



OUTLINE OF EVIDENCE OF ASHLEY MORRIS AND MAGISTRATE KAY MACPHERSON (MARRAM-NGALA GANBU)

DECEMBER HEARINGS 2022 (CHILD PROTECTION)

9 DECEMBER 2022

I BACKGROUND

Ashley Morris

1. Ashley is a Gunditjmara man with ties to Dublin, Ireland through his mother.
2. Ashley began his career at the Mungabareena Aboriginal Corporation in Wodonga working as a Trainee Administration Officer before moving into the position of Koori Youth Justice Worker. In this role, he ran a number of diversionary programs and assisted Young Aboriginal people on youth justice orders.
3. Since moving to Melbourne, Ashley has held a number of positions including the Broadmeadows Koori Court Officer, Community Corrections Officer, Koori Men's Family Violence Court support and Coordinator of Koori Programs in the Koori Court Unit.
4. As Koori Services Coordinator at Broadmeadows, Ashley has been responsible for setting up Marram-Ngala Ganbu as the first Aboriginal child protection court.

Magistrate Kay Macpherson

5. Magistrate Macpherson commenced her career as a criminal lawyer with Victoria Legal Aid.
6. She was appointed a Magistrate in 1991 and sat at the Dandenong Magistrates Court in the criminal jurisdiction from 1994 to 2008.
7. She commenced sitting in the Children's Court in 2008 and is currently the Regional Co-ordinating Magistrate at the Broadmeadows Children's Court, head of the Family Drug Treatment Court and head of the Koori Hearing Family Day Court (Marram-Ngala Ganbu).

II ABOUT MARRAM-NGALA GANBU

8. Marram-Ngala Ganbu is a Koori Family Hearing Day established by the Children's Court of Victoria. It sits every Tuesday at Broadmeadows, and since April 2021 has also been sitting every second Thursday in Shepparton. Marram-Ngala Ganbu means 'We are One' in Woiwurrung language.
9. Marram-Ngala Ganbu provides an informal atmosphere and allows greater participation by family members in the court process to improve court outcomes for Aboriginal children. A Koori Family Support Officer works with the Koori Services Coordinator to coordinate the list and assist family members in obtaining legal representation and understanding the court process. The staff can also assist in providing warm referrals to culturally appropriate support services as required.
10. In the past, the Children's Court has not always offered a safe experience for Aboriginal children and families. Historically, trauma has precluded the full, culturally safe participation of Aboriginal families in court processes – processes that until the introduction of Marram-Ngala Ganbu were inadequately equipped to determine sensitive child protection matters in culturally welcoming, competent and safe ways.
11. During Koori Family Hearing Day, the Magistrate sits at a circular table on the same level as everyone else, not at the bench. Marram-Ngala Ganbu staff, along with family members and legal

representatives also sit around the table, and discussion ensues. The room is adorned with Aboriginal cultural items such as paintings, flags and a possum-skin cloak. Photos of the hearing room and circular table are at **Annexure 2**.

12. Marram-Ngala Ganbu works differently from the mainstream Children's Court as three concepts are prioritised:
 - a. **Koori Centred** – legal processes are respectful and responsive to Koori peoples and cultures;
 - b. **Child and Family Centred** – children, young people and families voices and needs are prioritised; and
 - c. **Therapeutic Justice** – legal processes are informal, encouraging and prioritise relationships.
13. These concepts inform the two key components of how Marram-Ngala Ganbu is run in an adapted court setting to meet the needs of Koori families in communicating and with a focus on case management such that Marram-Ngala Ganbu staff, magistrates and dedicated DHHS staff keep matters on track and hold the system to account.
14. Marram-Ngala Ganbu can be driven by the needs of the local Aboriginal community through the establishment of a location-specific reference groups. This ensures that Marram-Ngala Ganbu is adapted where necessary to meet local needs. This is an essential function of self-determination.
15. Since its inception, Marram-Ngala Ganbu has provided a service to over 800 Aboriginal families. It now lists eight to ten mentions and two conciliation conferences each Tuesday in Broadmeadows, and a similar number in Shepparton every second Thursday. On average, Aboriginal families comprise 22.3 per cent of the families appearing in the family division at the Broadmeadows Children's Court each month, and 42 per cent of families in Shepparton. Staff have reported that some Aboriginal community members are making arrangements to temporarily reside in the Preston child protection catchment area in order to be able to access Marram-Ngala Ganbu. Families from as far away as Ballarat and Warrnambool have enquired about the program.

III FORMAL EVALUATION REPORT OF MARRAM-NGALA GANBU¹

16. The 2019 Evaluation of Marram-Ngala Ganbu found the court experience for Koori families and children has been transformed, successfully encouraging Aboriginal people to feel welcome, heard and empowered. Simple changes made to the court room and process had a dramatic effect – including offering support before, during and after court from Koori staff who built relationships with families and into the community. A copy of the Evaluation is at **Annexure 1**.
17. As one Koori parent who participated said:

“Any worries and concerns with the stress leading up to Court I could get in contact with the support workers, and it makes a whole lot of difference. I was excited going to [Marram-Ngala Ganbu] because of the fairness.”
18. Koori families are more likely to attend court at Marram-Ngala Ganbu, and more likely to follow court orders due to the support of the magistrates and Koori staff. Also, DFFH is more accountable to magistrates and the court process in Marram-Ngala Ganbu. There is greater compliance with the Aboriginal Child Placement Principle, which is otherwise not being well adhered to in courts across Victoria according to a 2016 review.
19. The evaluators stated that “*Marram-Ngala Ganbu also demonstrates the importance of providing space for, and investing in, First Nations-led innovation and approaches to social service delivery*”, and that “*approaches like Marram-Ngala Ganbu have the potential to not only transform First Nations Peoples' experience of the justice system but have lessons for social services more broadly*”.
20. Several elements of Marram-Ngala Ganbu demonstrate Koori-centred approaches to jurisprudence. While Koori-centred approaches have been a feature of criminal courts across Australia for some

¹ See Attachment 1

time, their application in a child protection setting is less common, with very few examples in Australia or overseas. The key features of Marram Ngala Ganbu are:

- a. Koori staff led the design, implementation and day-to-day function of the program. The design process was a material 'power shift' that translated into the day-to-day operation of the program.
- b. Staff in the court have a high level of cultural competence. Magistrates and court staff ensure that processes and decisions respond to the importance of Aboriginal culture in child protection.
- c. Marram-Ngala Ganbu provides a culturally safe environment for Koori families. The court setting features multiple physical and verbal acknowledgements of culture, all of which were identified as critical to cultural safety by participants interviewed for the evaluation.
- d. Marram-Ngala Ganbu provides warm referrals to a range of Aboriginal-controlled support services in the region. The evaluation identified these too were important in providing cultural safety and contributed to better outcomes for families and young people.

IV FURTHER IMPACT OF MARRAM-NGALA GANBU

21. In 2018 the Koorie Youth Council's 'Ngaga-dji (Hear Me)' young voices creating change for justice report called for the state-wide expansion of the Koori list in the family division of the Children's Court.
22. The Aboriginal Justice Agreement Phase 4 (AJA4), also launched in 2018, called for consideration to be given to increasing the number of Koori convenors and courts offering Marram-Ngala Ganbu.
23. The Commission for Children and Young People's report into Aboriginal Youth Justice, *Our Youth Our Way*, also recommended:

"That the Victorian Government resource the expansion of the fully specialised Children's Court, commencing with rural and regional headquarter courts, to support the court's work with Aboriginal children and young people."

V HOW MARRAM-NGALA GANBU WORKS

24. Only non-contested matters can be heard. Protection orders can be made as per the *Children, Youth and Family Act 2005*. Where a Protection Application Information Form identifies a child as Aboriginal and/or Torres Strait Islander or where a child is subsequently identified as Aboriginal and/or Torres Strait Islander then the protection application can be listed on a Marram-Ngala Ganbu hearing day.
25. If the parties cannot come to an agreement and the matter is likely to lead to contest, matters are adjourned for a Conciliation Conference. These conferences are facilitated by an Aboriginal convenor when required.
26. The Marram-Ngala Ganbu model promotes therapeutic judicial practice that is less adversarial and child-centred, by enabling children and families to engage productively with the legal and court process and to have an opportunity to have their say, for the purpose of fostering healing through a positive court experience.
27. The informal nature of hearings invites everyone sitting at the table to speak freely to the Magistrate in a conversational manner, including families, children, extended family members, child protection practitioners, family support services and lawyers. This contrasts with mainstream hearings in which Magistrates speak to families through lawyers and rarely address them directly, and non-joined parties are not able to contribute. The Magistrate also allows people to speak about things that may not be technically or directly relevant to the matter being heard.
28. Speaking at the launch of Marram-Ngala Ganbu in Shepparton in April 2021, Aunty Pam Pedersen, a Yorta Yorta Elder with more than 18 years' experience as an Elder and Respected Person on the Koori Court said:

"It is really exciting that [Marram-Ngala Ganbu] has come to Shepparton, especially to help our families and the children. It's really important that they have the opportunity now to

come into court and express what their issues are and have the children there too because we want our children to stay with their parents."

29. Fewer cases are heard on a Marram-Ngala Ganbu court day than in mainstream court, allowing more time for each hearing. A typical Marram-Ngala Ganbu court day will list 10-12 cases with a mainstream Children's Court day listing up to 30 cases. This allows more time to ensure families are comfortable, can ask questions and that issues blocking progress (e.g. access to services) are able to be addressed.
30. One of the critically important functions that occurs through the Marram-Ngala Ganbu process is the accurate identification of Aboriginal children in the Family Division. This identification is critical because it ensures that Child Protection apply the Aboriginal Child Placement Principle, and other government services engage with Aboriginal-specific legislative requirements. Prior to Marram-Ngala Ganbu commencing in Shepparton the proportion of children with an 'Unknown' status for Aboriginality at the time a Protection Application was lodged with the ChCV was 57 per cent, and the proportion of Aboriginal children in applications in the Family Division was 19 per cent.
31. Within a year of Marram-Ngala Ganbu commencing in Shepparton, the number of applications where the Aboriginal status was 'Unknown' had fallen to less than 2 per cent, and the proportion of Aboriginal identified children had risen to 37 per cent. In 2021, that number had risen to 42 per cent, and the number of cases with an 'Unknown' status had fallen to below 1 per cent. This means that the availability of Marram-Ngala Ganbu in Shepparton has likely resulted in 142 children being identified as Aboriginal or Torres Strait Islander in 2021-22, who would otherwise have been through the Court process, and the child protection process as a whole, with an 'Unknown' status. This raises questions about the application (or adherence) and implementation of the Aboriginal Child Placement Principle
32. Aboriginal parents would often not attend child protection hearings in mainstream court – we believe because of personal and community trauma about child removals. If parents do not attend, all the court can go on is what the Department says, and it can leave the court with the impression that the parents do not care. We have noticed a significant increase in the numbers of parents attending for court hearings with MNG, which always results in better outcomes for them because the court gets to hear their side of the story, and the court can see how much they care about their kids.

VI CASE STUDIES

Case Study 1 – 'No protective concerns'

33. After a period in out-of-home care, three of four children in a family were returned to their mother's care. However, one of the siblings remained in out-of-home care. The mother had regular, meaningful contact with the child. Heading towards a final contest, the mother was supported by the Marram-Ngala Ganbu team to have her voice heard.
34. At a care team meeting, supported by Marram-Ngala Ganbu and a VACCA support worker, the mother asked why her child couldn't be home with his siblings and what more she needed to do in order to have her child returned. Child protection advised the mother that there were 'no protective concerns' and noted that it was that the child's extensive medical needs were currently being met by the carer and NDIS plan, so there was no need to return the child to his mother's care with his siblings.
35. At the next court event, the mother was supported by Marram-Ngala Ganbu staff to have her voice heard. The conversation in Marram-Ngala Ganbu was highly emotional and time was given to all parties to ensure the discussion wasn't cut short (as it would have been under time pressures of the mainstream court).
36. After this difficult conversation in Marram-Ngala Ganbu, the matter was adjourned for child protection, the mother and the support services to work with the NDIS to brief the care team on what could be done to assist the family with the child's medical needs so that he could be returned home, with family and community.
37. Due to the case management approach of Marram-Ngala Ganbu, the matter was mentioned regularly to keep things moving and resolved with all parties agreeing to a short-term family preservation order (FPO).

Case Study 2 – Family involvement and participation: large sibling group and proceedings commenced by protection application (notice).

38. A large family with 6 children attended court on a protection application by notice. The Preston DFFH office worked with the Marram-Ngala Ganbu team to have the matter issued for its first mention to be on a Tuesday in Marram-Ngala Ganbu. This allowed for the Marram-Ngala Ganbu team to offer support to the family prior to arriving at court.
39. The family were experiencing homelessness and had been couch surfing with friends, living in their car, and there had been unconfirmed reports of family violence and substance use by the father.
40. The family were supported by the Marram-Ngala Ganbu team and other services for about 13 months to support them in finding safe, stable accommodation. Throughout the 13 months, the family were offered emergency accommodation before being offered a stable tenancy with the support and advocacy of the team.
41. The matter was finalised following an application to withdraw from the department.
42. The family have had no further child protection involvement and still have a relationship with past and present Marram-Ngala Ganbu team members.

Case Study 3 – Koori designed, led and delivered services

43. A young couple had just relocated from New South Wales at 36 weeks pregnant. There was an extensive list of protective concerns, however the family had been actively engaging with a local ACCO since arriving in Melbourne, who were able to offer a much more holistic and comprehensive understanding of the parents to the court, through support letters and verbal updates at the Marram-Ngala Ganbu circular table.
44. This local ACCO was able to offer their support to the family and the paternal grandfather, also living in the home, who these same staff had worked with for over 4 years. This ACCO had worked with the paternal grandfather when the father of the baby was a teenager, so they knew the family and historical concerns well. The informal nature of Marram-Ngala Ganbu welcomed and highly valued the voice of these two workers from the ACCO to give information at the circular table in support of the parents, some of which the DHHS had not known.
45. Lakidjeka ACSASS were also provided with this further information about the family, including the support letters, which enabled the perceived level of risk to shift and therefore allowing a change in their endorsement. This updated information potentially would not have made its way to Lakidjeka, as they were told the DHHS disposition was for the newborn to go back to New South Wales to live with an aunt while the parents remained in Melbourne.
46. The baby was returned to the parents care after spending a short time in out-of-home care.

Case Study 4 – s 18 and Koori support

47. In this case, there was a full circular table with Aboriginal services supporting a family in the family division. The mother had support from Djirra, the father was supported by VALS, and the case was managed by VACCA's Nugel Program. The only non-Aboriginal person or organisation seated at the circular table was the Magistrate, who is the Regional Co-ordinating Magistrate and co-ordinating magistrate of Marram-Ngala Ganbu, holding an extremely competent cultural lens. The mother had initially come to the attention of the DFFH due to her young age when she gave birth and it was suggested that she would benefit from engaging with a parenting support program, as well as the mother's own extensive trauma history. The child was placed in an out-of-home care non-Aboriginal kinship placement for a period close to 6 years, which then broke down due to the father's heightened risk when he moved into the kinship placement with the child. During this time, the child was placed on a Care by Secretary order (**CBSO**), and a non-reunification case plan was made.
48. The case then transferred to the Nugel Program and the mother was reassessed given the concerns of the kinship placement. She was found to be suitable and intensive supports were put in place from a number of VACCA programs which lead to reunification. The matter was finalised on a family preservation order, which has since expired, and the matter has not returned to court.

Case Study 5 - CBSO to FPO

49. On 3 August 2021 in Broadmeadows, four Care by Secretary orders were converted to family preservation orders. Three of these matters were case managed by VACCA's Nugel Program.
50. In one case, a 15-year-old boy was placed on a CBSO in 2009 and then Long-Term Order in 2015. The FPO was made for him to return to live with his father in Gippsland.
51. In another case, a 12-year-old boy was placed on a CBSO in September 2017. His mother worked very hard with Nugel to address the protective concerns, and after a gradual transition he was returned to his mother's care permanently in June 2021. The court made an FPO to the mother. In congratulating her on her great work, she told the court that it was far easier to achieve results working with an Aboriginal organisation in a Koori court.
52. In another case, two children aged 10 and 8 respectively reside with their mother and younger sibling in Odyssey House. Prior to that they were both on CBSOs which were imposed in August 2019. The mother has been in Odyssey House since 2019 and her mother was a member of the Stolen Generation. The mother is currently in the Leavers' Program at Odyssey House. She is the first Aboriginal woman to do so. Her children joined her in Odyssey House in April 2021. Nugel sought FPOs for both children and will assist them to find appropriate accommodation once she leaves Odyssey House.

Annexures:

Annexure 1: Children's Court of Victoria, Evaluation of Marram-Ngala Ganbu Report

Annexure 2: Photos of Marram-Ngala Ganbu

ANNEXURE 2 – PHOTOS OF MARRAM-NGALA GANBU