

Unlocking the evidence: meaningful evaluations in Aboriginal justice

Evaluation of the Victorian County Koori Court

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Introduction

Benefit of participatory approaches to *‘unlock the evidence’*:

- * Contrasting aims of the County Koori Court:
 - * Cultural inclusiveness (reconciliation)
 - * Reducing recidivism (rehabilitation)

Introduction

Benefit of participatory approaches to *‘unlock the evidence’*:

- * Difficulty in collecting evidence against these aims:
 - * Experience of Accused and participants
 - * Data from a range of different sources, over sufficient time period

Introduction

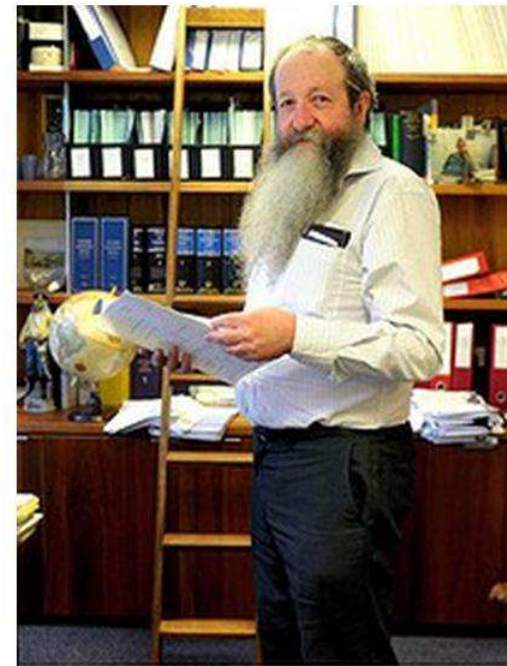
Benefit of participatory approaches to *'unlock the evidence'*:

- * Using participatory approaches to overcome this tension:
 - * Assist in data collection
 - * Ensure that the evidence meets the needs of stakeholders
 - * Interpret the evidence to be meaningful

Findings

“Calls to expand funding for Koori Court” (The Age, Feb 22, 2012)

“Plans to expand Indigenous County Court” (The Age, June 24, 2012)



Judge Smallwood

"I had no idea what to expect ... this is just stunning ... What we as white people don't really get a hold of is that dealing with the elders is a massive influence on them. ... A number of them ... they just thought it was the first time they'd ever been heard in a courtroom ... it was the first time they could ever remember what was said and ... they felt obligated, in a sense, with the elders present, not to reoffend." Judge Smallwood said the court's success had demonstrated that "people with serious histories and serious problems, in that scenario, we've been able to stop them offending ... I've got no doubt it facilitates in a reduction in trials."

A brief summary of findings

- * 1 of 31 Accused reoffended
- * 14 of the 15 Accused interviewed said that the process was more engaging, inclusive and less intimidating than the mainstream court (even when the Accused aired grievances regarding the sentence they had received).
- * Support from service providers vital
- * Accused valued the chance to talk and be heard
- * Participation of Accused, Elders and families highly valued
- * Improvements in access to fair, culturally relevant and appropriate justice

A brief summary of findings

- * Stories:

- * Accounts of the impact of having Elders there to 'tell them off' and 'tear strips off them' and tell them about their own experiences and often, those of the Accused's family members
- * Heads held high vs. not down
- * Having a voice vs. being talked at
- * Elders upfront and clear vs. Court jargon

Issues in Aboriginal Justice

- * Aboriginal & Torres Strait Islanders represent 26% of prison population, and only 2.5% of total population
- * 13 times more likely to have been in prison in last year
- * High risk of institutionalisation for Aboriginal people (recidivism, length of time in prison)
- * Deaths in custody (Royal Commission report)
- * Fractured relationship with the courts and justice system based on history of colonial dominance, marginalisation, racism, poverty, inadequacies of the system etc.

Indigenous Courts

- * Response to Indigenous alienation with the traditional court sentencing process and adverse effect of involvement in the justice system
- * Consequence of the Royal Commission into Aboriginal Deaths in Custody (1991) and a strategy to emerge from the Victorian Aboriginal Justice Agreement
- * Aim to contribute to reducing the rate of recidivism by providing a culturally sensitive court environment

Indigenous Courts

The procedures follow principles of restorative justice:

- * culturally appropriate and inclusive
- * convenes around an oval table
- * avoids the formal language of a traditional court
- * allow contributions from Aboriginal Elders and Respected Persons, victims, support people and the Accused
- * sentencing is determined by the Judge

County Koori Court

- * Commenced in February 2009
- * County court: first higher level Indigenous court in the country (where custodial sentences are common)
- * Significant community participation in inception and design (important principle of engagement established)
- * Accountable to the community through the local and state Aboriginal Justice Reference groups
- * Implemented in Latrobe Valley and East Gippsland
- * Good support from Attorney General's office

County Koori Court

For the County Koori Court to hear a matter the Accused must

- (a) identify as Aboriginal or Torres Strait Islander,
- (b) plead guilty or intend to plead guilty, and
- (c) consent to the matter being heard in the Koori Court

County Koori Court

- * In Victoria there are 10 Koori Courts:
 - * 7 Magistrates courts
 - * 2 Children's courts
 - * 1 pilot County Court
- * Overall societal and criminal justice goals of the Victorian Koori Courts:
 - * to provide an appropriate justice system through being responsive and inclusive of culture
 - * to reduce Aboriginal over-representation within all levels of the justice system

County Koori Court

- * **Program outcomes of the County Koori Court Pilot Program:**
 - * the Koori Court provides access to fair, culturally relevant and appropriate justice.
 - * Koori Accused are diverted away from more serious contact with the justice system.

Background to evaluation of CKC

- * Pilot program –important to evaluate impact and process
- * Relatively short evaluation period - report required for end of 3 year pilot period
- * Context of different power groups (Elders, Judges), some with different demands on the evidence and different ideas about main purpose of Court
- * Evaluation ran from June 2009 to June 2011 during which 49 Accused attended with approximately 1/3 receiving custodial sentences (average duration of 40 months)

Difficulties in gathering and measuring evidence

- * Experience of the Accused and Court participants
 - * Finding & contacting Accused requires community contacts, trust and collaboration
 - * Getting the Accused to discuss feelings, experiences, and abstract concepts (e.g. cultural inclusiveness)
 - * Ensuring anonymity of Court participants in such a small group (Elders, Lawyers)

Difficulties in gathering and measuring evidence

- * Assessing impact on reoffending:
 - * Not 'eligible' to reoffend until the point of release or end of community order
 - * Reoffending measured by conviction or arrest (time difference between the two)
 - * Data on reoffending and release-date is scattered across different sources (depending on jurisdiction and who administers sentence)
 - * No comparison group (no data on Aboriginality in Court records)

Why participatory approach?

- * Participatory approach chosen because:
 - * Significant community ownership of the court (e.g. Elders, regional justice forums, etc)
 - * Extensive Community participation and consultation in Court design (Court goals are influenced by the community)
 - * Consistent with the ethos of the Koori Court
 - * Build relationships to assist with data collection
 - * Build trust so that results can influence implementation of the Court (especially as this is a pilot)

Methodology – Planning workshop

- * Planning workshop to involve stakeholders in developing:
 - * Program Logic
 - * Key evaluation questions
 - * Strategies and methods of data collection
- * Wide ranges of stakeholders involved:
 - * High Court Judges
 - * Elders and respected persons
 - * Solicitors
 - * Community services & local NGO's
 - * Department of Justice staff

Methodology - Qualitative data collection

- * The evaluation required evidence regarding:
 - * The Accused's criminal history and cooperation with 'the system'
 - * The motivations of the Accused to attend the CKC
 - * The engagement of the Accused in the process
 - * The impact on the Accused of the:
 - * Elders
 - * The cultural environment of the court room
 - * The Judge
 - * The process of understanding their background and motivations for their criminal behaviour
- * Experiences of the process from Judges, Elders, and others

Methodology - Qualitative data collection

- * Methods and processes of data collection:
 - * Most Significant Change with Accused
 - * In-depth interviews with Accused
 - * Interviews with those who know the Accused
 - * Case studies combining different views on Accused

Methodology - Qualitative data collection

- * Difficulties in accessing Accused, overcome by:
 - * Working with community stakeholders
 - * Court staff and solicitors raising awareness
 - * Visiting communities and building relationships with related organisations and services
 - * Visiting Accused in Prisons (still not easy Ethics!)

Methodology - Quantitative data collection

- * Evidence of Accused's reoffending or adherence to court orders, requires unlinked data from different sources:
 - * Release date (or end of court order date) = Corrections data
 - * Reoffending date (Police data)
 - * Sentencing date (Courts data)
- * Participatory approach brought together data 'owners' to discuss data options (+ provide permission)
- * Also require information on a comparison group of Aboriginal Accused (no courts data on Aboriginality)

Methodology - Results & recommendations

- * Objective was to ensure the results are meaningful to all stakeholder groups, this required participatory workshop to:
 - * Interpret qualitative data with different stakeholders
 - * What do the Accused stories mean to them?
 - * What is the truth behind the different perspectives of process?
 - * Stakeholder interpretation of success
 - * Group development of recommendations

Summary - Benefits of participatory approach

Adopting the participatory approach from the start allowed for:

- * Most appropriate methodology
- * Continuity with participatory and inclusive approach to program design and coordination
- * Comprehensive data collection
- * More meaningful results
- * Relevant and actionable recommendations (even before the reports were written!)

Summary - Benefits of participatory approach

Building the foundations of relationships with Indigenous community from the start

- * Developed trust and sense of collaboration

Involvement of Indigenous community in designing the evaluation and data collection process

- * Enhanced trust through having a transparent and agreed evaluation process; helped with data collection

Summary - Benefits of participatory approach

- * Agreed objectives of the evaluation and CKC
 - * Community knew that it was relevant to them and would meet their purposes (i.e. not just about reducing prison costs, but about overcoming exclusion from the 'system')
- * Informed community & develop partnerships:
 - * Internal Indigenous and legal stakeholders helped to promote the evaluation to their networks – helping with data collection and evaluation impact

Summary - Benefits of participatory approach

- * Adding local and cultural context to interpretation of findings
 - * Providing more relevant views on what an Accused's story may mean for how the Court impacted on them
- * Recommendations relevant and actionable
 - * Recommendations developed through negotiation of what the main issues are for all groups, and how best to address them

Issues and challenges for participatory approaches

- * How much 'participation' is enough/ appropriate/ adequate? Who decides?
- * Who is participating? Community dynamics and leaders
- * Getting beyond 'participatory' as simply meaning 'involving the community'
- * More time consuming or resource intensive? (Probably not in the overall evaluation but a 'shifting' of focus on what planning for and 'doing' evaluations means)
- * Balancing independence and levels of participation
- * And lots of others Questions?