, "anecdotal evidence indicates that they are considerably lower".⁹

The review observed:

*If the single, most critical ingredient of the Court's success had to be identified, it would be the free and open exchange of views and comments that are encouraged by the Magistrate. This creates a conversational environment and builds trust and mutual understanding between Local Courts and Aboriginal communities.*¹⁰

The review provides key considerations for the future development of the Nunga Court that are equally relevant to the evaluation considerations of Circle Sentencing in NSW.¹¹ Some of those considerations are:

- Payments for Aboriginal Elders are now available, to acknowledge and compensate them for the many hours of work and to encourage other community leaders to offer their services
- Skills of the Magistrates need to be updated, as Aboriginal courts require Magistrates that are comfortable in dialogue and unfamiliar styles of communication. Aboriginal courts are about the process as much as the outcome

8 Welch, C. (2002) South Australian Courts Administration Authority – Aboriginal Court Day and Aboriginal Justice Officers, *Indigenous Law Bulletin*, ILB3, 2002.

9 Tomaino, J. (2004) *Aboriginal (Nunga) Courts*, Office of Crime Statistics and Research, Government of South Australia, Information Bulletin, p.7.

10 *ibid*, p.12.

11 *ibid*, p.13.

- Extending the Aboriginal court network statewide would enable the main Aboriginal communities to be serviced. It was suggested that Aboriginal courts, with the same Magistrate and support staff, could go on circuit across the state
- Providing offenders with more support upon release from court could help to ensure that they do not reoffend because of lack of housing or work, or simple issues such as not having a bus ticket to return home.

The review concluded that any evaluation of Aboriginal justice processes needs to consider important questions:

Aboriginal Courts must not be compared to an idealised vision of justice that does not exist but rather, to their alternatives (i.e. the current mainstream Courts). Efforts to introduce new ways of delivering justice should always be subjected to careful scrutiny to ensure that core judicial values such as certainty, impartiality and fairness are not compromised.

An evaluation could focus on the outcomes achieved from stakeholders' perspectives (i.e. procedural justice), accompanied by relevant data including attendance rates, penalty outcomes and recidivism. There is therefore a need for reliable data collection to inform practitioners about the operations of Aboriginal Courts. A capacity to accurately monitor the Courts' performance will also enable early identification of problematic trends and issues and inform the development of ameliorative strategies.¹²

4.3.2 Koori Court (Victoria)

The Koori Court was introduced in Shepparton in 2002 and in Broadmeadows in 2003. An evaluation was conducted over the first two years of the Shepparton Koori Court and the first 18 months of the Broadmeadows Koori Court.

The Koori Courts are conducted in a remodelled courtroom, and the participants include the Magistrate, the Elders or respected persons (two participants, with one to assist in the hearing), the Koori Court Officer, the defendant, the defendant's solicitor, the Police Prosecutor and a representative of Community Correctional Services. A member of their family or a supporter may join the defendant. If there is a victim, they too can be invited to participate, or alternatively a victim impact statement may be provided to the Court.

¹² *ibid*, p.14.

The review of the Koori Court in Victoria identified that, by employing specific Indigenous approaches, justice issues have been well received by Indigenous communities, primarily because their level of trust and understanding of the Court's decision is improved precisely because they are involved.¹³

Nevertheless, while most of the research provides positive feedback, it is difficult to draw strong conclusions from the evaluation on the impact of the Indigenous sentencing courts on reducing recidivism rates.

Despite the data limitations, the evaluation concluded that "it is clear that in virtually all of the stated aims of the Koori Court pilot program, it has been resounding success" (Harris 2006, p.8).

In particular, the review found that the Koori Courts:

- Reduced the level of recidivism among Koori defendants – Shepparton Koori Court had a recidivism rate of approximately 12.5% for the two years of the pilot program, and the Broadmeadows rate was approximately 15.5%, both significantly less than the general level of recidivism in Victoria, which is 29.4%
- Increased the level of Koori community participation in and ownership of the administration of law
- Developed an effective means of integrating the various service providers who might be involved in tailoring community-based orders
- Strengthened the Koori community through reinforcing the status and authority of Elders and respected persons.

4.3.3 Murri Court (Queensland)

The Murri Court was introduced in 2002 in Brisbane and some time later in Caboolture, Rockhampton, Mount Isa and Townsville. In 2006 the Murri Court was established in Cherbourg. A defining feature of the Murri Court is that it operates in the Children's Court as well as the Magistrates Court. The review also notes that, while not specifically operating as a Murri Court, several Magistrates Courts are "formally assisted by Aboriginal Community Justice Groups, Elders and respected persons when dealing with some Indigenous offenders on some matters".¹⁴

¹³ Briggs and Auty 2003

¹⁴ Parker N & Pathe M (2006) *Report on the Review of the Murri Court*, State of Queensland Department of Justice and Attorney General, December, 2006, p.14.

The Murri Court mostly deals with minor or non-violent offences such as stealing, receiving stolen property, unlawful use of a vehicle, illegal entry of premises, driving offences, drug offences and breach of bail conditions. Categories of violent offences dealt with most often in the Murri Court are assaulting or obstructing police, breaches of family violence orders, and assault.¹⁵

Like the Nunga and Koori courts, the Murri Court is conducted in the regular courtroom and with the Magistrate and other participants, including the offender, sitting together at the bar table. The defendant is not handcuffed or placed in the dock. The Magistrate addresses the offender and encourages the offender to speak directly to the Court and Elders. The Magistrate then invites the Elders to speak. The Elders may challenge the offender and explain the impact of their behaviour on the community, their family and themselves.¹⁶

Despite the lack of comparable data on sentencing outcomes, anecdotal evidence provided by Magistrates suggests that many of the offenders appearing before a Murri Court would have otherwise received a custodial sentence. The review notes that there are indications that the Murri Court is having success in regard to its objective of diverting offenders from prison.¹⁷ The review however highlights the limitations of court information systems, the Murri Court outcomes data and the short time that the Murri Court has been operating as challenges that led to the review not being able to determine whether the Murri Court is meeting its goals:

*... the Murri Court had only been in operation for no more than four years in any one location, with small numbers of offenders appearing, so recidivism rates and order breach rates calculated at this stage are not reliable.*¹⁸

The review goes on to recommend the establishment of a specific Murri Court database to address the data limitations.

Despite the data limitations, overall the review found that the Murri Court has been successful in:

- Involving Elders and respected persons in the court process, and from this, assisting the offenders to develop trust in the Court
- Assisting offenders to undertake rehabilitation
- Assisting offenders to be more responsible for their offending behaviour because of the presence of community members

¹⁵ *ibid*, p.17.

¹⁶ *ibid*, p.18.

¹⁷ *ibid*, p.24.

- Increasing awareness among offenders of the impact of their offending behaviour on victims and their own community
- Increasing Indigenous community participation in and ownership of community-building and collaboration goals.

The review made a large number of recommendations, among which are:

- That additional training of Elders and respected persons be provided on the legal system, Department of Corrective Services and Department of Communities programs, available support services and programs for offenders, the writing of pre-sentence reports and the importance of confidentiality
- That the Murri Court needs to be adequately resourced, given that many participants from the Department of Justice, AGD and other agencies expressed concern at the amount of work they were required to do to maintain the Court that was not within their core work duties
- That a Murri Court database be established.

While anecdotally the review suggests that the Murri Courts are meeting their objectives, one of the key recommendations of the review was for a comprehensive and independent evaluation to be conducted once adequate data is available. This review will likely provide more reliable evidence to assess whether the Murri Courts are meeting their objectives, as well as assessing the cost and efficiencies, a key question given the resource-intensive nature of this program.

4.3.4 Yandeyarra Circle Court (Western Australia)

There is limited information on the Circle Court in Yandeyarra, although feedback from the Magistrate who convened the Court from September 2003 to June 2004 noted that for the 50 to 60 matters dealt with by the Court there had been no breaches of the community-based orders. This was thought to be directly linked to the strong community support for the Court and the existence of good local support facilities, such as the women's centre, Aboriginal out-camp and juvenile bail hostel.¹⁹

¹⁸ *ibid*, p.25.

¹⁹ Law Reform Commission of Western Australia, 2005.

4.4 STRATEGIC IMPLICATIONS FOR THE CURRENT REVIEW

The general conclusion drawn from these reviews is that Indigenous sentencing courts offer a culturally appropriate means of administering sentences to Indigenous offenders and are effective in engaging Indigenous communities.

Despite the overwhelmingly positive feedback reported in the reviews, it is clear that there is an urgent need for the development of data collection processes that are able to provide accurate data in relation to reoffending. The current inability to measure recidivism limits any evaluation's ability to making claims about the program meeting one of its prime objectives. One of the implications of this review is that it highlights the need for qualitative considerations such as capacity-building and re-engagement with the criminal justice system to be considered in conjunction with hard statistical data.

5. CIRCLE SENTENCING PROGRAM DESCRIPTION

This section details resource and structural issues in relation to Circle Sentencing.

5.1 PROJECT OFFICERS

The Circle Sentencing Project Officer provides a vital link between the Local Court and the Aboriginal community and coordinates the Circle Sentencing program at each location. The role of the Project Officer is to assist the Magistrate in establishing the program, coordinating Circle Sentencing sessions and assisting Aboriginal people when appearing at court when not working on the Circle Sentencing trial. The key accountabilities of the position are to:

- Organise Circle Sentencing sessions and advise the Magistrate on the progress of those sessions
- Advise the local community about the program
- Advise participants in Circle Sentencing sessions of their requirements
- Provide liaison between the judiciary, magistracy and the registrar of the Local Court and court staff and the Aboriginal community in order to facilitate more effective feedback between the parties
- Liaise with police, the Aboriginal Legal Service, the probation service and other agencies in order to facilitate and maximise cooperation between parties in the operation of the program
- Visit Aboriginal communities and meet with Aboriginal organisations in order to increase awareness of the Circle Sentencing program
- Maintain a database of information on the Circle Sentencing program in that location
- Provide personal support for Aboriginal people appearing before the Local Court in order to increase their understanding and awareness of courtroom procedures and to reduce their alienation and fear of attending court
- Advise on the processes and procedures relating to warrants, in order to reduce the number of Aboriginal people with outstanding warrants
- Help Aboriginal people understand the process for payment of fines.

5.2 THE ASSESSMENT PROCESS

When an Aboriginal person pleads guilty or is found guilty in a NSW Local Court,²⁰ they may, depending on the offence committed²¹ and the capacity of the Circle Sentencing Court, be referred by the Magistrate for assessment.

As part of the assessment process, the Project Officer confers with members of the local Aboriginal Community Justice Group (ACJG), who form an assessment team (usually comprised of two or three members). The Project Officer, the ACJG assessment team and the offender and support person meet to determine if the case is suitable for Circle Sentencing. This process involves gathering background information about the offender, including information about their family members, in order to understand how connected an individual is to the community and whether there are any potential conflicts of interest.

After consideration, the ACJG assessment team provide advice to the Elders (sometimes they are the same people) and the Project Officer regarding the suitability of the individual for Circle Sentencing, and if the individual is found suitable the team will provide information to the Elders and the Project Officer about the offender as an aid to exploring issues at the time of the Circle.

Offenders deemed unsuitable for Circle Sentencing are referred back to the Local Court for sentencing. There is no right of appeal to the ACJG assessment team's decision, but an offender can decide to be sentenced by the Magistrate if preferred.

Circle Sentencing will not proceed if the offender commits another offence prior to the Circle.

In most locations, those involved in Circle Sentencing have preferred that people only have the opportunity to appear before the Circle once, although there have been a few cases where people have attended a Circle more than once.

²⁰ In this report, 'offender' is used to refer to persons found guilty in a NSW Local Court.

²¹ A range of offences are excluded from Circle Sentencing based on section 348 of the *Criminal Procedures Act*. Most of these exclusions refer to more serious offences (including, but not limited to, murder; rape; sexual assault; child pornography; offences involving fire arms; possession of child pornography).

5.3 THE CIRCLE STRUCTURE

The structure of the Circle is as follows:

- The typical composition of Circle Sentencing hearings is three to four Elders, the Magistrate, the Police Prosecutor, the Circle Sentencing Project Officer, the offender and the offender's solicitor (usually Legal Aid or Aboriginal Legal Service), the victim and their support person, and sometimes the victim's solicitor. The NSW Sheriff's Office provides an officer for security purposes, but the officer usually sits outside of the Circle and is not considered part of the Circle
- The Magistrate reads out the offence committed and any other details relevant to the case
- The Elders give a brief introduction and provide the offender with an opportunity to speak
- The offender provides information relevant to the offence and explains their actions. Usually this is an opportunity for the offender to express remorse and detail mitigating factors for their behaviour
- If a victim is present, they are asked to present their side of the story and their experiences as a victim
- Elders often ask at this stage for the offender to respond to the victim, if appropriate, which provides a further opportunity for the offender to express remorse and to apologise to the victim
- Elders may ask the opinion of any support people present to broaden their understanding of the situation and offence. Often support people and victims can be one and the same, as domestic violence is prevalent in many Aboriginal communities, with partners and other family members subjected to violence
- After hearing the victims and support people, the Elders may ask further questions of the offender to better understand the offender's situation so as to assist in deciding on a sentence
- There are two ways in which the Elders will reach a decision:
 - After receiving advice from the Magistrate and comments from the offender's solicitor, everyone is asked to leave the room while the Elders reach a sentence. The Magistrate may be called back into the room to provide extra advice if required, but the final sentence determination is made by the Elders. Once the decision has been made, everyone is called back into the room and the sentence is handed down. This process is

followed in Armidale, Kempsey and Dubbo, and a similar process is followed in Lismore, although in Lismore only the offender leaves during the sentencing discussion

- After receiving advice from the Magistrate, the Elders confer with each other while everyone is present. According to Elders who reach a sentencing decision this way, this approach provides transparency as well as providing the offender with the rationale for the decision reached. This approach is followed in Bourke, Brewarrina, Mt Druitt, Nowra and Walgett
- The offender is given a chance to ask questions or make a comment about the sentence provisions and agrees to accept the sentence. If the offender does not agree to the sentence, an appeal can be made to the Local Court. There has been only one example of an offender appealing a sentence identified in this evaluation
- The Elders thank everyone for their participation and the Circle is adjourned.

5.4 THE CIRCLE SENTENCING CONSTITUTION

Schedule 4 of the *Criminal Procedure Regulation 2005* sets out the eight objectives of Circle Sentencing:

- To include members of Aboriginal communities in the sentencing process
- To increase the confidence of Aboriginal communities in the sentencing process
- To reduce barriers between Aboriginal communities and the courts
- To provide more appropriate sentencing options for Aboriginal offenders
- To provide effective support to victims of offences by Aboriginal offenders
- To provide for the greater participation of Aboriginal offenders and their victims in the sentencing process
- To increase the awareness of Aboriginal offenders of the consequences of their offences on their victims and the Aboriginal communities to which they belong
- To reduce recidivism in Aboriginal communities.

6. PROFILE OF COMMUNITIES

There were nine NSW communities included in the evaluation where Circle Sentencing is operating. The data in Table 2 provides a comparison of key demographics, employment information and information pertaining to the Circles in each of the communities.

Table 2 – Comparative information relating to communities included in the evaluation (including data from 2006 and 2007)

	Armidale	Bourke	Brewarrina	Dubbo	Kempsey	Lismore	Mt Druitt	Nowra	Walgett
Demographic information²²									
Total persons	23,368	3,096	1,945	37,843	27,387	42,210	20,036	26,168	1,735
Total Indigenous persons	1,273	911	1,157	3,910	2,540	1,578	679	1,720	822
Indigenous (%)	5.4%	29.4%	59.5%	10.3%	9.3%	3.7%	3.4%	6.6%	47.4%
Indigenous employment information²³									
Employed (%)	32.4%	37.5%	35.3%	42.0%	27.3%	39.7%	38.5%	34.1%	32.8%
Unemployed (%)	15.8%	12.3%	9.1%	11.8%	8.9%	13.3%	14.1%	11.1%	8.4%
Local Court data²⁴									
# Total offenders	439	231	134	917	743	1,462	1,501	1,205	291
# Indigenous offenders	128	183	115	395	297	375	248	305	224
% Indigenous offenders	29.2%	79.2%	85.8%	43.1%	40.0%	25.6%	16.5%	25.3%	77.0%
Circle data									
Circle start date	Sep 06	Mar 06	Jan 05	Aug 03	Sep 05	Mar 06	Jan 07	Jan 02	Apr 05
Number of Circles ²⁵	19	15	19	69	18	32	9	48	2
# Elders in pool ²⁶	20-30	29	4	10-15	8	4	N/A	20	30
Focus of matters going to Circle ²⁷	DV	Assault	DV	DV & offens. behav.	Assault	Driving	Driving & DV	N/A	N/A

22 Australian Bureau of Statistics, Census of Population and Housing, 2006.

23 Australian Bureau of Statistics, Census of Population and Housing, 2006.

24 NSW Bureau of Crime Statistics and Research for 2006.

25 AGD Data – total number of Circles conducted @ June 2007.

26 Based on feedback from Circle Sentencing Project Officers during research conducted in 2007.

Mount Druitt, in Sydney, is the only Circle operating in a major metropolitan centre. Armidale, Dubbo, Kempsey, Lismore and Nowra are all regional centres. Bourke, Brewarrina and Walgett are smaller, more isolated communities, serviced by limited community infrastructure in comparison to the other communities in the evaluation. These three communities also have the highest proportion of Indigenous people to total population, as well as the highest proportion of Indigenous offenders compared to total offenders.

As Table 2 shows, the number of Indigenous offenders varies considerably across locations, with Dubbo, Lismore and Nowra having over 300 Indigenous people with a proven offence at the Local Court in 2006. These three locations also account for the largest number of Circles that have been conducted. Kempsey, Mt Druitt and Walgett also have large numbers of Indigenous people with a proven offence at a Local Court, and the number in Walgett is significant given that only two Circles have been conducted there since the program started in April 2005.

While the time periods for the Local Court data and the number of Circles conducted is not comparable, the results do indicate that a minority of cases go to Circle. In 2006 there were 2,270 Indigenous people with proven offences in the nine locations. In comparison, for these nine locations, 231 people had attended Circle Sentencing.

27 Based on feedback from Circle Sentencing Project Officers during research conducted in 2007.

7. EVALUATION FINDINGS

This section details the research findings and analysis relevant to each of the evaluation objectives, as follows:

7.1 – Has Circle Sentencing achieved its stated objectives (as identified in the *Criminal Procedure Regulation 2005*)? In particular:

- Has Circle Sentencing included members of Aboriginal communities in the sentencing process?
- Has Circle Sentencing increased the confidence of Aboriginal communities in the sentencing process?
- Has Circle Sentencing reduced barriers between Aboriginal communities and the courts?
- Does Circle Sentencing provide more culturally appropriate sentencing options for Aboriginal offenders?
- Does Circle Sentencing provide effective support to victims of offences by Aboriginal offenders?
- Does Circle Sentencing provide for greater participation of Aboriginal offenders and their victims in the sentencing process?
- Does Circle Sentencing increase the awareness of Aboriginal offenders of the consequences of their offences on their victims and the Aboriginal communities to which they belong?

7.2 – Has Circle Sentencing been effective in reducing reoffending?

7.3 – Are there any unintended positive or adverse effects of Circle Sentencing?

7.4 – What factors influence acceptance and non-acceptance of Circle Sentencing within local Aboriginal and non-Aboriginal communities?

7.5 – What suggestions are there for ways to improve the effectiveness and cost-efficiency of Circle Sentencing?

7.1 HAS CIRCLE SENTENCING ACHIEVED ITS STATED OBJECTIVES?

7.1.1 *Has Circle Sentencing included members of Aboriginal communities in the sentencing process?*

In summary ...

Circle Sentencing includes members of Aboriginal communities in the sentencing process through the involvement of Elders, offenders, victims and Project Officers. The research indicates that, while participation varies across locations, the involvement of Elders has many benefits, although there are opportunities to increase the number of Elders involved.

Participation of offenders is significant, although when compared to the total number of Aboriginal people with a proven offence in the Local Court the proportion of Aboriginal offenders involved in Circle Sentencing is limited.

The evaluation indicates that members of Aboriginal communities are included in the sentencing process through the involvement of Project Officers, Elders, offenders and victims. While the number of Elders involved varies by location, in total there are over 100 involved in Circle Sentencing. The Elders included in this research spoke very positively about their involvement, with the words 'pride' and 'respect' used often when discussing their involvement in Circle Sentencing. However, this evaluation highlights that in some locations the number of Elders involved is limited, and that steps need to be taken to increase the pool of Elders available.

In terms of offenders, at the time of the research over 220 offenders had attended a Circle Sentence. This compares to 2,270 Aboriginal people who had had a proven offence in the Local Court in 2006 in the nine locations (based on Local Court data). This suggests that the proportion of Aboriginal people coming before the courts that are accessing Circle Sentencing is limited.

Information on the participation of victims is not collected consistently, so it is not possible to identify the extent to which victims are involved.

The participation of each of these stakeholder groups, and the impact of their participation, is discussed in Sections 7.1.6 and 7.4.

7.1.2 Has Circle Sentencing increased the confidence of Aboriginal communities in the sentencing process?

In summary ...

Elders expressed a high level of confidence in Circle Sentencing, and this confidence was based on the level of respect given to Elders, the seriousness of the Circle Sentencing process as experienced by the participants, and the engagement with and response from offenders. This confidence was also based on a belief that Circle Sentencing takes into account the unique circumstances of the offender and provides a sentence that addresses underlying problems that influence offending behaviour.

Most offenders consulted through the research expressed having confidence in Circle Sentencing. The offenders responded positively to the level of engagement and interaction in the Circles with Elders and the Magistrate.

Circle Magistrates also expressed a high level of confidence in the process, as did most court officials and support services consulted.

In assessing the level of confidence in the sentencing process, feedback was gathered from a range of people involved in the process, including Elders, offenders, victims, services, Aboriginal Legal Aid representatives and court officials. This section provides feedback on the results for each of these key groups, although, as discussed in Section 3.5, the results may be skewed towards the positive due to the voluntary nature of qualitative research and the tendency for those positively inclined to participate.

The review found that the Elders involved in Circle Sentencing expressed a high level of confidence in the process, with varying degrees of personal satisfaction and achievement through their involvement in the Circles. Confidence in the sentencing process was based on the following:

- The authority and respect afforded them by the Circle process and court officials, with particular consideration of the respect shown by Magistrates
- Witnessing the seriousness of the process and the resources allocated to it through the involvement of a Project Officer, who acts as an important enabler and a valuable community resource
- Seeing the reaction of offenders to the Circle process in their shame, embarrassment and remorse

- Having the opportunity to express community expectations about the offenders' behaviour as well as the offenders' responsibilities to their family, Indigenous community and wider community
- Having their sentencing decisions respected by and endorsed by the Magistrate.

Overall, most of the Elders consulted during this review had a high level of confidence in the sentencing process, and in most cases this confidence was based on a belief that Circle Sentencing takes into account the unique circumstances of the offender and provides a sentence that addresses underlying problems that influence offending behaviour, such as alcohol use. Indeed, many Elders identified the greater time allowed for in the Circle compared to the Local Court, and the increased level of interaction in the Circle, as proof that Circle Sentencing is more appropriate. This led to increased confidence in the process:

In normal court processes there is no engagement, the Magistrate does not get to know the offender's history and circumstances. With Circle, the Magistrate is more involved and learns the stories of the offenders. (Elder, Kempsey)

I think it makes people more confident in the system. In regular court I often hear clients say the Judge is racist, but in Circle they feel more protected and never make the same claims. (Solicitor, Lismore)

There are a number of potential challenges to this confidence which need to be monitored and responded to. These are:

- The impact of changes to the Circle process such as those represented by changing Circle Magistrates or changes in the nature of matters being referred to Circle – This is a critical issue as one of the main outcomes of the Circles is an increase in legal literacy regarding Circles. When familiar processes are changed or expectations challenged, the result can be a reduction in confidence, which, if it remains unaddressed, can result in conflict and a total loss of confidence. For example, in one location a change in Magistrate resulted in a change in the focus of offences selected, with driving offences excluded from Circle Sentencing
- A threat to the impartiality of the Circle if it becomes the domain of an individual community or network at the expense of others – In one location where the role of Project Officer had been conducted by several people over time, the Elders suggested that previous Project Officers had not engaged with the broader Aboriginal community

- A perception among some Circle Sentencing Project Officers that the position was under-resourced – It was felt that the responsibilities of the Project Officers are considerable and that 'burnout' could be a potential concern if they are not resourced adequately
- Perceptions of lack of respect for the Circle process by court officers, with the support of the Magistrate being the major contributor to confidence – This is discussed further in Section 7.6.7.

A few Elders commented that, within the broader Aboriginal communities, levels of confidence in Circle Sentence usually depended on the level of exposure of community members. A few Elders felt that there were some in the community who dismissed Circle Sentencing, but that if their family participated in Circle Sentencing in almost all cases the end result was a high level of confidence in the process.

Most Circle Magistrates delivered a strong endorsement of the Circles and expressed both satisfaction with and confidence in the role of Elders and the legitimacy of a cultural intervention. This confidence was demonstrated by their approach to Circle, their behaviour and demeanour during Circles, and the views they expressed in interviews.

Offenders and victims in most cases spoke of having a high level of confidence in Circle Sentencing, although the level of consultation with victims in this research was limited, so further research is needed in this area.

Almost all offenders interviewed indicated that they were attracted to Circle principally because they believed that they would get a softer sentence. The issue of being judged by their community was a secondary motivation at best. Their response to the Circle experience was highly emotional, and deep. They were surprised at the authority given to the Elders in the process, the presence of court officials prepared to engage with them, the seriousness of the process, and the severity of the sentences imposed.

A key to offenders' confidence is the greater opportunity that Circle Sentencing provides to participate in the sentencing process. For example, the main point raised was that the Circle experience was so different from their previous experiences in court. These experiences were characterised by sitting in a busy courtroom, not really understanding what was going on, and receiving a tap on the shoulder by the solicitor to indicate that the matter had finished. Offenders contrasted this experience with their experience in Circle Sentencing, which involved:

- A Magistrate who was showing respect to the Elders, the victim and the offender by engaging with them during the process

- The Elders in the court talking directly to offenders and making them feel responsible not only for their actions but for the effect these actions have on their families and community
- Having family there to support them and witness their shame in front of other community members.

For most offenders this was the first time they had actually been spoken to by Elders and been able to speak directly to the Magistrate:

It's a big difference being able to speak your mind and your feelings, unlike when you are in court where you can't get stuff off your chest. The court is all a system, but not them [Circles], there is a sense of reality. (Offender, Dubbo)

It was a lot deeper, it brought things up you wouldn't think. I was honest out of respect for the Elders and they were faces that I knew. (Offender, Dubbo)

In normal court you don't know what's going on. Your lawyer stands up and the Magistrate deals with them and when they finish talking you get taken outside and told what the decision was and what would happen next. (Offender, Mt Druitt)

They [the Elders] don't let you look to the ground, they want you to look them in the eye and cop it. (Offender, Dubbo)

They may have been able to laugh at the law behind its back, but not with Circle Sentencing because it's with your peers. (Elder, Armidale)

One Elder commented that when sentences are handed down in a Circle the offender accepts the penalty because they have been part of the process, and that this creates some kind of onus to honour the spirit in which the sentence was given. The Elder continued that this responsibility to honour the sentence handed down by Elders is often accompanied by a change in attitude. When sentences are handed down in a Local Court, the offender has had no meaningful involvement in the process, resulting in little motivation to change and often non-compliance with the sentencing requirements. One of the Magistrates interviewed also identified that the offenders are more likely to accept the sentence given their involvement in the process.

Overall, the response to Circle by offenders was highly positive, and they acknowledged its value and legitimacy.

It should be noted that Elders from a few locations cited examples where they felt the offender did not respect the Circle process. In most cases these examples were of offenders who were not linked to the local community, and it was felt that this link is critical in ensuring the offender respects Circle and has confidence in the process. Based on this, there was a preference for offenders from the community where the Elders “know their families and know where they’re from”.

Solicitors from the Aboriginal Legal Service were consulted, and overall the level of confidence in Circle Sentencing was high, with most (but not all) proactive in referring offenders to Circle Sentencing, and many acting as advocates for the program. The only criticism identified was the limitation with regard to the number of offenders able to access Circle Sentencing.

The views expressed by support services involved in the Circle process, such as victim support in domestic violence cases and service support for sentences, suggested that confidence among Aboriginal community members in the Circle process is very high.

The final measure of confidence was demonstrated by the role of the Circle Sentencing Project Officer. A key observation in the review was that a successful Circle was in large part the result of the multiskilled role of the Project Officer. In many cases these people have become valuable community members and key community resources. Generally there is a direct relationship between the community having confidence in the Project Officer and the community having confidence in the Circle Sentencing process. While in most cases this reliance on the Project Officer was beneficial, in one location where the Project Officer did not have adequate skills to complete the role effectively it was a major limitation. This also suggests that reliance on the one individual may have long-term implications if there are staff changes.

Discussions of confidence in the Project Officers included discussions of the origin of the Project Officer. This is detailed in Section 7.6.1, although it is worth noting at this point that confidence in the Project Officer appears to be influenced primarily by their level of skill, commitment and community involvement, rather than their cultural links to the community.

7.1.3 Has Circle Sentencing reduced barriers between Aboriginal communities and the courts?

In summary ...

The research provides several examples of Circle Sentencing reducing barriers between Aboriginal communities and the courts.

For many of those involved in Circle Sentencing, legal literacy has increased, and this has resulted in greater knowledge of the mechanics and restrictions of the law, as well as an appreciation of the dispensation of the law.

Another factor that appears to have reduced the barriers between Aboriginal communities and the courts is the positive relationships between Elders, Project Officers, Magistrates, other court officials, and in some cases the broader Aboriginal community. However, the research does also indicate that where relations are strained this can undo some of the gains that have been made by Circle Sentencing in reducing the barriers between the Aboriginal community and the courts.

The research also suggests that Circle Sentencing enhances the cultural competency of court officials and that this has a positive impact on reducing the barriers between Aboriginal communities and the courts. In particular, the two-way education process of Circle Sentencing appears to have had a significant impact on several Magistrates, and this potentially has broader implications on the relationships between these Magistrates and the wider Aboriginal community.

Despite the positive results, it is important to keep in mind that Circle Sentencing represents a fraction of the interaction between Aboriginal communities and the courts, and therefore the impact of Circle Sentencing on reducing barriers between the broader Aboriginal community and the courts is limited. Nevertheless, the enhanced cultural competence of court officers as a result of Circle Sentencing is likely to have broader implications and is not limited to their interactions in Circle Sentencing alone.

The second objective of Circle Sentencing pertains to the effect on the nature of the relationship between Aboriginal communities and the courts.

For many of those involved in Circle Sentencing, the quality and quantity of contact with the courts through Circle Sentencing resulted in a significant increase in the level of familiarity with both the law and the judicial and sentencing process. For Elders, the effect of both being part of a judicial process and being directed in this participation by the Magistrate and other court officials has been to increase their legal literacy. The research suggests that many Elders have gained both knowledge of the mechanics and restrictions of the law and an appreciation of the dispensation of the law and the

delivery of outcomes that are fair not only for offenders but also in meeting the community's expectations.

Another significant outcome identified in the research was that in several communities Circles are establishing and enhancing a number of bilateral and multilateral relationships between Elders, Project Officers, other court officials and the broader Indigenous community. For these communities, this has resulted in an improvement in the relationships between the courts and members of the Aboriginal community, as well as personal relationships that can enhance ongoing community relations and engagement.

There were a few specific examples provided of relationships that had been improved as a result of Circle Sentencing. One positive narrative provided to the research by Elders and a Project Officer was about a local (non-Indigenous) police officer attending the Circle as a victim. At first, they said, he was very sceptical about the process, but after the Circle he said to the Elders that he had found the experience "quite amazing" and had not really thought about the offender's life and family situation prior to the incident which led to the abuse of the police officer and subsequent arrest. The Elders said that after this the relationship between this police officer and the Aboriginal community really changed for the better, but sadly the officer is no longer in the area and things have "returned to normal".

While the research can identify positive relationships that have been developed in several communities, this area is a critical one for the ongoing success of the Circle process. If relations become strained, then the achievement or maintenance of the other outcomes is difficult to maintain. This is of particular concern given that the Magistrate and Police Prosecutor role changes regularly, and resources and effort need to be dedicated to developing these new relationships. There was an example in one location where a change in Magistrate had resulted in strained relations among Circle participants, and this appeared to undo some of the gains that had been made by Circle Sentencing in reducing the barriers between the Aboriginal community and the Court.

In reducing barriers between Aboriginal communities and the courts, one important achievement of Circle Sentencing identified through the research is the increase in the cultural competency of the Magistrates and other court officials. Ongoing direct contact with Elders and the community through the Project Officer delivers a level of experience and insight which directly affects perceived stereotypes. Whether it be asking for a cultural interpretation on a matter or relationship, or going into a community and being part of community rituals such as men's business, the effect is a greater insight into the cultural context of the lives of offenders. This benefit was identified by several Magistrates and Police Prosecutors, and several Elders also claimed that they had 'trained' court officials so that they had a better level of understanding of the Aboriginal communities involved. Related to this cultural understanding is that Magistrates and other court officials are forced to witness and consider different types of cultural life and behaviour:

There is a give and take relationship between us and them. We're both learning from each other. (Elder, Lismore)

While the research suggests there have been improvements in the relationship between court officials and Aboriginal communities, it should be understood that this needs to be led and resourced by the courts. For this to be possible, the Project Officer needs to provide a plethora of services to enhance knowledge about Circle in the community and among the Elders, as well as facilitate the participation of Elders and other community structures in Circle. If this outward stimulus and resource commitment is lacking, the success of the Circle process may be limited.

While the research suggests that, for many of the people involved in the Circle Sentencing process, barriers between the courts and these community members have been reduced as a result, it should be noted that the impact overall is limited given the small number of Circles conducted across NSW. Circles represent a fraction of the interaction between Aboriginal communities and the courts, and therefore any benefits in reducing barriers between Aboriginal community members and the courts are limited. Nevertheless, the enhanced cultural competence of court officials as a result of Circle Sentencing is likely to have broader implications, and is not limited to their interactions in Circle Sentencing alone.

7.1.4 Does Circle Sentencing provide more culturally appropriate sentencing options for Aboriginal offenders?

In summary ...

Most of the Elders, court officials and offenders involved in the research felt that Circle Sentencing results in more culturally appropriate sentencing options for Aboriginal offenders. The two main factors driving this perception were the belief that Circle Sentencing takes into account individual circumstances, and the view that cultural and community knowledge is used in determining the nature of the sentences.

However, in most locations the support services available to address related issues such as alcohol and other drug use are not adequate, which it was felt limited the effectiveness of the Circle Sentencing approach.

When discussing sentencing options, most of the Elders felt that a key benefit of Circle Sentencing was that the sentence takes into account individual circumstances and aims to address related issues. For example, several Elders spoke of the sentences including a range of rehabilitation or support

programs to address issues of drug and alcohol abuse, anger management and cultural alienation. Therefore, the consistent theme from the research was that the sentences from Circles are more culturally appropriate compared to those handed down in Local Courts. An example was given in Armidale, where it was estimated that 80% of the cases before Circles involved alcohol and/or other drugs, emphasising the importance of taking into account these circumstances in determining the sentencing options:

You face childhood and other problems besides your criminal problem. You don't realise it but a lot of this has a lot to do with the crimes. (Offender, Armidale)

Participants also felt that sentencing through Circles was more appropriate because cultural and community knowledge was used when determining the nature of the sentences. This was evident through observation of the Circles, as Elders used their knowledge of the offender and their circumstances to assess the relative merits of different sentencing options. Commonly the matters considered by the Circles involved both Aboriginal offenders and Aboriginal victims, and again an understanding of the impact of this on Aboriginal community relations is highly valuable. This local knowledge was not only detailed but also helpful in providing a personal and community context in which to consider the sentence:

I see it as a big responsibility, but a good one. It's good to be able to take my knowledge to it. I've learnt a lot of lessons, and I can use these to help them change their lives. (Elder, Armidale)

The sausage factory of court can't deal with things in the same way as Circle Sentencing can. Court has to have the appearance of parity and this means it has to be seen as dealing with people in the same way. Circle delves deeply into the cases and delivers more appropriate sentences. (Magistrate)

Circle isn't about getting a sentence, it isn't about finishing a sentence, it's about changing lives. You won't see results of Circle until a few years down the track. (Elder, Armidale)

The major inhibitor to delivering culturally appropriate sentences is in areas where appropriate support services are inadequate or do not cater for the specific needs of Aboriginal clients. The lack of such services was identified as a major challenge, and it is important that further developments of Circle Sentencing consider this issue.

7.1.5 Does Circle Sentencing provide effective support to victims of offences by Aboriginal offenders?

In summary ...

Overall, the victims included in the research felt that they had been supported throughout the Circle Sentencing process and that their views had been taken into account and respected by the Elders. Elders were also generally positive about the level of support provided to victims. However, the research identified a few cases where the victim was not adequately supported, although this did not appear to be a common occurrence.

Circle Sentencing was identified as able to accommodate the dual roles that victims of domestic violence sometimes play in terms of also being a support person for the offender.

The number of victims included in this evaluation was limited (n=6), and therefore it is difficult for this evaluation to be conclusive regarding the level of support provided to victims, especially with regard to victims of domestic violence. This issue requires further investigation.

For several locations (including Armidale, Bourke, Brewarrina, Dubbo, Kempsey and Mt Druitt), a large number of the Circle offences are domestic violence. Project Officers noted that, as a result, many of the victims attending Circle are partners or other family members of the offender who also attend the Circle as a support person.

The Project Officers, Elders and victims consulted reported that in most cases where people play this dual role of victim and support person the Circle allows them to articulate how they feel, while simultaneously supporting the offender, and there was satisfaction with this approach. In this sense, some felt Circle Sentencing was effective in accessing the victim's perspective and emphasising the impact on the victim for the offender. Also, several victims spoke of the influence of alcohol and other drugs on the offender's behaviour, and it was felt that the Circle Sentencing addressed these substance use issues more so than at a Local Court.

As one victim/support person expressed, "it's all about getting help for the offender" – in this case her son. The son had been referred to Circle after pleading guilty to assaulting his mother. His mother said she was initially dubious about going to Circle, and especially sceptical about who the Elders would be – "they were going to judge my son" – as there had been some animosity between her family and some other families in the community. However, she said that when she arrived for the Circle she was satisfied with the participating Elders. She continued:

I knew the Circle had achieved something because my son broke down and started crying. He apologised to me for the harm and worry he had caused me. (Victim, Bourke)

Another commented:

I felt good about it, I saw him speak in the Circle, it was good and I was happy for him. I wanted him to be helped and I was there with a support person. (Victim, Dubbo)

Overall, the victims included in the research felt that they had been supported throughout the Circle Sentencing process and that their views had been taken into account and respected by the Elders. In discussions with stakeholders, there were a few cases identified where victims were not adequately supported, and this included a Circle where a police officer was the victim; in this case there was a focus on police/Aboriginal relations more broadly rather than focusing on the case at hand. The Police Prosecutor discussed this and noted that it was necessary to intervene as it is the Police Prosecutor's role to ensure the victim's rights are protected. In one of the Circles that was observed as part of the research, the victim did not have a support person present, and during the Circle a female Elder tended to play this role, which potentially compromised her role within the Circle. However, in this situation there were difficulties in organising childcare, and therefore the support person cared for the children while the victim attended the Circle. It is critical that where victims are attending, assistance be given to ensure a support person is able to attend. This is increasingly important in cases where the Elder pool is male dominated.

In terms of support, an unintended effect of participation in a Circle was the sense of support the victim felt they would receive after the Circle. In one case, a victim of domestic violence said that just by attending the Circle with Elders and the Project Officer present she felt supported, and as a result felt that more people in the community would know the situation and would keep an eye out for her safety, which she believed automatically provided her with support.

However, the appropriateness and impact of victim involvement in Circle Sentencing for domestic violence cases was only touched on in this review. Given the complexities of this issue, it requires much deeper investigation in order to draw conclusions about the effectiveness of the support provided in these cases.

7.1.6 Does Circle Sentencing provide for the greater participation of Aboriginal offenders and their victims in the sentencing process?

In summary ...

The research indicates that the level of participation and engagement of offenders is greater when compared to the Local Court context.

For victims, it is difficult to draw conclusions regarding the level of participation, as this varied across locations, and insufficient data was collected to allow for an understanding of the level of involvement based on offence type and location. To allow ongoing monitoring of victim participation it would be beneficial if the Project Officers uniformly collected this information.

For those victims consulted as part of the research (n=6), the experience of participating in Circle Sentencing was viewed positively, and the victims were satisfied with the opportunity they were given to explain how the offence had affected them.

In terms of the involvement of offenders, there was considerable discussion throughout the research of the greater engagement of offenders in Circle Sentencing compared to the Local Court. It is clear from these results that the perception among offenders, Elders, Project Officers and court officials is that there is a greater level of participation of Aboriginal offenders in the sentencing process through Circle Sentencing. Section 7.1.1 discusses the level of participation and engagement of offenders in Circle Sentencing in more detail.

In assessing the participation of victims in Circle Sentencing, this data was not collected uniformly across locations, and as a result it is not possible to document the level of participation for victims. It would be beneficial for Project Officers to collect this information as part of their regular reporting, as it is important to be able to monitor victim participation on an ongoing basis.

Judging by the qualitative consultations, the level of the involvement of victims in Circle Sentencing varied, and there was no clear picture of the extent to which victims are involved across locations; obviously, this was also influenced by the variations in the type of offences that proceed to Circle. For example, in Armidale it was noted that of the 18 Circles that had been conducted at the time of the research (14 of which were domestic violence and four of which were assault related), victims participated in 14. In Dubbo, the Project Officer suggested that in several domestic violence situations the victims have left the home and do not want anything more to do with the offender or the process, and in fact would be happy for the offender to be given a custodial sentence. It was estimated by the Project Officer that this was the response in 50% of the cases. In Lismore, the majority of cases going to Circle are driving matters, where there is no victim.

The victims taking part in this evaluation (n=6) reported that the experience of participating in Circle Sentencing was beneficial and positive. Primarily this was because they felt satisfied with the experience and with having a chance to explain how the offence affected them and the broader community. Also, for some the experience did not match their expectations, as they thought that people “would just get off”. By comparison, victims were impressed that the Elders took the victim’s view into account, and they found it satisfying to explain the true cost of the offence and how it impacted on the broader community as well as the victim:

I wanted them to know what it cost me, and not just money, and I felt that I had that chance and that they cared. (Victim, Nowra)

One victim also discussed how they had raised objections during the sentencing because they felt it was too light. They felt the Elders listened and revised the sentence to include weekend detention. The victim was happy with the process, and noted that 12 months later the offender apologised.

7.1.7 Does Circle Sentencing increase the awareness of Aboriginal offenders of the consequences of their offences on their victims and the Aboriginal communities to which they belong?

In summary ...

The research suggests that the involvement of the victim, and their support person, provides a direct account of the impact of the offender’s actions. Stakeholders involved in this research saw this as a key benefit of Circle Sentencing compared to the process at Local Court in terms of increasing the awareness of the offender of the impact of their behaviour.

A key finding from this research is that Elders were seen to play a very important role in emphasising the impact of the offender’s actions on the victim and the community more broadly. Elders spoke very strongly about their role in ‘shaming’ the offender and encouraging them to consider the impact of their actions on others, and offenders also spoke about the Elders in this context.

Elders and court officials noted that one of the perceived strengths of Circle Sentencing is the inclusion of the victim in the process, although there is no data to indicate the level of victim involvement in Circles that have been conducted to date. The victim’s participation was seen as an integral part of the Circle that can have a powerful effect on the course and outcome of the proceedings. In Local Court proceedings it is rare that the victim has any voice apart from through the Police Prosecutor. Victims indicated that Circle Sentencing potentially plays a role in empowerment, healing and reconciliatory processes of forgiveness.

Importantly, the participation of the victim, and their support person, provides the offender with a direct account of the outcomes of their actions. The Circle provides a forum in which to confront the offender to explain how their actions have affected the victim, and to be able to, if desired, open up a dialogue with the offender in which options for appropriate reparation can be explored. Often the offender will offer an apology to the victim as part of this exchange:

Involving victims in the Circle is important to break down the common defence used by offenders that it's the system they are fighting. Being in front of a victim brings them back home and shows them the result of their individual action. (Court official, Dubbo)

The support person of the victim also has a powerful role to play in that they are able to articulate the impact of the offender's action from a third party point of view. If the support person is another family member, as is often the case, they are able to provide an account of how the offender's actions have affected the family more broadly. If the support person is from a victim support service, then they are able to inform the Circle of the victim's need for support as a result of the incident. The victim's support person may also read a written victim's impact statement to the Circle if the victim is unable to attend for any reason.

While the impact on the victim was identified as a key factor in increasing awareness of the consequences for offenders, one of the key findings of this research is that the Elders play a significant role in this regard. The Elders included in this research spoke very strongly about their role in 'shaming' the offender and encouraging them to consider the impact of their actions on the victim and the community more broadly:

They think that Circles are the easy options, but we rip into them, we don't make it easy for them. We don't let them stay with their heads down, and we do consider custodial sentences because they can be useful for forced attendance at rehabilitation and detox programs. (Elder, Dubbo)

We know the offenders and their families, and when you see an offender in the community, it keeps them honest. It gives the young ones a sense of confidence that someone cares and looks out for them on a daily basis. (Elder, Brewarrina)

Elders in the research saw this as the main role they play in Circle, and take this very seriously:

It's not a cubby house. You have to come out strong, watch their attitude. We're fair dinkum with our people. We're there to help them but they also have to be punished. (Elder, Nowra)

7.2 HAS CIRCLE SENTENCING BEEN EFFECTIVE IN REDUCING REOFFENDING?

In summary ...

To assess the impact on recidivism, analysis was conducted by the NSW Bureau of Crime Statistics and Research (BOCSAR). The analysis assessed whether Aboriginal people who participate in Circle Sentencing show a reduction in the frequency of their offending or take longer to reoffend than those sentenced through the normal court process, controlling for a range of other factors likely to influence the speed of reoffending. The analysis also examined the question of whether offenders dealt with through the Circle Sentencing process commit less serious offences, if they reoffend.

The BOCSAR analysis found that Circle Sentencing did not influence the rate of reoffending or the seriousness of the offence for those that reoffended. On the other hand, the common perception identified in the qualitative consultations among stakeholders was that Circle Sentencing is having an impact on reoffending, or that it is too early to tell. Many provided specific examples of cases where Circle Sentencing had brought about a dramatic change in circumstances for the offender, or noted that only a few of those who had been through Circle Sentencing had reoffended. There appears to be a conflict between people's perceptions of the impact of Circle Sentencing on recidivism and the reality of the data.

The results of the evaluation indicate that it is 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. This is important as reducing recidivism is one of eight objectives of Circle Sentencing as identified in Schedule 4 of the Criminal Procedure Regulation 2005.

This area represents the most difficult aspect of the review in that, while one of the program objectives is to lower the level of reoffending, stakeholders in the Circle process were adamant that the importance placed on this should be tempered and balanced by the other identifiable program outcomes and community benefits. Care also needs to be taken in measuring success based on reoffending rates, given the lack of appropriate services to support sentences, and the complex interplay of factors that lead to reoffending. These factors suggest that it may be unrealistic to expect an alternative sentencing approach to have a measurable impact on recidivism in the short term.

In answering the question of whether Circle Sentencing is having an impact on reoffending rates, we have included analysis conducted by BOCSAR. The impact on reoffending was a key component of our consultations with all stakeholders, and this qualitative feedback will also be discussed later in this section. Interestingly, the perception among many stakeholders was that Circle Sentencing was having a positive impact on reoffending, or that it was too early to tell, while the BOCSAR analysis

indicates that there is no impact on reoffending for those participating in Circle Sentencing. Both the quantitative data analysis and the qualitative analysis will be discussed.

7.2.1 An overview of the method used to assess the impact of Circle Sentencing on reoffending

This information is taken from the report prepared by BOCSAR in April 2008. The full report can be found in Appendix Two.

In each of the three analyses contained in the report, recidivism was defined as reconviction in court for an offence committed after the Circle Sentence (that is, a proven offence²⁸). Time to reoffend was measured from the date of the individual's first subsequent proven offence, not the date that the matter was finalised in court.²⁹

Frequency of offending

The first analysis considered whether participants demonstrate a reduction in offending after being Circle Sentenced. For this analysis, the number of proven offences was compared over equal periods before and after the Circle. The same analysis was conducted for a matched control group before and after appearance at court.

For those Circle Sentenced before January 2006, BOCSAR counted the number of proven offences committed in the 15 months prior to the Circle and in the 15 months after the Circle.³⁰ Every proven charge was counted regardless of whether it was finalised in court at the same time as other offences. This part of the analysis was limited to people Circle Sentenced before January 2006, as a period of 15 months was designated within which reoffending could occur, to allow for an equivalent comparison.³¹ Offences dealt with in the Circle (or equivalent reference court appearance for the

28 Offences which were brought to court but for which the person was not convicted were not counted. It should be noted that offences proven in court are not a precise measure of recidivism as they exclude crimes for which the offender is not apprehended. Alternative indicators, such as police mentions or self-reported offending, however, have as many, if not more, problems. Offenders asked to report on their own offending may not answer truthfully. Police contacts that do not result in a conviction may reflect biases in the exercise of police discretion.

29 Information on proven offences was obtained from the Reoffending Database of the Bureau of Crime Statistics and Research. See Hua & Fitzgerald 2006 for details.

30 A 15-month follow-up period was chosen to balance the benefits of a reasonable follow-up period with the need for a reasonable sample size. A longer follow-up period would give a better indication of a person's offending patterns. However, it would also restrict the analysis to a small number of people Circle Sentenced in the early days of the program. For instance, a 30-month follow-up period would include only 49 individuals who participated in a Circle Sentence between 2002 and 2004. Eighty-one individuals participated in a Circle Sentence prior to January 2006.

31 At the time the analysis was conducted information was only available on court appearances finalised up to 30 June 2007. As a result, individuals in both the circle sentencing group and the control group may have committed offences in the 15-month follow-up period which had not yet been finalised in court by 30 June 2007. The effect of this on the Circle Sentencing group and the control group should be the same.

control group) were included in the 'prior' count if they occurred within 15 months of the Circle Sentence.³²

The analysis was then repeated for a matched control group of offenders who did not participate in Circle Sentencing. The control group was matched on Indigenous status, age at reference court appearance (plus or minus three years and excluding juveniles), gender, reference offence (same principal offence type, such as acts Intended to cause injury; theft; or road traffic and motor vehicle offences), date of reference court appearance (within 12 months and before January 2006), prior proven court appearances in the past five years (people with no priors were matched with others with no priors, otherwise plus or minus two of each other) and prior imprisonment since 1994 (yes or no).

The Circle Sentencing participants included in this analysis were from Brewarrina, Nowra and Bourke Local Courts. The control group was also selected from Local Courts outside Sydney. Apart from excluding people who received a prison sentence at their Circle, this part of the analysis did not incorporate a control for time spent in custody.³³

Eighty-one people participated in a Circle Sentence prior to January 2006. Of these, 13 were excluded from the analysis – six because they received a penalty of imprisonment at their Circle (thereby reducing their capacity for reoffending in the follow-up period), and the remaining seven because an accurate match could not be found.³⁴ Thus the analysis was conducted on 68 Circle Sentencing participants and the equivalent 68 from the control group. Of the 68 Circle Sentencing participants, 40 were from Dubbo, 24 from Nowra and four from Brewarrina. Both the Circle Sentencing and control groups comprised 15 women and 53 men. The average age of people in both groups was 29 years. In the Circle Sentencing group the oldest person was 57 years and the youngest 18; in the control group the eldest person was 55 and the youngest was 18.

Ideally, BOCSAR would have liked to have compared Circle Sentencing and control group defendants in terms of the size of any change in offending frequency between Circle Sentencing participants. The highly skewed nature of the offending distribution made this impossible. Instead, a non-parametric Wilcoxon signed-rank test was applied to the results from the Circle Sentencing group and the control group independently to determine whether, in each group, there was a significant difference between the number of proven offences before and after the reference court appearance.

32 Offences committed before the Circle Sentence (or equivalent reference court appearance) but finalised in court after it were counted as prior convictions.

33 Twenty-five percent of both the Circle Sentencing group and the control group had spent time in prison in the five years prior to the reference court appearance.

34 An alternative to omitting the seven individuals for whom an accurate control group member could not be found would have been to relax the matching criteria. It was decided that it was preferable to have a slightly smaller sample size with a control group that precisely represented the Circle Sentencing group rather than additional subjects with a less representative control group.

Time to reoffend

The second analysis assessed whether, controlling for other factors, Aboriginal people who participate in Circle Sentencing take longer to reoffend than those sentenced through the normal court process. As noted, time to reoffend was measured from the offence date of the individual's first subsequent proven offence, not the date that the matter was finalised in court. The reference start date for time to reoffend was the Circle Sentencing date for the treatment group and the finalisation date of the reference court appearance for the control group. Note that there were four people in the sample who were Circle Sentenced more than once during the observation period. The date of the first Circle Sentence for these four people was taken as their reference court appearance. Reoffending was considered up to June 2007.³⁵ Time spent in prison was controlled for by subtracting any time spent in custody from the total time between reference court appearance and offence. Individuals whose reference court appearance was for an offence that was ineligible for Circle Sentencing were not included in the control group.

Cox regression was used to compare the time to first proven offence among offenders in the Circle Sentencing group with the time to first proven offence in a control group of Aboriginal offenders sentenced through the traditional court process.

Since Cox regression adjusts for unequal follow-up periods and allows controlling for pre-existing differences between treatment and control groups, BOCSAR were able to include 153 individuals Circle Sentenced between February 2002 and June 2007 in this analysis.³⁶ Eligible for inclusion in the control group were 21,324 Aboriginal adults found guilty in NSW courts outside Sydney between February 2002 and June 2007 who did not participate in a Circle Sentence. Because all but two of the 153 Circle Sentencing participants were sentenced in courts outside Sydney,³⁷ the control group only included people appearing in courts outside Sydney.

Since the large disparity between the size of the control group (21,324) and the Circle Sentencing group (153) could destabilise the Cox regression model, supplementary analyses were conducted on sub-samples of the control group to ensure that the findings for the entire control group were robust.

³⁵ Only offences proven in court up to June 2007 were included.

³⁶ BOCSAR was provided with details of 167 Circle Sentences from courts operating the program. Six of these individuals were excluded as their Circle Court appearance could not be located in the database of Local Court finalisations maintained by the Bureau of Crime Statistics and Research. This could be because many of the courts in which Circle Sentencing operates are not computerised and the practice in these courts is to mail the details of court finalisations on paper forms. It is possible that forms were not received for the Circle Sentencing appearances that could not be located. The remaining people could not be included because their date of birth was either missing or obviously incorrect.

³⁷ The 153 people in the circle sentencing group were Circle Sentenced in the following locations: Armidale – 12, Bourke – 10, Brewarrina – 11, Dubbo – 63, Kempsey – 14, Lismore – 15, Mt Drutt – 2 and Nowra – 26. The two individuals in Mt Drutt (1.3% of the sample) were the only Sydney Circle Sentences.

Ten random sub-samples were selected from the control group, each comprising 7% of the entire control group, or about 1,450 persons.³⁸

The following factors were included as controls in the analysis because of their demonstrated impact on the time to first reconviction (Chen, Matruglio, Weatherburn & Hua 2005; Snowball & Weatherburn 2006): sex, age at reference court appearance, offence type, remand status, whether the person had concurrent offences, prior convictions in the past five years, and prior prison episodes since 1994.

For both the complete control group and each of the 10 random sub-samples, a Kaplan-Meier test was applied to each of the factors planned for the survival analysis to determine if it was associated with time to reoffend. The significant factors were then entered into a Cox regression analysis to determine whether the time to first proven offence was lower for those who were Circle Sentenced, after controlling for other factors.

Offence seriousness

The third analysis was designed to test for changes in offence seriousness (for both treatment and control groups) between the reference offence and the next offence, for those in the sample who had a further offence. Offence seriousness was measured using the offence seriousness index developed by the Crime Research Centre in Western Australia, in association with the South Australia Office of Crime Statistics (Ferrante 1998). The significance of any change in offence seriousness in the treatment and control groups was assessed using Chi-square and Fisher's Exact Test.

7.2.2 BOCSAR results

This information is taken from the BOCSAR report.

Did participation in Circle Sentencing reduce the frequency of offending?

Table 3 shows the trend in proven offences before and after the Circle Sentence or index court appearance for both the Circle Sentencing group and the control group.

Forty-six percent of the Circle Sentencing group committed at least one offence in the 15 months following the Circle which was proven in court, compared with 38% of the control group.

In the 15 months prior to their reference court appearance, the Circle Sentencing group offended more often than did the control group (the median number of proven offences was 3 for the circle group versus 2 for the control group while the average number of proven offences was 4.2 versus 3.0

³⁸ Smaller-sized samples (of 5%) were also tested but were not used because of their large variance in median time to reoffend. Ten of the 7% samples were tested to ensure that they gave broadly consistent results in the Cox regression.

respectively). In the 15 months following the reference court appearance, the two groups were equivalent in terms of proven offences (the median number of proven offences were zero for both groups and the averages were 1.5).

Table 3 – Comparison between offending 15 months prior to and post the reference court appearance by method of disposition (Circle Sentencing group versus control group)

		Circle Sentencing group	Control group		
Median no. of proven offences	15 months prior to court	3	2		
	15 months post court	0	0		
Mean no. of proven offences	15 months prior to court	4.2	3.0		
	15 months post court	1.5	1.5		
% reoffending in 15 months post court		No.	%	No.	%
		31	45.6	26	38.2
Comparison of no. of offences pre and post Court	Same number pre and post	6	8.8	4	5.9
	Fewer offences in 15 months post	53	77.9	52	76.5
	More offences in 15 months post	9	13.2	12	17.6
	Total	68	100.0	68	100.0
		Sig ^a		Sig ^b	

a Wilcoxon signed Ranks Test: Z= -4.992, p<0.001

b Wilcoxon signed Ranks Test: Z= -4.562, p<0.001

Most (53 of 68, or 78%) of the Circle Sentencing group had fewer proven offences in the 15 months following the Circle than in the 15 months prior to the Circle. Thirteen per cent offended more in the 15 months following the Circle. A small proportion (9%) had the same number of offences before and after the Circle Sentence. The results are almost identical for the control group, with 77% having few proven offences, 18% having more proven offences, and 6% having the same number of proven offences before and after the index court appearance.

Did participation in Circle Sentencing increase the time to the next proven offence?

The first stage of this part of the analysis involved applying a Kaplan-Meier test to each of the factors planned for the survival analysis to determine if it was associated with time to reoffend. The results of these tests for the whole control group are shown in Table 4. To ensure the findings for the complete control group are robust, the analysis was also performed on 10 random sub-samples from the control group. The results for the 10 control group sub-samples are shown in the notes at the bottom of Table 4.

Table 4 – Characteristics of the Circle Sentencing and control groups and the relationship between characteristics and time to reoffend

	Circle		Control		Total	
Group						
Factor	No.	%	No.	%	No.	Median survival time (days)
Circle Sentencing	153		0		153	618
Control	0		21,324		21,324	1,433
Gender						
						<i>Sig^a</i>
Female	40	26.1	5,893	27.6	5,933	n.c.
Male	113	73.9	15,431	72.4	15,544	1,175
Age at reference appearance (years)						
						<i>Sig^b</i>
18 to 24	49	32.0	7,070	33.2	7,119	959
25 to 33	55	35.9	6,726	31.5	6,781	1,247
34 or more	49	32.0	7,528	35.3	7,577	n.c.
Remand status						
						<i>Sig^a</i>
On bail/bail dispensed with	142	92.8	18,561	87.1	18,703	1,600
In custody	11	7.2	2,761	12.9	2,772	605

Reference offence

						<i>Sig^b</i>
Driving	24	15.7	6,069	28.5	6,093	n.c.
Justice	20	13.1	2,283	10.7	2,303	986
Theft	14	9.2	2,665	12.5	2,679	996
Violence	72	47.1	4,988	23.4	5,060	1,731
Other	23	15.0	5,319	24.9	5,342	1,182

Concurrent offences

						<i>Sig^c</i>
None	53	34.6	12,192	57.2	12,245	1,759
One	39	25.5	4,590	21.5	4,629	1,318
Two or more	61	39.9	4,542	21.3	4,603	938

Prior proven court appearances in past 5 years

						<i>Sig^a</i>
None	15	9.8	6,457	30.3	6,472	n.c.
One	21	13.7	4,552	21.3	4,573	n.c.
Two to three	67	43.8	5,381	25.2	5,448	1,091
Four or more	50	32.7	4,934	23.1	4,984	400

Prior prison episodes since 1994

						<i>Sig^a</i>
None	94	61.4	15,502	72.7	15,596	n.c.
One to two	34	22.2	3,320	15.6	3,354	751
Three or more	25	16.3	2,502	11.7	2,527	334

-
- a. Significant at 0.05 for the complete control group and in each of the 10 control group samples.
- b. Significant at 0.05 for the complete control group and in 9 of the 10 control group samples.
- c. Significant at 0.05 for the complete control group and in 6 of the 10 control group samples.
- n.c. Median survival time is not calculated if less than 50% of the group reoffended.

Each of the variables listed in Table 4 had a significant association with the time to reoffend when the Circle Sentencing group was compared with the entire control group. The results for the 10 control group sub-samples were slightly different. The results were consistent with respect to Circle Sentencing, with time to reoffend being significantly shorter for the Circle Sentencing group than for

each of the control sub-samples. However, one of the 10 sub-samples gave a non-significant result for sex, one gave a non-significant result for remand and four gave non-significant results for offence.

Table 4 also shows the characteristics of the control group compared with the Circle Sentence group. It can be seen that the offenders who were Circle Sentenced were generally more serious offenders than those in the control group. Members of the Circle Sentence group were more likely to have multiple concurrent charges, were more likely to be appearing for a violent offence, generally had more prior convictions and were more likely to have spent time in prison. These factors all reduce the average time to reoffend.

Table 4 shows five categories of offence type. It can be seen that median survival time is similar for justice offences, theft offences and other offences. In order to reduce the number of variable combinations in the survival analysis, these three offence types were combined in the Cox regression analyses described below.

The factors listed in Table 4 were entered into a Cox regression analysis for both the complete control group and each of the 10 sub-samples to determine whether the time to first proven offence was lower for those who were Circle Sentenced. The hazard ratios produced from the Cox regression models for the complete control group are shown in Table 5. This table also shows the bounds of the associated 95% confidence intervals. Note that where the confidence interval includes one, the comparison is not significant. Model 1 includes Circle Sentencing participation and offender sex and age. Model 2 considers these variables as well as features of the reference offence – bail status, the number of concurrent offences and the reference offence type. Model 3 adds prior court appearances and prior prison episodes.

Note that bail status, added in Model 2, was found not to be significant in the final model and was subsequently removed. The contrast between one concurrent offence and no concurrent offences was not significant in the final model. The contrast between two or more concurrent offences and no concurrent offences was significant ($p=0.005$), but it was felt that, overall, this variable did not contribute much and, in the interests of creating a parsimonious model, it was removed (note that removal of the concurrent offences variable did not affect the significance of any of the other variables).

Comparison of the hazard ratios for the Circle Sentencing variable across the different models reveals that it is significant in the first two models but not significant in the final model when all the additional variables are taken into account. When the only other control variables are age and sex (Model 1), the Circle Sentencing group appears to take longer to reoffend than the control group. The same is true when offence type is added (Model 2). However, when information about prior offending is introduced (Model 3), the Circle Sentencing variable shows no relationship with time to offend.

Table 5 – Cox regression model for time to reoffend: Circle Sentence group versus entire control group (n=21,477)

Comparison	Model 1	Model 2	Model 3
Circle Sentence vs control group	1.448 (1.125-1.863)	1.465 (1.138-1.886)	1.162 (0.903-1.496) ^a
Male vs female	1.412 (1.340-1.487)	1.429 (1.356-1.505)	1.161 (1.100-1.225)
18 to 24 years vs 34 years or more	1.546 (1.465-1.631)	1.512 (1.433-1.596)	1.436 (1.363-1.519)
25 to 33 years vs 34 years or more	1.347 (1.275-1.423)	1.335 (1.264-1.410)	1.187 (1.123-1.254)
Justice offence vs driving offence		1.106 (1.038-1.178)	1.040 (0.976-1.108)
Other ^b offence vs driving offence		1.348 (1.279-1.421)	1.183 (1.122-1.248)
One prior in past 5 years vs none			1.484 (1.379-1.597)
Two to three priors in past 5 years vs none			1.959 (1.830-2.096)
Four or more priors in past 5 years vs none			3.037 (2.828-3.261)
One to two prior prison episodes since 1994 vs none			1.147 (1.078-1.220)
Three or more prior prison episodes since 1994 vs none			1.447 (1.351-1.550)

a: not significant

b: Includes justice offences, theft offences and 'other' offences

Note: The reference category is the second category for each variable

Table 6 shows the composition of the final models for each of the 10 sub-samples. The hazard ratios for these models are shown in Appendix Two. From Table 6 it can be seen that there were some differences in the final models for the 10 sub-samples, but participation in Circle Sentencing was not a significant predictor of time to reoffend in any of the three models.

Table 6 Summary of the final Cox regression models from the 10 random sub-samples from the control group

	Sub-sample										Summary
	1	2	3	4	5	6	7	8	9	10	
Circle Sentencing	n.s.	n.s.	n.s.	n.s.	n.s.	n.s.	n.s.	n.s.	n.s.	n.s.	Not significant 10/10
Age	sig	sig	sig	sig	sig	sig	sig	sig	sig	sig	Significant 10/10
Sex	-	sig	-	sig	-	-	sig	sig	Sig	-	Significant 5/10
Remand	-	-	-	-	-	-	-	-	-	-	Not significant 10/10
Offence type	-	sig	-	sig	sig	-	-	-	-	-	Not significant 7/10
Concurrent offences	-	-	sig	-	sig	-	-	-	-	sig	Not significant 7/10
Priors	sig	sig	sig	sig	sig	sig	sig	sig	sig	sig	Significant 10/10
Prison	sig	sig	sig	sig	-	-	-	sig	sig	-	Significant 6/10

Notes: '-' means the variable was omitted from the final model because it was not significant; 'n.s.' means the variable was included in the final model but was not significant; 'sig' means the variable was significant in the model

Did Circle Sentencing reduce the seriousness of any further offending?

Of the 153 people Circle Sentenced, 61 (40%) had reoffended by June 2007. Of the 21,324 people in the control group, 8,250 (39%) had reoffended.³⁹ Table 7 shows the relative seriousness of the next offence after the Circle Sentence or reference appearance for reoffenders. For 52% of the Circle Sentence group who reoffended, the next offence was less serious than the reference offence, compared with 45% of the control group. This difference was not statistically significant.

Table 7 – Change in offence seriousness by method of disposition (Circle Sentencing group versus control group)

Seriousness of subsequent offence	Circle Sentencing group		Control group	
	No.	%	No.	%
Less serious	34	55.7	3,690	44.7
More serious or the same	27	44.3	4,560	55.3
Total	61	100.0	8,250	100.0
			n.s. ^a	

a. Not significant: $\chi^2= 2.968$, d.f. = 1, $p=0.085$, Fisher's Exact Test $p=0.056$

³⁹ The fact that the overall rate of reoffending among the Circle Sentencing group and the control group is very similar (40% and 39% respectively) may appear, on the surface, to contradict the result in Table 2 that circle sentencing participants reoffend faster than the control group. This is not actually the case. The two groups have similar overall rates of reoffending because the number of Circle Sentencing participants has increased each year so there are proportionally more from recent years. The control group, on the other hand, contains equal numbers from each year so, compared to the Circle Sentencing group, has proportionally more individuals appearing in the earlier years of 2002, 2003 and 2004. Since the earlier individuals have had longer to reoffend this has increased the overall reoffending rate for the control group. This result does not

7.2.3 Discussion of the BOCSAR findings

Based on the analysis, BOCSAR concluded that those participating in Circle Sentencing did not show a reduction in the frequency of their offending, that there was no significant difference between Circle Sentencing participants and the control group in time to offend, and that there was no significant difference between the treatment and the control group in the percentage of offenders whose next offence was less serious than the reference offence.

However, it is important to take into account that reducing reoffending is one of several objectives of Circle Sentencing, and the qualitative research suggests that the other key objectives of Circle Sentencing are being met. It is also important to be realistic regarding expectations of the impact that Circle Sentencing can have on reoffending, with greater focus given to post-sentencing support and rehabilitation to address factors associated with criminal activity, such as alcohol, drug abuse and unemployment.

Section 7.2.4 includes analysis of the qualitative feedback. It is important to consider these results when interpreting the data from the above analysis.

7.2.4 Qualitative feedback on reoffending

This evaluation has found that there is a conflict between people's perceptions of the impact of Circle Sentencing on recidivism and the reality of the data.

In discussing reoffending with stakeholders, it was clear that the common perception is that Circle Sentencing does have an impact on reoffending. In many cases Project Officers cited the number of Circles completed and the number that had reoffended since attending Circle. For those locations where 13 to 22 Circles had been conducted (Armidale, Bourke, Brewarrina, Kempsey and Mt Druitt), most Project Officers said that only a few had reoffended. The only exception to this was in Dubbo, where a few participants estimated that the reoffending rate was approximately 50%. For locations where more Circles had been conducted (Lismore and Nowra), the perception was that Circle Sentencing had a positive impact on reoffending rates, although participants were not able to identify the number that had reoffended.

While we appreciate these figures are not a reflection of recidivism, given that they do not account for the time elapsed since attending Circle, they are provided here as they form the background on which

impact upon the findings in the Cox regression analyses as this method controls for unequal follow-up periods. It also does not affect the seriousness analysis as time to reoffend is not a factor.

the qualitative feedback is based. By this we mean that for many who were consulted their understanding is that only a few have reoffended, and this tends to reinforce their perceptions with regard to the positive impact of Circle Sentencing.

For example, many of the Elders included in the research felt that Circle Sentencing is having a positive impact on reoffending, and most cited the apparent small number of people who had reoffended as evidence for this:

It's been successful. Only one person has come back. (Elder, Armidale)

Most of the people who have gone through Circle have kept out of trouble, because of respect. (Elder, Armidale)

Circle Sentencing was seen to reduce reoffending because it addressed related problems to offending and was based on trust:

It stops reoffending because it brings them face to face with real issues. Circle Sentencing is a big digging fork and getting down to that tough root. Something that we might say seems to bring it out and bring it to the surface. (Elder, Armidale)

They are given trust, so it works to help people stay out of jail. They don't get an opportunity like this in the courthouse. They own up to it more. (Elder, Armidale)

However, a few Elders and court officials were unsure about the impact on reoffending:

Don't know if it's kept them out of trouble, as I don't know what happens after Circle.
(Elder, Armidale)

This is an interesting point, as it suggests that Elders are not always informed of the outcomes for offenders over time, and this is one area that could be improved.

Several Magistrates noted that, while it was difficult to assess the impact on reoffending, there were examples where Circle had a dramatic influence on offenders beyond reoffending. Magistrates and Elders gave examples of people addressing substance use problems, finding employment and being reunited with their children. These results were seen as very worthwhile, with Magistrates commenting that “even if we've failed with everything else, these cases are a massive success” and “There have been standouts and failures – but less failures”.

This is an important point, as it appeared that in several locations there were 'champions' that participants identified as proof that Circle Sentencing is having a positive impact on reoffending. Participants gave examples of offenders whose lives had dramatically improved, and the interviews with several of these offenders emphasised the significant effect that Circle Sentencing had on their lives.

For example, one offender explained that now, after much support from the Project Officer, he has a nice home, is with his partner and three children, has finished the legal requirements and is looking to begin study or work. He compared this to before Circle, when he was using drugs, was homeless and was at the end of a relationship with his partner: "My self-esteem is back, my pride in being Aboriginal".

Another offender told of her experience with Circle. At first she was reluctant to be involved because she "didn't really care anymore", no longer had any respect for the law or courts, and had been distanced from her family as she had a 20-year drug habit. She felt grateful to the Project Officer who worked with her to encourage her to attend Circle and make changes in her life. The offender attended Circle in 2002 and has not reoffended or used drugs since. She also discussed how she is working on healing relationships with her family and that the Elders have spoken to her parents and told them how hard she is working to "be a good person".

These examples were identified by many Elders as 'proof' that Circle Sentencing is having a positive impact on reoffending, and it is important to keep in mind the significance of these cases to community members, especially as they 'champion' the program within the community. Awareness of these 'champions' was very high, and this awareness generated positive perceptions of the ability of Circle Sentencing to reduce reoffending and change lives.

Several stakeholders discussed the need for caution when assessing the impact of Circle Sentencing on reoffending. It was felt that Circle was a long-term program and that the positive benefits with regard to offending behaviour will need to be measured in the long term. This is especially the case with many of the locations where Circle Sentencing had been operating for less than two years at the time of the evaluation (Armidale, Bourke, Kempsey, Lismore and Mt Druitt), as time is needed to assess the impact on reoffending. It is important to keep in mind that few had reoffended to date.

Several police prosecutors also noted that it is challenging to assess the impact on reoffending locally as offences committed in other locations are not necessarily known to those in the local area. There were a few police prosecutors who were unsure about the impact of Circle Sentencing on reoffending. One recalled an earlier review in Dubbo where seven of the nine offenders had reoffended, although he noted that the cases selected for Circle Sentencing were those where it was a last resort before jail, and in his mind it was too late because "the horse had bolted". This research suggests that in

several locations the cases assessed for Circle were those where it was felt that there would be a better chance at rehabilitation, while in other locations the focus was on the 'hard' cases. Any assessment of impact needs to consider this variation in focus by location.

Overall, while the BOCSAR data identifies that to date the rates of reoffending are similar for those attending Circle Sentencing and those attending Local Courts, it is necessary to consider that this is one of eight objectives of Circle Sentencing, and that for many of the locations it is too early to draw conclusions about the impact of Circle Sentencing. In the view of one of the Police Prosecutors consulted, the objective of Circle Sentencing relates to empowerment – the community accepting the rules, adopting these rules and taking ownership of the law – and it is hoped that in response to this people will not reoffend. Therefore, in this prosecutor's view, it is difficult to measure effectiveness in the short-term. Also, as one court official warned, "there is a need to keep a realistic approach and real expectations about both the nature and rate of change affected by Circle".

However, given that the financial and human resources dedicated to Circle Sentencing are significant, it is important to consider the balance between the weight given to the many objectives 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.

7.3 ARE THERE ANY UNINTENDED POSITIVE OR ADVERSE EFFECTS OF CIRCLE SENTENCING?

In summary ...

One of the most important unintended benefits of Circle Sentencing is the positive impact that participation has had on Elders. Many had a strong sense of achievement as a result of their participation, with discussions about the impact on levels of pride, confidence and community status.

Other unintended benefits include perceptions that community members take more responsibility for the actions of other members through their involvement in Circle Sentencing. It was also suggested in one location that Circle has reduced the impact of factional issues. Several stakeholders highlighted the benefits of Circle Sentencing as a community-based approach to address domestic violence within Aboriginal communities, although more research is needed on this issue.

Two unintended negative effects of Circle Sentencing were identified in the research. One related to concerns that in some cases Elders' views are 'pushed' onto the offender. (This was only raised in one location.) Another adverse effect of Circle Sentencing was the resource-intensive nature of the approach, and the resource implications this has for the Magistrates, Project Officers and Elders involved.

7.3.1 *Positive impact for Elders involved*

The research identified several unintended benefits of Circle Sentencing, and the most significant is the impact that participation has had on the Elders involved. The evaluation obtained first-hand perspectives from many of the Elders who have given their time and energy to the Circle process. From this it can be said that if Project Officers are the engine room of Circle Sentencing, then Elders are its heart and soul.

In almost all cases, Elders were very positive about the experience and their role. This was consistent in all centres and across all interviews. When discussing the impact on Elders, several themes emerged. Words like 'pride', 'respect', 'confidence', 'sense of belonging', 'empowerment' and 'status' were mentioned often, and the research indicates that the impact of Circle Sentencing on many of the Elders involved is significant. Many had a strong sense of achievement as a result of their participation:

You wouldn't have caught me dead in a place like this a few years ago, but now look, it's like I own the place! (Elder, Kempsey)

It's the most rewarding thing that I have done in the Aboriginal community. (Elder, Dubbo)

I always feel quite buoyed by the process. (Elder, Bourke)

You get to see people who are doing good. You can have an impact on people – changing their lives is great. (Elder, Lismore)

The engagement of Elders in a judicial process provides them with a community status and respect that their traditional positions in the community have merited. In this way Circle Sentencing can be seen as institutionalising this traditional authority. The process is also important as it engenders feelings of self-worth and wider community recognition. In particular, the respect shown to Elders by court officials and the process itself was seen as critical in developing these positive outcomes.

A clear result of this strong connection to the process is the seriousness given to the role by Elders. They were keen to express the value of the Circles and their role in them and to reiterate that Circle is not the easy option and that they do take offenders to task for the effect of the offence on the victims and the overall community (see Section 7.1.7 for more details).

We shame them and look in their eyes. We don't let them keep their head down. (Elder)

7.3.2 *Flow-on effect of the Elder's involvement*

Several participants, including a few Magistrates, felt that the positive impact of Circle Sentencing on the respect of the Elders in the community would have a flow-on effect in the community, especially as many feel motivated to help their community and the offenders. Several Elders perceived that their elevated status has had a flow-on effect in the community generally. They believe that by re-engaging with the criminal justice process the community is able to take more responsibility for its members who are committing offences, usually against fellow community members:

Now a lot of Elders are watching out for their people and offenders are aware that the Elders are watching over them. (Magistrate)

Responses from a few offenders also suggest this is having an impact:

I keep my word to the Elder and I still keep it to this day. Because I live in town with my aunties, I show respect to them, I owe them. When at Local Court I never saw the Magistrate except in court, but I see my aunties every day. I can't muck up because I will lose respect. You get a fella that's been to jail over and over, he'll just say stick it to you. But with your aunt, you put your head down to say sorry for what I've done. (Offender)

Because you see the Elders every day in the street, it keeps you straight. (Offender)

7.3.3 *Reducing factions in the community*

In one community, Circle Sentencing was perceived to have addressed the factional issues, to some extent, as a range of Elders have been involved in Circle and as a result of their commitment to the program they were seen to have "left their own agenda aside once they see that it is beneficial":

Armidale has a few factions and you cannot get some people in the same room. In Circle they are all there for the one purpose. It has done community development in its own right. (Elder)

It's done more than sort the offenders out, it's brought the community together. (Elder)

However, not all Elders agreed that Circle allowed Elders to put aside personal differences, with one noting that in meetings Elders "cannot see eye to eye".

Importantly, other communities identified the factional nature of the community as a barrier to attracting an adequate pool of Elders. Therefore, while there is the potential for Circle Sentencing to bring communities closer together, in some cases this conflict can jeopardise the Circle Sentencing process.

7.3.4 Addressing domestic violence

In several locations the majority of cases referred to Circle are domestic violence matters. While this evaluation did not specifically explore the appropriateness of this for the victims and offenders, several participants identified benefits that Circle Sentencing offers in addressing domestic violence concerns.

In some locations it was stated that domestic violence is a focus as it is a common offence that affects a lot of people and because many in the community are “sick and tired of domestic violence”:

It affects more than the victim and the offender – it's a problem that if we can help solve, you're helping 10 people, not just one. (Project Officer)

One Project Officer felt that the focus on domestic violence is appropriate as the emphasis is on offences that are affecting the broader Aboriginal community. This Project Officer also noted that the impact is broadened when the victim and family attend Circle, as the message is delivered to a wider audience.

While the results suggest that Circle Sentencing is appropriate for domestic violence cases, more research is needed to explore this from the perspective of the victims.

7.3.5 Unintended adverse effects

The research did not identify a large number of unintended negative effects of Circle Sentencing. In one location there were criticisms that the Elders' views were being ‘pushed’ onto offenders. For example, one offender had had little contact with their Aboriginal relatives as their immediate family was non-Aboriginal. In Circle, two of the Elders focused most of the discussion on the need for the offender to reconnect with Aboriginal family members and offered to reunite the offender and family by assisting with transport and other details. At the time of the Circle, the offender agreed with the Elders. However, after the Circle the offender expressed frustration that family was the focus of discussion:

They kept going on about connecting with my culture, but I was brought up differently. It doesn't relate to me. (Offender)

There are two sides to this issue. On the one hand, the Elders in this location actively sought to find out about the offender's family prior to Circle, chiefly because they believe that making connections to culture and family will help to strengthen and positively direct offenders. The Elders also believe that strengthening family bonds helps to strengthen the Indigenous community generally. However, in this particular case, the offender felt that the Elders misunderstood the situation and that the advice offered was not relevant. The offender also said they were too intimidated at the time of the Circle to argue. A court official also highlighted this as an issue, and felt that occasionally Circle serves as a forum for Elders to voice issues they are concerned about but that are not necessarily relevant to the individual:

Sometimes it can be a bit of a soapbox. I feel like they often feel the offence is linked to identity, perhaps because they have been through similar things. It is very difficult to manage those types of things. (Court official)

The other unintended adverse effect is the resource-intensive nature of Circle Sentencing. While considerable resources have been allocated to it, several implications in terms of resources were identified in the research:

- A few Magistrates noted that the time implications are significant. The Magistrates noted that the time allocated to Circle Sentencing has not resulted in a reduction of responsibilities in other areas
- The management of Circle Sentencing by the Project Officers is resource intensive. Some of the tasks that have a considerable impact on resources include developing and maintaining relationships with the Aboriginal community and the court officials, public relations activities, assisting Elders and offenders with tasks outside the scope of the Project Officer role, and providing transport to Elders at the time of Circle.
- While most Elders included in the research are very committed to Circle Sentencing, for some the time implications are significant, especially as many are also involved in other committees and community activities.

Also, the resource-intensive nature of Circle Sentencing led to a few court officials questioning the viability of Circle Sentencing, with concerns that adequate measures are not in place to allow for a cost-benefit analysis to be conducted.

7.4 WHAT FACTORS INFLUENCE ACCEPTANCE AND NON-ACCEPTANCE OF CIRCLE SENTENCING WITHIN LOCAL ABORIGINAL AND NON-ABORIGINAL COMMUNITIES?

In summary ...

The two factors that appear to have the greatest impact on acceptance of Circle Sentencing are the skills and commitment of the Project Officer, and the support and attitude of the Magistrate.

Other factors that influenced acceptance of Circle Sentencing (to a lesser extent) included the nature of the factions in the community, with examples given where Circle Sentencing had a positive impact on these factions, and others where historically Circle Sentencing had been linked to particular factions, which had a negative impact on levels of acceptance.

The research also suggests that concerns about the resources required for Circle Sentencing influenced levels of acceptance in the non-Aboriginal communities, as did perceptions that Circle Sentencing is a 'soft option'.

While there appears to be a range of factors that influence the level of acceptance of Circle Sentencing in communities, the two main factors are the support and attitude of the Magistrate, and the skills and motivation of the Project Officer.

Circle Sentencing's success appears to depend on the ability of the Project Officer to manage the process and engage the community. The responsibility of informing the Aboriginal community about Circle Sentencing, accessing Elders, supporting offenders and victims, and providing post-sentence follow-up all rest with the Project Officer. As a result, perceptions of Circle Sentencing among those consulted in this research were strongly influenced by perceptions of the appropriateness of the Project Officer for the task. Significantly, in almost all cases this led to a positive perception of Circle Sentencing.

The support and attitude of the Magistrate is critical to the effective running of Circle Sentencing, and this also has a significant effect on perceptions in the Aboriginal and non-Aboriginal community.

Acceptance of Circle Sentencing appeared to be greater in locations where the Magistrate had strong links to the community and had been very active in promoting Circle Sentencing to both the non-Aboriginal and Aboriginal communities:

There has to be respect from the Court; it's not necessarily the main factor, but you need it. (Elder, Armidale)

An example was given in the research of a Magistrate's participation at a men's business day, and this was well received by the men involved, not only because the Magistrate reached out to the community but because his involvement resulted in relationships with community members which reportedly led to an increased pool of Elders being available to participate in Circle Sentencing.

The research also identified scenarios where the approach of the Magistrate appeared to be having a negative effect on the Circle. The main area of tension and sensitivity was the blanket exclusion of traffic matters from the Circle in one location, which was seen to be out of kilter with other Circles. This was at the heart of a perception that the power balance was on the side of the Local Court. This is also a key issue as driving offences account for the largest number of offences for Indigenous offenders in this location.

The extent of the factions in a community, and the ability of Circle Sentencing to work across these factions, is also a factor that influences acceptance within the Aboriginal community. In one location, Circle was seen to bring the community closer together, having a likely positive impact on the community perceptions of Circle Sentencing. In another location, Elders from several factions were involved, and these Elders were actively engaging with their community groups to encourage others to become involved. In another location, there was talk that historically Circle Sentencing had been linked to particular factions, and this had a negative impact on levels of acceptance.

Perceptions regarding the resources devoted to Circle Sentencing appear to affect perceptions within the non-Indigenous community, specifically within the legal framework. Circle Sentencing was seen to require considerable financial and human resources, and this raised concerns when people did not turn up and also in terms of measuring the success, as AGD is accountable for the resources devoted to Circle Sentencing.

Linked to this are concerns among stakeholders that Circle Sentencing is perceived to be a 'soft option'. This was discussed continually throughout the research, primarily because participants were keen to dispel this myth and reinforce that Circle is very challenging for offenders, and is definitely not the soft option as it can be a more difficult experience on an emotional and personal level compared to a Local Court:

I can understand why people think it is a softer option. However, I think that often Circle is much harder. It puts them [offenders] on the spot and they have to explain their actions. I think the penalties are actually harsher and that the experience is more emotionally taxing. (Court official, Lismore)

Nevertheless, there were concerns that this viewpoint exists, and that it needs to be dispelled.

7.5 WHAT SUGGESTIONS ARE THERE FOR WAYS TO IMPROVE THE EFFECTIVENESS AND COST-EFFICIENCY OF CIRCLE SENTENCING?

In summary ...

The research identified several factors that could improve the effectiveness of Circle Sentencing, although it is worth noting that a number of these factors are beyond the control of AGD. The key factors that are beyond the control of AGD are:

- *The availability of post-sentencing support*
- *The commitment and attitude of the Magistrate*
- *The longevity of the Project Officer*
- *The availability of Magistrates for Circle Sentencing, with suggestions for addressing this through Circle Magistrates or the use of videoconferencing.*

On the other hand, the research identified a range of factors that could improve the effectiveness of Circle Sentencing. These include:

- *Assisting Project Officers to increase the number of Elders involved in Circle Sentencing. Ideally it would be beneficial if this were the responsibility of the Project Officers and the Magistrates*
- *Enforcing the role of Probation and Parole in supervision of offenders and in reporting progress to Project Officers*
- *Improving the data collection and ongoing monitoring of Circle Sentencing*
- *Providing additional administration and process support, such as standardised forms, information-sharing across locations, and consistent approaches for tasks such as updating Elders, post-sentence follow-up and monitoring*
- *Developing a formal and consistent orientation program for Elders*
- *Covering the out-of pocket expenses of Elders*
- *Providing support for Project Officers with regard to debriefing or counselling (if relevant).*

7.5.1 Project Officers

The Project Officer is the key figure in the operation of Circles. The overall finding in this regard is that in order to facilitate the Circle processes Project Officers have to undertake tasks that far exceed their job description, and manage a range of complex and sensitive issues.

For example, the Project Officer is a conduit between the court (and its officers) and the Elders who participate in the Circle. This is a complex set of relationships, and the difficulty increases in communities where there is a limited pool of Elders and in communities that are factionalised. Also, the Elders represent a range of levels of experience and knowledge of legal processes and of the operations of the Circle in particular. The Project Officer needs to work with individual Elders to meet their individual participation needs. This ranges from providing them with transport to providing a detailed verbal briefing on individual cases for Elders with literacy issues. The time needed to manage these relationships is significant and has resource implications.

The second is the issue of resourcing. If each Elder has different participation requirements, and relationships between Elders need to be considered and managed, then the impact on resource levels of getting Elders to Circle is considerable. A major factor impacting on the importance of this issue is the size of the pool of available Elders. It appears that far greater time and resource commitments are required when the pool is small, because of the lack of flexibility with regard to scheduling, difficulties in avoiding potential conflict, and the need to manage the relationship so that the Elders do not 'burn out'.

The nature of this position is that it is a 'one band man' role and the wide range of skill sets required by individual Project Officers has a major impact on the efficiency of the process, and if something goes wrong in any of these matters then the responsibility is perceived to lie with the Project Officer.

Apart from the administrative and technical aspects of the Project Officer position, there are a number of cultural factors that also have a bearing on the success of the position.

The first of these is the place of origin of the Project Officer. There is a common acceptance among research participants that if the Project Officer is drawn from the local community then they will have the cultural and community knowledge to deliver effective community participation in the Circle process. In fact this was held up in a number of the Circles as a main determinant of success. However, in at least one case this cultural connection was seen as a negative as there were hints that the Project Officer was being overly influenced by one section of the community.

Overall, from the perspective of many Elders, coming from the community does provide legitimacy and ease of access for the Project Officer in promoting the Circle, and Elder participation in the Circle. It is then reliant on individual Project Officers to position themselves above partisan community politics and develop a rapport across the community. However, others felt that a Project Officer from outside the community can be successful if they have the community access skills to build rapport with the local community as the precursor to fostering both confidence and participation in the Circle process. This was the case in two of the nine communities included in the research.

Coupled with this rapport is the need to maintain cultural neutrality so that the Project Officer can operate above the level of Aboriginal community politics and be seen to be fair and reasonable and not favouring a particular group over another. The Project Officers involved in the Circles were able to demonstrate this neutrality, and this was reflected in the overwhelming positive response to Project Officers in almost all jurisdictions.

A by-product of this enhanced community role is that the Project Officer becomes known as a respected person in the community and someone with authority, and this leads to a growing role for them in the community. While generally a positive outcome emanating from the Circle operation, this community resource is then sought for other purposes, with the result being an increasing pressure on the individual.

The cumulative effect of these pressures and the emotional involvement in following cases and dealing with reoffending does take its toll on Project Officers. This was evident in their willingness to discuss their frustrations and the problems they encountered on a day-to-day basis. As such there is a perceived need to provide more general support for Project Officers in the form of debriefing or even counselling when dealing with particularly traumatic cases. Not addressing this issue will lead to Project Officer burnout, especially in Circles where tensions are high.

Given the central role of Project Officers to the operation and success of the Circles, Project Officers have expressed the need for a higher level of process support as well as options for emotional support when dealing with complex and sensitive cases and sustained pressure situations in their day-to-day work.

Based on this, there are several issues that need to be considered:

- The risk of burnout due to the physical and emotional strain of the role, and frustration in locations where there is not an adequate pool of Elders
- The increasing workload as the number of Circles increases and as the number of people needing post-sentencing support and follow-up increases
- The responsibilities of the Project Officers that in many cases extend beyond their job description. One Project Officer reported that, as she holds a 'legal title' in the community, she is often asked to deal with other matters, such as making doctor's appointments and Centrelink appointments. This Project Officer reported that the position is one of great responsibility and one that brings not only respect but also obligations.

Project Officers provided a few suggestions for improvement that may increase the efficiency of Circle Sentencing:

- Providing standardised forms (such as letters to offenders), as currently each location has developed their own correspondence
- Enhancing the ability for Project Officers to share information across locations
- Developing consistent approaches for key tasks such as updating Elders on the progress of offenders, and post-sentence follow-up and monitoring. One suggestion was that formal links be established between the Project Officer and Probation and Parole, and for regular reporting to be part of the sentence
- Developing a consistent approach to follow-up that is recorded but that has limited impact on the respondent.

The heavy reliance on Project Officers is a key issue to consider, as the research suggests that the effectiveness of Circle Sentencing is dependent on the skills and commitment of the Project Officer. If the Project Officer is not able to fulfil the many roles expected of them (some of which are beyond the documented responsibilities), the effectiveness of Circle Sentencing in their area is threatened.

7.5.2 Engagement and participation of Elders

The experience in most Circles is that Elders are initially reluctant to participate, with the main barrier relating to concerns about 'sitting in judgement on others' or being in a position where they send people to jail. The effect of this is to shift the onus of participation onto the court structure and the Project Officer in particular, who has to undertake significant outreach, provide convincing arguments and address any number of access issues that could block the participation of Elders in the process:

Only a few people are interested in doing it – civic-minded people that want to give back something to their community. (Elder, Lismore)

The engagement process and the recruitment of Elders normally falls to the Project Officer. This is generally effective due to the connections maintained by these people, but can become limited over time.

Engagement with the Circle process may improve if other court officials, such as the Magistrate, are involved in community engagement. While community engagement is the responsibility of the Project Officers, the research found that the level of community engagement was greater in locations where the Magistrate actively engaged with the local Aboriginal community outside of Circle Sentencing. It would be beneficial if court officials, especially Magistrates, were involved in reaching out and

engaging Aboriginal community Elders through outreach activities, with these activities supported and facilitated by the Project Officer.

An example of innovation in this regard is the recent efforts of the Mt Druitt Circle Magistrate who went out on a men's business day and through this was able to encourage a number of men to consider sitting on the Circle, which bore immediate results.

The learning from this example is the positive results that a direct connection between the Court and the community can achieve.

Overall, most Circles appeared to have an appropriate pool of Elders. However, in the few Circles in which the number of Elders is small the ramifications are:

- The potential for gender imbalance, which is a particular concern given the number of domestic violence cases going to Circle
- Availability issues, which can delay Circle or impair its organisation
- The lack of breadth among Elders to allow the customisation of Circle to suit specific cases, that is, to enable Circle to be used to achieve broader community outcomes based on the specific knowledge of Elders about individuals, families and communities. It would also be ideal to allow for the Elder group to take into account the needs of the victims.

Having enough Elders to call on is essential for giving the Circle process both the flexibility and legitimacy required.

7.5.3 Defining an Elder

Origin

The research discussed the significance of Elders being from the relevant communities. While overall the most common response is that the Elders should have close ties to the community, there were mixed responses depending on the specific community context. For example, in Dubbo it was preferred that Elders were from nearby communities (such as Walgett and Bourke) given the cross-roads nature of the Indigenous Dubbo population. It was also suggested that ties to country are less relevant for Mt Druitt given its urban nature. Based on the research results, the key outcome for consideration is that Elders need to have links to the community, and that these links could be based on links to country or connections to the community through involvement and citizenship.

Overall, the research suggests that the issue of origin is not as important as building an adequate pool of Elders to be involved in Circle. Any number of models could have validity, and it is up to the individual Circle to determine the most appropriate approach given the context and operating realities.

Age

While age was not discussed consistently across the research, it was raised in several discussions regarding Elder status. In Nowra, a few Elders were concerned with younger respected persons being involved in Circle because they did not feel younger people have the necessary authority. There was a perception that Indigenous sentencing in Canberra failed because there were younger people (35-year-olds) judging the community.

On the other hand, in Kempsey the Project Officer identified the need to broaden the pool of Elders involved, and at the time of the research the Project Officer was in discussions with other people in the community who are not Elders but are respected persons. The Project Officer noted that some of these people have experienced severe disadvantage and 'bad times' themselves, and are now well respected in the community and will one day be Elders. The Project Officer believes these people are role models and would serve the Circles well by providing perspectives and life experiences that will benefit offenders.

7.5.4 Training and orientation for Elders

Participation in Circle does generate a range of questions about the skills required by Elders to maximise their effectiveness. The issues raised on this issue include the following:

- The majority of Elders were keen to learn more about the law but felt that their role was to provide the cultural input and connection with the offender. As such, the skill set they need is knowledge of the community and a capacity to invoke the authority of the community in passing sentence
- The corollary of this view was that it is the role of the court official to ensure that Elders understand the legal framework in which they are working and the sentencing options available to them
- Some Elders showed interest in learning more about the law, though they did not feel that their participation in Circle was impaired without this.

Overall, Elders were happy with their role in the Circle and comfortable deferring the detailed legal considerations to the court officials. The interest in training was mixed, although in most cases Elders did not express a significant need for training, with a preference for "learning through experience

rather than on paper". Many of the Magistrates interviewed believed that the Circles were delivering a form of on-the-job legal training for Elders as they were not only learning about the provisions of the law and the limitations of sentencing but were also becoming more familiar with the overall judicial process. This is a positive effect as it is building a bridge between the Court and the community.

While the majority held this view on legal training, Elders did indicate that they wanted to be thoroughly oriented to the process and that the best approach for this was to involve the following activities:

- Being verbally briefed on their role
- Being provided with a document that summarises the verbal briefing and provides examples of the type of cases referred to Circle and the types of sentences imposed
- Being able to observe a number of Circles prior to more formal participation.

The research suggests that orientation of Elders happens across the board but that there may be benefits in developing a formal and consistent orientation program for Elders to inform them of their role and to engender their confidence in their role and the powers of Circle. Orientation could also address issues relating to conflict of interest, which were identified in a few cases in the research where Elders excused themselves from a Circle because they were related to the offenders. In developing this orientation, it is important to keep in focus the key participatory value in the Circle, which is the genuine caring that Elders have for their community and their cultural confidence in communicating to younger people in the community.

In the research, Elders also discussed debriefing. While most had a regular debriefing after Circle, the approach across locations varied. This is an important aspect of the Circle process, especially given the emotional nature of many Circles. Ensuring that all locations consistently implement debriefing is also important.

7.5.5 Remuneration

There were mixed opinions around the issue of remuneration.

Some Elders indicated that they should be receiving some form of remuneration for the time and effort they were putting in, and that payment was an equity issue as "everyone else attending the Circle is getting paid". This view was expressed by Elders in Mt Druitt and Walgett.

Others were staunchly against remuneration and felt that payment would attract the wrong people:

If you put money up, you will have everyone there, and anyway we don't want to talk about money. (Elder)

If they introduce it, I won't belong to it ... Once you get sitting fees you attract the wrong people. (Elder)

Elders in Nowra, Kempsey, Armidale and Brewarrina were more likely to hold these views. For those in Dubbo, Lismore and Bourke, responses were mixed.

While the issue of formal payment for participation is contentious, there is a related issue of the costs incurred by Elders in participating. There was general consensus that out-of-pocket expenses incurred by Elders should be reimbursed.

Developing a more formal position on both formal remuneration through sitting fees and the coverage of out-of-pocket expenses is essential in building confidence and consistency in the operation of Circle.

7.5.6 Sentences

One Project Officer felt there is a problem with Circle Sentencing issuing Section 11 Bonds (S11). These bonds allow an offender to be released on bail before sentencing while an assessment is made of their prospects for rehabilitation. Sometimes the maximum 12-month period would be provided for under S11. Twelve months, according to the Project Officer, is too long for someone to be awaiting sentence, and many Aboriginal offenders receiving an S11 Bond reoffend prior to the Circle reconvening.

7.5.7 The Circle Magistrates

It is clear from this review that the Magistrate has a strong bearing on the success or otherwise of the Circle Sentencing court. In every Circle location, informants identified the support given to Circle by the Magistrate as the single biggest determinant of success.

Overall, Elders, Project Officers and offenders felt that the Magistrates were supportive of the Circle process. This view was based on:

- Magistrates allocating time to the Circle process, including involvement in the assessment process and sitting on the Circle

- Showing respect for the Elders and other participants in the management of the Circle
- Supporting the sentences decided on by the Elders.

There was, however, a perception that some Magistrates were more committed to Circle than others, with the differential being between those Magistrates who were proactive in engaging with the local Aboriginal community outside of court interaction and contact, and those who were reactive and only responded as required by the legislation.

The perception is that the level of support from the Magistrate has a major bearing on how the other key stakeholders gauge the success of Circle, and that, where this support is demonstrated, perceptions of the effectiveness of the Circle process are more positive.

One of the key influencers on this perception is the type of matters that the Magistrate allows to go to Circle. In some jurisdictions, restrictions are placed on the type of matters (outside the legislated exclusions) that are allowed to be considered for Circle, while in other the range of matters is far broader.

There are a number of consequences from this:

- The first is the apparent inconsistency between jurisdictions. As an example, the predominant matters going to Circle in Lismore involve driving offences, whereas in Dubbo the majority of matters going to Circle are for domestic violence matters and all driving offences are excluded
- The second is the tension that the selection of matters causes between the Aboriginal community and court officials. In both of these jurisdictions, Elders felt that the restrictions were limiting in that some of the matters excluded would be ideal for Circle. This situation has also led to a perception that there is a higher level of intervention in the Circle process than necessary
- The third is that the selection of matters is seen to decrease the level of Aboriginal community ownership of the Circle Sentencing program. This is a sensitive point because at no stage did Elders express the view that they should have total control of the Court, though they would like their views reflected in its operation.

While there appear to be a number of tensions caused by legal interpretation and resulting operational issues, there was strong evidence across the review that Magistrates were genuinely respectful of Elders and that this was acknowledged by all informants.

The word that kept on recurring in discussions about the Magistrate was 'respect' – respect for the community and respectful behaviour in Circles. Magistrates have generated a very strong positive endorsement of the Circle process by Elders. The response from first-time Elders in Mt Druitt was one of amazement at the approach and demeanour of the Magistrate.

Another consistent result from the review was a perception among Magistrates that the Circle process was increasing the level of legal process literacy and contact between Elders in the community and the Court:

I get the facts, I put them in plain English, take out the narrative and deliver a short chronological history of the matter, identifying trends and gaps, and then I add the information from Probation and Parole when introducing the sentencing options. (Magistrate, Mt Druitt Local Court)

This is an important perspective as again the process is seen to deliver a number of community resource dividends by increasing Elders' familiarity with the legal process and creating a range of positive experiences between the court and the community.

The main structural impediment to the Circle process involving the Magistrate is concerned with general availability of the Magistrate to sit in the Circle. This was more keenly felt in Circles that were presided over by circuit Magistrates.

The importance of this is the need to provide a greater consistency in the number and scheduling of Circles between jurisdictions. At present, the variability in the frequency of Circles across locations is significant and at times does have the effect of increasing the tension around specific Circles which occur infrequently. It should be noted that referring offenders to Circle Sentencing is the role of the Magistrate, and this therefore is one of the major influences on the frequency of Circle Sentences.

One suggestion made by an Elder was to develop specialised Circle Magistrates to direct the Circles, though this idea does conflict with the benefits identified by a Magistrate developing deep community links and knowledge. Another suggestion from a Magistrate was to have 'country' Magistrates that would work in a number of locations within a region. Another suggestion was for videoconferencing to be used in more remote locations where the frequency of Circles is limited by the availability of a visiting Magistrate.

The implication of these findings is that there is a need to achieve a higher level of consistency in the operation of the different jurisdictions in terms of frequency of Circles, the matters that are allowed to go to Circle, and the procedures followed during the Circle process. A greater level of consistency will increase confidence in the program and remove the structural causes of tension in individual Circles. It

is worth acknowledging, however, that AGD has little control over the operation of the Magistrates involved in Circle Sentencing, which is a key issue to keep in mind given their influence on the effectiveness of Circle Sentencing.

7.5.8 Post-sentencing support

The support an offender receives post-sentence is critical to their rehabilitation potential for further involvement in the criminal justice system.

Circle Sentencing aims to provide offenders, where possible, with community-based support solutions to enable them to continue to participate in the community and receive the appropriate assistance required to lead a functioning, healthy, crime-free life.

Many of the offenders participating in Circle Sentencing, for example, have alcohol misuse problems, and a common sentencing element is to require the offender to attend a drug and alcohol rehabilitation facility or to attend Alcoholics Anonymous or another alcohol counselling service.

In other cases, offenders may be given a Community Service Order (CSO) in which they have to provide services or duties for a community-based organisation. Others may be required to attend some kind of training that can provide them with employment skills.

However, if the services are not available within a community, or the services within a community are not appropriate or adequate, then it is futile to expect someone to fulfil the sentence requirements. One example of inadequate access to services is that of an offender in Bourke being required by the Circle to attend counselling, but after three months Probation and Parole had not been able to organise counselling as no service had been identified, although the offender had been fulfilling his other sentencing requirements. The Elders feared that without counselling this young man may reoffend.

In some locations there is a range of support services able to provide assistance to offenders, while in other locations services are scarce and offenders may have to travel to the nearest regional centre to access services, or wait until the service visits. In towns like Brewarrina and Walgett this is certainly an issue, with the resources available stretched.

Although larger regional centres like Kempsey and Dubbo have a range of community and government services, there are still issues in relation to the adequacy and appropriateness of the services available. In Dubbo, for example, there were concerns about the lack of Indigenous-specific domestic violence, drug and alcohol rehabilitation and counselling services, a key issue given the prevalence of these issues in cases referred to Circle Sentencing. There were also concerns raised

about the lack of positive working relationships between Circle Sentencing and Indigenous-specific services in the area. In Kempsey, limitations with post-sentencing support were raised in response to perceptions that Indigenous organisations are not adequately resourced to appropriately support offenders.

In Mt Druitt, the situation is different. As it is located in an urban area, there is a large range of services which Circle Sentencing can consider referring the offender to. Moreover, these services are not restricted to the Mt Druitt area but are available across a broader regional area, and this is seen as one of the strengths of the Mt Druitt Circle.

The lack of support services in some locations means that Elders and the Project Officer end up taking on extra commitments in relation to providing support for offenders in their community. This places extra pressure on Project Officers and Elders, who are usually already over-extended in relation to providing community support, given their participation in a range of other community activities.

Although the role of Project Officer includes monitoring the progress of the offender post-Circle, this has proved difficult in many cases because of the lack of adequate support services and communication between services and Project Officers. Some Project Officers commented that monitoring is made more difficult because of the lack of formal communication mechanisms established between the community sector and Circle Sentencing. There are no formal reporting systems in place, and the Project Officers find themselves chasing up services to enquire whether offenders have attended their required appointments. This may not be such an issue for Project Officers with a small number of people to monitor, but for locations like Dubbo, where over 60 people have gone through Circle Sentencing, it presents a time and resource problem for the Project Officer.

A communication regime needs to be established to allow for enhanced reporting between Project Officers and community-based services. This could be a simple database or a form that the offender needs to have signed by the service provider and given to the Project Officer, or an email form that the services provider could forward to the Project Officer after the appointment.

It is also important to consider the role of Probation and Parole in post-sentencing support. Supervision and follow-up is the responsibility of Probation and Parole, and this research indicates that the approach to this is not consistent across the Circle locations. While in a few locations there is regular and formalised communication from Probation and Parole to the Project Officer regarding the supervision of offenders, this is not universal. There are opportunities for improvement with regard to the responsibilities of Probation and Parole in the supervision of offenders and in reporting the progress to Project Officers.

In summation, the relationships between community-based organisations and government departments needs to be strengthened in order to provide Circle Sentencing with increased and improved support options. This could be done through Project Officers attending interagency meetings or visiting services individually to develop professional ties. Elders could also take part, although increasing the role of Elders may have implications regarding payment. Another suggestion is that representatives from community-based services and relevant government departments could sit in on Circles and be part of sentencing agreements. For example, if the Elders and the Project Officer have some indication prior to a Circle that the offender may need some drug and alcohol counselling, then they could invite the service, whether it be the Aboriginal Medical Service or the local hospital out-patient service, to attend the Circle. This may involve the service in providing support for the offender.

There are also clear opportunities to strengthen the role of Probation and Parole in supervising offenders, and to formalise regular and consistent reporting to Project Officers.

7.5.9 Data collection and ongoing monitoring

Adequate data collection is a major issue in assessing the effectiveness of Circle Sentencing. There is a need for standardised reporting mechanisms across the locations and the development of a database and use of CIN that allows BOCSAR to easily monitor the outcomes of those attending Circles.

This process should also involve collecting information on the participation of victims and developing an efficient process for monitoring the progress of offenders after Circle Sentencing.

8. CONCLUSIONS

This evaluation focused on several objectives, and the results for each objective are summarised below.

8.1 HAS CIRCLE SENTENCING ACHIEVED ITS STATED OBJECTIVES?

This evaluation sought to answer the following questions:

- Has Circle Sentencing included members of Aboriginal communities in the sentencing process?
- Has Circle Sentencing increased the confidence of Aboriginal communities in the sentencing process?
- Has Circle Sentencing reduced barriers between Aboriginal communities and the courts?
- Does Circle Sentencing provide more culturally appropriate sentencing options for Aboriginal offenders?
- Does Circle Sentencing provide effective support to victims of offences by Aboriginal offenders?
- Does Circle Sentencing provide for the greater participation of Aboriginal offenders and their victims in the sentencing process?
- Does Circle Sentencing increase the awareness of Aboriginal offenders of the consequences of their offences on their victims and the Aboriginal communities to which they belong?

Based on the qualitative analysis, this evaluation suggests that each of the objectives above is being met by Circle Sentencing. For most of the people involved in the evaluation, confidence in the sentencing process is high. Elders, Project Officers and offenders also indicated that barriers between Aboriginal people and the courts have reduced to some extent, and that the sentencing outcomes are culturally appropriate when compared to the Local Court.

The evaluation did identify a few limitations with regard to Circle Sentencing meeting these objectives:

- Participation of offenders in Circle Sentencing is significant, although when compared to the total number of Aboriginal people with a proven offence in the Local Court the number involved in Circle Sentencing is limited

- In most locations, the support services available to address related issues such as alcohol and other drug use are not adequate, which it was felt limited the effectiveness of the Circle Sentencing approach
- The number of victims included in this evaluation was limited (n=6), and therefore it is difficult for this evaluation to be conclusive regarding the level of support provided to victims, especially with regard to victims of domestic violence. This issue requires further investigation
- Related to this is the fact that insufficient data is being collected to allow for an understanding of the level of involvement of victims based on offence type and location. To allow ongoing monitoring of victim participation it would be beneficial if the Project Officers uniformly collected this information.

8.2 HAS CIRCLE SENTENCING BEEN EFFECTIVE IN REDUCING REOFFENDING?

The BOCSAR analysis found that Circle Sentencing did not influence the rate of reoffending or the seriousness of the offence for those who reoffended. On the other hand, 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. Many provided specific examples of cases where Circle Sentencing had brought about a dramatic change in circumstances for an offender, or noted that only a few of those who had been through Circle Sentencing had reoffended. There appears to be a conflict between people's perceptions of the impact of Circle Sentencing on recidivism and the reality of the data.

The results of the evaluation indicate that it is 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. This is important as reducing recidivism is one of eight objectives of Circle Sentencing as identified in Schedule 4 of the *Criminal Procedure Regulation 2005*.

8.3 ARE THERE ANY UNINTENDED POSITIVE OR ADVERSE EFFECTS OF CIRCLE SENTENCING?

One of the most important unintended benefits of Circle Sentencing was the positive impact that participation has had for many of the Elders involved. Many of the Elders included in the research had a strong sense of achievement as a result of their participation, with discussions about the impact on their levels of pride, confidence and community status.

Other unintended benefits include perceptions that community members take more responsibility for the actions of other members through their involvement in Circle Sentencing. It was also suggested in one location that Circle has reduced the impact of factional issues. Several stakeholders highlighted the benefits of Circle as a community-based approach to addressing domestic violence within Aboriginal communities, although more research is needed on this issue.

Two unintended negative effects of Circle Sentencing were identified in the research. One related to concerns that in some cases Elders express their personal values during the Circle, and that these views are 'pushed' onto the offender. (This was only raised in one location.) Another adverse effect of Circle Sentencing was the resource-intensive nature of the approach, and the resource implications this has for the Magistrates, Project Officers and Elders involved.

8.4 WHAT FACTORS INFLUENCE ACCEPTANCE AND NON-ACCEPTANCE OF CIRCLE SENTENCING WITHIN LOCAL ABORIGINAL AND NON-ABORIGINAL COMMUNITIES?

The two factors that appear to have the greatest impact on acceptance of Circle Sentencing are the skills and commitment of the Project Officer, and the support and attitude of the Magistrate.

Other factors that influenced acceptance of Circle Sentencing (to a lesser extent) included the nature of the factions in the community, with examples given where Circle Sentencing had a positive impact on these factions, and others where historically Circle Sentencing had been linked to particular factions, which had a negative impact on levels of acceptance.

The research also suggests that concerns about the resources required for Circle Sentencing influenced levels of acceptance in non-Aboriginal communities, as did perceptions that Circle Sentencing is a 'soft option'.

8.5 WHAT SUGGESTIONS ARE THERE FOR WAYS TO IMPROVE THE EFFECTIVENESS AND COST-EFFICIENCY OF CIRCLE SENTENCING?

The research identified a range of factors that could improve the effectiveness of Circle Sentencing. These include:

- Assisting Project Officers to increase the number of Elders involved in Circle Sentencing. Ideally it would be beneficial if this were the responsibility of the Project Officers and the Magistrates
- Providing support for Project Officers with regard to debriefing or counselling (if relevant). This support should also be available to Elders where relevant

- Providing additional administration and process support for Project Officers, such as standardised forms, information-sharing across locations, and consistent approaches for tasks such as updating Elders, post-sentence follow-up and monitoring
- Developing a formal and consistent orientation program for Elders
- Covering the out-of-pocket expenses of Elders
- Improving the data collection and ongoing monitoring of Circle Sentencing, including the participation of victims and the monitoring of offenders post-sentencing. This could be assisted by establishing formal communication mechanisms between the community sector, Probation and Parole, and the Project Officers. As part of this monitoring, Elders should be informed of the progress of offenders
- Improving the availability of support services for offenders.

APPENDIX ONE – BIBLIOGRAPHY FOR THE LITERATURE REVIEW

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APPENDIX TWO – BOCSAR REPORT