

Yallum Yallum Elders and Respected Persons Council

Centre for Innovative Justice

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1. Introduction

1.1 Overview

The Centre for Innovative Justice (CIJ) has been engaged by the Victorian Aboriginal Community Services Association Ltd (VACSAL) and the Grampians Regional Aboriginal Justice Advisory Committee (RAJAC) to make recommendations for an independent self-determined justice model incorporating an 'Elders and Respected Persons Council', to be known as Yallum Yallum.

This report outlines a proposed model for Yallum Yallum including vision and values, governance and administration, and program processes. The report also provides a high-level implementation plan, including suggestions for the approach to evaluation. The report recommends that a new position (the Yallum Yallum Coordinator) be created at the implementation site, Goolum Goolum Aboriginal Cooperative. The Yallum Yallum Coordinator would help establish and then implement (maintain oversight of the day-to-day operation) the pilot program.

The model is a process for referring willing community members of any age to an Elders and Respected Persons Council known as Yallum Yallum. Participation in Yallum Yallum will promote cultural healing, social and emotional wellbeing and a stronger role in culture and community. The process aims to provide an alternative that diverts people away from further involvement in the criminal justice system, and addresses the overrepresentation of Aboriginal people in the justice system.

1.2 Background

This report and the development of the model is for consideration by the Yallum Yallum subcommittee of RAJAC (RAJAC subcommittee). This group functioned as a steering committee for the design phase of the Yallum Yallum project. The Yallum Yallum project arose out of a particular context. The Grampians Aboriginal community has historically chosen not to be part of the expansion of Koori Court (a court for Aboriginal and Torres Strait Islanders who plead guilty to a criminal offence) as it is not considered a fully self-determined model of justice. In Koori Court, although Elders contribute to the sentencing conversation, the Magistrate (rather than the Elders) makes the final decision as to the sentencing outcome. The community was eager to develop its own independent self-determined justice model incorporating an 'Elders and Respected Persons

Council' where the process and outcome would be controlled by the community, represented by the Elders and Respected Persons Council.

On completion, it is proposed that the model documented in this report will be provided to Goolum Goolum Aboriginal Cooperative to implement and test. The model will integrate with local cultural support and other established programs. Although VACSAL has received funding for both the design and implementation of the model, this funding does not extend to the creation of new programs or support services that might complement the model. The proposed approach to developing the Yallum Yallum model is therefore to start small, identifying and linking in with established resources including local services and supports. As the implementation of the Yallum Yallum model unfolds, there will be an opportunity to identify service gaps and seek funding necessary to complement and grow the model, in a way that is consistent with the vision and values outlined in section 2.1 below.

1.3 Project development activities

For this project the CIJ was asked to:

1. Research existing Aboriginal-led justice models
2. Develop a co-design process with the RAJAC subcommittee
3. Carry out a process of co-design with key Aboriginal community members, organisations, and other non-Aboriginal stakeholders
4. Draft a model and make recommendations for implementation.

The Centre for Innovative Justice completed a research paper and self-determination table on existing Australian and international Aboriginal-led justice models (**appendix 1**). These documents informed the co-design discussions, providing concrete examples of embedding cultural practices and community voice into justice processes.

It was important to the community that the governance and co-design process that informed the development of the model was Aboriginal-led. As part of this project, the Yallum Yallum subcommittee of RAJAC (comprised of two community Elders, leaders from Goolum Goolum, the Grampians RAJAC and VACSAL) was established. The RAJAC subcommittee held the project vision, community and stakeholder relationships, and acted as a bridge for the research team during co-design with community. Leading up to and throughout the co-design process, there

were regular meetings between the project team and the RAJAC subcommittee to enable the project team to report back and be further guided in refining the model's objectives and design.

The model was developed through a process of co-design across four workshops with key Aboriginal community members, organisations, and other non-Aboriginal stakeholders (see diagram in **appendix 2**). This process involved constant refinement, with each workshop drawing on the learnings of the previous workshop.

Community members and stakeholders engaged in workshops (A and B) in two separate streams. This approach aimed to address the potential power imbalance that might be felt between community members and stakeholders who are part of the formal justice system. It was anticipated that workshop C would focus on the design of the self-determined justice program model and involve Aboriginal community members only, with this design presented to justice stakeholders in workshop D to discuss the process of actualisation. However, due to sorry business and COVID-19 impacting on participants, workshop C was attended by smaller numbers of community members. A productive meeting was held between the project team, community members present and an Elder, who together provided the foundation for the vision and values statement that was then refined by the RAJAC subcommittee. This vision and values statement and the process for making this vision a reality was then discussed with justice stakeholders who participated in workshop D.

Following completion of the co-design process, CIJ conducted additional interviews with stakeholders, Victoria Police and Court Services Victoria to gather further information and perspectives on cautioning and diversionary processes. Analysis and reflection of this further information as part of this co-design process has resulted in the detailed outline of the Yallum Yallum model set out below. The following section of this report outlines the Yallum Yallum model.

2. The Yallum Yallum Model

2.1 Vision and values

The vision for the Yallum Yallum Elders and Respected Persons Council is:

To provide an independent and self-determining justice model that promotes cultural healing, social and emotional wellbeing and a stronger role in culture and community. To divert people away from and address over representation of Aboriginal people in the justice system.

The values of the Yallum Yallum Elders and Respected Persons Council are:

Self-determination through community control of both the process and outcome

The process itself is community controlled. Referrals, stakeholder engagement, preparation for meetings and recruitment of Elders and Respected persons are organised by the Yallum Yallum Coordinator, to be employed at Goolum Goolum Aboriginal Cooperative. Elders and Respected Persons who sit on the Council will run the meetings/process and determine the outcome.

Enabling voice of ancestors, elders and participants

The meetings would include Council members talking honestly and openly with the participant. The process would initially be held at Goolum Goolum Aboriginal Cooperative with the potential of moving it to an on-country site if resourcing is sufficient to support this. Cultural protocols, including Welcome to Country would be followed.

Embedding culture through place, process, participation and outcome

The Council process will include a program for identification and connection to culture, setting cultural milestones and acknowledging and celebrating when those milestones are met.

Accountability to community, through support, healing and return to community

Participants would be accountable to community through the Council as the decision maker about the outcome of the process. The makeup of the Council, comprising Elders and Respected Persons would be carefully constituted for each matter to best meet the needs of the participant and the community, and to minimise any potential conflicts of interest. Support and healing would be offered to the participants through established community organisations.

Centring on the strength of community relationships

The process would centre on existing established community programs. For example, there may be a role for Barengi Gadjin Land Council to provide work opportunities. Aboriginal mentors could also play a role.

Providing meaningful, restorative and problem-solving outcomes

The meetings could include victims (community members or otherwise). Preparation for such processes would be careful and thorough. The process would ensure that outcomes were meaningful to the participants and tailored to their individual circumstances.

Participation does not require admission of guilt but does require acknowledgment of obligation

Unlike Koori Court, a plea of guilty would not be required for participation. However, the process would require an acknowledgement by the participant of obligation to the community.

Accessible to willing participants (of any age) who identify as part of community

The process would not be limited by age but would seek to address the identified gap of diversionary options for Aboriginal people aged over 18.

2.2 Governance and administration

Governance

The Yallum Yallum Elders and Respected Persons Council will operate independently of the formal justice system. Its focus will be on engaging participants in cultural activities, celebrating cultural milestones and strengthening community connection.

The Yallum Yallum Elders and Respected Persons Council would run as pilot program of Goolum Goolum. The current RAJAC subcommittee would continue to provide support, expertise and feedback throughout the establishment and implementation phases. It is noted however, that the composition of the subcommittee may need to be reconsidered to ensure the expertise required for the establishment and implementation phases are met.

Specific establishment and implementation activities that would need to be undertaken by Goolum Goolum and supported by the RAJAC subcommittee as part of the establishment of the model, are likely to include:

- Recruitment of the Yallum Yallum Coordinator
- Establishing recruitment processes and participation protocols for Elders and Respected Persons, including declaring and managing conflicts of interest
- Recruitment of Elders and Respected Persons
- Ensuring the Yallum Yallum program is culturally safe for Elders and Respected Persons, the Yallum Yallum Coordinator and participants
- Determining appropriate mechanisms and responsibility for dealing with complaints from participants about the program (noting that Goolum Goolum would have overall responsibility for the program and addressing complaints)
- Receiving assurance of the program's compliance with information handling, privacy and record keeping
- Contributing input to any review and evaluation of the program.

Administration

Role of the Yallum Yallum Coordinator

The Yallum Yallum Coordinator will be employed by Goolum Goolum Aboriginal Co-operative. The Coordinator will help establish and then implement (maintain oversight of the day-to-day operation) the pilot program. The duties and functions of the Coordinator role could include:

Establishment

- Developing a strong and constructive relationship with the Elders and Respected Persons
- Developing and delivering a training package for Elders and Respected Persons
- Developing relationships and establishing referral pathways for cultural activities and other activities as required
- Developing relationships with stakeholders including courts, police and community organisations
- Running training for referring or participating organisations i.e. police or court staff where necessary
- Establishing any mechanism for external reporting back to authorities such as the court and police

Implementation

- Identifying eligible participants and managing referrals
- Being the initial point of contact for participants, to explain the program and its purpose
- Practical arrangements for meetings (timing, venue, participants, need for interpreters or other accessibility supports)
- Supporting participants throughout the process
- Collecting data about the program including de-identified feedback from participants
- Consulting with the RAJAC subcommittee, stakeholders and program participants to identify opportunities to adjust the parameters of the program and improve its delivery
- Reporting on the progress and outcomes of the program (to the extent that confidentiality requirements permit)
- Supporting review and evaluation of the program.

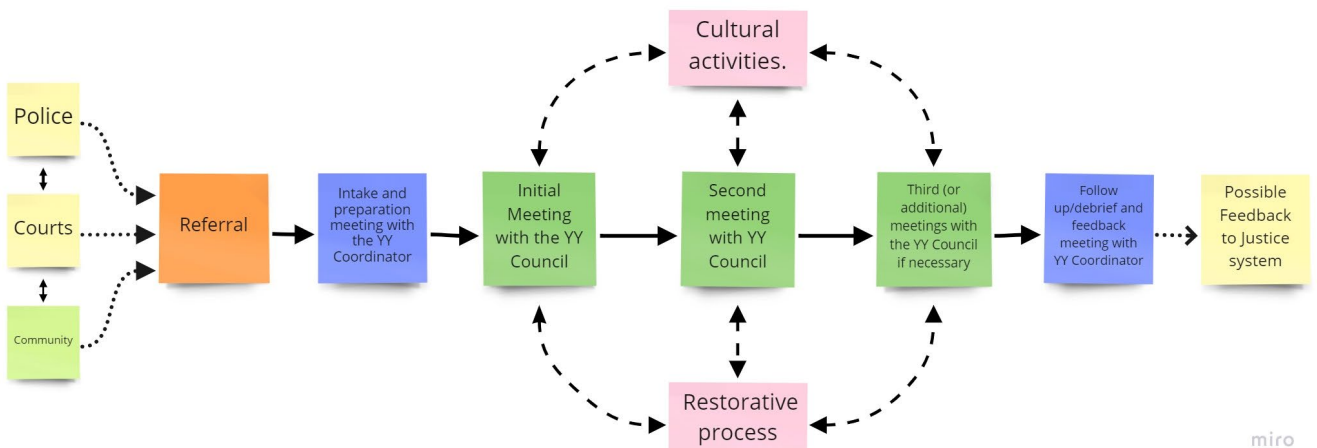
Role of the Elders and Respected Persons Council

The role of the Elders and Respected Persons Council is to assist the person coming before the Council to find their cultural identity through cultural obligation and community connection. This engagement with the participant is envisioned as a process (checking in, through regular meetings over a period of time) rather than a once off event.

2.3 Process

Below is a diagram of the proposed Yallum Yallum Elders and Respected Persons Council process. Each of the elements of the diagram are articulated in more detail below.

Figure 1: Yallum Yallum Elders and Respected Persons Council process



Eligibility and referral

As noted above any person will be eligible to participate in the Yallum Yallum Elders and Respected Persons Council if they:

- identify as part of the Aboriginal community, and
- acknowledge their obligation to community.

Initially it is envisaged that there will be three main referral pathways into the Yallum Yallum Elders and Respected Persons Council: referrals from police, referrals from the court and community-based referrals.

The Yallum Yallum Elders and Respected Persons Council fact sheet and referral guide (**appendix 3**) provides an example of who is and who is not eligible for Yallum Yallum and explains the referral process.

Enhancing police and court referral pathways

The Yallum Yallum Elders and Respected Persons Council has received significant positive feedback both during the co-design process and wider stakeholder engagement. Many stakeholders and community members can see the enormous potential of Yallum Yallum, particularly in the context of the significant *Sentencing Act 1991(Vic)* reform process underway, a process that the Aboriginal Caucus is participating in.

However, to secure and enhance sustainable referral pathways for participants into the Yallum Yallum Elders and Respected Persons Council, further work will be required. This work includes building awareness of the Council and building support across each referral pathway. It will require exploring:

- How Yallum Yallum is taken up by local police, how police are best made aware of it and whether it is seen as a viable alternative pathway by police.
- How courts are made aware of Yallum Yallum, ensuring that Magistrates see it as a viable option and ensuring there is continuity when new Magistrates are appointed in the region.
- Analysis of local data to make sure existing referral pathways (cautions and diversions) are accessible to participants who would benefit, and where necessary working with police and courts to ensure referral pathways work to support access to Yallum Yallum.

In this context, the Grampians RAJAC will continue to be a valuable forum for developing partnerships and local agreements to support the shared objective of reducing overrepresentation of Aboriginal people in the justice system, raising awareness of the program amongst referral agencies, and ensuring the program is accessible to those for whom it would offer the most benefits.

A pre-charge pathway

Due to the current limitations on cautions and diversions (particularly for adults), it is expected that the number of people referred to participate in the Yallum Yallum Elders and Respected Persons Council may be small. See *Summary of Cautions (Youth and Adult)* in **appendix 4** and *Diversion Matrix (Youth and Adult)* in **appendix 5**.

There are, however, precedents for widening referral pathways into pre-charge programs for both adults and young people. These include:

- *The Youth Crime Prevention and Early Intervention Project (YCPEIP)*¹ which has established a localised standard operating procedure involving cautions, creating a presumption for a caution for eligible young people. The second stage of the pilot will include adults (young people aged 18-25).
- *The Adult Pre-Charge Diversion Pilot, New Directions (appendix 6)* is a new program available for people who may be charged with eligible offences (mainly low-level drug offences) in the City of Yarra. Successful completion of the New Directions program will result in charges not being proceeded with by Police. This is a wider referral pathway for adults than cautions or diversions as in many cases (comparable) prior convictions are not a barrier to entry. However, it still has some limitations, for example the participant must not be on bail or a sentencing order.

It is recommended that a wider referral pathway into the Yallum Yallum Elders and Respected Persons Council be negotiated with Victoria Police.

Access to statistical information on the number of Aboriginal young people and adults currently receiving diversions, alongside local crime statistics that can identify priority youth and adult cohorts would be extremely useful to inform this discussion. Initial discussions with stakeholders suggest that due to lack of local services being available, adults rather than young people should be the priority participants for the Yallum Yallum Elders and Respected Persons Council.

¹ West Justice, Youth Crime Prevention and Early Intervention Project (YCPEIP), [Funded projects: Crime Prevention Innovation Fund | Community Crime Prevention Victoria](#)

It may therefore be sensible to start negotiations around an adult pre-charge pathway into Yallum Yallum. The Yallum Yallum Elders and Respected Persons Council fact sheet and referral guide (**appendix 3**) provides an example of who is and who is not eligible for Yallum Yallum and explains the referral process. This may be a useful starting point for discussions with Victoria Police.

Once the referral pathway is established, training with local police, court staff and Magistrates will be vital to ensure referrers understand the context and value of the Yallum Yallum Elders and Respected Persons Council. This training might also cover:

- Yallum Yallum vision and values
- The application of restorative justice principles
- Examples of cases where Yallum Yallum could benefit an individual and community
- The referral pathway and referral process.

Consideration should also be given to the Yallum Yallum Coordinator potentially being located within referral organisations (the Horsham Police Station and/or Horsham Magistrates' Court) for a day each week to ensure that referrals to the Council continue to remain visible and accessible for police and court staff.

Community referrals

As discussed in section 1.2 above, the suggested approach to developing Yallum Yallum is to start small, with established processes such as pre-charge criminal justice referrals, and then consider broader applications to grow the model at a later stage, in a way that is consistent with the vision and values established for the Council.

Referrals from community organisations for participants who are not linked into the justice process could be part of the later stages of the implementation process, to enable broader application of this process in other contexts. There may be an opportunity for Yallum Yallum to act in an advisory capacity responding to broader community harms that are not otherwise linked to criminal justice processes. For example:

- a complaint of racism at an education institution
- a complaint of racism against Victoria police.

The Council should, however, be aware of the risk of 'net widening', for example where referrals are made for behaviour that may be antisocial but not criminal.

Meeting with the Yallum Yallum Coordinator

The Yallum Yallum Coordinator would meet with the referred individual and prepare a brief report for the Council to inform the Council's initial meeting with the participant. This meeting could cover the following:

- The person's story
- An explanation of Yallum Yallum, including vision and values, process, role of the Council and potential for involvement as suggested by the Council in cultural activities and being connected with Aboriginal mentors
- The person's suitability, for example, the degree of responsibility they are willing to accept for what happened and their expectations of the process
- The person's willingness to engage in the Yallum Yallum process, referrals to cultural activities or Aboriginal mentors
- Speaking to the person's legal representative if appropriate
- Whether a restorative process with a victim might be appropriate
- Identifying opportunities and discussing support options from family and community.

If the person is found suitable and willing to participate, then a brief report will be provided to the Council to support the Council's preparation for the initial meeting with the participant.

The Coordinator would also assist in:

- Making practical arrangements for Council meetings (timing, venue, participants, need for interpreters or other accessibility supports)
- Contacting and preparing any nominated family or community supports
- Preparing the Elders and Respected Persons to facilitate the process.

The preparation of the Elders and Respected Persons might include a meeting between each of the Council members who will be involved in the matter and the Coordinator, where the Coordinator's report is discussed.

Initial meeting with the Yallum Yallum Council

The person would then come before the Yallum Yallum Council in an initial meeting. During the meeting, the person could be supported by any relevant family or community supports.

This meeting would be facilitated by the Council members (Elders and Respected Persons). It could cover the following:

- An explanation of Yallum Yallum, its vision and values, process, and role of the Council
- A discussion of the person's cultural background and connections
- A discussion of the person's goals and what they hope for in being part of the Yallum Yallum process
- A discussion about the person's aspirations for a cultural or community identity or 'who they would like to be in community'
- Options for possible referrals including cultural activities, work for the land council, connecting with Aboriginal mentors etc.

Referral options

Referrals to cultural activities, mentors and support programs could take place at the initial meeting or at any of the subsequent meetings with the Yallum Yallum Elders and Respected Persons Council.

Cultural activities

These cultural activities will be developed and built on over time. However, some ideas that arose in the co-design sessions included:

- Work with the Barengi Gadjin Land Council on activities such as cultural burning and water management, working at the wail nursery, weeding and maintenance and looking after country. This work could provide a pathway into employment as a Ranger as well as an outlet for holistic healing, rekindling connection with country, waterways and land.
- Community counselling including men's and women's groups
- Social and Emotional wellbeing counselling and healing
- Alcohol and other drug support

- Lawn mowing for Elders
- Gulgurn Manja Gariwerd Academy Program – an Aboriginal led youth program which aims to address the legacy of colonisation and strengthen young people’s cultural connection to build resilience.

Aboriginal mentors

Referral to Aboriginal mentors was also discussed during co-design as an option. This would involve strength-based mentoring and referral to talented community members such as artists, sport people, leaders and quiet achievers.

Follow up meetings with the Yallum Yallum Council

As discussed above, the Yallum Yallum Elders and Respected Persons Council will facilitate a process, rather than a once off event. This process may require three or more meetings over a period depending on the needs of the person, their level of engagement and complexity of referrals. The key aim will be to build a relationship between the participant and the Council members over time and foster development, growth and an increased connection to culture and community.

Restorative process

The Yallum Yallum Elders and Respected Persons Council could incorporate some restorative principles and practices by bringing together people affected by the harm in a safe, structured and facilitated way, to talk about what happened, how they were impacted and how the harm can be addressed or repaired. A restorative process would be a referral option rather than inherent to every process.

There is no one set way of ‘doing’ restorative justice or restorative processes. Practices are flexible and responsive to individual and community needs. Some practices might focus solely on people who have been harmed or people who have caused harm, while others focus on community development and prevention.

This could occur during the meetings facilitated by the Council, or the person could be referred to a separate meeting facilitated by the independent restorative justice convenor. An independent convenor may be appropriate where the offence, harm caused, or circumstances are particularly complex. The community may wish to draw on Aboriginal-led examples of restorative justice to develop this process further. Examples of this include restorative programs operated at Worowa Aboriginal College and Rumbalara, where restorative practices are used to address incidents of harm.

Final meeting with the Yallum Yallum Coordinator

Once the formal process with the Yallum Yallum Elders and Respected Persons Council is concluded, the Yallum Yallum Coordinator could facilitate any final follow up and conduct a debriefing with the participant and their supports. The participant would also be asked how they found the process in a survey or other format, to support evaluation activities.

3. Implementation/Operational considerations

It is recommended that a phased approach be taken to implementation, and that the program be established as a pilot. The first phase would be dedicated to establishing the pilot and the second to operating the pilot. This section of the report also suggests the sequence and duration of each of the steps involved to support implementation planning.

Phase 1 – Establishment

The Yallum Yallum Elders and Respected Persons Council would run as pilot program of Goolum Goolum Aboriginal Cooperative. The current RAJAC subcommittee would continue to provide support, expertise and feedback throughout the establishment and implementation phases. It is noted, however, that the composition of the subcommittee may need to be reconsidered to ensure the expertise required for the establishment and implementation phases are met.

Specific aspects of governance and administration that could be considered as part of the establishment of the project include:

- Negotiation of a pre-charge referral pathway for adults including any mechanism for reporting back completion or non-completion of the program

- Negotiation of memorandum of understanding for court referrals including any mechanism for reporting back completion or non-completion of the program
- Recruitment of the Yallum Yallum Coordinator (settle the Yallum Yallum Coordinator position description and carry out the recruitment process, recommending an appropriate candidate)
- Establishing recruitment processes and participation protocols for Elders and Respected Persons, including declaring and managing conflicts of interest
- Recruitment of Elders and Respected Persons
- Ensuring the Yallum Yallum program is culturally safe for Elders and Respected Persons, the Yallum Yallum Coordinator and participants
- Determining appropriate mechanisms and responsibility for dealing with complaints from participants about the program (noting that Goolum Goolum would have overall responsibility for the program and addressing complaints)
- Receiving assurance of the program's compliance with information handling, privacy and record keeping
- Contributing input to any review and evaluation of the program.

Once the Yallum Yallum Coordinator is recruited, their first task may be to draft the operational documents for the program. These could include:

- Template consent forms and confidentiality agreements
- Plain language explanation of the process for participants (documents, videos)
- A template for the coordinator's report to the Yallum Yallum Elders and Respected Persons Council
- A guide for police, courts and other referral agencies explaining the process
- A guide for support agencies about participation in the process.

Once the operational documents have been developed, the Yallum Yallum Coordinator could also develop:

- A comprehensive training package for Elders and Respected Persons
- Stakeholder training for relevant referral agencies such as police, courts and community members to ensure they understand the values, vision and processes of the Council.

It is important to acknowledge that the range of skills and capabilities required for the Yallum Yallum Coordinator position is very significant. To enable the recruitment of a Yallum Yallum coordinator with strong community connections and support their focus on the day-to-day operation of the Yallum Yallum Elders and Respected Persons Council rather than the 'document heavy' establishment phase, it may be worth considering whether this role during the establishment phase should continue to be supported by the CIJ project team.

Phase 2 – Operation

Once the establishment phase has been completed, the Yallum Yallum Elders and Respected Persons Council will be ready to commence operation. As program operation commences, a program evaluator should be appointed. It is recommended that Goolum Goolum with the support of the RAJAC subcommittee administers this process and appoints an evaluator. The CIJ could also support the evaluation if Goolum Goolum and the RAJAC subcommittee considered it appropriate. The evaluator would develop the suggested evaluation framework working closely with representatives of the program responsible for governance, and undertake an evaluation of the pilot. The evaluation should also inform plans for funding and ongoing operation of the pilot.

Implementation steps – sequence and duration

Preparatory work to establish the pilot (from project initiation for approximately three months until pilot model is operational)

- RAJAC subcommittee composition is reconsidered and confirmed
- Negotiation of a pre-charge referral pathway for adults including any mechanism for reporting back completion or non-completion of the program
- Yallum Yallum Coordinator position description developed and position recruited
- Operational documents developed
- Yallum Yallum Elders and Respected Persons Council members recruited
- Comprehensive training package for Yallum Yallum Elders and Respected Persons Council members developed and delivered
- Stakeholder training for relevant referral agencies such as police, courts and community members developed and delivered.

Process evaluation (concurrent with preparatory work)

- Independent evaluator identified and engaged
- Development of evaluation framework for Pilot (evaluator in consultation with program governance)
- Survey design, and obtaining any necessary ethical approvals for data collection for evaluation (evaluator)
- Collecting data for outcome and process evaluation (evaluator).

Operation of Pilot

- Pilot commences operation, participants are identified and referred (for duration of Pilot)
- Process evaluation feedback provided to improve program operation (for duration of Pilot: evaluator)

Outcome evaluation (approximately three months from conclusion of Pilot)

- Pilot outcome evaluation developed (evaluator)
- Final outcome evaluation completed (to inform budget or other funding process)
- Funding obtained for future operation of program and transition to ongoing program following successful evaluation of pilot.

Suggestions on the approach to evaluation

While it is possible to highlight likely key elements of the evaluation framework, it would be preferable undertake this process once an evaluator is appointed as in the process outlined above. The evaluator would work closely with Goolum Goolum supported by the RAJAC subcommittee to identify the evaluation approach and its aims and objectives, to develop an appropriate evaluation framework. These might variously include the methodology, data collection methods, and how an evaluation could support process improvements as well as identifying outcomes. It will be important that this process continues to be led by the vision and values identified by the community for the Yallum Yallum Elders and Respected Persons Council.



Appendix 1

Research and Self Determination table

Australian and International First Nations Justice Models

February 2022

1 Research

The Victorian Aboriginal Community Services Association (VACSAL) has engaged the Centre for Innovative Justice (CIJ) of RMIT University to assist the Yallum Yallum Subcommittee of the Grampians Regional Aboriginal Justice Advisory Committee (RAJAC) to design an independent self-determined justice model incorporating an 'Elders and Respected Persons Council', to be known as Yallum Yallum.

The model will aspire to promote cultural healing, social and emotional wellbeing and turn Aboriginal people away from the justice system and towards a stronger role in their culture and community. The model will be developed through a process of consultation and codesign with key Aboriginal community members, organisations, and other non-aboriginal stakeholders.

This paper outlines some examples of Australian and International First Nations justice models. This paper is not a comprehensive catalogue of models, but rather its aim is to inform the process of consultation and co-design by drawing out existing and potential models, or parts of models, for discussion and adjustment to meet the needs of community.

Part one briefly outlines 'hybrid' justice models such as First Nations sentencing courts. These models do not operate in an indigenous law framework but provide a channel for First Nations input into the dominant criminal justice system.¹ The wider systemic context is relevant to consideration of these models, for example the relationship between First Nations people and the State or the representation of First Nation people in the Judiciary. This paper attempts to draw out parts of these models that could be understood as self-determined.

Part two outlines models that can perhaps be more genuinely described as community controlled or self-determining models, such as Law and Justice Groups in the Northern Territory which provide a vehicle for Aboriginal communities to respond to their specific geographic and community circumstances.

¹ Anthony and Crawford, 'Northern Territory Indigenous Community Sentencing mechanism: an order for substantive equality' (2013/2014) 17(2) AILR 81.



Since the 1990s First Nations Sentencing Courts have been established and continue to evolve across Australia, New Zealand and Canada. Despite local variations these courts all aim to make court processes more culturally appropriate and to increase the involvement of First Nations people and community.²

New Zealand

Rangatahi Courts, Ngā Kōti Rangatahi and Pasifika Courts

Operating since 2018 there are now 15 Rangatahi Youth Courts in operation across New Zealand and two Pasifika Courts in Auckland. Both courts are an alternative option for all young people (not just Maori and Pasifika Youth) if they admit to the charges and the victim consents.

A Family Group Conference (FGC) is convened by the presiding judge in the Youth Court where the young person initially appeared. Out of this conference an FGC plan is developed which outlines how to best support the young person. The central work of Rangatahi and Pasifika Courts is to monitor family group conferencing plans.³ This is a restorative justice style process, focusing on harm caused to people, relationships and community adapted to the protocols and cultural values of discrete communities.

A Rangatahi Court hearing, for example, is generally held on a marae⁴ and facilitated by a Youth Court Judge together with kaumātua/kuia (Maori Elders).⁵ Hearings begin with a pōwhiri (welcoming guests onto marae), and the young person is required to learn and deliver a pepeha (traditional greeting of tribal identity). Kaumātua/kuia may offer advice to the young person, and some Rangatahi Courts provide access to tikanga⁶ learning programmes.⁷

Pasifika Courts operate in a similar way to the Rangatahi Courts. They are held at Pasifika churches or community centres. A judge will facilitate the hearing with assistance from Pasifika elders.⁸

Some commentators argue that these courts could do better, questioning whether “the largely symbolic use of Maori culture has translated into effective practice.”⁹ Some call for strength based, rather than enforcement-based approaches or ‘power sharing partnerships’ between service agencies and communities, as well as extending community authority to take responsibility for their own justice and child protection needs.¹⁰

² Marchetti and Daly, ‘Indigenous Sentencing Courts: Towards a Theoretical and Jurisprudential Model’ (2007) Sydney Law Review, 17 29(3) 415.

³ Blagg and Anthony, *Decolonising criminology: Imagining justice in a post-colonial world* (Palgrave Macmillan UK) 2019, 261.

⁴ A communal and sacred meeting ground that provides everything from eating and sleeping space to religious and educational facilities.

⁵ District Court of New Zealand ‘Rangatahi and Pasifika Youth Courts’, www.districtcourts.govt.nz (14 December 2021).

⁶ Tikanga is commonly based on experience and learning that has been handed down through generations. It is based on logic and common sense associated with a Māori world view. See Maori language Commission, ‘Tikanga Overview’, www.tetaurawhiri.govt.nz/en/learn/tikanga/ (14 December 2021).

⁷ District Court of New Zealand ‘Rangatahi and Pasifika Youth Courts’, www.districtcourts.govt.nz (14 December 2021).

⁸ District Court of New Zealand ‘Rangatahi and Pasifika Youth Courts’, www.districtcourts.govt.nz (14 December 2021).

⁹ Moyle and Tauri, ‘Maori, Family Group Conferencing and the mystification of restorative justice’ (2016) 11(1) *Victims and Offenders*, 99.

¹⁰ Moyle and Tauri, ‘Maori, Family Group Conferencing and the mystification of restorative justice’ (2016) 11(1) *Victims and Offenders*, 99.



Canada

Gladue principles

While Australian¹¹ and New Zealand¹² courts have recognised Indigenous disadvantage as relevant to individual cases, they have rejected systemic recognition of racism and colonisation. By comparison Canadian courts have over the last 20 years recognised that Aboriginal People face racism and systemic discrimination in and out of the criminal law system and have attempted to deal with the overrepresentation of Aboriginal Peoples by changing how Canadian Courts sentence.

Known as the Gladue principals¹³ Canadian courts must consider:

- The indigenous person's background and
- The impact and history of discrimination against Indigenous people by the State and the criminal justice system.

This means that at sentencing hearings alternatives to jail must be considered and, if jail is given, the court must apply Gladue principles to the length of the sentence.

Gladue Courts and Gladue reports

Gladue Courts are available to those who self-identify as Metis, First Nations or Inuit. They deal with all criminal offences but hear only bail and sentencing hearings. They apply Canadian law but often try to incorporate Indigenous cultural practices and understandings of justice.¹⁴ In making determinations about charges the court refers to a Gladue presentencing or bail hearing report, usually prepared by Gladue caseworkers at the request of the judge, defence or the Crown. These reports contain recommendations about what an appropriate sentence might be and include information about the persons' background such as: history regarding residential schools, child welfare removal, physical or sexual abuse, underlying developmental or health issues such as substance use.¹⁵ Importantly these reports illustrate the First Nations person's holistic circumstances and needs, including how they have been failed by the system. According to the Canadian Truth and Reconciliation Commission¹⁶ they have the potential to reduce prison sentences for First Nations People.

Aside from the preparation of such reports, there is no other involvement of First Nations elders or community in the sentencing process.

Circle sentencing

Circle Sentencing was developed in Canada in the late 1980s and now exist across the country. They provide a Judge sentencing a First Nations person with more detail regarding the circumstances of their life, and information about alternatives to imprisonment. They also provide an opportunity to hear from the accused, family, community, and often the victim, in a more informal, less hierarchical setting more likely to induce openness.¹⁷ Some commentators suggest Circle Sentencing is a return or reinvention of Indigenous justice.¹⁸ Others argue that just because

¹¹ See *Bergman (a pseudonym) v The Queen* [2021] VSCA 148 and *Bugmy v The Queen* (2013) 249 CLR 571

¹² See *Mika v The Queen* [2013] NZCA 648.

¹³ See *R v Gladue* [1991] 1 SCR 688.

¹⁴ Steps to Justice, 'What is Gladue or Indigenous Peoples Court', www.stepstojustice.ca/questions/criminal-law/what-gladue-or-indigenous-peoples-court (15 December 2021) .

¹⁵ Native Women's Association of Canada, "What is Gladue?" www.nwac.ca/wpcontent/uploads/2015/05/What-Is-Gladue.pdf (15 December 2021).

¹⁶ Victorian Aboriginal Legal Service, *Inquiry into Victoria's Criminal Justice System*, Submission 139 (18 September 2021).

¹⁷ Rudin, 'Aboriginal Justice and restorative justice' *Elliott and Gordon (eds) New Directions in Restorative Justice: Issues, Practice, Evaluation*. Cullompton, (Willan Publishing, 2015) 89.

¹⁸ Jones, Nestor, 'Sentencing Circles in Canada and the Gacaca in Rwanda: A comparative Analysis' *International Criminal Justice Review* (2011) 21(2) 39.

some Circle sentencing is community based does not necessarily mean that the initiative is rooted in Indigenous tradition or is even part of an Indigenous worldview.¹⁹ Others note that that circle sentencing represents the input the justice system will allow First Nations people to have rather than a community-controlled justice initiative.²⁰

Cree Courts

Cree Courts are circuit courts that sit across north-eastern Saskatchewan and are conducted entirely or partially in Cree language.²¹ The Court hears child protection and criminal matters. The presiding Judge is a Cree member and there are usually Cree speaking lawyers, court workers and prosecutors. Cree Courts aims to enable the court to communicate in a way that is suited to the accused's language and cultural needs, encouraging participation of community leaders and recognising communities role to support both the defendant and victim, incorporating traditional values into sentencing such as respect for family and community, positioning the court as an institution committed to a safe community and acknowledging the value of First Nations culture and the role it can play in addressing community challenges.²²

Diversionsary Restorative programs

Generally smaller in scale and diversionsary and restorative in nature, Canada hosts several additional initiatives.

Tsuu T'ina Peacemaking Court

Opening in October 2000, the Tsuu T'ina Peacemaking Court has jurisdiction over criminal, youth and bylaw offences committed on the Tsuu T'ina reserve. The court sits on traditional lands, incorporates traditional ceremonies and is staffed mainly by First Nations personnel.²³ The diversionsary aspect of the court comes into play if the defendant pleads guilty and the Crown and peacemaking coordinator believe the case is appropriate for resolution through peacemaking. This process involves the accused, the victim and their families, Community Elders and community program representatives meeting in a circle to reach an agreement on how to 'make peace between the victim, wrongdoer and community using traditional values and beliefs of the Tsuu T'ina people'²⁴. If the prosecutor is of the view that the defendant adhered to the conditions of the agreement, the charges are withdrawn.

Aboriginal Legal Service Community Council

In Toronto, the Aboriginal Legal Service Community Council was the first of its kind, running since 1991. The Council (a circle of volunteer Elders) receives referrals from First Nations adults charged with an offence under the Criminal Code of Canada or Narcotic Control Act who have been diverted from the court system (according to a protocol established with the Crown Attorney). The focus of the Community Council is to develop a plan by consensus that will allow the person to take responsibility for their actions, address the root causes of the problem, and reintegrate into the community in a positive way. At diversion, charges are withdrawn. If the individual does not appear for the hearing or does not fulfil his/her conditions, the Crown is informed, and charges may be re-laid and the person is not eligible for re-diversion to the program.²⁵ Interestingly while the nature of

¹⁹ Jones, Nestor, 'Sentencing Circles in Canada and the Gacaca in Rwanda: A comparative Analysis' *International Criminal Justice Review* (2011) 21(2) 39.

²⁰ Rudin, 'Aboriginal Justice and restorative justice' *Elliott and Gordon (eds) New Directions in Restorative Justice: Issues, Practice, Evaluation*. Cullompton, (Willan Publishing, 2015) 89.

²¹ Marchetti and Downie, 'Indigenous people and sentencing courts in Australia, New Zealand and Canada' Bucerius and Tony (Eds), *The Oxford Handbook on Ethnicity, Crime and Immigration* (Oxford University, 2014) 374.

²² Courts of Saskatchewan, 'Cree Court', www.sasklawcourts.ca/provincial-court/cree-court/ (15 December 2021) .

²³ Sharp, 'To investigate strategies for increasing the cultural integrity of the court process for Aboriginal Young people and their families in the Northern Territory Youth Justice System, USA, Canada, New Zealand.' *2012 Churchill Fellowship*, www.naaja.org.au/wp-content/uploads/2014/05/Churchill-Fellowship-Report.pdf (15 December 2021).

²⁴ Marchetti and Downie, 'Indigenous people and sentencing courts in Australia, New Zealand and Canada' Bucerius and Tony (Eds), *The Oxford Handbook on Ethnicity, Crime and Immigration* (Oxford University, 2014) 374.

²⁵ Aboriginal Legal Service, 'Community Council', www.aboriginallegal.ca/councils/community-council (12 December 2021).

the offence committed is a factor in assessing suitability for diversion, no offences are inherently ineligible. Additionally, prior convictions do not limit eligibility.²⁶ A 2000 evaluation notes the Community Council has 'returned a greater degree of responsibility to community for its members who are in conflict with the law' creating a meaningful alternative to the criminal justice system.²⁷

Hollow Waters Community Holistic Healing Circle Initiative

Hollow Waters Community Holistic Healing Circle Initiative was developed in the late 1980's by community in response to a high rate of sexual abuse, particularly child sexual abuse (often by perpetrators who had themselves been abused) in four communities around Hollow Water Manitoba. The program initially focused on sexual violence but over time broadened to include family violence.²⁸ Eligible perpetrators can remain in community, avoiding imprisonment if they admit to the offences and commit to the process. They are held to account for their actions by victims, families and community through a healing and circle sentencing based on traditional practices. Perpetrators can access culturally relevant services and remain in community where they are monitored and supported.²⁹ Despite its evident success³⁰ in managing seemingly intractable criminal behaviour, the program continues to experience funding uncertainty.³¹

Australia

First Nations Sentencing Courts

First Nations Sentencing Courts are a platform for participation with the Australian Criminal justice system, rather than an First Nations led justice model.³² Modelled on the Canadian approach they were developed with varying degrees of community consultation, in NSW for example the Aboriginal Justice Advisory Council chaired the working committee, facilitated consultation, and established the initial framework. These Sentencing Courts are known as circle sentencing in New South Wales and the Australian Capital Territory, Koori Courts in Victoria, Community Courts in Western Australia and the Northern Territory, Murri Courts in Queensland and Nunga Courts in South Australia.³³ Australian First Nations Sentencing Courts are only available for First Nations people who have made a guilty plea and are generally an alternative for sentencing for less serious offences.³⁴ Although the process varies among jurisdictions, First Nations Sentencing Courts can offer a holistic and localised understanding of culture and community and can tailor sentences to the needs of individuals.

In all jurisdictions, a group of First Nations Elders provide advice to the sentencing judge or magistrate, drawing on community expectations and awareness and on appropriate avenues, programs and supports for individuals and families.³⁵ In some courts, victims participate in the

²⁶ Aboriginal Legal Service, 'Protocols with Crown', www.aboriginallegal.ca/councils/community-council (12 December 2021).

²⁷ Campbell Research Associates, 'Evaluation of the Aboriginal Legal Services of Toronto Community Council Program', www.aboriginallegal.ca/downloads/community-council-evaluation-year-2000.pdf (April 2000).

²⁸ Coats, Umbreit, and Vos, 'Restorative justice an exploratory study' (2003) 6(3) *Contemporary Justice Review*, 265.

²⁹ Native Counselling Service of Alberta, *A Cost-Benefit Analysis of Hollow Water's Community Holistic Circle Healing Process* (Evaluation Report, 2001).

³⁰ Native Counselling Service of Alberta, *A Cost-Benefit Analysis of Hollow Water's Community Holistic Circle Healing Process* (Evaluation Report, 2001).

³¹ Rudin, 'Aboriginal Justice and restorative justice' *Elliott and Gordon (eds) New Directions in Restorative Justice: Issues, Practice, Evaluation*. Cullompton, (Willan Publishing, 2015) 89.

³² Herrman, 'Indigenous sentencing Courts performance review methodology: Applying Restorative Justice Principles to supplement recidivism emphasis' (2021) 7 *UNSW Law Journal*, 4.

³³ In 2011 Community Courts in the Northern Territory were by legislative interpretation and administrative changes. They were subsequently disbanded by the then Northern Territory Attorney General. The Northern Territory Aboriginal Justice Agreement Implementation Plan 2021–2027 commits to re-establishing Community Courts. See https://justice.nt.gov.au/__data/assets/pdf_file/0005/1034627/northern-territory-aboriginal-justice-agreement-implementation-strategy-2021-2027.pdf

³⁴ Most Indigenous Sentencing Courts are in the summary jurisdiction, although the Koori Court Victoria for example has been expanded to the County Court. Breaches of family violence protection orders are excluded in Victoria, and sexual offences are excluded in all jurisdictions except Queensland and South Australia.

³⁵ Blagg and Anthony, *Decolonising criminology: Imagining justice in a post-colonial world* (Palgrave Macmillan UK) 2019, 261.



process. Some courts are convened in a room other than a court room that bears significance to the local community. In all courts Elders, will also speak frankly with the defendant about the offences.³⁶

In Victoria, Koori Courts have been established in the Magistrates' Court (2002), the Children's Court (2005) and the County Court (2008) across various locations in Victoria. In the Vic County Koori Court there is an explicit statement from the Judge that the court respects Aboriginal people and that the room (still a traditional court setting) has been smoked. It is the experience of some Aboriginal organisations that Koori Courts demonstrate a greater understanding and acknowledgment of Aboriginal culture and identity than the mainstream criminal sentencing courts and that their work should be extended to include bail contested hearings.³⁷

In Southeast Queensland Murri courts, a Magistrate can bail a person to engage with an Aboriginal community justice group.³⁸ This bail program aims to build cultural responsibility and includes a number of cultural services including gender specific Yarning circles where the defendant gains a form of social support from Elders and Respected Persons³⁹. Whilst strong engagement with the program should mitigate the final sentence, this sentencing discretion sits with the Magistrate. Critiques of these models argue that such diversionary or therapeutic bail programs are an extension of the penal state or a form of net-widening, with many participants spending up to a year participating in programs before the court finalises their sentence, and if participation is not considered satisfactory, they may still receive imprisonment.⁴⁰

Aboriginal community justice reports

In 2018, the Victorian Government and the Aboriginal Justice Caucus committed to piloting Aboriginal Community Justice Reports. Modelled on Canada's Gladue reports discussed above, these reports aim to provide information to judicial officers about an Aboriginal person's life experience and history impacting on their offending and to identify more suitable sentencing arrangements to address these underlying factors.⁴¹

Other Australian Jurisdictions are piloting similar initiatives with Aboriginal and Torres Strait Islander Experience Court Reports in the ACT⁴², Narrative Reports in Queensland⁴³ and the Bugmy Justice Project in NSW⁴⁴.

These reports are an important attempt to push courts to provide space within the sentencing process to better understand an Aboriginal person's life and circumstances, including their "aspirations, interests, strengths, connections, culture, and supports of the individual, as well as the adverse impact of colonial and carceral systems on their life".⁴⁵ They draw on the Canadian

³⁶ Marchetti and Downie, 'Indigenous people and sentencing courts in Australia, New Zealand and Canada' Bucieris and Tonry (Eds), *The Oxford Handbook on Ethnicity, Crime and Immigration* (Oxford University, 2014) 374.

³⁷ Victorian Aboriginal Legal Service, *Inquiry into Victoria's Criminal Justice System*, Submission 139 (18 September 2021) 160.

³⁸ Radke, 'Women's Yarning circles; a gender specific bail program in one Southeast Queensland Indigenous sentencing court' (2018) 29 *The Australian Journal of Anthropology*, 53.

³⁹ Radke, 'Women's Yarning circles; a gender specific bail program in one Southeast Queensland Indigenous sentencing court' (2018) 29 *The Australian Journal of Anthropology*, 53.

⁴⁰ Russel and Carlton, 'Pathways, race and gender responsive reform: Through an abolitionist lens' (2013) 17(4) *Theoretical Criminology*, 474.

⁴¹ For more information on this pilot see Victorian Aboriginal Legal Service, *Inquiry into Victoria's Criminal Justice System*, Submission 139 (18 September 2021) 160, 117.

⁴² Inman "ACT set to trial sentencing reports for indigenous offenders, like Canada's Gladue reports," (Canberra Times, 6 August 2017) www.canberratimes.com.au/story/6029810/act-set-to-trial-sentencing-reports-for-indigenous-offenders-like-canadas-gladue-reports/.

⁴³ In Queensland, Five Bridges have been developing Narrative reports for use in Murri Courts in Maroochydore, Brisbane and Ipswich since 2015, and other justice groups in Queensland also do similar reports.

⁴⁴ Deadly Connections Australia, 'Bugmy Justice Project' www.deadlyconnections.org.au/bugmy-justice-project/ (15 December 2021) .

⁴⁵ Anthony, Lachs and Waight, "The role of 're-storying' in addressing over-incarceration of Aboriginal and Torres Strait Islander Peoples," *The Conversation*, www.theconversation.com/the-role-of-re-storying-in-addressing-over-incarceration-of-aboriginal-and-torres-strait-islander-peoples-163577#:~:text=Re-storying%20provides%20resistance%20to%20racist%20stereotypes%20in%20courts,is%20a%20way%20to%20counter%20and%20expose%20racism. (17 August 2021).



experience discussed above where courts go beyond experience of disadvantage to consider systemic racism and colonisation.⁴⁶

Family group conferencing

Variations of family group conferencing, modelled on the New Zealand approach discussed above, have been incorporated into youth justice and child protection practices in some Australian states.⁴⁷ Most programs involve government departments, some have independent facilitators, and some enable Aboriginal organisations to co-facilitate or coordinate the conferencing processes. Reservations have been expressed by some commentators about appropriation of the 'Maori inspired'⁴⁸ processes uncritically replicated as a model for Aboriginal communities, without genuine engagement, co-design or transfer of control.⁴⁹ Furthermore, some commentators note the unequal power relations inherent in a bi-cultural model particularly in child protection proceedings.⁵⁰

Various proposals have been made for establishing a pre-charge Family Group Conference model, (based on the New Zealand model) in Victoria. The Aboriginal caucuses supports the introduction of Family Group Conferencing but notes that any model must be based on principles of self-determination and be developed through a co-design process with the Aboriginal Justice Caucus, and managed and delivered on an ongoing basis by Aboriginal communities and organisations⁵¹.

Part 2 – First Nations led or controlled or self-determining models

Law and Justice Groups

The formation of Law and Justice Groups in the 1990s provided a vehicle for Northern Territory Aboriginal communities to respond to local circumstances with a focus on two-way recognition processes that afford Aboriginal people greater control in dispute resolution and healing.⁵² The groups work closely with the North Australian Aboriginal Justice Agency (NAAJA) which supports their work and advocacy.

Law and Justice Groups and committees are not uniform and have been inconsistently funded, and so it is difficult to make generalisations about them.⁵³ However, they are arguably one of the strongest examples of Aboriginal led or community-controlled justice. Indeed, their growing role in Central Australia and the Top End is testament to the resilience of Indigenous justice mechanisms and their capacity to continue outside of state resourcing and control.⁵⁴

These groups have at various points undertaken a range of justice focused activities including involvement in pre-court conferencing and victim offender conferencing, providing recommendations to courts (as requested), assisting with the development and management of

⁴⁶Victorian Aboriginal Legal Service, *Inquiry into Victoria's Criminal Justice System*, Submission 139 (18 September 2021) 160.

⁴⁷ See Nathan Harris, 'Family Group Conferencing in Australian 15 years on' (2018) 27 *NCPC*. www.aifs.gov.au/cfca/publications/family-group-conferencing-australia-15-years

⁴⁸ Some commentators challenge the 'romanticised' 'origin myth' of Family Group Conferencing arguing that empowering Maori families to have any form of control over responses to the offending of their youth was not a major consideration for policy makers. See also Tauri, 'An indigenous commentary on the globalisation of restorative justice' (2014) 12(2) *British Journal of Community Justice*, 35.

⁴⁹ Blagg, 'A Just Measure of Shame? Aboriginal Youth and Conferencing in Australia' (1997) 37(4) *The British Journal of Criminology*, 481.

⁵⁰ Ban, 'Aboriginal child placement principle and family group conferences' (2005) 58:4 *Australian Social Work*, 384.

⁵¹ Aboriginal Justice Caucus, *Equality and Justice for our kids*, (Aboriginal Justice Caucus Submission on the Development of a new Youth Justice Act for Victoria, 2021).

⁵² Blagg and Anthony, *Decolonising criminology: Imagining justice in a post-colonial world* (Palgrave Macmillan UK) 2019, 261.

⁵³ The new Northern Territory Aboriginal Justice agreement 2021-2027 looks to 'establish and support law and justice groups. There is some concern that the Government is interested in creating its own groups rather than supporting existing and emerging groups. See https://justice.nt.gov.au/__data/assets/pdf_file/0005/1034627/northern-territory-aboriginal-justice-agreement-implementation-strategy-2021-2027.pdf.

⁵⁴ Anthony and Crawford, 'Northern Territory Indigenous Community Sentencing mechanism; an order for substantive equality' (2013/2014) 17(2) *AILR* 81.



community diversion programs, reporting to local councils on law and justice trends and issues and training Aboriginal elders to be Justices of the Peace, mediators and peacemakers.⁵⁵

In 2011 Northern Territory Adult Community Courts (an example of a First Nations Sentencing court, discussed above) were suspended by the then Chief Magistrate on the basis that court procedures were inconsistent with the prohibition of cultural and customary law considerations arising from the Northern Territory Emergency Response ('NTER')⁵⁶ In December 2012 the newly elected Northern Territory Government abolished the Community Court Program completely.⁵⁷ Commentators have described these events as a 'deliberate shift away from accommodating difference'⁵⁸ and 'an intolerance of cultural practice'⁵⁹. Since the abolition of Community Courts in the Northern Territory some Law and Justice Groups have taken on a greater role of pre-sentencing advice to courts in the form of a 'cultural reference letter' to the court. Similar to a Gladue report, this letter provides local cultural information about the person and their family, and crafts rehabilitative and mentoring supports and assistance that can build and strengthen community connection.⁶⁰

With the assistance of NAAJA, some groups are also addressing the enormous and frustrating court lists of remote communities by creating their own informal court process for minor matters, running a clinic in between court circuits where matters can be progressed with the law and justice groups, often resulting in an apology, agreement for recompense or to undertake a program or volunteer work. This work is then presented to the circuit court by the NAAJ lawyer and becomes the conditions of a good behaviour bond.⁶¹

Some Law and Justice Groups have also undertaken community advocacy. For example, engaging with government on the impact of new legislation on cultural practices,⁶² giving evidence at the Royal Commission into the Protection and Detention of Children in the Northern Territory, facilitating dispute resolution between individuals and groups and maintaining good relations between community and the police, courts and correctional services.

Indigenous Justice of the Peace (JP) Courts

As distinct from Indigenous sentencing courts, where the magistrate in most cases is a non-Indigenous person (advised by Elders), Indigenous Justice of the Peace (JPs) have the power to directly control sentencing and other outcomes.⁶³ In this sense the program has the potential for greater community control and ownership of criminal justice related outcomes and processes.⁶⁴

Since 1993, Queensland has had a model of Indigenous led courts known as the Remote Justices of the Peace (Magistrates' Court) Program. The program provides local Justices of the Peace to convene Magistrates' Courts in their respective communities as required.⁶⁵ Their jurisdiction is limited to local law offences, summary offences, adjournments and bail applications.⁶⁶ The program

⁵⁵ Anthony and Crawford, 'Northern Territory Indigenous Community Sentencing mechanism; an order for substantive equality' (2013/2014) 17(2) AILR 81.

⁵⁶ This interpretation is challenged in Anthony and Crawford, 'Northern Territory Indigenous Community Sentencing mechanism; an order for substantive equality' (2013/2014) 17(2) AILR 81.

⁵⁷ See Anthony and Crawford, 'Northern Territory Indigenous Community Sentencing mechanism; an order for substantive equality' (2013/2014) 17(2) AILR 81.

⁵⁸ See Anthony and Crawford, 'Northern Territory Indigenous Community Sentencing mechanism; an order for substantive equality' (2013/2014) 17(2) AILR 81.

⁵⁹ Spiers Williams, 'Why are there no adult Community Courts operating in the Northern Territory of Australia' (2013) 8(4) *Indigenous Law Bulletin*, 7.

⁶⁰ Discussion with Nick Espie, Coordinator Community Justice, NAAJA, 2 December 2021.

⁶¹ Discussion with Nick Espie, Coordinator Community Justice, NAAJA, 2 December 2021.

⁶² Discussion with Nick Espie, Coordinator Community Justice, NAAJA, 2 December 2021. NAAJA assisted with advocacy around the Burial and Cremation Act 2009 (NT), which criminalised Aboriginal burial traditions.

⁶³ Allison, Cunneen, Loban, Luke and Munro, 'Sentencing and Punishment in the Indigenous Justices of the Peace Courts', (2012) 16(1) *Australian Indigenous Law Review*, 14.

⁶⁴ Allison, Cunneen, Loban, Luke and Munro, 'Sentencing and Punishment in the Indigenous Justices of the Peace Courts', (2012) 16(1) *Australian Indigenous Law Review*, 14.

⁶⁵ Currently, Remote JP courts are active in the discrete communities of Cherbourg and Kowanyama.

⁶⁶ *Courts Innovation Program: What is the Remote Justices of the Peace (Magistrates' Court) Program?*, 2015, Department of Justice and Attorney-General, Queensland, http://www.courts.qld.gov.au/_data/assets/pdf_file/0003/205644/cip-fs-remote-jp-mag-court-program.pdf.



aims to overcome disadvantage experienced by Indigenous people in contact with the criminal justice system, as well as to provide opportunities for Indigenous people to play positive roles with the justice system and community, creating more culturally responsive and relevant justice.⁶⁷

The Courts have received strong support from stakeholders and community, especially the fact that JPs share the same language and cultural background as participants⁶⁸. However, the potential of the courts has been limited by a lack of ongoing support and training, and challenges with recruitment and retention of Indigenous JPs, including the legislative exclusion from appointment based on prior convictions.⁶⁹ Other concerns are the effectiveness and meaningfulness of sentences imposed (with 72 percent of cases receiving fines), as well as lack of legal representation, and the inconsistency and proportionality of fines.⁷⁰

⁶⁷ Allison, Cunneen, Loban, Luke and Munro, 'Sentencing and Punishment in the Indigenous Justices of the Peace Courts', (2012) 16(1) *Australian Indigenous Law Review*, 16.

⁶⁸ Allison, Cunneen, Loban, Luke and Munro, 'Sentencing and Punishment in the Indigenous Justices of the Peace Courts', (2012) 16(1) *Australian Indigenous Law Review*, 14.

⁶⁹ Allison, Cunneen, Loban, Luke and Munro, 'Sentencing and Punishment in the Indigenous Justices of the Peace Courts', (2012) 16(1) *Australian Indigenous Law Review*, 14.

⁷⁰ Allison, Cunneen, Loban, Luke and Munro, 'Sentencing and Punishment in the Indigenous Justices of the Peace Courts', (2012) 16(1) *Australian Indigenous Law Review*, 14.



2 Self determination table

Features of self-determination	Rangatahi Courts and Pasifika Courts	Gladue Courts and Gladue reports	Circle sentencing	Cree Courts	Tsuu T'ina Peacemaking Court	Aboriginal Legal Service Community Council	Hollow Waters Community Holistic Healing Circle Initiative	First Nations Sentencing Courts	Aboriginal community justice reports	Family group conferencing	Law and Justice Groups (LAJG)	Indigenous Justice of the Peace (JP) Courts
<p>Is the model Aboriginal led?</p>	<ul style="list-style-type: none"> To some extent. Facilitated by the Youth Court Judge with Kaumatua (respected elders). 	<ul style="list-style-type: none"> To some extent. Coordinated by the Aboriginal Legal service All report writers are indigenous. 	<ul style="list-style-type: none"> To some extent. Difficult to generalise due to many different models. Allows for greater justice system participation of victims, defendants, and communities. Some communities have embraced and taken ownership of Circle Sentencing. However, for many communities the process remains Judge Led. 	<ul style="list-style-type: none"> Yes. Conducted entirely or partially in Cree language. Court personnel including Judge are usually Cree. Encourages participation of Elders and community leaders. 	<ul style="list-style-type: none"> Yes Court sits on traditional lands Incorporates traditional ceremonies Staffed by First nations personnel - First Nations Judge and 'Elder' Peacemakers. 	<ul style="list-style-type: none"> Yes A council (of volunteer Elders) receives referrals for First Nations adults diverted from Court system. 	<ul style="list-style-type: none"> Yes. Defendants who admit guilt are released on probation to the community. caseworkers use traditional healing practices to work with victim, defendant, and children. Defendants often sentenced to further supervision including counselling, addiction treatment Sharing circles review progress. 	<ul style="list-style-type: none"> To some extent. Elders advise sentencing Judge or Magistrate Weight placed on advice dependent on individual decision maker (who is usually a non-aboriginal person). 	<ul style="list-style-type: none"> To some extent. In Victoria it is a joint initiative of Vic Government and Aboriginal Justice Caucus. Piloted by Victorian Aboriginal Legal Service (VALS) 	<ul style="list-style-type: none"> To some extent. Most programs involve government departments Some have independent facilitators Some enable Aboriginal organisations to co-facilitate or coordinate the conferencing processes. 	<ul style="list-style-type: none"> Yes. LAJGs were initiatives of Aboriginal Community members responding to circumstances in their community. 	<ul style="list-style-type: none"> Yes. Indigenous JPs have the power to directly control sentencing and other outcomes Potential for greater community control and ownership.



Features of self-determination	Rangatahi Courts and Pasifika Courts	Gladue Courts and Gladue reports	Circle sentencing	Cree Courts	Tsuu T'ina Peacemaking Court	Aboriginal Legal Service Community Council	Hollow Waters Community Holistic Healing Circle Initiative	First Nations Sentencing Courts	Aboriginal community justice reports	Family group conferencing	Law and Justice Groups (LAJG)	Indigenous Justice of the Peace (JP) Courts
Is the program design Aboriginal led?	<ul style="list-style-type: none"> • Yes. • Instigated by Maori Judge Heemi Taumaunu. • Consultation with both Maori and Pasifika communities. • Influenced by Victorian Koori Court. 	<ul style="list-style-type: none"> • Gladue Courts were an outcome of <i>R v Gladue</i>. • Gladue reports instigated by the Aboriginal Legal Service. 	<ul style="list-style-type: none"> • Some commentators suggest Circle Sentencing is a return or reinvention of Indigenous justice. • Others suggest they come from the actions of reform minded judges. 	<ul style="list-style-type: none"> • Yes. • Instigated by Saskatchewan provincial court and Cree First Nations Judge Gerald Morin. • Consultation with Cree community. 	<ul style="list-style-type: none"> • Yes. • Instigated by Alberta provincial court and First Nations Judge L.S Mandamin. • Court was integrated with Provincial Court, Community and its justice traditions. 	<ul style="list-style-type: none"> • Yes • Instigated by the Aboriginal Legal Service (ALS) Toronto. 	<ul style="list-style-type: none"> • Yes • Developed by community in response to high rates of intergenerational sexual abuse, particularly child sexual abuse in four communities around Hollow Water. 	<ul style="list-style-type: none"> • No. Modelled on the Canadian approach with varying degrees of community consultation 	<ul style="list-style-type: none"> • Modelled on the Canadian Gladue reports. • Piloted by VALS 	<ul style="list-style-type: none"> • No. • Modelled on the New Zealand approach. 	<ul style="list-style-type: none"> • Yes • Generally grassroots, community led and designed programs • Supported by North Australian Aboriginal Justice Agency (NAAJA). 	<ul style="list-style-type: none"> • No
Is the model partially or entirely community controlled?	<ul style="list-style-type: none"> • No. • Largely a platform for First Nations participation rather than a community-controlled model. • Not a separate system but part of the NZ Youth Court legal structure. 	<ul style="list-style-type: none"> • No. • Gladue courts are regular criminal courts that apply Canadian case law but are distinct in their approach to sentencing. • Gladue reports are coordinated by the Aboriginal Legal service • All report writers are indigenous. 	<ul style="list-style-type: none"> • No. • Some circle sentencing processes are diversionary • Many are located within mainstream criminal justice system. • Some commentators note Circle Sentencing represents what the justice system will allow First Nations people to have rather than a community controlled model. 	<ul style="list-style-type: none"> • No. • Largely a platform for First Nations participation rather than a community-controlled model. • Not a separate system but hybrid court straddling both traditional provincial and peacemaking sentencing court processes. 	<ul style="list-style-type: none"> • No. • Largely a platform for First Nations participation rather than a community-controlled model. • Not a separate system but hybrid court straddling both traditional provincial and peacemaking sentencing court processes. 	<ul style="list-style-type: none"> • Yes. • Run by the ALS • Community Council has 'returned a greater degree of responsibility to community for its members who are in conflict with the law' 	<ul style="list-style-type: none"> • Largely. • Eligible matters are referred to Community Holistic Healing Circle Initiative. • Probation and associated services are all community controlled. • Circle sentencing occurs in community, with families and community present. 	<ul style="list-style-type: none"> • No. • This model is a platform of First Nations participation rather than a community-controlled model 	<ul style="list-style-type: none"> • Piloted by VALS 	<ul style="list-style-type: none"> • No. • Some models enable Aboriginal facilitation, but no model identified is community controlled. 	<ul style="list-style-type: none"> • Yes • In part because of inconsistent funding. • LAJGs were defunded in 2005. • Following community requests for reinvigoration many have reformed with the assistance of NAAJA. 	<ul style="list-style-type: none"> • Partially. • Indigenous JPs hold decision making power but programs sit within non-aboriginal court structure.



Features of self-determination	Rangatahi Courts and Pasifika Courts	Gladue Courts and Gladue reports	Circle sentencing	Cree Courts	Tsuu T'ina Peacemaking Court	Aboriginal Legal Service Community Council	Hollow Waters Community Holistic Healing Circle Initiative	First Nations Sentencing Courts	Aboriginal community justice reports	Family group conferencing	Law and Justice Groups (LAJG)	Indigenous Justice of the Peace (JP) Courts
Are cultural customs/practices involved?	<ul style="list-style-type: none"> • Yes • Rangatahi Court FGC hearings are held on Marae. • Hearings begin with a pōwhiri (welcoming guests onto Marae). • The young person is required to learn and deliver a pepeha (traditional greeting of tribal identity). • Rangatahi Courts provide access to tikanga learning programmes. 	<ul style="list-style-type: none"> • Gladue Courts aim to integrate specialised Aboriginal knowledge (in the form of Gladue reports) to produce alternative understandings of the accused including their path and the path of the generations before them. 	<ul style="list-style-type: none"> • There is no consistent format or approach. • The courtroom is generally arranged in a circle. • The main goal is to bring parties and their community together to work towards a constructive sentence. 	<ul style="list-style-type: none"> • Yes. • Some use traditional forms of dispute resolution such as 'smudging with sweet grass sage or...eagle feathers or eagle down' to infuse the sentencing process with culturally appropriate practices. • Adaptive to defendant's language and cultural needs. 	<ul style="list-style-type: none"> • Yes • Hearing held in a building modelled on a beaver lodge (the beaver is the totem of the Tsuu T'ina people.) • Court uses peacemaking traditions, including smudging with sage or sweet grass. • Court clerks display embroidered eagle feathers on their court attire. 	<ul style="list-style-type: none"> • Modelled on the way justice was delivered in Aboriginal communities in Central and Eastern Canada before arrival of Europeans to North America. • Less formal, returning the defendant to community. 	<ul style="list-style-type: none"> • Healing and circle sentencing based on traditional practices, cultural value systems and 'ways of knowing'. • Revitalisation of traditional knowledge and growth of traditional practices. • Community members and workers seen as agents who assist in communal healing process. 	<ul style="list-style-type: none"> • Varies from jurisdiction • All aim to create an environment that is more culturally appropriate and sensitive. 	<ul style="list-style-type: none"> • In Vic the reports will present – • Unique systemic background factors • Information about individual culture/mob • Effects of colonisation on their life, family, and community. 	<ul style="list-style-type: none"> • No. • As noted above some Aboriginal organisations co-facilitate or coordinate the conferencing processes ensuring cultural competence. 	<ul style="list-style-type: none"> • Yes. • LAJG comprised of Senior community members who act as an interface between Aboriginal and Non-Aboriginal law and justice systems. 	<ul style="list-style-type: none"> • JPs share the same language and culture as participants
To what extent is the process punitive or coercive or linked to non-Aboriginal justice system	<ul style="list-style-type: none"> • Courts work within the NZ Youth Court legal structure. • The same laws and consequences apply as they would in the NZ Youth Court. 	<ul style="list-style-type: none"> • Report inform the non-aboriginal justice system and must conform with the intent of <i>R v Gladue</i>. 	<ul style="list-style-type: none"> • The Sentencing Circle works within the non-aboriginal justice system and must conform with the intent of <i>R v Gladue</i>. 	<ul style="list-style-type: none"> • Cree court works within the non-aboriginal justice system and must conform with the intent of <i>R v Gladue</i>. 	<ul style="list-style-type: none"> • Court works within the non-aboriginal justice system and must conform with the intent of <i>R v Gladue</i>. 	<ul style="list-style-type: none"> • Diversionary process • If the individual does not appear for the hearing or does not fulfil his/her conditions, the Crown is informed, and charges may be re-laid • The person is then not eligible for re-diversion to 	<ul style="list-style-type: none"> • Eligible perpetrators can remain in community, avoiding imprisonment if they admit to the offences and commit to the process. 	<ul style="list-style-type: none"> • The courts work within the Australian criminal justice system. • The same laws and consequences apply. 	<ul style="list-style-type: none"> • Reports inform non-aboriginal justice system/Judges. 	<ul style="list-style-type: none"> • In most models the process is linked to the non-aboriginal justice system – for example, facilitated by the department in Child Protection proceedings 	<ul style="list-style-type: none"> • Since abolition of community courts, LAJG assist in pre-sentencing advice to courts. • Informal 'court' processes for minor matter in remote communities. 	<ul style="list-style-type: none"> • Replica of non-aboriginal justice system.



						the program						
Features of self-determination	Rangatahi Courts and Pasifika Courts	Gladue Courts and Gladue reports	Circle sentencing	Cree Courts	Tsuu T'ina Peacemaking Court	Aboriginal Legal Service Community Council	Hollow Waters Community Holistic Healing Circle Initiative	First Nations Sentencing Courts	Aboriginal community justice reports	Family group conferencing	Law and Justice Groups (LAJG)	Indigenous Justice of the Peace (JP) Courts
Who makes decisions about sentencing or other outcomes?	<ul style="list-style-type: none"> Youth Court Judge (often First Nations) together with Kaumatua (respected elders) monitor the FGC plan. 	<ul style="list-style-type: none"> Discretion still ultimately sits with the Judge but aims to conform with the intent of <i>R v Gladue</i>. 	<ul style="list-style-type: none"> Depending on model the Judge may decide to be present or rely on the recommendations of the circle without participating. 	<ul style="list-style-type: none"> Discretion ultimately sits with Judge (usually Cree) but aims to conform with the intent of <i>R v Gladue</i>. 	<ul style="list-style-type: none"> Discretion ultimately sits with Judge (usually First Nations) but aims to conform with the intent of <i>R v Gladue</i>. 	<ul style="list-style-type: none"> Community Council develops a plan by consensus. If the individual does not appear for the hearing or does not fulfil his/her conditions, the Crown is informed. 	<ul style="list-style-type: none"> Discretion ultimately sits with the Judge but significantly informed by community led process. 	<ul style="list-style-type: none"> Sentencing discretion ultimately sits with the Magistrate or Judge. 	<ul style="list-style-type: none"> Sentencing discretion ultimately sits with the Magistrate or Judge. 	<ul style="list-style-type: none"> FGC is a process to enable family participation in decision making. It may facilitate an agreement between the department and the family. 	<ul style="list-style-type: none"> Some LAJGs mediate disputes outside of the system. Some LAJGs make recommendations to the court but sentencing discretion ultimately sits with the Magistrate or Judge. 	<ul style="list-style-type: none"> Indigenous JPs have the power to directly control sentencing and other outcomes within jurisdiction

Appendix 2 Co design process and structure

WORKSHOP A – Community

What is not working (and what is working)

- Pros and cons of Koori Court – ‘don’t like pleading guilty’ but provides a ‘voice’
 - Corrections orders- family issues/funerals not considered, ‘they are starting off with the idea that you are dangerous’
 - Non conviction important
- Very little adult diversion
- Local programs work well, access challenges for many programs

What is needed, what are the opportunities

- Voice
- Young people and adults
- An alternative
- Before/instead of, another option
- Connect existing and future programs
- Level of charges – who is eligible, what is the pathway, role of the court
- Not PG and not having a record

WORKSHOP B – Stakeholders

What is not working (and what is working)

- Pros and cons Koori court
- Referral pathways
- Systemic racism
- No buy in from courts
- Challenges short term Magistrates/Major system players
- Geography and resourcing

What is needed, what are the opportunities

- Relationships
- Grand vision
- Guiding principles
- Could reduce system pressures
- Needs to be properly resourced

WORKSHOP C – Community

Place/Voice/Culture

- Consider holding on country
- Consider holding at Goolum
- Cultural protocols including welcome
- Role of land council
- Site and activities

Restorative Processes

- Preparation important, who has obligations?
- Centring on the strength of community relationships
- Providing meaningful, restorative and problem-solving outcomes

Yallum Yallum Elders and Respected Persons Council

Culture/Voice

- Council sets a program for identity/connection to culture; counselling/ AOD/DV support/ Language
- Council would ask participant – who do you want to be in community?
- Cultural milestones set by Council or back to mainstream
- Aboriginal Mentors
- Ceremony when milestones are met – acknowledged and celebrated
- When graduated ceremonial gift

Self Determination/ Accountability to community

- Community through the Council is the decision maker about the outcome of the process (not the court)
- Council elders/respected persons make up – group chosen to minimise conflict of interest
- Support and healing (support person from community orgs)



WORKSHOP D - Stakeholders

Vision and values

- Representation of concept
- Yarning mat
- Ground rules spirit in which the conversation is held
- Explanation of Yalum Yallum – many ponds...

Where do we start

- Referral pathways – completely outside the justice system
- Inside the system – cautions and diversions
- Police hold discretion with diversion
- Geographic and resourcing challenges with programs
- Challenges for drug affected people – i.e struggling to access AOD councillors
- Start small – promoting and highlighting service gaps

YY Steering committee



Appendix 3

Yallum Yallum Elders and Respected Persons Council

Fact Sheet and Referral Guide

What is the Yallum Yallum Elders and Respected Persons Council?

The Yallum Yallum Elders and Respected Persons Council aims to provide an independent and self-determining justice model that promotes cultural healing, social and emotional wellbeing, and a stronger role in culture and community. Yallum Yallum also aims to divert Aboriginal people away from the criminal justice system and reduce their over representation in the justice system. The Council is a group of Elders and Respected Persons who are brought together to provide guidance to participants during their engagement with the program. Yallum Yallum is a pilot program. People can be referred to Yallum Yallum by police, the courts or the community. The pilot will begin with a focus on referrals from police.

What are the potential benefits for Yallum Yallum participants and the community?

- Addresses the underlying causes of offending and prevent crime through early intervention
- Connects individuals to services, culture and community to address issues that contribute to criminal behaviour
- Diverts low-medium level criminal offences away from the court system
- Supports behaviour change for individuals, improving community safety
- Increases community confidence and builds stronger relationships with local police, and builds community support for crime prevention and early intervention
- Saves police time by reducing onerous evidence-gathering/brief compilation and involvement in court processes

Who is eligible for Yallum Yallum?

Any person (adult or child) will be eligible to participate in the Yallum Yallum Elders and Respected Persons Council pilot if they:

- Identify as part of the Aboriginal community
- Acknowledge their obligation to community (an admission of guilt is not necessary).
- There must be sufficient evidence to charge or reasonable prospect of finding of guilt.

Who is not eligible for Yallum Yallum?

The following offences are not eligible for referral into the pilot:

- Sexual offences
- Any offence attracting a mandatory penalty under the Road Safety Act/Road Rules/Regulations.
- Traffick/Cultivate Drug of Dependence
- Any offence attracting a mandatory penalty
- Any offence involving a serious injury
- Any offence with a penalty of 15 years or more imprisonment
- Any offence arising from a family violence incident.

Offences requiring additional considerations:

- Firearm offences - requires approval by an Inspector or above at the Licensing & Regulation Division.
- Offences where the accused is a Private Security Operator or Private Security Business Owner requires approval with an Inspector or above at the Licensing & Regulation Division.
- Liquor licence offences - where a licensee or BYO permittee has been charged under the Liquor Control Reform Act for a 'non-compliance incident offence', approval is required by the Officer in Charge of the Liquor Licensing Unit.
- Emergency worker harm offences - careful consideration must be given, after reviewing all relevant information regarding the seriousness of the charge, its impact on the victim, the intent of the legislation and the circumstances in which the offending occurred. Approval from the relevant Work Unit manager is required.

People with criminal records:

Individuals are not excluded from participating in Yallum Yallum if they have a criminal record. However, several factors will be considered where an individual has a criminal record, including:

- Type of offences
- Age and number of offences
- If the criminal record is consistent with the current behaviour that indicates a need for connection with culture and community.

How can police make a referral to Yallum Yallum?

Contact the Yallum Yallum Coordinator.

A Sergeant may refer a matter directly to the Coordinator.

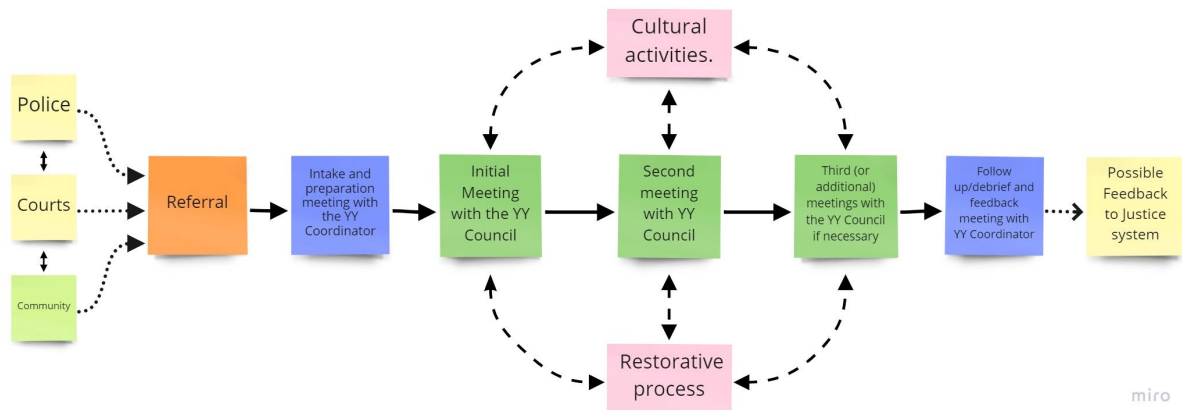
The police informant may also recommend a referral to the section or custody sergeant who will determine if the person is eligible.

What do police do when referring into Yallum Yallum?

Under the pilot program, instead of charging a person with a criminal offence, police will be able to refer an eligible person to the Yallum Yallum Coordinator. Police note in the case progress narrative in LEAP database that the accused has entered the Yallum Yallum Program. The disposition is recorded as 'intent to summons'.

What happens after a referral into Yallum Yallum?

This diagram illustrates what happens after a referral:



The Coordinator receives the referral and then works with the participant as part of an intake process to prepare for their engagement with the Yallum Yallum Elders and Respected Persons Council.

With the assistance of the Coordinator, the Yallum Yallum Elders and Respected Persons Council will facilitate a process of engagement with the person who has been referred. This will involve several meetings with the Council, rather than a one-off event.

Depending on the needs of the person, their level of engagement and complexity of referrals, several meetings between the person and the Council may be required over a period of time. Tailored referrals or cultural activities suggested by the Council will engage the person with culture and community with the aim of preventing or reduce further offending.

What happens when the process has been completed?

Successful completion will be determined by the Council. This could include genuine engagement, personal growth and increased connection to community and culture. If the person successfully completes the program, then police will not proceed with the charges. The Yallum Yallum Coordinator will advise police whether the program has been successfully completed. No further action will be taken by police in relation to the intent to summons if the program has been successfully completed.

Appendix 4 Summary of cautions

Type of caution	Eligibility	Limitations
Child cautions	<ul style="list-style-type: none"> Only applies to children who are aged 10 to 17 (inclusive) at the time of the offence. A child can be cautioned on more than one occasion. The child's parent or guardian must consent to the caution. The parent or guardian must be present at the time of issuing the caution. 	If the offence is of a sexual nature: <ul style="list-style-type: none"> obtain advice from the Sexual Offence Child Investigation Team (SOCIT) on the suitability of a caution, and obtain approval from a member approved to authorise sexual offence briefs
Adult shop steal caution	<ul style="list-style-type: none"> The person must be 18 years or over. Total retail value of the property stolen must be less than \$500. The offence must not involve theft from more than one store 	A person is ineligible: <ul style="list-style-type: none"> if there are aggravating circumstances such as assault, or where the theft is by an employee of the retail outlet.
Cannabis caution	<ul style="list-style-type: none"> The person must be 18 years or over (if a child, administer a child caution). Can only be used for a small quantity (up to 50 g) of dried leaf, stems, stalks and/or seeds. No plants, hash or hash oil. The cannabis must be for personal use only. There is no requirement to attend an assessment or treatment program 	<ul style="list-style-type: none"> No other offences can be involved unless they are immediately dealt with via police cautioning program or issue of an infringement notice. A person can have no more than one previous drug caution or diversion.
Drug diversion (other than cannabis)	<ul style="list-style-type: none"> Person must be 10 years of age or over. Applies to use and/or possession of a small quantity* of any substance that requires authorisation to possess under the Drugs, Poisons and Controlled Substances Act 1981. The substance must be for personal use only. Person must consent to participating in the Drug Diversion Program. This includes attending an assessment and appropriate treatment with an approved service provider 	<ul style="list-style-type: none"> Excludes cannabis No other offences can be involved unless they are immediately dealt with via police cautioning program or issue of an infringement notice. A person is ineligible if they are on a community corrections order. A person can have no more than one previous drug caution or diversion.
In addition to the criteria above, the following applies to all cautions:		
All cautions	<ul style="list-style-type: none"> The person must consent to the caution. Prior criminal history <i>does not exclude</i> a person being eligible for a caution 	<ul style="list-style-type: none"> Prisoners (including persons on remand) are ineligible. If the person is a Victoria Police employee, authorisation of the Assistant Commissioner PSC, is required. A caution must not be issued for any offences involving a firearm without obtaining written approval from Superintendent, Licensing and Regulation Division, Regulatory Services.

*Small quantity - as defined by s.70, Drugs, Poisons and Controlled Substances Act.

source: VPM: Cautions

Appendix 5 Children's Court Diversion Criteria Matrix

It is noted that the criteria outlined below is directly from ss. 356C & 356F *Children, Youth and Families Act* 2005.

When assessing a Diversion application, the following 'purposes of diversion', must be considered:

Purposes of diversion

The following purposes of diversion are—

- (a) a child should be diverted away from the criminal justice system where possible and appropriate;
- (b) the risk of stigma being caused to a child by contact with the criminal justice system should be reduced;
- (c) a child should be encouraged to accept responsibility for unlawful behaviour;
- (d) a child's offending should be responded to in a manner that acknowledges the child's needs and assists with rehabilitation;
- (e) a child should be provided with opportunities to strengthen and preserve relationships with family and other persons of importance in the child's life;
- (f) a child should be provided with ongoing pathways to connect with education, training and employment.

Prosecutorial consent to diversion

A prosecutor must also consider the following matters when determining whether to consent to an adjournment for diversion—

- (a) the availability of suitable diversion programs;
- (b) the impact on the victim (if any);
- (c) the child's failure to complete previous diversion programs (if any);
- (d) the alleged level of involvement of the child in the offending;
- (e) any other matter that the prosecutor considers relevant.

There are 3 specific offence categories that require additional consideration prior to recommending diversion:

1. *Family violence offences* – Careful consideration must be given, after reviewing all relevant information regarding the seriousness of the charge and the circumstances. Prosecutors must contact their Sub-Officer for approval prior to recommending diversion for any family violence matters, after conducting LEAP checks in order to fully inform themselves of the accused’s background in relation to family violence.
2. *Firearm offences*. A diversion or withdrawal of charges should not be offered to the accused or their counsel without first consulting with an Inspector or above at the Licensing & Regulation Division – (03) 9247 3231. PBEA – LRD-Diversions-Manager-OIC
3. *Emergency Worker Harm Offences*: Careful consideration must be given, after reviewing all relevant information regarding the seriousness of the charge, its impact on the victim, the intent of the legislation and the circumstances in which the offending occurred. Prosecutors must seek approval for diversion of emergency worker harm offences from their Work Unit manager who is to ensure an appropriate record is made as to the rationale in support of the decision.

		OFFENCE SERIOUSNESS		
		1 MINOR	2 MEDIUM	3 MAJOR
FUTURE OFFENDING RISK	3 MAJOR	PROBABLY SUITABLE	PROBABLY SUITABLE	NOT SUITABLE
	2 MEDIUM	PROBABLY SUITABLE	PROBABLY SUITABLE	POSSIBLY SUITABLE
	1 MINOR	SUITABLE	PROBABLY SUITABLE	POSSIBLY SUITABLE

* *Possibly Suitable*– In each individual case, it is necessary to look behind the circumstances and apply the ‘purposes of diversion’ along with Table 1 and Table 2 to see whether there are ‘serious concerns’.

Table 1: Offence Seriousness Table

Rating	Description
<p align="center">3 MAJOR</p>	<p>As a general rule, the following offences <i>*should</i> be included in the major category:</p> <ul style="list-style-type: none"> • Family violence offences – involving physical violence or serious breaches of IVOs. • Sex offences where the offending was aggressive and/or predatory. • Trafficking Drug of Dependence (above a traffickable quantity). • Any offence attracting a mandatory penalty (e.g mandatory licence disqualification). • Any offence involving a serious injury where the child is the primary offender. • Any offence incurring ‘vehicle impoundment’ provisions.
<p align="center">2 MEDIUM</p>	<p>As a general rule, all other indictable offences should be included in the medium category, as well as:</p> <ul style="list-style-type: none"> • Lower level Family Violence offences, including minor breaches of IVOs.
<p align="center">1 MINOR</p>	<p>Any Summary Offences (other than those attracting a mandatory penalty).</p>

**Should* – In each individual case, it is necessary to look behind the circumstances and apply the ‘purposes of diversion’ to see whether there are ‘serious concerns’.

Table 2: Future Offending Risk Table

Rating	Description
3 MAJOR	As a general rule, the likelihood of future offending is to be regarded as Major if: <ul style="list-style-type: none">• the accused has been found guilty by a court within the preceding 2 years.
2 MEDIUM	As a general rule, the likelihood of future offending is to be regarded as Medium if: <ul style="list-style-type: none">• The accused has been subject to a previous diversion/caution or warnings within 2 years;• The accused has a prior finding of guilt/conviction that is 2 years or older.
1 MINOR	As a general rule, the likelihood of future offending is to be regarded as Minor if: <ul style="list-style-type: none">• The accused has no court priors.

Appendix 5 Magistrates Court Diversion Criteria Matrix

In making the assessment for diversion, Prosecutors must have consideration to the Victoria Police Manual and other relevant policy documents, along with this Diversion Criteria Matrix.

There are 2 specific offence categories that require additional consideration prior to recommending diversion:

1. *Firearm offences* - A diversion should not be offered to the accused or their counsel without first gaining written approval from the Superintendent at the Licensing Services Division (03) 9247 3231.
2. *Liquor Licence offences* - A diversion should not to be offered to an accused or their counsel where a licensee or BYO permittee has been charged under the *Liquor Control Reform Act* for a non-compliance incident offence, without first gaining written approval of the OIC of Liquor Licensing Unit (03) 9098 5101.

Magistrates' Court Diversion Matrix

As of November 2017

		OFFENCE SERIOUSNESS		
		1 MINOR	2 MEDIUM	3 MAJOR
FUTURE OFFENDING RISK	3 MAJOR	POSSIBLY SUITABLE	GENERALLY NOT SUITABLE	
	2 MEDIUM	POSSIBLY SUITABLE	POSSIBLY SUITABLE	GENERALLY NOT SUITABLE
	1 MINOR		POSSIBLY SUITABLE	GENERALLY NOT SUITABLE

Future Offending Risk Table

Rating	Description
3 MAJOR	As a general rule, the likelihood of future offending is to be regarded as Major if: <ul style="list-style-type: none">• the accused has been found guilty by a court within the preceding 5 years.
2 MEDIUM	As a general rule, the likelihood of future offending is to be regarded as Medium if: <ul style="list-style-type: none">• The accused has been subject to a previous diversion/caution or warnings.• The accused has been processed by way of penalty notice.• The accused has a prior finding of guilt/conviction that is 5 years or older.
1 MINOR	As a general rule, the likelihood of future offending is to be regarded as Minor if: <ul style="list-style-type: none">• The accused has no court priors.

Offence Seriousness Table

Rating	Description
3 MAJOR	<ul style="list-style-type: none"> • Family violence matters may only be diverted if exceptional circumstances exist.¹ <p>As a general rule, the following offences <i>*should</i>² be included in the major category:</p> <ul style="list-style-type: none"> • Sex offences. • Traffic Drug of Dependence. • Any offence attracting a mandatory penalty (e.g mandatory licence disqualification). • Any offence involving a serious injury. • Any offence incurring 'vehicle impoundment' provisions. • Any offence with a penalty of 15 years or more.
2 MEDIUM	As a general rule, all other indictable offences should be included in the medium category.
1 MINOR	Any Summary Offences (other than those attracting a mandatory penalty).

¹ Unit Managers must be consulted and make the final decision as to whether exceptional circumstances exist

² **Should* – In each individual case, it is necessary to look behind the circumstances and apply the 'diversion principles' outlined in the VPM and other Victoria Police policy documents to see whether there are 'serious concerns'.

What if I have a criminal record?

You may still be eligible for the program.

It will depend on:


- how many previous offences you have
- what the offences were
- how long ago the offences happened
- whether your record and current behaviour indicates a need for treatment or support
- whether you've had opportunities to participate in other programs in the past (e.g. Drug Court, Community Corrections Order) and how well you participated in these programs.

Need more information?

Barb Williams is a healthcare worker at North Richmond Community Health and the Navigator for New Directions.

Call Barb on 0408 034 412 or email her at barbaraw1@nrch.com.au

Barb is happy to talk to you about any questions you may have.

  @NRCHaus  nrch.com.au



North Richmond Community Health (Wulempuri-Kertheba) stands on the traditional lands of the Wurundjeri people. We pay our respects to their elders, past and present.



New Directions was funded by the Victorian Government's Building Safer Communities Program.

NEW DIRECTIONS

a partnership between North Richmond Community Health, Victoria Police, Neighbourhood Justice Centre and City of Yarra



A program to support you in making positive changes to your life

What is New Directions?

New Directions is a new program available for people who may be charged with some types of offences in the City of Yarra.

If you successfully complete the New Directions program, Victoria Police will drop the charges against you that you were referred for. The program is an alternative to going to court.

New Directions aims to:

- address what has been happening in your life that may have led to you offending through working with a Navigator
- support any positive changes you want to make in your life that you may have difficulty doing by yourself.

How can New Directions help me?

The Navigator (a health care worker) will work with you to identify areas of your life that you want to improve.

This can include things like:

- accommodation
- financial issues
- physical health
- mental health
- substance use
- relationships
- employment
- education.



Am I eligible?

You may be eligible if:

- you are 18 years or older
- your alleged offence happened in the City of Yarra
- the alleged offence happened less than 6 months ago
- you're not on bail or a sentencing order
- police haven't assessed you as 'high risk'
- you're alleged to have committed an eligible offence.

To find out if the offence you have been arrested for is eligible, talk to your arresting officer or your lawyer.





NEW DIRECTIONS

Adult Pre-charge Diversion Pilot

What is New Directions?

New Directions is an adult pre-charge diversion pilot. It targets the early stages of criminal behaviour and offers intervention before the person is charged.

Under the pilot, police refer an eligible person to the Navigator. The Navigator case manages the person as they participate in tailored interventions to prevent or reduce further offending. If the person successfully completes the program then police will not proceed with the charges.

What are the potential benefits?

New Directions aims to:

- Address the underlying causes of offending and prevent crime through early intervention
- Connect individuals to services and treatment they require to address issues that contribute to criminal behaviour
- Provide an alternative option to criminal sanctions for low-medium level offences
- Divert low-medium level criminal offences away from the court system
- Change ongoing behaviour of individuals to better serve community safety and protection
- Increase community confidence in police in relation to crime prevention and early intervention
- Save police time by reducing the number of prosecutions and paperwork.

What is involved in the program?

The Navigator will conduct a Needs Assessment with the individual to identify areas of their life that they need assistance with, such as:

- accommodation
- financial issues
- physical health
- mental health
- substance use
- relationships
- employment
- education

The individual will be asked to sign an agreement to work with the Navigator for 4 months. The agreement will include four conditions, stipulating that the individual:

1. Does not offend during the four-month agreement
2. Meets with the Navigator as directed
3. Identifies 2 needs they want to work on and;
4. Engages with the services the Navigator refers them to.

How will I know if the agreement has been completed?

The Navigator will advise the informant:

- when the agreement has been signed
- when the agreement has been completed successfully so that the charges can be dismissed
- if the agreement is terminated for any reason

How do I refer?

Contact the Navigator Barb Williams on 0408 034 412 or email barbaraw1@nrch.com.au.

A Sergeant may refer a matter directly to the Navigator. The police informant may also recommend a referral to the section or custody sergeant who will determine if the offender is eligible.

Eligibility criteria:

- the individual must live within the City of Yarra or the offence must have taken place within the City of Yarra;
- the individual must be over 18
- the offence must be an eligible offence
- the offence must not be older than 6 months old
- the individual must not be subject to a sentencing order imposed by the courts or be on police/court bail
- the individual must not be assessed as a high-risk individual
- there must be sufficient evidence to charge or reasonable prospect of finding of guilt. Admissions not necessary.

Eligible offences:

The following offences are not suitable:

- sexual offences
- offences under the Road Safety Act/Road Rules/ Regulations.

The following offences are deemed not suitable unless exceptional circumstances exist, which must be approved by the Work Unit Manager:

- Traffic/Cultivate Drug of Dependence
- Any offence attracting a mandatory penalty
- Any offence involving a serious injury
- Any offence incurring 'vehicle impoundment' provisions
- Any offence with a penalty of 15 years or more
- Any offence arising from a family violence incident.

Offences requiring additional considerations:

- Firearm offences - requires approval by an Inspector or above at the Licensing & Regulation Division.
- Offences where the accused is a Private Security Operator or Private Security Business Owner requires approval with an Inspector or above at the Licensing & Regulation Division.
- Liquor licence offences - where a licensee or BYO permittee has been charged under the Liquor Control Reform Act for a 'non-compliance incident offence', approval is required by the Officer in Charge of the Liquor Licensing Unit.
- Emergency worker harm offences - careful consideration must be given, after reviewing all relevant information regarding the seriousness of the charge, its impact on the victim, the intent of the legislation and the circumstances in which the offending occurred. Approval from the relevant Work Unit manager is required.

Prior criminal record:

Individuals are not excluded from participating in the program if they have a prior criminal record. One aim of the project is to address underlying issues that lead to criminal behaviour, which may be indicated by a criminal record (eg. consistent history of low-level drug offences).

However, several factors will be considered where an individual has a criminal record, including:

- Type of offences
- Age and number of offences
- If the criminal record is consistent with the current behaviour that indicates a need for treatment or other intervention
- Opportunities for treatment and intervention in the past (past participation in other support and treatment programs e.g. Community Correction Order, Drug Court etc.) and the individual's participation in these opportunities.

Appendix 6 New Directions Stakeholders Brochure

Prior Criminal Record

Individuals are not excluded from participating in the program if they have a prior criminal record. One aim of the project is to address underlying issues that lead to criminal behaviour, which may be indicated by a criminal record (eg. consistent history of low-level drug offences).

However, several factors will be considered where an individual has a criminal record, including:

- Type of offences.
- Age and number of offences.
- If the criminal record is consistent with the current behaviour that indicates a need for treatment or other intervention.
- Opportunities for treatment and intervention in the past (past participation in other support and treatment programs e.g. Community Correction Order, Drug Court etc.) and the individual's participation in these opportunities.

For more information

Navigator details:

Barb Williams

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23 Lennox St, Richmond VIC 3121

☎ 0408 034 412

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North Richmond Community Health (Wulempuri-Kertheba) stands on the traditional lands of the Wurundjeri people. We pay our respects to their elders, past and present.



New Directions was funded by the Victorian Government's Building Safer Communities Program.

NEW DIRECTIONS

a partnership between North Richmond Community Health, Victoria Police, Neighbourhood Justice Centre and City of Yarra



An adult pre-charge diversion pilot

What is New Directions?

New Directions is an adult pre-charge diversion pilot designed to offer intervention at the earliest opportunity (pre-charge). It targets early stages of criminal behaviour for low-medium level offences.

It involves a Police Officer referring an eligible person to a Navigator who works with the person to identify drivers of offending and provide tailored interventions to prevent or reduce further offending.

The Navigator will conduct a Needs Assessment with the individual to identify areas of their life that they need assistance with, such as:

- Accommodation.
- Financial issues.
- Physical and/or mental health.
- Substance use.
- Relationships.
- Employment.
- Education.
- Training.



What is involved in the program?

If the individual decides to participate in New Directions, they will be asked to sign a four-month agreement with the following conditions:

- Not to offend during the four months.
- Meet with the Navigator as directed.
- Identify two needs they want to work on and;
- engage with the services that the Navigator refers them to.

If the individual successfully completes the program, Victoria Police will not proceed with the charges the individual was referred for.

What are the potential benefits?

- Address underlying causes of offending and prevent crime through early intervention.
- Provide an alternative option to criminal sanctions for low-medium level offences, particularly for first offences.
- Build upon positive factors that can divert the individual from future offending.
- Save police time by reducing the number of prosecutions and paperwork.

Eligibility Criteria:

- The individual must live within the City of Yarra or the offence must have taken place within the City of Yarra;
- The individual must be over 18
- The offence must be an eligible offence
- The offence must not be older than 6 months old
- The individual must not be subject to a sentencing order imposed by the courts or be on police/court bail
- The individual must not be assessed as a high-risk individual
- There must be sufficient evidence to charge or reasonable prospect of finding of guilt. Admissions not necessary.



Appendix 6 New Directions Victims of Crime Brochure

What are the potential benefits of the program?

New Directions responds to crime by focusing on rehabilitation to make our community safer by:

- addressing the root causes of offending and preventing crime by intervening earlier
- resolving crime effectively without going to court. Taking someone to court often isn't a good way of changing their behaviour. Instead, it can draw them further into a cycle of crime
- responding to the harm caused to victims of crime by taking their experiences into account, giving them a say and an opportunity for the harm to be repaired
- connecting individual people with the services and treatment they need to address issues that contribute to criminal behaviour.

What help is available to me?

> Victims of Crime Helpline

➤ victimsofcrime.vic.gov.au/

☎ 1800 819 817

> Neighbourhood Justice Centre Peacemaking Program

➤ neighbourhoodjustice.vic.gov.au/our-services/conflict-resolution/peacemaking-conflict-resolution-service

☎ 9948 8632

✉ anita.deblasio@courts.vic.gov.au

> Barb Williams | Navigator for New Directions and healthcare worker at North Richmond Community Health

☎ 9948 8632

✉ barbaraw1@nrch.com.au

f @NRCHaus ➤ nrch.com.au



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NEW DIRECTIONS

a partnership between North Richmond Community Health, Victoria Police, Neighbourhood Justice Centre and City of Yarra



Have you been a victim of crime?

What is New Directions?

New Directions is a program to resolve crime without going to court. It focuses on rehabilitating people, and drawing them away from a cycle of crime so they can contribute positively to our community. The program helps to prevent further crime and make our community safer.

Police refer eligible people to the program, who are alleged to have committed specific low-medium level offences in the City of Yarra.

The program's Navigator works with the person to identify the root causes of their offending. They provide the person with tailored interventions to address issues such as:

- Mental Health.
- Substance Use.
- Homelessness.
- Unemployment.



The Navigator monitors the person's progress on the program and holds them accountable. If the person fails the program, Victoria Police will charge them with the alleged offence(s) and prosecute them through the courts. If the person successfully completes the program, Victoria Police will drop the charges.

Example:

Two men leaving a pub get into a fight. This leads to them breaking a neighbour's window and scaring the neighbour's family. They are referred to New Directions. Instead of sending them to court, they engage in counselling for alcohol addiction and anger issues. At the neighbour's request, they pay for window repairs and write a letter of apology to the neighbour and her family.

What is involved in the program?

The police will discuss New Directions with you and answer any questions you may have.

They will hear from you about how the alleged offender's behaviour has affected you and take your views into consideration in deciding whether to refer the person to the program.

If the alleged offender participates in the program, the person will sign a four-month agreement with the following conditions:

- Not to offend during the four months.
- To meet with the Navigator as directed.
- To identify two needs they will work on and to engage with the services that the Navigator refers them to (e.g. drug and alcohol counselling).

A restorative process could also be included (e.g. making amends to the victim) and you may be invited to participate in such a process. The Neighbourhood Justice Centre's Peacemaking Program would deliver this process.

