

A decorative graphic element consisting of a grid of lines that recedes into the distance, creating a perspective effect.

Port Lincoln Aboriginal Conference Pilot: Review Report

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Executive Summary

Introduction

This paper presents a summary of findings from a review of the Port Lincoln Aboriginal Adult Conference Pilot conducted by the Office of Crime Statistics and Research over the period May to June 2008.

Port Lincoln Aboriginal Conference Pilot: model and aims

The Port Lincoln Aboriginal Adult Conference Pilot commenced in September 2007, with the first conference and sentencing hearings held in November 2007.

Under the Port Lincoln conference model, Aboriginal defendants who reside in Port Lincoln, have family connections to the local community and who plead guilty are eligible to attend a conference prior to the sentencing hearing. Conferences are facilitated by a Conferencing Coordinator and an Aboriginal Justice Coordinator and involve a Police Prosecutor, defendant(s), victim(s), defendant and victim supporters and respected members of the local Aboriginal Community. Using non-adversarial methods, the meeting provides an opportunity to acknowledge the harm done to the victim and to contribute to the development of responses to the offending behaviour. A report of the conference is then provided to the Magistrate to assist in determining an appropriate sentence.

Overall, the purpose of Adult Aboriginal Conferencing at Port Lincoln is to involve members of the Aboriginal Community and victims in a conference:

- so that the defendant is aware of the harm done as a result of his or her offending;
- to encourage contrition and reparation to remedy harm resulting from offending;
- to provide a restorative opportunity to victims;
- to give the community more confidence in the sentencing process; and
- to provide the Magistrate with better information to facilitate appropriate and constructive sentencing options.

Review aims and methodology

In November 2007, the Office of Crime Statistics and Research was commissioned to undertake a brief review of the Conference Pilot. The aims of the review were to:

1. identify the experiences and perceptions of Aboriginal Conferencing among a range of project participants; and
2. determine the extent to which the specified objectives of the Aboriginal Conferencing Port Lincoln Pilot have been achieved.

The review was conducted during May and June 2008 and involved observation of conferences and sentencing hearings; interviews with a wide range of stakeholders including victims; and document analysis.

Key Findings

Conference Profile

Between 27 September 2007 and 30 June 2008, a total of nine referrals were made to Aboriginal conferences in Port Lincoln. Referrals were made by the Magistrate or Defence Counsel, with no referrals to date from Police.

- Of the nine referrals, seven resulted in a conference. One referral was not proceeded with, and one is planned for July 2008.
- The number of participants for the seven conferences (excluding the Conferencing Coordinator and Aboriginal Justice Coordinator) ranged from six to nine (three with six, three with seven and one with nine). Two conferences involved two defendants. An ALRM field officer attended five conferences.
- Three of the seven conferences involved matters with one or more victims, with five victims overall. Two victims and two victim representatives attended the conference.
- The conferences involved eight discrete defendants, with one defendant attending two conferences.
- The eight defendants included four males and four females, with ages ranging from 23 to 30 years. The average age of defendants was 25 years.
- The defendants' prior level of offending varied, with approximately half of the defendants having substantial prior offending, while the other half had minimal past involvement with the criminal justice system.
- The conferences involved a variety of offences that were predominantly lower level, including disorderly behaviour, damage property, offensive language, drive uninsured/unregistered/under disqualification, but also included resist police and assault. The most serious offences were recklessly cause harm to another (aggravated), intentionally cause harm (basic) and assault police.
- In general, the actions/recommendations to come from the Conferences were: the inclusion of conditions in a supervised bond for counselling (in relation to anger management, family conflict resolution, drug and alcohol abuse and grief and loss); participation in Social and Emotional Wellbeing program; and the defendant to write a letter of apology to victim.
- Sentences handed down following a conference process generally acknowledged the recommendations of the Conference. In some circumstances, generally due to the nature of the defendant's past offending behaviour, the Magistrate was obliged to impose a term of imprisonment.

Stakeholder responses

Overall, there was a positive response from all stakeholders regarding the conferencing process, with unanimous praise for all participants in the way conferences were organised, conducted and documented and for the conduct of sentencing hearings. There was particular recognition of the contribution of Aboriginal Elders.

Benefits

The major benefits of Adult Aboriginal Conferencing identified by stakeholders included:

- The respect shown to Aboriginal Elders during the conference and sentencing hearing will increase respect for Elders within the Aboriginal Community.
- Conferencing utilises the life experience and knowledge of Elders to help the defendant acknowledge the harm done to the victim and to provide information to assist the Magistrate to determine an appropriate sentence. However, the Conference model also protects Elders from being perceived as responsible for the final sentence.
- Conferencing is likely to be a more effective deterrent than traditional court because:
 - The process is considerably more relevant to Aboriginal defendants and the Aboriginal Community compared with the traditional court process.
 - The prospect of immediate Elder disapproval is more effective than an application for breach of bond sometime in the future.
 - It provides an opportunity to recognise and address underlying issues of offending by linking sentencing to rehabilitative services.
 - It provides more relevant information to Magistrates, leading to more effective sentencing.
- Conferencing builds bridges between police and the Aboriginal Community by increasing the understanding of police roles and responsibilities as well providing an understanding of difficulties faced by Aboriginal Community.
- A conference provides victims with the opportunity to confront the defendant in safe, supported environment.
- A conference provides the opportunity for victims to receive an acknowledgement of the harm done as a result of the offending and for restorative actions such as an apology and/or compensation.
- Involvement in the conference process provides a link to support services for victims, if required.

The major issues identified by the Review were:

- The need to recognise the considerable time required to plan, conduct and report on conferences and conduct effective sentencing hearings.
- The need to ensure that all appropriate information is available to police prosecutors and conference coordinators to avoid inappropriate referrals.
- The length of conferences, with a number of stakeholders indicating that they should be limited.
- The eligibility criteria, with mixed views as to the type of offences and offenders that should be referred to a conference. Approximately half of all stakeholders indicated that conferences should be limited to summary offences. A slight majority of stakeholders felt that there was value in referring repeat offenders and domestic violence offenders to a conference.
- The perception by some stakeholders that conferencing is a 'soft' option. This perception was strongly challenged by Magistrates, defence counsel and police.

- The need to support Elders with formal training in court procedures and conference aims.
- The need to be sensitive to victims' experiences and to be careful not to be perceived as 'making excuses' for the defendant.
- The need for victims to have access to support before, during and particularly after the conferences.
- The need for follow-up to ensure that defendants comply with their restorative promises, such as a written apology.
- That referral to a conference may delay the finalisation of a case.
- That a conference may increase the conditions included in a bond and that while these conditions are likely to be therapeutic, they may be seen as onerous by the defendant.
- The need to increase the involvement of the Aboriginal Health Service in the conferencing process.

A number of recommendations have been made to address these issues in any further implementation of Adult Aboriginal Conferencing (see Part 6).

Achievement of aims

The overall finding of the review is that the Aboriginal Conferencing Pilot has been operating as intended and that five of the six aims had been achieved.

In relation to the specific aims of the Pilot, there was agreement that:

- the Pilot had successfully involved members of the Aboriginal Community and victims in conferences;
- for the most part, defendants had been made aware of the harm done as a result of the offending;
- that contrition and reparation by defendants had been both encouraged and witnessed;
- that the victims had been provided with a restorative opportunity, via the opportunity to inform the defendant of the impact of the offending, to ask questions and to receive compensation; and
- that the Magistrates had been provided with better information to facilitate appropriate and constructive sentencing.

It was also generally agreed that, due to the small scale of the conferencing pilot, that the aim to 'give the community more confidence in the sentencing process', had not yet occurred. However, most stakeholders were optimistic that the benefits of conferencing would be disseminated to the local community through Elders and defendants, and that this would, in time, increase confidence in the sentencing process.

Introduction

This paper presents a summary of findings from a review of the Port Lincoln Aboriginal Adult Conference Pilot conducted by the Office of Crime Statistics and Research over the period May to June 2008.

Development and implementation of Aboriginal Conferencing Pilot

The Aboriginal Adult Conference Pilot was originally proposed in a discussion paper prepared by the Deputy Chief Magistrate, Dr Andrew Cannon, and Carolyn Doherty, Manager of the Family Conference Team, in August 2007¹. The model combined elements of the sentencing circle and restorative justice conferencing with the Nunga Court method. The model was also based on the successful pilot adult restorative justice conferencing program conducted in the Adelaide Magistrates Court in 2004/05.

Under the proposed model, Aboriginal defendants who reside in Port Lincoln, have family connections to the local community, and who pleaded guilty would be eligible to attend a conference prior to the sentencing hearing. Emphasis would be placed on defendants who were at risk of harming the community or themselves by repeat offending. Conferences would be facilitated by an experienced Family Conference Youth Justice Coordinator (Conferencing Coordinator) and an Aboriginal Justice Officer (Aboriginal Justice Coordinator). The conference would involve a Police Prosecutor, defendant(s), victim(s), defendant and victim supporters and respected members of the local Aboriginal Community. Using non-adversarial methods, the meeting would acknowledge the harm done to the victim and the community and provide opportunity for all parties to contribute to the development of responses to the offending behaviour. This information would then be provided to the Magistrate to assist in determining an appropriate sentence.

While the proposed Aboriginal Conferencing Model included some aspects of the Nunga Court method, such as the involvement of Elders and a less formal, more interactive style during the sentencing hearings, there were several differences. To demarcate the role of the Elders and the Magistrate in relation to sentencing outcomes, the Magistrate would not attend the actual conference, which would be conducted outside of the courtroom. In addition, an emphasis was to be placed on the involvement of victims.

Port Lincoln was the chosen pilot site as it had a significant number of Aboriginal defendants combined with the support of several Aboriginal community organisations. In addition, the Family Conference team regularly visited Port Lincoln to deal with matters diverted from the Youth Court.

As part of the Aboriginal Conference development process, the Conferencing Coordinator and Aboriginal Justice Coordinator undertook a number of consultations with Port Lincoln Police Prosecutions and key members of the local Aboriginal community, including Elders who would be invited to participate.

The Pilot was overseen by a Steering Committee comprising the Director of Court Services (Chair), Deputy Chief Magistrate, Manager of Court Services, Manager of Family Conference Team, the Conferencing Coordinator and Aboriginal Justice Coordinator.

The first conference was held in November 2007. As at June 2008, a total of seven conferences have been conducted, involving eight defendants and five victims.

During the first few months of the Pilot, the original conference model as proposed in the August 2007 Discussion Paper was refined to reflect evolving practice. The final model is outlined in *Port Lincoln Aboriginal Conferences Guidelines and Case Flow Management*, attached as Appendix 1. The model states that preference should be given to offences

¹ Cannon, A. and Doherty, C. *Aboriginal Sentencing Conferences* August 2007

involving one or more victims, but victimless offences are not precluded. No limits on the age, type of offence or the offending history of the defendant are stipulated, but risk to other participants, particularly victims and Aboriginal Elders must be assessed prior to commencement.

The Guidelines describe the purpose of Aboriginal Conferencing is to involve members of the Aboriginal Community and victims in a conference:

- so the defendant is aware of the harm done to both as a result of his or her offending
- to encourage contrition and reparation to remedy harm resulting from offending
- to provide a restorative opportunity to victims
- to give the community more confidence in the sentencing process
- to provide the Magistrate with better information to facilitate appropriate and constructive sentencing options

Review aims and methodology

In November 2007, the Office of Crime Statistics and Research was commissioned to undertake a brief review of the Conference Pilot. The aims of the review were to:

1. Identify the experiences and perceptions of Aboriginal Conferencing among a range of project participants; and
2. determine the extent to which the specified objectives of the Aboriginal Conferencing Port Lincoln Pilot have been achieved.

The review was conducted during May and June 2008 and involved:

- Observation of two conferences and subsequent sentencing hearings during the Port Lincoln court week in May 2008.
- Semi-structured interviews with Aboriginal Elders, ALRM Field Officer, victims from previous conferences, one defendant, police prosecutor, defence lawyers, Magistrates, Conferencing Coordinator and Aboriginal Justice Coordinator. A total of 11 interviews were conducted, involving 18 individuals. Each interview covered the interviewee's views on conference process and outcomes, with questions tailored to fit the particular stakeholder's role in relation to the conference. All interviewees were informed about the review process, and that they could terminate the interview at any time or refuse to answer specific questions. All interviewees provided written consent.
- Document analysis including *Guideline and Case Flow Management*, Steering Group minutes and Conference reports.
- Collection and summary of pilot statistics including number of participants, types of offences involved, conference recommendations and sentencing outcomes.

Note re recidivism

This report does not include an analysis of the impact of the conferencing process on recidivism because 1) a reduction in re-offending is not a primary aim of the Pilot and 2) insufficient time has elapsed since the commencement of the pilot to allow for meaningful follow-up of most participants. It is suggested that it may be useful to examine re-offending rates at some future time. However, while such an analysis could provide additional insight into the potential outcomes of Aboriginal Conferencing, it should be noted that the primary objectives of the Pilot are to encourage defendants' victim awareness, provide restorative opportunities for victims and facilitate constructive sentencing options.

Report Structure

This report is divided into a number of sections. Part 1 provides a brief overview of the Aboriginal Conference Process, while Part 2 provides a profile of the conferences held up to June 2008, including number of defendants, victims and participants, the sex and age of defendants and the offences involved, conference recommendations and sentence outcomes. Part 3 of the report is a summary stakeholder responses, while Part 4 summarises the key issues identified during the review. Part 5 provides an overview of the aims achieved and Part 6 lists a number of recommendations to consider in any further implementation of Aboriginal Conferencing beyond the pilot phase.

Part 1: The Aboriginal Conference Process

A brief summary of the conference process is described below.

Conferences are organised and conducted by the Conferencing Coordinator and the Aboriginal Justice Coordinator (the Conference Coordinators). A detailed description of these roles is attached as Appendix 2.

Referral:

- The Aboriginal Conference process begins with the entering of a guilty plea by the defendant. Any party (for example, lawyer, prosecutor, victim, defendant or Magistrate) may ask to have a court case referred to a conference. The prosecutor may seek a short adjournment to conduct background checks on the defendant. The prosecutor, defence counsel or Magistrate can challenge the proposed referral in court, with the Magistrate making the final decision.
- If a referral is made, the Magistrate adjourns the case for sentencing to the following circuit to allow a minimum of one month for the Conference to be convened. Where possible, the Conference Coordinators will be advised and will attempt to meet with the defendant before he/she leaves the court. The purpose of this meeting is to explain the conference process and to obtain informed consent.

Planning:

- Police Prosecutions are responsible for providing relevant information to the Conferencing Coordinator, including copies of the relevant Police Apprehension Report(s), contact details of any victim(s), and any information not in the reports that may be relevant to the Conference.
- The Conferencing Coordinator and Aboriginal Justice Coordinator will then contact all parties (the defendant, victim and their supporters) to explain or confirm the process and encourage attendance. If requested by the victim, the Conferencing Coordinator will contact Victim Support Services for a victim representative to support the victim or attend as their representative. Relevant defendant support services (for example, Port Lincoln Aboriginal Health Service) are also invited to attend the conference.
- The Aboriginal Justice Coordinator, in consultation with the Conferencing Coordinator, will consult, select and contact appropriate Aboriginal Elders. Elders are fully briefed on the case and must identify any potential conflicts between themselves and the defendant. A fee is paid to Elders for their attendance at both the Conference and the Sentencing Hearing.
- Prior to the conference, invitation letters detailing the date, time and location of the conference are mailed to participants. Police Prosecutions are also informed of the conference arrangements. In the week before the conference, the Coordinators will telephone the defendant, victims, elders and supporters to remind them of the arrangements and to confirm their attendance.

- If at any time the defendant decides not to participate, or the Coordinators become aware of any reason why the conference should not proceed, the Coordinators will advise the referring Magistrate, Police Prosecution and Defence Counsel. This advice should not include any information which might prejudice the defendant's case.

Conduct of conferences:

- Conferences are generally held during the week of the Port Lincoln Court circuit in the Conference Room of the Port Lincoln Court building.²
- Depending upon the number of participants and whether or not a victim is involved, the conference lasts between 1.5 and 2 hours.
- The conference is facilitated by the Conferencing Coordinator. At the beginning of the conference, the Conferencing Coordinator introduces all participants and briefly explains the purpose of the conference. The role of the Elders to advise, support and, where appropriate, challenge the defendant is also acknowledged. The Police Prosecutor is then invited to read the charges and the defendant(s) is asked to outline what happened and how it occurred, and any comments he or she may have about those events. All participants are then invited to respond to the defendant. Issues covered include the impact of the offending on the victim and the defendant, factors which may have influenced the offending behaviour (such as anger and/or alcohol) and suggestions as to how such behaviour may be avoided in the future (e.g. drug and alcohol counselling). Emphasis is placed on the defendant acknowledging the harm done (including making an apology) and possible restorative/therapeutic actions that could be recommended to the Court. Participants are advised that the Magistrate is responsible for the final sentence. The Aboriginal Justice Coordinator is responsible for recording conference proceedings and outcomes and for providing culturally specific information to conference participants.

Conference Report:

- The Conferencing Coordinator, in consultation with the Aboriginal Justice Coordinator, prepares and forwards a report to the referring Magistrate, Prosecution, defence counsel or defendant prior to the sentencing hearing.

Sentencing Hearing:

- The sentencing hearing is generally held within two days of the Conference. The Conference Coordinators and Elders are invited to attend to elaborate on the conference report if required. During the sentencing hearing, both the Magistrate and Elders sit at the Bar Table. The proceedings are less formal than traditional court hearings, with the Elders, Conferencing Coordinator, Aboriginal Justice Coordinator and defendant invited to comment where necessary. Victims are also invited to the hearings and, if they attend, are acknowledged by the court.
- Discussion is then concluded and the Magistrate hands down the sentence. Particular effort is made to ensure that the Elders are not seen as responsible for the sentence.

Follow up:

- Following the sentencing hearing, the Conferencing Coordinator contacts the victim(s) to advise of the sentence (if they did not attend the hearing) and to provide an opportunity for the victim to 'debrief' regarding the conference. If required, the victim may be referred to Victim Support Services for ongoing support. Discussions have recently taken place with Port Lincoln Victim Support Service to provide more proactive support to victims after the conference process.
- The Coordinators are also responsible for follow-up/debriefing with Police and other participants, as required.

² One conference was held at the Port Lincoln Prison as the defendant was remanded in custody for charges not related to the conference.

Part 2: Conference Profile

Number of referrals/conferences

- Between 27 September 2007 and 30 June 2008, a total of nine referrals were made to Aboriginal conferences in Port Lincoln. Referrals were made by the Magistrate or Defence Counsel, with no referrals to date from Police.
- Of the nine referrals, seven resulted in a conference, with the first conference conducted in November 2007. One referral was not proceeded with, and one is planned for July 2008.

Time between referral and conference

- Of the seven completed conferences, two were held in the month following the referral date, four were held within two months and one was delayed for three months, at the defendant's request, due to employment away from Port Lincoln.

Location of conference

- All but one of the seven conferences were held in the Conference Room at the Port Lincoln Magistrates Court. One conference was held at the Port Lincoln Prison where the defendant was remanded in custody for other charges not related to the conference. Given the resources required to implement transport the defendant to the Port Lincoln Magistrates Court (including a two person escort) it was decided to hold the conference at the prison.

Time between conference and sentencing hearing

- For all seven conferences, a sentencing hearing was held within two days of the conference.

Number of participants

- The number of participants for the seven conferences (excluding the Conferencing Coordinator and Aboriginal Justice Coordinator) ranged from six to nine (three with six, three with seven and one with nine). Two conferences involved two defendants. An ALRM field officer attended five conferences.

Victim involvement

- Three of the seven conferences involved matters with one or more victims, with five victims overall. Two victims and two victim representatives attended the conference. The victim representatives included a family member and a support worker from a local non-government agency.

Defendant profile

- The conferences involved eight discrete defendants, with one defendant attending two conferences.
- The eight defendants included four males and four females, with ages ranging from 23 to 30 years. The average age of defendants was 25 years.
- The defendants' prior level of offending varied. According to the Conferencing Coordinator, approximately half of the defendants had substantial prior offending, while the other half had minimal past involvement with the criminal justice system.

Offence profile

- The conferences involved a variety of predominantly lower level offences, as listed below.
 - Disorderly behaviour (4)
 - Resist police
 - Assault police
 - Carry offensive weapon
 - Drive with Excess Blood Alcohol
 - Drive unregistered
 - Drive uninsured vehicle
 - Drive under disqualification
 - Intentionally cause harm - basic
 - Damage property (2)
 - Fail to comply with Restraining Order
 - Recklessly cause harm to another- aggravated
 - Offensive language
 - State false personal detail
 - Fail to comply with bail agreement

The most serious offences were *recklessly cause harm to another (aggravated)*, *intentionally cause harm (basic)* and *assault police*. With the exception of *disorderly behaviour* and *damage property* (which were involved in four and two conferences respectively) all other offences were represented in one conference only.

Conference outcomes and recommendations

The actions/recommendations to come from the conferences included:

- Acknowledgement of the defendants apology to victim
- Acknowledgement of the defendants participation in the Conference
- The defendant to write a letter of apology to victim
- The inclusion of conditions in a Supervised Bond for counselling re:
 - anger management
 - family conflict resolution
 - drug and alcohol abuse
 - grief/loss
- Participation in Social and Emotional Wellbeing program
- Griffith's Remand for progress report in 3-6 months
- To attend counselling and therapeutic programs while in prison
- Court to be made aware of extreme provocation of defendants in lead up to offences
- Offer of assistance to defendants by Elders to negotiate with services re housing, to access counselling and to provide employment information and leads

Sentence outcomes

The sentences received by conference defendants are listed below. In general, the sentences reflect the recommendations of the Conference, with particular emphasis on the inclusion of therapeutic measures, such as treatment for substance abuse and counselling for anger management.

Conference 1

- Good Behaviour Bond for 12 months (\$500)
- Supervision by Community Corrections
- Attend counselling courses, assessment and treatment for substance abuse
- Attend Social and Emotional Wellbeing program
- Attend Bond review after six months

Conference 2

- Part heard and remanded for progress report, with Elders invited back to hear report
- Supervised bail
- Attend counselling as directed for substance abuse
- Participation in Social and Emotional Wellbeing program
- Progress report review was adjourned for five months for defendant to complete rehabilitation program for alcohol misuse

Conference 3

- Convicted and imprisoned for 3 months

Conference 4

- Good Behaviour Bond - 2 years
- Court fees and levies waived

Conference 5

Defendant 1:

- 8 months imprisonment, suspended sentence bond for 3 years
- Supervision by Community corrections to participate as directed in counselling and treatment for anger alcohol and drugs

Defendant 2:

- Adjourned for 2 months
- Other offences referred to a second conference

Conference 6

- Adjourned for one month
- Good Behaviour Bond for 18 months
- To return in three months for a progress report to Magistrate and Elders

Conference 7

- Good Behaviour Bond - 12 months
- Supervision by Community corrections to participate as directed in programs for anger management and alcohol misuse
- Compensation of \$200 to Housing SA

Part 3: Stakeholder responses

The following section summarises the responses from 11 interviews with 18 stakeholders. Responses are grouped according to the category of stakeholder.

Victims/victim representative responses

The review involved interviews with two victims and one victim representative (herein all included under the term 'victims'). All incidents involved assault type offences.

Victims were asked their views about information they received prior to the conference, how the conference was conducted, the roles of elders and defendants, Coordinators, conference outcomes and final sentence.

Overall, victims were satisfied with the conference process. All noted that the process had been explained to them clearly, they knew what to expect and that the actual conference 'was pretty much straightforward'.

In terms of their expectations of the conference, a range of views were expressed. One victim expected an apology and the opportunity to address with the victim the events leading up to the offence (in the context of the role of Aboriginal Community Constables and their relationship with the local Aboriginal Community). Another victim wanted to have his 'say', while the third reported that she simply wanted to ask why the offence had occurred.

All victims felt that they had sufficient opportunity to participate. When asked what, if anything, worked particularly well, the responses included:

"It was good to have the option of a conference and to be able to confront the offenders in a safe environment, instead of out on the street"

"It was an opportunity for Elders to understand what the young people are getting up to"

"I found out a bit more than I knew before [about the offence]"

When asked if there was anything that didn't work so well, one victim was disappointed that she had not received the promised written apology and another felt that the defendant had been treated too lightly and that they need to be spoken to more firmly and directly.

Two suggestions were made regarding changes to the process: 1) the attendance of Aboriginal Community Constables at Conferences to build relationships with the Elders and to have a better understanding of what is happening in the Aboriginal Community and 2) follow up to ensure that defendants are held accountable for their promises.

All victims indicated that appropriate persons attended the conference and that they were conducted well. One victim noted that the Conferencing Coordinator did well to keep the conference on track, while another praised the Coordinator's response when one of the two defendants involved in his conference became agitated, denied involvement in the offence and walked out. One victim was very appreciative of the role the Elders played, acknowledging that they were well respected in the community, that they kept the discussion relevant and they "helped people to be truthful". One victim was less enthusiastic, reporting that one Elder appeared to be trying to justify the offending behaviour in terms of the defendant's difficult life. The victim indicated that this response was difficult for her to deal with as "...I've had a hard life too'. Another victim reported that initially he had felt that one Elder was "a bit more on their side", but acknowledged that the Elder in question did not know all the details of the offence. When the Elder was fully informed, the victim agreed that the Elder responded appropriately. This suggests the importance of Elders being fully briefed as to the details of the offending in question.

Two of the victims indicated that they were very nervous during the Conference process. One victim noted that the offending incident had affected his previously positive relationship with the local Aboriginal community and it was difficult for him to be in a group of Aboriginal people. When asked how they felt *after* the conference, a range of responses were received, as follows:

"...felt happy....the person acknowledged it, took responsibility, apologised and agreed to do counselling...ended up being positive about what they could do to get back on track"

"..little bit angry...went home unsettled but settled down. Gave me a chance to get things of my chest"

"Bit more relieved...I got the answers that I needed".

The victims were also asked whether or not they thought the conference was achieving its intended aims. In terms of involving the Aboriginal community and victims, one victim was very positive, noting that the conference strengthened the relationship between the Aboriginal Community, the police and courts and that the involvement of Elders had helped with healing. While all victims felt that the defendant(s) had been made *aware* of the harm done, there was some uncertainty as to whether this knowledge would be reflected in the defendant's future actions. There were also mixed views regarding restorative outcomes. As indicated, one victim was disappointed that the promised written apology was never received. Another victim was happy to have received a genuine apology from one of the defendants in his case, but noted that it was difficult to 'restore' what he had lost in terms of his connection with the Aboriginal community and permanent physical injury. The final victim was very satisfied with the result as the defendant had apologised at the conference and had subsequently acknowledged her in the community. The victim reported "I feel better because there were proactive outcomes..."

In relation to the sentence received, one victim was not aware of the final outcome, one victim reported that the sentence was what he expected given the defendant's prior history and another did not appear to know the details but expressed the belief that conferences were a 'cop out' in terms of consequences for the defendant.

The final question put to victims was whether or not they would recommend a conference for other victims. The responses were somewhat guarded including "To some I would" and "I would do...but it would be up to them" and "Just depends upon the nature of the incident". Two of the victims felt that conferences should only be undertaken for less serious offences (for example, for theft, but not for assault).

The analysis of conference reports and victims interview responses suggests that victims may have a very positive response during or immediately after the conference, but that in the days afterwards there may be an unsettled feeling. This may be due to the conference reviving memories of the offence and/or feelings of uncertainty after speaking with family and friends.

The Conferencing Coordinator confirmed that this is a common response to the conferencing process.

Overall, the conferences were a positive, if at times difficult, experience for the three victims interviewed. The victims were satisfied with the information they received and the way the conferences were conducted and positive outcomes were noted regarding the relationship between the Aboriginal community, police and courts. In terms of restorative outcomes, the victims' responses are reminders that while an acknowledgement of the harm done and an apology can be helpful, the impact of the offending incident may be very difficult to overcome.

The interview findings also confirm the importance of support for the victim during and after the conferencing process. It is noted that, as a result of earlier feedback from the review, a more formal and proactive arrangement has been instigated with Port Lincoln Victim Support Services to follow up victims after the conference.

Defendants

While attempts were made to contact several defendants, only one of the eight discrete defendants was available for interview during the review process. The following results should therefore be interpreted with caution as they may not be representative of the experience and views of other defendants.

The defendant was a young male who had pleaded guilty to *property damage* and *resist police*. He was interviewed face to face immediately after the sentencing hearing, which was held two days after the Conference. The defendant's partner was also present at the interview.

The interview included questions about the defendant's introduction to Aboriginal Conferencing, the information received, expectations, participation and satisfaction with the process. It was noted that the defendant was very withdrawn and that this made it difficult for him to provide detailed answers to the interview questions.

The defendant reported that he first heard about Aboriginal Conferencing from his lawyer, who recommended it and asked if the defendant would like to participate. He noted that a letter was sent out to him providing information about the process, but that he was not at that address at the time and therefore did not receive the letter.

The defendant reported that the conference was everything he had expected it to be. He commented that it was hard at times because he was not used to sitting around with "that many people" and that it was hard for him to bring up what he wanted to say as he was not confident in a group. When asked how he felt after the conference, his response was "All right about it".

The defendant did express concern about two aspects of the conferencing process. Firstly he noted that conference delayed the finalisation of his case (in this case, the conference was held two months after the initial hearing) and this impacted upon his offending behaviour.

"I had court...then [the conference] pushed it away...bit too long. There was a gap...because it was too long I got into trouble again".

Secondly, the defendant felt that the inclusion of a number of conditions in his sentence with regard to supervision and attendance at programs was:

"A bit too much...all those conditions...five or six things to do".

However, despite these concerns, the defendant indicated that he would recommend the process to others:

"I would recommend they go and tell their problems before the court date."

As indicated, it is inappropriate to judge the experience of all defendants on the basis of one interview. However, other stakeholders did provide some insight into the views of defendants. Both Elders and defence counsel indicated that defendants had found conferencing positive. It was reported that defendants are happy to have the opportunity to speak, both during the conference and at the sentencing hearing. One defence counsel noted:

“I consider the clients feel like they have actually participated in the court process rather than giving instructions and then being bystanders in the process as the prosecutor, lawyers and Magistrates then speak.”

One Magistrate commented on the involvement of defendants:

“There is traditionally limited involvement, but in this context they participated, they explained their point of view, they were able to explain what their feelings were and how their understanding might have changed.”

Defence also noted that clients felt that conferencing was valuable in bringing issues out and in linking them to rehabilitation programs.

It was also reported that during one conference, one defendant became agitated, denied her role in an assault against the victim and indicated that she had only entered her guilty plea to “get it over with”. This suggests that some defendants may see a conference as a soft option and are not fully aware of the implications of attending a conference, particularly in relation to having to confront their offending behaviour and underlying issues.

Aboriginal Elders/ALRM Field Officer

For the purposes of the review, a group discussion was held with four Aboriginal Elders. A separate interview was held with an ALRM Field Officer. Elders were asked to comment on their role and the preparation they had received, the conduct of the conferences and sentencing hearings and the impact that conferencing had had upon them.

Elders were unanimously positive about the Aboriginal Conferencing Pilot. They noted that they had been approached before the Pilot commenced and were happy with the information they had received. However, they also reported that they felt new to the conference process, that they were learning “as we go along” and that it was a “learning curve” for them. It was agreed that ‘life experience’ was a good qualification for the role, with one respondent noting that Elders should be over 45 years of age and should be genuinely motivated to help young people.

In relation to their participation in the conference, Elders reported that they felt they had a caring and advisory role, but that they also needed to be straightforward with defendants and that “...you can’t pamper them.” They felt that they had sufficient opportunity to participate and that the Conferencing Coordinator was skilled in including Elders who were attending for the first time.

Elders were generally satisfied that appropriate persons were attending the conferences, but expressed some disappointment that the Aboriginal Health Service had not been able to attend more regularly. This was considered particularly important given that many defendants had significant drug and alcohol problems. The Elders recommended that this issue be discussed with the Aboriginal Health Service and that they should be strongly encouraged to attend.

In relation to the discussion during the conference one person felt that it could be slightly repetitive, with the result that the conference probably took longer than necessary.

The Elders expressed mixed views about the type of offences that should be referred to a conference. Some felt that the process was not appropriate for major indictable offences or for domestic violence cases, while others felt that a conference would be a good opportunity for a domestic violence victim to ‘have their say’ to the perpetrator in a safe environment.

Others expressed the view that repeat offenders should be given the opportunity to attend a conference. It was felt that a conference was a way to 'pull up' repeat offenders and that they may gain a better understanding of why they should stop their offending behaviour.

Elders were also very happy with the respect they received at the conference and from Magistrates during the sentencing process, particularly in relation to joining them at the Bar Table during the sentencing hearing. One Elder was very supportive of the 'natural' atmosphere at the sentencing hearing compared to traditional hearings.

Other positive aspects of Aboriginal Conferencing identified by Elders were:

- having Elders present at both the conference and the sentencing hearing contributed to the honesty of the defendant, because the Elders were in a position to know whether or not the defendant was being truthful.
- involvement in conferences and the sentencing hearing would increase the respect given to Elders by the local Aboriginal community.
- involving Elders in the process was a more effective way to impact upon the behaviour of young people.

"It's a good set up...because out on the streets they see you, they have this respect for you and they know they've got to behave....if they do something wrong they know I know about it."

It was felt that the respect shown to Elders at the conference and the sentencing hearing would further strengthen the ability of Elders to oversee and, if necessary, challenge the behaviour of defendants in the community.

- that defendants are able to participate in the process, rather than simply answering 'yes' or 'no' in the court.
- that it had gone some way towards a mutual understanding between the police and the defendants. This related to the police having a better understanding of the background of the defendants and the need to show respect to the community, but also the defendants understanding the role of the police and why they take particular actions. However, it was noted that more progress was needed in this area.
- that Magistrates were able to gain a better understanding of defendants and see them as individuals.

"Its been a success...its actually given the Magistrate more understanding of the individual...because there's no way in the world they would know what the background of this person is until [the conference] happens and it really helps them."

- that Aboriginal Elders are being given a purpose by having a role in helping Aboriginal young people.

Overall, Elders agreed that conferencing was a positive initiative, that they would like to see it continue and they would recommend it to victims and offenders. However, it was noted that not all of the local Aboriginal Community were aware of the process and as a result some may question becoming involved. If the conference process is to continue beyond the pilot phase, Elders recommended that a further information session be held with the local Aboriginal community to explain the purpose of conferences, how they work and "why it is a good thing". It was also suggested that printed material be made available.

Police

The review process included face to face interviews with a police prosecutor and a police officer who had represented the police prosecutor at one conference and had acted as a victim support person at another.

In general, the police respondents were very supportive of the conference process, in particular praising the contribution of the Conferencing Coordinator and Aboriginal Justice Coordinator. They felt that appropriate persons had been invited to attend and that the conferences were well organised. The location was also supported as "central, but separate from the court, even though it is in the court building".

In terms of conference outcomes, the police felt that reconciliation between the victim and defendant had occurred on a number of occasions. The view was expressed that conferences are not a 'soft' option and that the sentencing outcome for most has been the same as it would have been without a conference, with the added element that the defendant has to face the victim. One police respondent noted that he had initially misunderstood the conference process to be a diversion from court. He suggested that police officers should be fully informed of the focus of Aboriginal conferencing and, in particular, that the conference is held in addition to, not instead of, a court hearing.

While the police were positive about the contribution of Elders who had participated in the conferences to date, it was noted by one respondent that in any ongoing conference process it was important to select Elders who were well respected by the community. Some concern was also expressed about the possible selection of Elders with an extensive offending history.

It was noted that the Aboriginal Conferencing Pilot had limited impact upon general police officers due to the small number of conferences held to date. However, it could be problematic for Police Prosecutions if only one prosecutor was available, as it potentially involved one officer for one whole day during court week. It was reported that the preparation for the conferences was minimal if only one defendant was involved, but it may be more time consuming if there were multiple defendants and/or victims.

Two main concerns were expressed by police respondents. The first concern was that the conference discussions tended to become a bit repetitive and as a result the conferences were too long. It was noted that police had raised this concern with the Conferencing Coordinator and Aboriginal Justice Coordinator.

The second issue related to the type of offences and offenders who should be referred to a conference. It was felt that only summary offences should be eligible and there was also concern that some defendants referred had a serious criminal history and/or were not really committed to the conference process.

The view that the conferences should be restricted to offences where there is a personal victim was also put forward by one police respondent.

Both police respondents indicated that they would like to see Aboriginal conferencing in Port Lincoln, with one expressing the view that conferencing should also be available for non-Aboriginal defendants.

Conferencing Coordinator and Aboriginal Justice Coordinator

The Conferencing Coordinator indicated that he was generally happy with the operation of the Aboriginal Conferencing Pilot. While there had been a few process issues early on, primarily resulting from a lack of knowledge of court protocols, overall there was a high level of communication and cooperation between stakeholders.

The Conferencing Coordinator and Aboriginal Justice Coordinator were very supportive of the role and contribution of the Elders, noting that they brought valuable life experience and knowledge to the conference and sentencing hearing. In response to concerns expressed by some stakeholders regarding the potential involvement of Elders with prior criminal histories,

it was felt that some past experience with the criminal justice system may be beneficial because the defendant would be able to relate to the Elders' 'stories' while at the same time the Elders would be providing positive role models as persons who had successfully 'moved on'.

In response to concerns that at times Elders had appeared to be 'making excuses' for the defendant, it was noted that Elders are encouraged by Conference Coordinators to challenge the defendant's offending behaviour where necessary, and that some Elders do take this approach. However, it was also acknowledged that the Elders' role is to *support* the defendant to take responsibility for their actions and to recognise the consequences of their behaviour.

Both the Conferencing Coordinator and Aboriginal Justice Coordinator felt that further training in court procedure and terminology would be beneficial in that it would increase the confidence of Elders at both conferences and sentencing hearings.

There was also significant support for the role of police, in particular their sensitivity and their ability to stay positive. The efforts of the Magistrates to consider the recommendations of the conference and to conduct the sentencing hearing in an inclusive manner were also recognised.

The Conferencing Coordinator acknowledged the concerns of some stakeholders regarding the length of conferences, noting that all participants were informed that the conferences would take approximately 1.5 to 2 hours. He felt that it was his role as Chair to keep the discussion moving, but at the same time valuable insights often came out of the general conversation. Overall, it was felt that conferences should not be rushed to fit within a pre-determined time frame.

The Conferencing Coordinator did not support the limitation of conferences to offences involving victims only, noting that one of the best conferences during the pilot phase did not involve victims but was successful because the defendant recognised he had problems that needed addressing. It was acknowledged that if referrals exceeded current capacity then matters involving victims should take precedence.

The major concern raised by the Conferencing Coordinator and Aboriginal Justice Coordinator was the time consuming nature of the conference process, with approximately one day devoted to setting up each conference (including letters to all participants, giving and obtaining information from defendants, selecting and briefing Elders) and another day at least to conduct the conference, compile the report and attend the sentencing hearing. It was reported that with present resources it would be difficult to conduct any more than three conferences during the Port Lincoln Court week. The Aboriginal Justice Coordinator also noted that the work involved had impacted upon the time available for other duties.

While the review process instigated for the first two conferences was seen as valuable, due to time and resource constraints it was felt that they should be limited to special cases.

Magistrates

The three Magistrates who presided over the Aboriginal Conference matters were interviewed together as a group.

All three Magistrates were very enthusiastic and supportive of the conferencing process, with one commenting that it was "...the most worthwhile thing I've done in 25 years of magistracy". It was noted that effective sentencing depends upon 'connectedness and relevance to the community' and that the Pilot is an attempt to make sentencing relevant to the Aboriginal Community in Port Lincoln. It was highlighted that, from the clients point of view, there is a big difference between the threat of an application for a breach of bond, which is likely to be dealt with in several months, and the prospect of being challenged by one of the Elders in the community, and that the latter is a much more effective tool than the former.

Magistrates were also unanimous in their praise of the Conferencing Coordinator, Aboriginal Justice Coordinator and Elders, and the information that was brought to the sentencing hearing.

“I think the conferencing part of the whole process is brilliant. I think we are extremely fortunate to have such able and imaginative people running the conferences. The amount of information and the quality of information is of enormous use when you are sentencing.”

“The difference between the usual court and the Aboriginal Sentencing Court is that you gain greater insight and understanding because of the nature of the information you are given...you have not just knowledge but understanding and insight into the circumstances of the defendant and victims and others and it helps promote better decision making processes.

One particular aspect of the conferencing model that was supported by Magistrates was the clear demarcation between the Magistrate and the Elders in relation to sentencing. It was felt that Elders may be put in a difficult position within the Aboriginal community if it was perceived that they were responsible for such outcomes.

While the separation of the sentencing role of Magistrate and the Elders could be achieved by the Magistrate remaining seated at the Bench, it was felt that the benefits of having the Magistrate seated alongside the Elders at the Bar Table outweighed any potential confusion regarding roles and responsibilities. As a result, Magistrates agreed to remain at the Bar Table but to clearly demarcate in the sentencing hearing the point at which the discussion has ended and the sentence is to be handed down. Other stakeholders present at the hearings indicated that this had been successfully achieved.

“My concern was to not make it appear that the Elders were involved in the sentencing process and if I went to particular trouble it was to make sure they were not put in that position because that would be invidious”.

Magistrates were also supportive of the way the conferencing model provided the opportunity for the victim to participate. It was noted that in traditional court hearings, while the Magistrate may be informed the victim is present, that is the extent of the victim's involvement. However, under the conferencing model, the Magistrate can acknowledge the victim and offer them the opportunity to contribute.

One Magistrate noted the benefit of a review hearing requested by Elders following two conferences conducted early in the pilot. It was revealed at one review hearing that there had been some confusion regarding supervision of the defendant and as a result, the recommended service was not accessed. In these circumstances, it was felt that a review process can provide a level of accountability regarding delivery of services and undertakings, in contrast to the mainstream system where Magistrates are not aware of outcomes of their sentencing.

Another positive aspect of conferences reported by Magistrates was the understanding gained between police and defendants. In one matter, where co-defendants were upset that they and not others had been arrested, it was felt that the conference process had provided a much greater understanding of the role of police and why they acted as they did (ie a duty of care to stop the conflict immediately).

“I've seen, through conferencing, examples of bridges being built...interaction between police and defendants at conference seems to me to be a beneficial process that promotes understanding on both sides and builds much more harmonious relationships between the police and particular offenders”

“One of the conferences, the feedback to me, was that there was a useful interchange for police because they learnt about the difficulty of perceptions...raised their awareness.”

In relation to the types of offending most suited for conferencing, Magistrates did not support the idea of limiting conferences to minor cases... "If it is going to work it should work on hard cases as well". The Magistrates disagreed with the perception expressed by some stakeholders that Aboriginal Conferences were a 'soft option', although it was noted that the conferencing process did generally recommend the Magistrate give a greater weight to rehabilitation.

"The ones I've dealt with, the penalty that has been imposed is not dissimilar to the type of penalty that would have been given at a traditional court hearing. The difference is that the underlying issues that drive the offending, such as substance abuse are being recognised and addressed in a culturally sensitive way."

However, there was a general sense that it was inappropriate to refer an individual to a second conference for the same offence as a previous conference, with the comment that if offered too frequently, conferences may be devalued and lose their influence within the community. That said, it was also acknowledged that a second conference may be useful if the re-offending occurred in different circumstances, or something had changed about the defendant's life circumstances.

Overall, the flexibility of the model was emphasised.

"I start by ruling everyone in and looking at them as individuals...the more rules we have, the more dictated by them we will become".

One potential concern for Magistrates was that conference sentencing hearings were very time consuming, with sittings taking over an hour to finalise two to three matters. On a number of occasions this had impacted upon the time available for non-conferencing matters, with the session extended over part of the lunch hour to keep the schedule on track.

It was noted that this may become even more of a concern if the number of conference referrals increases in the future. However, it was still considered that the benefits of conferencing outweighed the potentially negative impact of the duration of sentencing hearings.

A final concern was that some defendants may actually be facing several charges, but that the conference participants, particularly the Elders, are only made aware of those charges where the defendant has pleaded guilty. It was felt that a situation could arise where a conference recommendation is made pertinent to the known offences, but at the sentencing hearing the Magistrate must deal with all offences, and it may be impossible to accept the recommendations from the conference. It was noted that the defendant may not admit the other offences and may not have had the opportunity to obtain legal advice. Following discussions between the Conferencing Coordinator and one Magistrate, it was agreed that in this situation, the Coordinator would obtain the consent of the defendant to have the Police Prosecution representative mention at the conference that there are other charges pending, but that conference participants are not to assume guilt at this stage.

Other than a procedure to deal with defendants with multiple offences, where not all offences are going to a conference, as discussed above, the Magistrates did not suggest any changes to the current conferencing model. It was noted that conferencing added value to the sentencing process because the different way of dealing with people promoted communication and understanding.

Overall, the Magistrates felt that the conferences were achieving their objectives. It was noted that most defendants were aware of the harm they had done and that Magistrates had seen genuine contrition and remorse for that harm. The Magistrates also expressed hope that community confidence in the sentencing process would be achieved through the involvement of Elders and their communication to others in the community.

All Magistrates supported the continuation of Aboriginal Conferencing.

“...at least with these matters we are disposing of them in a way where people are influenced by the process and the prospects of getting a better outcome are increased.”

Defence

Two defence lawyers were consulted as part of the Pilot review. One was interviewed face to face and one provided written comments.

Overall, defence lawyers were extremely supportive of the operation of Aboriginal Conferencing in Port Lincoln. In particular, the defence lawyers praised the conference reports and commented that having Elders at the sentencing hearing is very useful.

“It is a credit to the courts and the organisers of this system in the professional manner in which it is operated.”

“The concept of apologies and having Elders present is particularly helpful.”

As indicated, defence lawyers reported that their clients had positive experiences from the conferences, particularly in relation to having a chance to participate in the court process, and also as a result of being linked to rehabilitation programs.

Both defence lawyers felt that the conferences should be available to defendants with prior offending records. In the words of one:

“It is particularly successful in dealing with (sometimes) difficult clients who think if they delay matters they will somehow disappear. The conferences are also helpful in finalising matters for those clients with multiple files or those on the cusp of being jailed.”

Neither defence respondent felt that Aboriginal conferencing was a ‘soft’ option. In this context, one defence lawyer felt that the ability of police to veto a conference referral “may not always be helpful”. It was perceived that police may veto participation for those individuals with long criminal records, when in fact this may be a valid reason for a conference to take place, “to see if the pattern of offending and court can be broken by some other intervention. “ However, while police may indicate to the court that they do not support the referral of particular individuals, it should be noted that the Magistrate has the final decision.

One defence lawyer was particularly supportive of the use of conferencing in domestic violence cases, arguing that an intervention other than the usual court process may help both victim and offender, especially where court processes have failed in the past. While issues regarding the re-traumatisation of victims and having to confront the perpetrator need to be considered, it was reported that many domestic violence victims would want the opportunity to convey directly to the perpetrator the hurt caused by the domestic violence.

A practical issue highlighted by one defence lawyer was having Legal Services Commission recognise the work required when a client attends a conference, for the purposes of receiving Legal Aid. In particular, it was noted that the defence have to prepare a second set of submissions and address the comments from the conference report, but that there was no protocol to fund this additional work. While the defence lawyer had been provided with funding for the small number of conference clients he had acted for, he was advised that this may not be provided every time. The lawyer suggested that the Courts Administration Authority advise the Legal Services Commission of the legitimacy of the conference process.

Both defence lawyers were very supportive of the continuation of Aboriginal Conferencing, with one suggesting that it be extended to Ceduna. Overall it was felt that conferencing added significant value to the sentencing process.

“...it provides opportunities for rehabilitative sentencing rather than the standard general and personal deterrent model”.

Part 4: Summary of key issues

Overall, analysis of documentation and interview responses revealed very few issues of concern from the Aboriginal Conferencing Pilot. They are:

- The need to recognise the time required to plan, conduct and report on conferences, and conduct effective sentencing hearings.
- The need to ensure that all appropriate information is available to police prosecutors and Conference Coordinators to avoid inappropriate referrals (for example, offenders facing extremely serious charges).
- The length of conferences: a number of stakeholders (but not all) indicated that they were too long.
- Eligibility criteria: there were mixed views regarding the type of offences and offending history that should be referred to a conference and whether or not conferences should be limited to victim-only offences. Approximately half of the stakeholders felt that conferences should be restricted to minor offences. A slight majority of stakeholders felt that there was value in referring repeat offenders and domestic violence offenders to a conference. The Aboriginal Conferencing Steering Group are currently consulting with stakeholders regarding the inclusion of domestic violence cases in the conferencing process.
- The perception by some stakeholders that conferencing is a 'soft' option. This perception was strongly challenged by Magistrates, defence counsel and police who noted that the final penalties received by defendants were very similar to those received in the traditional court process. This finding suggests the need for the development of an information/communication strategy amongst police and the local community to explain and promote the process.
- The need to support Elders with formal training in court procedures and conference aims, to increase their confidence during the conference and sentencing process.
- The need for victims to have access to support before, during and particularly after the conferences.
- The need for follow-up to ensure that defendants comply with their restorative promises, such as a written apology.
- Referral to a conference may delay the finalisation of a case.
- A conference may increase the conditions included in a bond. While these conditions are likely to be therapeutic, they may be seen as onerous by the defendant.
- The need for the Aboriginal Health Service to be actively involved in conferences.
- The need to inform the Legal Services Commission that Aboriginal Conferences are a legitimate court process.

Alternatively, the major benefits of Aboriginal Conferencing can be summarised as:

- The respect shown to Elders during the conference and sentencing hearing increases respect for Elders within the Aboriginal Community.
- The process is considerably more relevant to Aboriginal Community.

- Conferencing utilises the life experience and knowledge of Elders but protects them from association with the final sentence.
- It is a more effective deterrent than traditional court because:
 - The prospect of immediate Elder disapproval is more effective than an application for breach of bond sometime in the future.
 - It provides an opportunity to recognise and address underlying issues of offending by linking sentencing to rehabilitative services.
 - It provides more relevant information to Magistrates, leading to more effective sentencing.
- Conferencing builds bridges between police and the Aboriginal Community by increasing the understanding of police roles and responsibilities as well as understanding of difficulties that may be faced by the Aboriginal Community in dealings with police.
- A conference provides victims with the opportunity to confront the defendant in safe, supported environment.
- A conference provides the opportunity for victims to receive an acknowledgement of the harm done as a result of the offending and for restorative actions such as an apology and/or compensation.
- Involvement in the conference process provides a link to support services for victims, if required.

Part 5: Achievement of aims

The overall finding of the review is that the Aboriginal Conferencing Pilot has been operating as intended and all but one of the aims have been achieved.

In relation to the specific aims of the Pilot, there was agreement among stakeholders that:

- the Pilot had successfully involved members of the Aboriginal Community and victims in conferences;
- for the most part, defendants had been made aware of the harm done as a result of the offending;
- that contrition and reparation by defendants had been both encouraged and witnessed;
- that the victims had been provided with a restorative opportunity, via the opportunity to inform the defendant of the impact of the offending, to ask questions and to receive compensation; and
- that the Magistrates had successfully been provided with better information to facilitate appropriate and constructive sentencing.

In relation to the aim to 'give the community more confidence in the sentencing process', it was felt that, due to the small number of conferences conducted to date, this had not yet occurred. However, most stakeholders were optimistic that the benefits of conferencing would be disseminated to the local community through Elders and defendants and that this would increase confidence in the sentencing process.

Part 6: Recommendations

In line with the key findings of the review, in any further implementation of Aboriginal Conferencing beyond the pilot phase, it is recommended:

Recommendation 1

- that appropriate resources are provided to ensure effective delivery of conferencing.

Recommendation 2

- that Aboriginal Conferencing is promoted within the local community, via one or more information sessions and the production and dissemination of pamphlets or flyers.

Recommendation 3

- that the Legal Services Commission be advised that Aboriginal Conferencing is a legitimate court process.

Recommendation 4

- that Aboriginal Elders be provided with formal training regarding the court process and the purpose and conduct of conferencing.

Recommendation 5

- that the current 'flexible' guidelines regarding eligibility be retained, with no individual or offence type (including domestic violence) to be officially excluded and each case to be considered on its merits, but with particular attention paid to the safety and well being of participants.

Recommendation 6

- that no time-limit is placed on conferences, but that the Conferencing Coordinator monitors the discussion to ensure that it is relevant and repetition is avoided.

Recommendation 7

- that consideration be given to developing a follow-up procedure to promote the completion of restorative undertakings.

Recommendation 8

- that the Port Lincoln Aboriginal Health Service be consulted and strongly encouraged to attend conferences where appropriate.

Recommendation 9

- that the feasibility of extending conferencing beyond Port Lincoln to other areas, such as Ceduna, be investigated.

Concluding comments

Overall, there was a positive response from all stakeholders regarding the conferencing process, with unanimous praise for the way conferences were organised, conducted and documented.

There was also general agreement that the Pilot had achieved or partly achieved all but one of its stated aims, with most stakeholders reporting that more confidence in the sentencing process could be achieved over time.

Finally, all stakeholders were very supportive of the continuation of Aboriginal conferencing in Port Lincoln beyond the pilot phase, with some requesting that it be extended to other locations.

Port Lincoln Aboriginal Conferences

Guidelines And Case Flow Management

For use by the Port Lincoln Magistrates, Police Prosecutors, Defence Counsel, Court Registrar, and Aboriginal Conference Coordinators for referrals to the Aboriginal Conference (AC).

This document refers to conference coordinators, or AC coordinators. There is a Youth Justice Coordinator (YJC) from the Family Conference Team and an Aboriginal Justice Officer (AJO). These workers are currently Eric Kasearu (YJC), Grant Thomas (FCT) and Terence Wilson (AJO).

Statement Of Purpose

Aboriginal conferencing will involve members of the Aboriginal community and victims in a conference so the defendant is aware of the harm done to both as a result of his or her offending. The conference process will encourage contrition and reparation to remedy that harm. Participating in a conference will provide a restorative opportunity to victims and give the community more confidence in the sentencing process. The magistrate will have better information to provide more appropriate and constructive sentencing options.

Guidelines for Appropriate Referrals

The following eligibility criteria **MUST** be established before referral to an Aboriginal Conference:

The defendant must be an Aboriginal adult who resides in, and has family ties/connections with Port Lincoln.

The defendant must enter a guilty plea before referral to an Aboriginal Conference.

The defendant must indicate a willingness to participate and should have had the Aboriginal Conference process explained to them prior to referral.

The following guidelines should be considered:

Preference should be given to offences involving victim(s). This does not preclude referral of victimless offences where it may be argued the community is a victim. The conference can still proceed if the victim(s) decline to be involved. Victims may be represented by a family member or a Victim Support Service Court Companion if requested by victims to do so.

Appendix 1

Younger adults, and those with limited criminal histories should be targeted, because they have the most potential to benefit from the Aboriginal Conference process.

Caution should be exercised if referring defendants with extensive, serious/violent criminal records to an Aboriginal Conference. Risk to other participants, particularly victims and Aboriginal Elders needs to be assessed.

It shall always remain the discretion of the AC coordinators to not proceed with a conference if consent of the defendant party is withdrawn or if any unacceptable risk to the safety or wellbeing of the conference participants is identified.

In domestic violence cases particular consideration should be given to victim safety and the need to ensure that the victim is not subjected to kinship and other pressures. Attention should be paid to collateral problems, eg. Restraining Orders, Family Court Orders, property and residence disputes involving children.

Case Flow Management Of The Aboriginal Conference

Court Sequence

Guilty plea must be entered.

Any party (lawyer, prosecutor, defendant, or the Magistrate) can ask to have a court case referred to an Aboriginal Conference. A victim may ask for a referral to be considered by the Court via the police.

The prosecutor, defence counsel, or Magistrate can challenge the proposed referral in court. Any party can provide background information to the court they feel is relevant to the suitability or otherwise of a proposed referral.

The prosecutor may seek a short adjournment for the purpose of background checks on the defendant.

The Magistrate has the final decision whether to refer a court case to an Aboriginal Conference. The Magistrate then adjourns the case for sentencing to the Wednesday of the following circuit to allow a minimum of one month for the Aboriginal Conference to be convened.

Appendix 1

Before the defendant leaves the courtroom, the current contact details, (including telephone numbers) is to be provided by the defence counsel to the Magistrate's clerk to be placed on the court file. The Magistrate's clerk must ensure the guilty plea and referral to Aboriginal Conference is endorsed on the court file and the referral outcome is entered into CRIMCASE.

It will assist preparation of the Aboriginal Conference if the co-ordinators are available in the court building and can meet the defendant before he/she leaves the court.

Once the court case has been referred for an Aboriginal Conference, the court registry will notify the AC coordinators and the manager of Port Lincoln prosecutions (or an officer acting in this role) as soon as practical. The notification will usually be by email. After the court file is updated, it is placed in the AJO/AC basket of the Port Lincoln Registry.

Setting up the AC process once the referral has been made

The Manager of Port Lincoln Prosecutions is to provide copies of Apprehension Report(s), and contact details of any victim(s) to the coordinators as soon as possible. Apprehension Reports are to be placed in the AJO/AC basket in Port Lincoln Court registry. Prosecution to advise the coordinators by email once this has been done.

Prosecution to convey by email to the coordinators any relevant information that is not in the Apprehension Report(s) concerning any party that they believe may impinge on the Aboriginal Conference.

The AJO coordinator is responsible for creating the AC file. A copy of the court file (the complaint, endorsement showing referral to AC, and any reports) is to be included in the AC file. The original court file is to be returned to the Registrar.

The AC Coordinators to contact all parties (defendant, victim and their respective supporters) to explain AC process and encourage their attendance.

If, whilst setting up the Aboriginal Conference, the coordinators become aware of any safety concerns or other factors that make it inadvisable to proceed because of risk to any party, they will advise the referring magistrate, Prosecution, and the defence counsel by email that the AC is unable to be proceeded with. This also applies if the defendant decides they do not wish to participate. This email should not provide information that might prejudice the defendant's case.

The coordinators will consult, select, and make contact with the appropriate Aboriginal Elders for the AC. A fee will be paid to the Elders for their attendance at both the AC and the Sentencing Hearing.

The Elders are to be fully briefed on the case and asked if they perceive any conflicts between themselves and the defendant.

Appendix 1

If, at the appointed time of the AC, neither of the Aboriginal Elders can attend and no substitute Elder is available, the Coordinators may manage the situation as follows: If other parties (including the defendant and the victim) are in attendance and wish to proceed with a meeting, the conference may continue with their consent. In these circumstances the conference is no longer an AC but falls within the description of an Adult Restorative Justice Conference meeting as piloted in the Adelaide Magistrates Court and this distinction will be explained to the parties by the Youth Justice Coordinator.

The YJC is to contact Victim Support Services for a victim representative to support the victim, or attend as their representative, if requested by a victim.

The AJO coordinator is to contact and invite relevant defendant support services (eg. Port Lincoln Aboriginal Health Service) to the AC.

The coordinators will prepare and mail standard invitation letters providing details of the conference arrangements to all identified participants who will be attending the AC.

The YJC will email prosecution regarding the AC arrangements.

The AJO coordinator will telephone the defendant and any supporters, plus the Elders invited to the AC in the week before the meeting to remind them of the arrangements and confirm their attendance. The YJC will do the same for any victim attending and their supporters.

Aboriginal Conference

Facilitators are to set up room eg, table, chairs, tea, coffee, water, cups, tissues, pen & paper.

Devise seating plan.

Utilise waiting rooms to separate parties prior to the AC commencing.

The YJC is to facilitate the conference with the assistance of the AJO coordinator.

Welcome and introduction by the facilitators.

The YJC facilitator is to state the AC rules and normalities and confirm agreement of these with the participants.

The conference proceeds with breaks as required. The conference concludes with any suggested restorative outcomes to be summarised by the chairperson.

Appendix 1

Post Aboriginal Conference

A report for the Court is generated and this report will focus on any suggested restorative outcomes. The YJC and AJO facilitators will attend Court and be available to report verbally (and briefly) on the key points of the conference discussion directly to the Court.

Copies of the AC report are to be emailed to the referring Magistrate and prosecution prior to the sentencing hearing.

Hard copies are to be provided to defence counsel, the defendant if they are unrepresented, and the Magistrates clerk for placing on the court file prior to the sentencing hearing.

Sentencing

The coordinators and the conference Elders are to attend the sentencing hearing to elaborate on AC report if required by the Magistrate.

Post-sentencing

The AJO coordinator is to arrange payment through the Court Registrar for the Elders attendance fees.

The YJC is to advise victim(s) in writing of sentencing outcome and attach a copy of the AC report.

Eric Kasearu, Youth Justice Coordinator (Conferencing Coordinator)

Terrence Wilson, Aboriginal Justice Officer (Aboriginal Justice Coordinator)

Final document approved by Steering Group on 12/03/08

Appendix 2

ABORIGINAL CONFERENCING PORT LINCOLN 2008

ROLES AND RESPONSIBILITIES OF COORDINATORS

Both coordinators take responsibility for implementing and guiding this programme by using a continual learning model, and practice lead development.

ABORIGINAL JUSTICE COORDINATOR

- Promotion of the program within the Aboriginal community.
- Linking and liaising closely with the aboriginal community to identify relevant community members and organisation to be involved in the conferencing process.
- Cultural advisor to the conference process including protocols (payment and paperwork)
- Supporting Elders at pre-conference, conference and post conference
- Supporting Conference Coordinator to become a trusted and respected person within the Aboriginal conferencing context. (building working rapport with the Elders and CAA)
- Educating, training and induction of Elders in the Aboriginal Conference process
- At pre-conference interview for the defendant to work in conjunction with the Conference Coordinator to present and gather information about the process. Subsequently then becomes the primary contact point for further information to the defendant regarding conference process.
- Collaboratively (CC and ALRM field officer) define factors for the most appropriate Elder to attend the conferencing
- Contacting the Elders and negotiate and confirm their participation at the conference.
- Logistic management of Elders/Aboriginal service providers and defendant on conference day
 - Checklist
 - Phone contact
- Participation at the conference
 - Generating the notes from the conference
 - Providing culturally specific information to the conference participants. (Drawing on their own experience and knowledge)* *not to blur the primary role of the elders*
- Follow-up
 - Debriefing participants as required (informal)
- Sentencing
 - Logistic management of Elders and defendants for sentencing day
 - Ensuring Elders /Client has copy of the Conference Report (provide to, retrieve and discuss recommendations)
 - Attend court for sentencing
- File creation - administration

Appendix 2

CONFERENCING COORDINATOR

- Assessing the referral and its relevance for a conferencing process (shared function)
- Retrieving and examining the AP
 - Defining roles and participants
 - Identifying potential issues that effect the conference process (risk assessment)
 - Follow up of issues identified
- Primary responsibility for victims
 - Negotiating their attendance at conference
 - Considering safety factors
 - Information provision
- Primary contact for SAPOL
- Primary contact for Victim Support Service (VSS)
- Providing information to community service providers (shared function)
- Ongoing education and dissemination of information to the community (shared function)
- At pre-conference interview with the Elders both present and gather information about the process. Briefing the Elders from the Apprehension Report.
- At pre-conference interview with the defendant, explain process and gain a specific consent for participation.
- Coordinate conference (logistics) – time, date, venue, participants
- Liaise with Aboriginal Conference Coordinator regarding the forthcoming conference
- Generate and post conference correspondence
- Facilitating the conference by chairing using conferencing model to enable the participants to discuss the relevant issues and generating restorative outcomes.
- Preparing the conference report for court.
- Distributing the report
 - Magistrate
 - Registrar
 - SAPOL
 - AJC
- Sentencing
 - Consult with Magistrate
 - Arrange pre-sentence ‘welcome’ for Elders with Magistrate
 - Attend court – respond to questions from court
- Post Sentencing
 - Follow up with Victim – information regarding sentencing
 - Follow up with SAPOL - debrief (shared function)
 - Identify follow-up as required (e.g. community corrections)
- Close file (shared)