



# Australian Domestic & Family Violence Clearinghouse

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**NSW circle sentencing, family violence and meeting the needs of victims**

***by Corrina Faulkner, in conjunction with workers from the Nowra and Mt Druitt (NSW) communities***

## ***Introduction***

Indigenous people are six times more likely than the non-Indigenous population to fall victim to domestic or family violence (People 2005). Circle sentencing attempts to address family violence issues in a manner which is culturally appropriate for Indigenous people. This article looks at whether victims should participate in circle sentencing and if so, what factors would make for 'good practice'. The needs of victims are varied but include critical issues such as safety. If their needs are not understood they have little chance of benefiting from circle sentencing and stand a fair chance of being re-victimised through further intimidation.

Recommendations in this article come from interviews with domestic violence and criminal justice system workers in the Nowra and Mt Druitt areas of New South Wales (NSW). Workers at these sites see value in the participation of victims in circle sentencing, as it keeps the focus on the true nature of the offence and assists the development of useful sentencing plans. Yet, while there are benefits for the victim, there are also concerns and these are addressed in the workers' recommendations.

## ***Circle sentencing***

Circle sentencing is a sentencing alternative which attempts to provide a more culturally appropriate process and more meaningful outcomes for Indigenous offenders, victims and the community. However, in circumstances of family violence, circle sentencing has been controversial, raising fears about lack of appropriate sentencing for offenders and fears around safety and revictimisation of victims, and in some locations has been excluded.

In NSW, circle sentencing involves referral by a magistrate to the local Aboriginal Community Justice Group. The suitability of the offender for circle sentencing is assessed in terms of their connectedness to the community, potential conflicts of interest, impact on the victim of the sentencing process and the community, and other matters. More severe offences (such as more severe assaults, sexual assault, child pornography, firearm and drug offences) are not dealt with by this process.

Once a circle has been convened, the magistrate, project officer, offender, offender's legal representative, at least three elders and often the victim, victim's support person and offender's support person, discuss the crime. Elders then determine an appropriate sentence for the offender. While the sentencing decision arrived at does need to fall within a normal sentencing range, the process of making the determination is as important as the final decision. Support workers have described circle process as the sentence.

Circles can be vehicles for increasing community responsibility for victim safety as elders are seen to condemn the abusive behaviour (Pranis 2002). Through the court system, people in the community are often unaware of what the offender has done, and focus concern on the offender's custodial sentences.

### ***Victim participation: the benefits and problems***

Victim participation in circle sentencing can be valuable, as it can give victims a voice in the process to discuss what happened to them and its impact on them. It allows exploration of the crime in a cultural and social context, something not necessarily possible in conventional criminal justice processes. Victims can also have a greater sense that justice occurred. Additionally, the circle can be used as a vehicle to increase recognition in the community that the behaviour is wrong and that the victim is in no way responsible for, nor deserving of the abuse (Pranis 2002).

Victims can educate participants about their particular situation in order for the most appropriate sentencing solutions to be developed. The victim can corroborate any background that was given to participants by the offender, clarify misinformation and offer suggestions to avoid counterproductive sentencing outcomes. The victim's relationships with and connectedness to the community may be strengthened. Stronger connection with the community may provide the victim with an increased support network, including support from elders participating in the circle.

Family violence victims who have participated in circle sentencing have expressed: feeling supported in the circle and backed up by the elders (Dick 2006); satisfied that circle sentencing enabled them to discuss effects of the abuse on them and on the community; and safer as a result of greater community awareness of their situation (thereby increasing the number of people watching out for them) (Cultural and Indigenous Research Centre Australia 2008).

While there are clear benefits to victim participation in circle sentencing, the process is not without its problems. Victim support workers interviewed felt that the power imbalance inherent in a violent relationship can affect the circle sentencing process. There is a risk of revictimisation if participants are unable to challenge the offender who denies or minimises their responsibility for violence.

Being party to the determination of the sentence or the punishment process can increase the risk to the victim (Stubbs 2002). Victims often experience an ongoing threat of violence. The possibility of reprisals by the offender's family may also be on the victim's mind along with concerns that the abuse will intensify upon the offender's release from jail (Cripps 2008). Pam Greer suggests that one of the biggest differences between Indigenous and non-Indigenous victims relates to the extended family paradigm. The offender's entire family may be speaking badly of the victim and giving her a very icy reception. His family may represent a large portion of the community (Greer & Laing 2001).

Shaming is a powerful tool used by elders in circle sentencing to make offenders see that their behaviour is unacceptable. However, victims may also feel ashamed. One victim advocate gave the example of a victim who felt shamed by the circle process and was worried that the elders would think she was part of the cause of the violence. Alternative supports from the community are required.

### ***Moving towards 'good practice'***

In order for circle sentencing to be truly restorative, victims' needs for safety and support need to be addressed. Victim advocates involved in circle sentencing at Nowra and Mt Druitt recommended a number of mechanisms that would assist with this.

#### ***1. Putting local services in place***

Without resources to help victims to heal, circle sentencing can only be an incomplete restorative process, addressing solely the behaviour of the offender. Before a circle is initiated, adequate services need to be in place. (Services for offenders also need to be in place.) Both culturally

appropriate services and mainstream services need to be accessible. These include front line supports: crisis accommodation, financial support, health services and rehabilitation services including counselling, mental health and drug and alcohol treatment programs. A notable gap was identified in the provision of services to deal with mental health in conjunction with addiction.

Further services required to ensure victims benefit from circles include Indigenous community centre based services, advocacy, support groups, counselling, child care, rehabilitation services, psychologists, psychiatrists and transport.

The importance of services catering for the whole family, being culturally appropriate and having adequate cultural competency training for non-Indigenous workers cannot be overstated. The cultural appropriateness of mainstream services was an issue in interviews. Training of Indigenous people is required to enable more Indigenous community members to fill support service positions in mainstream organisations and expand Indigenous specialist services for victims. Longer term needs could be addressed by funding case support workers to assist circle sentencing project officers. These workers could take on case loads and focus on ongoing monitoring of the outcomes and coordination of support.

## **2. Considering the safety of victims**

Victim safety is a primary need. Healing cannot occur without safety. Mechanisms for improving this include:

*Circle process.* There must be a safe method through which victims can communicate to enable the circle to be altered or stopped at any time in response to the victim's concerns (Pranis 2002).

*Risk assessment.* Appropriate risk assessment of safety could be incorporated in the screening process. Good risk assessment also requires a solid understanding of family violence dynamics and cultural awareness.

*Victim advocacy at screening.* Victim support people are best placed to gauge victim concerns.

*Guiding principles.* A set of guiding principles for circle sentencing could emphasise a priority on victim safety and ensure that any misconceptions about family violence do not enter the process (Stubbs 2002).

*More flexible time frames.* Circle sentencing outcome plans should be developed to cover a longer time frame in order to deal with victim safety and support needs. Greater flexibility around the time between the criminal justice response and the circle sentencing process may allow for the victim to recuperate psychologically and physically. This in turn may increase the victim's ability to actively participate in the circle sentencing process.

## **3. Using a women's panel for family violence matters**

The use of a panel of female elders for family violence matters was suggested in order to tackle issues of safety, power imbalance, promote victim focus, enhance the capacity of victim support people and deal with shaming, so as to be valuable for the victim. Its role would stretch from the outset of circle planning, pre-circle meetings with victims and their support people, through to involvement in the circle and post-circle meetings with the victim.

Nowra and Mt Druitt circles both aim for a gender balance among elders. Strong male elders are selected for their ability to confront the offender. Male elder participation has been found to be of benefit, in that these elders can speak strongly about the impact of family violence on the community.

## **4. Using an expert family violence officer**

Another suggestion from the workers interviewed is for circles to have a family violence expert participant in addition to the victim support person. That expert would meet with parties prior to

the establishment of the circle to set out ground rules for behaviour in the circle, such as no dirty or harsh looks from the offender or offender's support person towards the victim.

### **5. Providing adequate training**

Workers felt that family violence training for elders and magistrates should be considered. Without such training, participants may not understand the techniques used by perpetrators to neutralise the perceived seriousness of their behaviour (Stubbs 2007). Post-circle debriefing for the regular participants may also provide a forum for extending understanding of family violence. In Nowra, the project officer, magistrate and elders meet about a week after circle to, among other things, analyse areas in which the circle could do better.

### **6. Articulating reasons for sentencing**

There is great benefit to the parties in hearing why a certain sentence was chosen, particularly where elders make these decisions in private. Reasons for the sentencing outcome provide education for both parties, along with the condemnation of the behaviour and vindication for the victim. This increases acceptance of the sentence, acts as a check, provides education for both parties and supports condemnation of the behaviour and vindication for the victim.

Discussions with workers involved with circle sentencing show that resources are required to support family violence victims and to assist circle sentencing to achieve restorative goals of support, healing and growth for both parties. A thorough understanding and accommodation of victim needs in the circle process and the right local victim supports, raises the potential for circle sentencing to be empowering for family violence victim participants, and restorative for the community.

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### **See also:**

Fitzgerald J 2008, 'Does Circle Sentencing Reduce Aboriginal Offending?', *Crime and Justice Bulletin*, no. 115, NSW Bureau of Crime Statistics and Research, Sydney

### **References**

- Cripps K & McGlade H 2008, 'Indigenous family violence and sexual abuse: considering pathways forward', *Journal of Family Studies*, vol. 14, no. 2-3, pp. 240-253
- Cultural and Indigenous Research Centre Australia 2008, *Evaluation of Circle Sentencing Program Report*, prepared for the NSW Attorney General's Department, available at <[http://www.crimeprevention.nsw.gov.au/lawlink/cpd/ll\\_cpdiv.nsf/vwFiles/EvaluationOfCircleSentencing\\_REPORT.pdf/\\$file/EvaluationOfCircleSentencing\\_REPORT.pdf](http://www.crimeprevention.nsw.gov.au/lawlink/cpd/ll_cpdiv.nsf/vwFiles/EvaluationOfCircleSentencing_REPORT.pdf/$file/EvaluationOfCircleSentencing_REPORT.pdf)>
- Dick D 2006, 'Circle sentencing of Aboriginal offenders', paper presented at the *Sentencing: Principles, Perspectives and Possibilities Conference*, Canberra, 10-12 February
- Greer P & Laing L 2001, *Pathways to Safety – An Interview About Indigenous Family Violence with Pam Greer*, *Indigenous Training and Development Consultant*, Issues Paper 5, Australian Domestic and Family Violence Clearinghouse, Sydney
- People J 2005, *Trends and Patterns In Domestic Violence Assaults, Contemporary Issues in Crime and Justice*, no. 89, NSW Bureau of Crime Statistics and Research, Sydney

Pranis K 2002, 'Restorative values and confronting family violence' in H Strang & J Braithwaite (eds) 2002, *Restorative Justice and Family Violence*, Cambridge University Press, Cambridge, pp. 23-41

Stubbs J 2007, 'Beyond apology?: domestic violence and critical questions for restorative justice', *Criminology and Criminal Justice*, vol. 7, no. 2, pp. 169-187

Stubbs J 2002, 'Domestic violence and women's safety: feminist challenges to restorative justice' in H Strang & J Braithwaite (eds) 2002, *Restorative Justice and Family Violence*, Cambridge University Press, Cambridge, pp. 42-61

*NSW Criminal Procedure Regulation 2005 - Reg 4*. Viewed 30 August 2009  
<[http://www.austlii.edu.au/au/legis/nsw/consol\\_reg/cpr2005279/s4.html](http://www.austlii.edu.au/au/legis/nsw/consol_reg/cpr2005279/s4.html)>

### **MAKING CIRCLE SENTENCING WORK FOR VICTIMS OF FAMILY VIOLENCE: A SUMMARY OF WORKERS' SUGGESTIONS**

establish a women's panel to oversee the process

appoint a family violence expert to participate in the circle

hold pre-circle meetings to set out rules for behaviour

invite victims to participate in post-circle briefings

conduct post-mortem of circles

establish a set of guiding principles

ensure that all criminal justice professionals participate in Aboriginal cultural training

provide training in family violence dynamics to repeat participants

identify gaps in local services for victims

appoint Indigenous community workers to victim support services

provide Indigenous specific crisis accommodation and housing

provide culturally appropriate counselling services, as well as services which deal with dual diagnosis of mental illness and addiction.