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Restorative justice in the Australian criminal justice system

Jacqueline Joudo Larsen

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Acronyms

BOCSAR	Bureau of Crime Statistics and Research
JRC	Justice Research Consortium
JTT	Juvenile Justice Team
RCTs	Randomised Controlled Trials
RISE	Re-integrative Shaming Experiment
SCLJ	Standing Council on Law and Justice
VOM	Victim–offender mediation
YOA	<i>Young Offenders Act 1997</i>

Executive summary

In 2001, Heather Strang prepared a report for the Criminology Research Council summarising restorative justice programs in Australia (Strang 2001). At that time, restorative justice was largely seen as suitable for juvenile offenders and for less serious offences. Every state and territory had a youth conferencing scheme in place, while only Queensland, Western Australia and the Australian Capital Territory were using conferencing with adult offenders. At the time, the use of restorative justice beyond police and courts was beginning to be explored.

In 2013, the Australian Institute of Criminology undertook to build on this early work by reviewing restorative justice programs currently operating within Australian criminal justice systems and identifying the issues currently facing restorative justice.

The final report comprises four sections:

- section one provides a brief discussion relating to definitions and key concepts underpinning restorative justice;
- section two presents an overview of restorative justice programs currently operating across Australia;
- section three provides a summary of the literature regarding the impact of restorative justice; and
- section four discusses current challenges with reference to those highlighted by Strang in 2001 and also considers future challenges for restorative justice.

Defining restorative justice

While there remains some disagreement regarding practices that should and should not be considered 'restorative justice', the definition offered by Marshall (1996: 37) of

a process whereby all parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future

has been widely accepted.

The scope of this report is limited to 'programs involving meetings of victims, offenders and communities to discuss and resolve an offence' (Strang 2001: 5).

The most common forms of restorative justice programs operating in Australian criminal justice systems are victim–offender mediation, conferencing (for both adult and young offenders) and circle sentencing.

Restorative justice in Australia

Since 2001, restorative justice practices have become mainstream in Australian juvenile justice and have been extended for use with adult offenders. In the 12 years since Strang's 2001 report, restorative justice programs now span conferencing for both young and adult offenders, circle sentencing and victim–offender mediation.

As at 30 October 2013, a wide range of restorative justice options were available across Australia, specifically:

- conferencing for young offenders was available in all Australian states and territories;
- conferencing for adult offenders was available in New South Wales and South Australia;
- circle sentencing was available in New South Wales and Western Australia; and

- victim–offender mediation was available in jurisdictions, with the exception of Victoria and the Australian Capital Territory.

Impact of restorative justice

The evidence on the impact of restorative justice on reoffending is mixed but research suggests positive impacts for both victims and offenders. That is, a growing body of research indicates that restorative justice may be more effective for more prolific offenders, more effective for more serious offenders and more effective post- rather than pre-sentence.

While the ability of restorative justice to reduce reoffending is still contested, a focus on reoffending outcomes alone fails to capture the extent of other benefits, such as victim satisfaction, offender responsibility for actions and increased compliance with a range of orders, among others.

Challenges faced in the implementation and application of restorative justice

Current status of challenges identified in 2001

While there have been some improvements in the issues affecting the implementation of restorative justice programs identified in 2001; that is, upscaling following pilot programs, caseload problems (including net-widening), safeguarding rights and whether it is appropriate and effective in Indigenous and ethnic communities; some difficulties remain. In particular:

- *Upscaling following pilot programs*—many pilot programs have successfully been adopted and expanded, however there remain difficulties in this area. Several pilot programs across Australia have not been adopted despite positive results. The reasons for this are not always available, although it is likely that cost is a key factor.

- *Caseload problems*—as Strang (2001) predicted, for many programs, problems relating to low referrals have dissipated as key stakeholders have come to better understand the goals of restorative justice. However, low referral rates remain a challenge for some programs and this is more pronounced in the early stages of implementation.

- *Safeguarding rights*—there remains a tendency among advocates for victims and offenders to characterise any benefit for, or enhancement in the rights of, one party as being ‘at the expense of the other’ (Strang & Sherman 2003: 36). Research on the impact of restorative justice has contradicted this zero-sum approach and has been relatively consistent in reporting satisfaction among victims. Research has also failed to show that offender’s rights are violated in restorative justice processes.

- *Appropriate and effective in Indigenous and ethnic communities*—many of the issues relating to the use of restorative justice in Indigenous and ethnic communities that were identified in 2001 (ie low referral rates, few Indigenous conference convenors, high number of youths failing to appear for conferences and a lack of awareness among Indigenous communities of the potential benefits of restorative justice) remain today. Notably, efforts have been undertaken to reduce these barriers by increasing the cultural relevance of restorative justice programs through a range of ways, including the involvement of respected community members and elders. Further research is required to better understand the impact of restorative justice for racial and ethnic minority groups in Australia.

Future challenges

Three key challenges face restorative justice into the future:

- *Extending restorative justice to adult offenders*—while restorative justice has primarily been used for young offenders, an increasing number of practices extend to, or are designed for, adult offenders and the victims of their offences. There remains some debate as to whether it is appropriate to extend restorative justice to older

offenders, however, the research to date has reported some positive outcomes in reducing reoffending, victim and offender satisfaction, and positive attitudinal change among adult offenders.

- *Extending restorative justice to serious offences*—similarly, while restorative justice was formerly seen as appropriate only for less serious offences, it is increasingly being used to respond to the harm caused by more serious offending, such as murder, sexual assault and family violence, and there is growing evidence of positive outcomes in this space.
- *Achieving ‘restorativeness’*—whether ‘restorativeness’ is achieved is highly dependent on the willingness of victims and offenders to engage in restorative justice processes. Further, it is difficult to assess whether restorativeness has translated into programs the way it was intended, as there are many variations in implementation and what is considered to be ‘restorative’. This is also complicated by the fact that theory in this space has, and continues to, develop alongside practice. The recently endorsed Restorative Justice National Guidelines are intended to provide guidance on outcomes, program evaluations and are an important step towards promoting consistency in the use of restorative justice in criminal matters across Australia.

Conclusion

Following the emergence of restorative justice practices in the 1990s and their widespread use in Australia and overseas, the body of research into the impact of such programs has grown steadily and now paints a picture of a range of processes that continue to evolve but that largely result in positive outcomes for both victims and offenders.

The question, ‘does it work?’ is asked of all interventions in the criminal justice field and is most often answered by assessing the impact on reoffending. On this point, the evidence for restorative justice remains mixed. However, the literature is replete with reports of high levels of victim satisfaction and feelings that the process is fair. Further, while some significant issues remain, research conducted

to date consistently demonstrates that restorative justice programs work at least as well as formal criminal justice responses.

Although there remains much debate about where restorative justice fits in, what is certain is that where it is done well, it goes beyond what traditional responses can achieve and as a result, the potential impact upon individuals, communities and society is substantial.

Restorative justice is about more than traditional notions of justice; it is about repairing harm, restoring relationships and ultimately, it is about strengthening those social bonds that make a society strong.

The evidence base on restorative justice would benefit from future research extending the focus from asking ‘does it work?’, to considering how, when and for whom it works best in order to contribute to the growing evidence that seeks to provide a more nuanced understanding of the circumstances under which restorative justice is most effective.

Introduction

Background and purpose of this paper

Restorative justice represents a departure from formal responses to crime and its adoption in Western cultures emerged from a growing dissatisfaction with these traditional responses. Restorative justice practices seek to repair the harm caused by crime but the term has suffered from its own popularity and become something of a catchall for all non-traditional approaches to justice. The purpose of this report is twofold; to describe and provide an overview of restorative justice programs in Australia in order to build on Heather Strang's 2001 review and provide an assessment of current and future issues facing restorative justice practice.

Scope of the paper

While the understanding of what restorative justice encompasses varies greatly (and is discussed in section one), as was the case in Strang's 2001 report, this review scope is limited to 'programs involving meetings of victims, offenders and communities to discuss and resolve an offence' (Strang 2001: 5). Thus, this report includes circle sentencing, to take one example, but does not include other Indigenous courts such as the Koori, Nunga and Murri courts. While the latter may have restorative elements or be broadly labelled as such, reparation of harm is not approached in the same manner as in those programs that seek to achieve it by bringing victims and offenders together. In fact, in the example given, the role of the victim is technically the same as in a traditional court setting (although, the experience of victims in such courts may vary significantly and be more positive than experiences

in traditional court processes) and falls outside the definition of restorative justice used in this paper.

Further, although various restorative justice practices are used in other settings, such as care and protection matters, within schools to deal with issues such as bullying and within workplaces to resolve disputes (see Roche 2006 for a discussion of the use of restorative justice in a range of regulatory fields), this paper focuses on their use within the criminal justice system.

Report structure

The report is based on a review of the existing knowledge on restorative justice in the Australian criminal justice system available in the academic and grey literature between January 2002 and 30 October 2013. The report divided into the following sections:

- section one—a brief background, including a discussion of what constitutes restorative justice;
- section two—an overview of restorative justice programs (youth conferencing, circle and forum sentencing, and victim–offender mediation) currently operating across Australia;
- section three—summary of the literature regarding the impact of restorative justice, with a focus on findings regarding reoffending and satisfaction among participants; and
- section four is divided into two parts:
 - an assessment based on available literature of whether the issues set out by Strang in 2001 are still relevant today; and
 - a discussion of future challenges—issues still faced by restorative justice programs today.

Defining restorative justice

Although the concept of restorative justice has existed in one form or other in many early Indigenous and European cultures Strang (2001: 3) notes that 'the term was first used in its modern sense in the 1970s to refer to victim–offender mediation programs in North America' before also becoming widely used throughout Western Europe. Restorative justice practices emerged in the 1990s as a better way of 'doing justice' due in large part to their adoption in New Zealand as a means of more effectively addressing juvenile offending through the introduction of Family Group Conferences under the Children, Young Persons and their Families Act. The Act required that all juvenile offences (except murder and aggravated rape) be dealt with by a family group conference, which was characterised by the coming together of the offender, the victim and their families with the goal of repairing the harm caused. The principles underpinning the application of restorative justice were also applied to adult offenders through the 1990s. The role of restorative justice practices within the formal criminal justice system was acknowledged more than a decade later with the passing of the *Sentencing Act 2002*, *Parole Act 2002* and the *Victim's Rights Act 2002* (NZ Ministry of Justice nd). In 2000, the 'development of restorative justice policies, procedures and programmes that are respectful of the rights, needs and interests of victims, offenders, communities and all other parties'

was encouraged at the tenth session of the United Nations Congress on Crime Prevention and Criminal Justice (UNCPCTO 2000: np). Restorative justice principles were then firmly placed on the United Nation's agenda in 2002 when the Economic and Social Council adopted the *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters* (UN Basic Principles). The UN Basic Principles encourage Member States to establish guidelines and standards that set out the use of restorative justice programs appropriate to their legal systems (UNODC 2006).

The practices that began in New Zealand were soon replicated in various forms in other parts of the world and were the primary basis for restorative justice programs in Australia (Strang 2001). The most common forms of restorative justice programs are victim–offender mediation, conferencing (for both adult and young offenders) and circle sentencing.

What is restorative justice?

Understandings of restorative justice are based on the premise that crime causes harm to people, to relationships and to the community; that it is not simply committed against the state (Strang 2001). Restorative justice represents a departure from the principles upon which the traditional criminal justice

approach is based as it puts reparation of harm at the fore rather than punishment. It also signals a shift away from the traditional view that prison is an effective deterrent from future offending (Sherman & Strang 2007). It has been argued that interest in restorative justice has grown in part, due to a 'general disillusionment with retributive [forms of] administrative justice' (Hayes, McGee & Cerruto 2011: 128). Further, tougher stances on law and order, culminating in increased and lengthier prison sentences have failed to adequately address crime, fuelling the need to consider alternatives.

Restorative justice is differentiated from the conventional criminal justice system in the following ways:

- rather than crime being seen as a violation of law and committed against the state, it is perceived as a conflict between individuals which has resulted in harm to victims and communities (Latimer & Kleinknecht 2000);
- where the traditional approach seeks to determine guilt and impose punishment, restorative justice is more concerned with repairing the harm caused by offending and restoring relationships (Strang 2001); and
- restorative justice processes provide an opportunity for 'active participation by victims, offenders and their communities' (van Ness cited in Strang 2001: 3), a departure from the passive roles offered to them by the traditional criminal justice system.

Some contributors to the field claim to be 'against punishment' (Daly 2013: 356 Walgrave cited in Daly & Proietti-Scifoni 2011: 219) and do not see its relevance to restorative justice, while others argue that punishment cannot be separated from restorative justice (Daly & Proietti-Scifoni 2011; see Daly 2013 for a discussion on the relationship of punishment to restorative justice). Umbreit, Coates and Vos (2004) have pointed out that there is an assumption that restorative justice is not punishing because it does not intend to be and yet their research with participants revealed that some offenders felt that they had been punished more through restorative justice processes than would have been the case in the traditional court system. In many ways, restorative justice asks more of offenders than the conventional system; they must participate more actively, remorse is hard to feign

and they must engage more directly with the police, judicial officers and victims.

Further to this, Foley (2013: 130) argues that 'retribution is much wider than simply punishment' and that contrary to prevailing views, restorative justice programs actually play an important role in helping achieve retribution because they include 'bringing offenders to account, denouncing their behaviour, providing public vindication for victims and setting reparation and sanctions'.

Definition of restorative justice, standards and practices

Despite the fact that restorative justice is now a well-established way of 'doing justice', there remains contention around exactly what the term means (Vaandering 2011). Daly and Proietti-Scifoni (2011) posit five reasons for the lack of a clear definition:

- that restorative justice 'has developed in a piecemeal fashion' (van Ness & Strong cited in Daly & Proietti-Scifoni 2011: 5) across domestic and international contexts;
- the popularity of the idea and the momentum that resulted led to the inclusion of 'any justice activity, which remotely seemed alternative' (Daly & Proietti-Scifoni 2011: 5);
- key contributors to both theory and practice fail to agree on what restorative justice is;
- restorative justice was adopted to the transitional justice context despite the different meanings of terms such as restoration and reparation in the context of domestic crime within developed nations, compared with violations of human rights in conflict contexts; and
- the field has suffered from a lack of clear guidance for defining key terms, for example, in international law instruments, as is the case for transitional justice.

The definition offered by Marshall (1996: 37) of

a process whereby all parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future

has been the most commonly accepted. Braithwaite (1999: 1) emphasised the 'restorative' focus of such practices and identified the parties involved when he stated that restorative justice 'has to be about restoring victims, restoring offenders and restoring communities'. More recently, Zehr (2002: 37) offered the following:

Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible.

It is said that there are three key characteristics common to restorative justice programs;

emphasis on the offender's personal accountability by key participants, an inclusive decision-making process that encourages participation by key participants; and the goal of putting right the harm that is caused by an offence (Bazemore & Schiff 2004: 41).

Restorative justice is 'a process rather than a particular program model' (Umbreit et al. 2004: 82) and as such, encompasses a wide range of practices. Bolitho (2012: 76) suggests that this is due to different processes reflecting and emphasising the various elements and principles of restorative justice; 'elements and principles that are given differing weights...reflecting different 'sensibilities' and cultures'. Umbreit et al. (2004: 88) add that it is a concept that has evolved over time and while it is important to 'guide with care the underlying principles of restorative justice' it is equally important to understand that it is likely to continue to evolve and that this should be viewed positively.

The concepts of reparation and restoration are integral to understanding restorative justice. As Daly and Proietti-Scifoni (2011) note, both concepts are recent additions to domestic criminal justice (with the latter also moving into international law in recent times) and neither has a settled definition. There is some overlap between the concepts and Daly and Proietti-Scifoni (2011) suggest that the terms may be best understood by noting the starting points of various advocates; that is, some take reparation as the key term, others restoration. Restoration, as referred to earlier, refers to the overarching goal of restorative justice to 'put right the harm' (Bazemore & Schiff 2004: 41) and reparation can be seen as a

'subsidiary activit[y] that may assist in moving a victim to an initial state before the crime' (Duff cited in Daly and Proietti-Scifoni 2011: 35). Reparation can be made in a variety of ways and can be both material, for example, undertaking work for the victim or community service and making restitution, or symbolic, including but not limited to making a verbal or written apology or entering a treatment program. Importantly, repairing harm goes beyond paying for damages, it is about actively engaging with a victim to acknowledge their 'ownership' of the offence and that they have been 'wronged' in the commission of the offence.

Restorative practices

The difficulty in defining restorative justice can be partly attributed to the wide range of practices that it can include; that is, 'diversion from court prosecution; actions taken in parallel with court decisions, and meetings between victims and offenders at any stage of the criminal process' (Daly 2001: 5). Sherman, Strang and Newbury-Birch (2008: 9) clarify the distinction between restorative *practices* and restorative *justice* whereby the former represent

approaches to justice, criminal sanctions and rehabilitation that attempt to incorporate either offender awareness of the harm they have caused, or offender efforts to pay back the community for that harm, without necessarily engaging in restorative justice or in any way repairing harm done to their own victims.

They further specify that

Where a personal victim has been harmed but does not participate in the restorative practice, it would not constitute restorative justice. Where no personal victim exists, however (as in vandalism at a community centre), the participation of a community representative in a collective resolution involving the offender as well would qualify that restorative practice as restorative justice (Sherman, Strang & Newbury-Birch 2008: 9).

For example, this means that while cautioning and many speciality courts operating in Australia may be broadly 'restorative', they are not actually examples of restorative justice.

Much of the diversity in practice and definition is due to the fact that restorative justice theory has developed alongside restorative justice practice. In order to better align practice and theory, Braithwaite (2002) proposed a set of constraining, maximising and emergent standards to guide restorative justice processes. 'Constraining' standards are those values that must be present, as they represent the fundamental rights of participants and impose limits on the way in which practice is carried out (eg non-domination, empowerment and respectful listening). 'Maximising' standards refer to those values that seek to return those affected by crime to their pre-crime state and reflect the identified needs and wants of victims and offenders from the restorative justice process (eg restoration of human dignity, property loss, safety, damaged relationships, freedom and compassion). 'Emergent' standards (eg emotions such as remorse, forgiveness or mercy) are an indication of a successful restorative justice process and occur spontaneously and cannot be urged. While constraining standards must be present in restorative justice processes, maximising and emergent standards are considered to be indicators of 'restorativeness' but may not be achievable in all cases (see Braithwaite 2002 for a complete list and explanation of the standards). The advantage of this approach is that it provides a consistent set of measures against which different programs can be assessed. More importantly, the standards set out by Braithwaite help to conceptualise restorative justice as occurring on a continuum and provide an alternate, and more appropriate measure of the impact of restorative justice, rather than 'fall[ing] back to using typical criminal justice measures as indicators of restorativeness' (Bolitho 2012: 76).

Victims and communities

Victims

Central to understanding restorative justice and the concept of 'restoration' is understanding who is the object of 'restoration' that is, who the victims are and what the community is in this context. Victims (those harmed by a crime) may be individuals who were directly harmed, indirect victims with an emotional connection to the direct victim, or collective/institutional victims; for example, when

items are shoplifted from department stores (Sherman, Strang & Newbury-Birch 2008).

Although one of the core tenets of restorative justice involves bringing the key participants together to repair the harm caused by the offence, victims and offenders do not always meet face-to-face. In some instances, victim-offender mediations can involve 'shuttle mediation', whereby the mediator meets separately with the parties. In the Australian Capital Territory, restorative justice conferences are defined as an exchange of information between the people most affected by a crime and can occur directly through face-to-face meetings or indirectly, through exchange of letters, emails, audio recordings, video messages, telephone conferences and messages relayed via the convenor/facilitator (ACT Restorative Justice Unit personal communication 26 August 2013).

Communities

The concept of 'community' and its role in restorative justice processes has led to varied interpretations and some confusion (see McCold 2004; Umbreit et al. 2004). McCold (2004: 20) defined the 'community' in restorative justice as being comprised of 'family and friends of those directly affected', while others have argued against 'such a narrow, restrictive notion of community' (Umbreit et al. 2004: 84). Umbreit et al. (2004: 84) take a broader view of community which refers

to a place that has certain specific characteristics, to a group of people who share something in common such as a profession, and to even a 'we spirit' feeling state.

An important element of restorative justice processes is that they seek to repair the harm caused and reintegrate the offender into the community. Community representatives (eg school teachers, Indigenous elders, youth workers, church ministers) are involved in helping to identify ways in which the harm may be repaired and can be involved in identifying the skills required for the reintegration of offenders (Morris 2002). Researchers observing conferences in Canberra noted the important role played by community volunteers; facilitators reported that community volunteers were able 'to express a "community perspective" that would not be "heard in the right way" if presented by the facilitator in the role of police officer' (Bazemore & Schiff 2004: 48).

Restorative justice in Australia



To date, restorative justice in Australia has been used to deal almost exclusively with offenders who have admitted to an offence (Daly 2001). It can and has been employed at most points of contact with the criminal justice system. For example, it can be used by police to divert offenders away from court (eg youth conferencing), by courts as a sentencing outcome (eg referral to conferencing) or as a means of arriving at a sentence (eg circle and forum sentencing), or following release from prison (eg victim–offender mediation).

At the time of Strang's 2001 review of restorative justice programs in Australia, such programs were usually only available to juvenile offenders, as the programs were considered most suited to younger, less serious offenders. In the 12 years since that was written, these practices have become mainstream in Australian juvenile justice and have been extended for use with adult offenders. Given the extent of this uptake of restorative justice programs, particularly conferencing, across the criminal justice system and the fact that the majority are legislated, the use of restorative justice practices can no longer be considered peripheral. In fact, as Sherman and Strang (2011) note, restorative justice conferencing is very near to achieving mainstream adoption.

In the two decades since youth conferencing was first used by the NSW Police Service in Wagga

Wagga, restorative justice has largely been incorporated into existing criminal justice systems. As the Justice and Community Directorate states in relation to the ACT Scheme, 'it [restorative justice] 'augments' the criminal justice system without replacing it' (ACT Government 2013). Across the country, restorative justice processes now run alongside existing criminal justice responses. In 2011, the National Justice CEOs Group considered the need to develop national guidelines to underpin restorative justice practices for criminal matters in Australia (National Justice CEOs Group 2011). The Standing Council on Law and Justice (SCLJ) endorsed the Restorative Justice National Guidelines at its meeting on 10–11 October 2013 (SCLJ 2013a). The Guidelines are intended to promote consistency in the use of restorative justice in criminal matters across Australia and provide guidance on outcomes, program evaluations and training (SCLJ 2013b).

A summary of restorative justice programs across Australia was presented in Strang's 2001 report to the Criminology Research Council. At that time, all states and territories had some form of conferencing for young offenders in operation and adult conferencing was operating only in Queensland, Western Australia and the Australian Capital Territory. In the 12 years since that report, restorative justice programs have grown considerably and span conferencing for both

young and adult offenders, circle sentencing and victim–offender mediation programs (see Table 1 for a summary).

Conferences: Young and adult offenders

Youth (sometimes referred to as *family*) conferencing operates in all states and territories (see Richards 2010 for an overview of the legislative and policy context in which restorative justice is applied to young offenders). Conferences present an opportunity for the young person to take responsibility for their actions and to see firsthand how their behaviour has affected others. In determining whether the matter is suitable for a conference, the seriousness of the offence, the level of violence involved, the harm caused to the victim, the nature and extent of offending by the young person, the number of times they have received warnings or cautions under the relevant Act and other matters deemed relevant must be taken into consideration.

If the offender is found to be suitable and eligible, and agrees to participate, a conference may be organised with the relevant parties. Conferences are held at different stages of the process and are run by police, courts or juvenile justice agencies. The assessment of suitability is based on the offender’s acceptance of responsibility, level of remorse, feelings towards the victim, their interpersonal skills and various safety issues including substance abuse

and cultural values. This usually involves bringing the victim and offender together with facilitators, police and other support people to attempt to repair the harm caused by the offender’s actions and to devise an intervention plan or agree on an undertaking for the offender. In some jurisdictions, conferences may go ahead without the victim being present. The plan may include making an apology or reparation to the victim, doing community service or an education program, donating to charity, counselling, or working for the victim or their parent. It can also include drug and alcohol treatment where this has been identified as an influence on their offending behaviour. Generally, the agreed outcomes must not be more onerous than a court would order. Offenders who do not comply with the outcomes of a conference may return to the conventional criminal justice system, although in some jurisdictions, there is some discretion as to how matters involving offender who do not comply with their agreement may be dealt with, including a caution or no further action.

Restorative justice options are also available for adult offenders. Several jurisdictions have piloted conferencing for adults over the years, however, it is currently only available in four jurisdictions—New South Wales, Victoria (up to 20 years of age), South Australia and in Queensland. Further, restorative justice conferencing for adults is primarily available at the pre-sentencing stage. The various conferencing options that are currently available for both youth and adult offenders across Australia are summarised in Table 2.

Table 1 Restorative justice practices available in Australian criminal justice systems

	Youth conferencing	Adult conferencing	Victim–offender mediation	Circle sentencing
New South Wales	✓	✓	✓	✓
Victoria	✓			
Queensland	✓		✓	
South Australia	✓	✓	✓	
Western Australia	✓		✓	✓
Northern Territory	✓		✓	
Tasmania	✓		✓	
Australian Capital Territory	✓			

New South Wales

In New South Wales, a young person can be offered a conference for the same offences that may be cautioned under the *Young Offenders Act 1997*, but often following previous warnings and cautions, as conferences were not designed for first-time minor offenders. In practice, a youth may be diverted to a conference after receiving three cautions. Participants must admit their guilt and consent to participate in a conference, although sexual assault, drug and traffic offences, offences causing death and breaches of apprehended violence orders are not eligible for conferencing. Eligible youth are referred to a conference that involves a meeting of the young offender, their parents (should the offender wish them to attend), the victim, their support person and the police. For victims who choose not to attend themselves, they may send a representative. Ideally, an outcome plan is reached with the agreement of all participants and where a victim has attended in person, the plan is enforceable only when both the youth and the victim agree. Where no agreement is reached, the matter is referred back to the police or court that first referred the matter. The Conference Convenors, who are engaged as required for a conference, are individuals who live and work in the local communities.

An early Bureau of Crime Statistics and Research (BOCSAR) study examining the reoffending outcomes for young people who were processed through Youth Justice conferences and those eligible for a conference but processed through the Children's Court, found that there was a 'moderate reduction' in reoffending among those who participated in a youth justice conference (Luke & Lind 2002:1). A second evaluation examining the effect of youth conferencing on reoffending in New South Wales reported no significant difference in reoffending, the length of time to first (proven) reoffence, the level of seriousness of reoffending, or the number of proven offences (Smith & Weatherburn 2012). A more recent study assessing the impact of the *NSW Young Offenders Act 1997* (YOA) on the likelihood that a young offender would

receive a custodial order, found that that the YOA had been effective in diverting both Indigenous and non-Indigenous young people from custody (Wan, Moore & Moffatt 2013).

Conferencing for adult offenders commenced in New South Wales as the Community Conferencing for Young Adults Pilot. This measure was trialed in September 2005 for offenders aged between 18 and 24 years in Liverpool Local Court and the Tweed Heads Local Court Circuit. This is now available to all offenders regardless of age and is known as Forum Sentencing. Among the guiding principles of the program is the need to enhance the rights and place of victims in the justice process and promote active participation and empowerment of all participants—offenders, victims and the families and support persons of both.

Potential participants are referred by the court after a plea or finding of guilt and prior to sentencing. Offenders who have committed serious violent crimes or have been charged with child prostitution, child pornography, stalking or intimidation offences involving the use of a firearm or domestic violence, are ineligible for the program. A draft intervention plan must be approved by the court, after which the offender undertakes the plan either prior to sentencing or as part of the sentence. Satisfactory completion of the plan is notified to the court, who can then consider the outcome during sentencing, or if the plan was part of the sentence the court can finalise the matter. An early evaluation of the program found that participants (victims, offenders and support persons) were generally satisfied with Forum Sentencing (People & Trimboli 2007) and that recidivism of offenders was low; however, the latter finding should be interpreted with caution as the study was limited by a short follow-up period and absence of a suitable comparison group (Jones 2009). The evaluation also reported a great deal of support among participants for eligibility to be broadened to all adults (People & Trimboli 2007) and as a result, the upper age limit was dropped in 2008. In 2008, driving offences (such as driving without a licence) that do not have a direct victim were made ineligible.

Table 2 Conferencing for youth and adult offenders currently operating in Australia

	Program name	Legislation	Eligible participants	Excluded offences	Victim participation	Point of referral
New South Wales	Youth Justice Conferences	<i>Young Offenders Act 1997</i>	Youth (10 to under 18 years)	Sexual assault, drug and traffic offences, offences causing death and breaches of apprehended violence orders	Conference can proceed without a victim present	Police and court (pre-sentence)
	Forum Sentencing	<i>Criminal Procedure Legislation 2010 NSW (Part 7)</i>	Adults—18 years and older	Murder, manslaughter and serious violent and sexual offences, offences of stalking and intimidation, drug supply, cultivation and manufacture, firearms offences	Conference can proceed without a victim present	Court (pre-sentence)
Victoria	Youth Justice Group Conferencing	<i>Children, Youth and Families Act 2005</i>	Youth (10 to under 18 years) and young adults (10 to 20 years)	None stipulated in the legislation but in practice, homicide, manslaughter, sex offences or serious crimes of violence are excluded	Conference can proceed without a victim present	Court (pre-sentence)
	Youth Justice Conferencing	<i>Youth Justice Act 1992</i>	Youth (10 to under 17 years), although some adults may be referred by police	None stipulated in the legislation	Conference can proceed without a victim present	Police and court (pre-sentence)
Queensland	Justice Mediation Program	<i>Dispute Resolution Centre Act 1990</i>	Adults (17 years and over)	None stipulated in the legislation	Conference can proceed without a victim present	Mostly diversionary but can come at all stages of the criminal justice process
South Australia	Family Conferencing	<i>Young Offenders Act 1993</i>	Youth (10 to under 18 years)	Legislation stipulates youth who admit to committing a 'minor' offence may be referred by police, however no offences are specifically prohibited.	Conference can proceed without a victim present	Police and court (pre-sentence)
	Port Lincoln Aboriginal Conferencing	<i>Criminal Law Sentencing Act 1988</i>	Adults—18 years and older		Conference can proceed without a victim present	Court (pre-sentence)
Western Australia	Family Group Conferencing	<i>Young Offenders Act 1994</i>	Youth (10 to under 18 years)	Schedule 1 and 2 offences, which include homicide offences, sexual offences, some drug offences, arson and offences against justice procedures	Conference can proceed without a victim present	Police and court (pre-sentence)

Table 2 Conferencing for youth and adult offenders currently operating in Australia (cont.)

	Program name	Legislation	Eligible participants	Excluded offences	Victim participation	Point of referral
Northern Territory	Youth Justice Conference	<i>Youth Justice Act</i>	Youth (10 to under 18 years)	Murder, attempted murder, manslaughter, terrorism offences, threats to kill, a range of other violent offences (eg robbery), sexual offences, some property offences and a range of drugs offences	Conference can proceed without a victim present	Police and court (pre-sentence)
Tasmania	Community Conference	<i>Youth Justice Act 1997</i>	Youth (10 to under 18 years)	Murder, attempted murder, manslaughter, aggravated sexual assault, rape, armed robbery, aggravated armed robbery and being armed with a dangerous or offensive weapon	Conference can proceed without a victim present	Police and court (sentencing option)
Australian Capital Territory	Restorative Justice Unit	<i>Crimes (Restorative Justice) Act 2004</i> —operating in phase one	Youth (10 to 17 years)	Serious property offences (over 14 years' imprisonment); serious offences against the person (over 10 years' imprisonment), all domestic violence offences, all sexual assault offences	Conferences cannot proceed without a victim (or their nominated substitutes) participation	From apprehension to post-sentence

A subsequent evaluation that compared recidivism among Forum Sentencing participants with offenders processed through courts, found no significant difference on four outcomes relating to reoffending (Jones 2009; see section three of this report for a further discussion of these results). Further changes were made to the program in 2010, where offences with no direct victim such as possession of prohibited drugs and driving with mid-range blood alcohol concentration were excluded (Hart & Pirc 2012). Following these changes, the 2009 BOCSAR evaluation was recently repeated and again found no evidence that participation in Forum Sentencing reduces reoffending. However, as reoffending is 'just one of six objectives' (Poynton 2013: 12) of Forum Sentencing, more comprehensive evaluations are required to determine whether the program is meeting other objectives. More recently, Rossner, Bruce and Meher (2013) conducted an in-depth study of the dynamics of how forum sentencing operates within the courts and identified several factors contributing to 'successful' forums and ways in which the process could be improved.

Improvements included establishing 'an active referral pathway' by the courts, strengthening relationships between Forum Sentencing and police, and identifying respected community members with a connection to the forum participants or case, among others (Rossner, Bruce & Meher 2013).

Victoria

The Youth Justice Group Conferencing program began as a pilot in Victoria in 1995, based on existing provisions in the *Children and Young Persons Act 1989*. It is now covered by the *Children, Youth and Families Act 2005*. The conferencing program is coordinated by the Department of Human Services and run by a number of non-government organisations such as Anglicare. Young people appearing before the Children's Criminal Court, who were aged from 10 to 18 years at the time of the offence, are eligible if they meet other criteria. Participants must have pleaded or been found guilty of offences not including homicide, manslaughter, sex offences or serious crimes of violence. The offence must be serious enough for

the court to consider probation or a youth supervision order and the youth must be referred to the program within 12 months of the commission of the offence. If the young person is considered eligible, their sentence is deferred so that they can be assessed for suitability to participate in the program. Failure to attend the conference or lack of participation is reported to the court. At the time of sentencing, the court may also take the behaviour of the young person during the conference, the pre-sentence report and the group conference report into consideration.

An early evaluation of the program found it had positive benefits for young people by diverting them away from supervisory orders and future contact with the criminal justice system (Success Works Pty Ltd 1999). A recent evaluation conducted by KPMG also reported positive outcomes, including that young people who were conferenced were less likely than young people who received probation or a youth supervision order to have reoffended within 12 or 24 months. All participants believed that victim participation led to improved conferencing outcomes and although only a small number of victims were surveyed, most reported feeling satisfied with the process and also felt that the offender would be less likely to reoffend and improve their behaviour. Half of those surveyed felt that the conference helped repair the damage caused by the offence (KPMG 2010). In 2007, group conferencing was extended to cover offenders up to 20 years of age.

In 2008, the Young Adult Restorative Justice Group Conferencing program was piloted for two years, ending in March 2010. The program was based on the Youth Justice Group Conferencing Program and delivered by Anglicare Victoria at the Neighbourhood Justice Centre (Keating & Barrow 2010) and was underpinned by five objectives:

- improve victim satisfaction with the justice process;
- promote greater participation by all parties;
- increase offender awareness of the consequences of their actions and encourage reparation;
- promote the rehabilitation and reintegration of young adult offenders; and
- promote community confidence in the justice system.

The Young Adult Restorative Justice Group Conferencing program was open to offenders aged between 18 and 25 years who were living in, or were alleged to have committed the offence in, the City of Yarra. Aboriginal or Torres Strait Islanders with a close connection to the area and who were alleged to have committed the offence in the City of Yarra were also eligible for the program. Referrals occurred through three pathways at both pre- and post-sentence stages:

- through the existing Criminal Justice Diversion Program as part of their diversion plan;
- through the Deferral of Sentence provisions of the *Sentencing Act 1991* (s 83A); or
- at the post-sentencing stage through custodial orders, post-release parole provisions and community correction orders (Keating & Barrow 2010).

An evaluation of the pilot was unable to provide definitive conclusions regarding the program's effectiveness due to low referrals and difficulties in accessing program participants (Keating & Barrow 2010). The evaluation did note that the program needed to function in a different manner than that which was considered successful with offenders aged less than 18 years due to the significant differences between young people and young adults. The latter were considered to have few of the social supports that the program assumed were present, a greater level of offending with no identifiable victim (resulting in low referrals to the program) and they required greater flexibility in the types of restorative justice options available, for example, face-to-face meetings and shuttle dialogue (Keating & Barrow 2010). The evaluation made several recommendations, including to remove the upper age limit such that the program would be available to all adults, expand the program to other courts and consider extending the range of offences dealt with under the program, noting that 'the greater the harm, the greater the need and opportunity for healing' (Keating & Barrow 2010: 18). The pilot program ended in March 2010 and at present, group conferencing is not available to adult offenders in Victoria.

Queensland

Community conferencing (now named youth justice conferencing) was introduced in Queensland in 1997 through the *Juvenile Justice Act 1992* as a pilot project operating in three locations and providing both a diversionary and a sentencing option. Police could divert young offenders from the court system by referring them to conferencing, or the court could choose to divert or order a pre-sentence conference or indefinite referral as a method of dealing with a charge.

The Community Conferencing Pilot was expanded across the state following the recommendation of an evaluation in 1998 (Queensland Government 2013a). Following changes to the legislation in 2003, the program became the Youth Justice Conferencing program and was subject to amendments, including the removal of victim consent before referring making a referral to a conference. Due to a significant increase in demand, the program underwent further changes to service delivery structure in 2006 to better deliver the program across the state (Queensland Government 2013a).

As there are no limitations regarding the type of offences that can be referred, conferences can deal with a range of offences, such as shop stealing, break and enter, unlawful use of a motor vehicle, wilful damage, arson and assault. Where the offender is an Indigenous youth, the conference convenor must consider asking an elder or respected member of the Indigenous community to attend the conference.

Data reported by the Queensland Department of Communities (Queensland Government 2010), for all conferences held between 1997 and October 2008, indicate a high proportion of both victims and offenders who were satisfied with conference outcomes and who reported the process was fair. During 2012–13, 99 percent of youth justice conferencing participants (including the victim and/or their representative) were satisfied with the outcome (Queensland Government 2013a). A study of the impact of the conference experience on reoffending among a sample of 25 young offenders who participated in conferences in southeast Queensland between 2004 and 2006, found that reoffending was less likely for those young offenders who saw the conference as a positive experience after hearing the victim's story and

realising the impact of their actions (Hayes, McGee & Cerruto 2011).

As at 1 January 2013, following amendments to the *Youth Justice Act 1992* (formally *Juvenile Justice Act*), young offenders can only be referred to a youth justice conference by a police officer; that is, they can no longer be referred to a conference by a court (Queensland Government 2013b).

Conferencing has been available for adults under the Justice Mediation Program (under a number of different titles) since 1992. The program is primarily for adult defendants/offenders with limited or no criminal history. It is predominantly used in relation to less serious offences, such as property-related offences and minor assaults. Mediations may be convened for more serious offences if it would benefit the complainant or victim. Defendants must acknowledge responsibility for their actions to be able to participate. The program is based on restorative justice principles and uses a victim–offender conferencing model. The program is intended to divert defendants or offenders from the criminal justice system and result in less reoffending/recidivism. Offenders/defendants are held accountable for behaviour to the person(s) harmed by their actions. It provides the victim(s) with an opportunity for healing and reintegration with their family (when a defendant or offender is a family member), as well as an opportunity to be involved in the criminal justice process (Department of Justice & Attorney-General personal communication October 2013).

Referrals to the program can be made at any stage of the criminal justice process and are received from courts, police prosecutions, Queensland Police Service officers (with Police Prosecutions' approval) and the Office of the Director of Public Prosecutions. Participation is voluntary for all parties. The court or prosecuting entity refers matters after conducting eligibility assessments to ensure only appropriate matters are referred. Further extensive assessment and preparation is undertaken by staff to ensure suitability of the parties and for the prevention of re-victimisation. Approximately 300 conferences are conducted each year. Agreement rates are consistently high, as is compliance by offenders with all the terms of the agreement (Department of Justice & Attorney-General personal communication

October 2013). The Justice Mediation Program was expanded to Cairns, Townsville and the Gold Coast in November 2007 and continues to operate in these locations.

In 2011, an internal review was conducted to provide an assessment of the effectiveness of the Justice Mediation Program with regard to client and stakeholder satisfaction and the degree of reoffending. The review found that the Justice Mediation Program is effective in achieving a number of important outcomes—high participant satisfaction rates and indicative low reoffending rates. For those participants who responded to the client satisfaction survey, satisfaction rates are high. Indicative reoffending rates found in this review were an average of eight percent, with one location having a rate of 1.5 percent. The review also found that the stakeholders were generally satisfied with the operation of the program, although they did make a number of suggestions for improvement, including increasing the number of locations in which the service is available (Department of Justice & Attorney-General personal communication October 2013).

Western Australia

In Western Australia, if an offence is deemed to warrant more than a written caution, the youth may be referred to a Juvenile Justice Team (JJT). JJTs are based on the restorative justice model and operate statewide to divert young offenders from the criminal justice system. JJTs are multi-agency and involve police officers and representatives from the Department of Corrective Services and the Department of Education and Training, and can also involve representatives of cultural or ethnic communities as appropriate. The family group conference, which involves a meeting of the young person, their parents, the victim, their support persons and family members, and other parties as relevant to either the victim or offender, is considered a major intervention. Participation on behalf of the victim is voluntary, whereas it is mandatory for the parents or guardian(s) of the youth to attend the meeting. A contract, known as an action plan, is negotiated between the young person, their parents and the victim, and outlines the penalty to be imposed on the young person.

There is no limit to the number of times a young person can be referred to a JJT, although teams have the right to recommend that a young person be sent to the Children's Court if they continue to reoffend. Youths can be referred to the JJTs by police officers of the Children's Court. For cases referred by the Children's Court, the matter must be dismissed upon successful completion of the action plan. Where the plan expires or is incomplete, the youth returns before the JJT and either another action plan is designed or a report is sent to the referring authority with suggestions for further action if the matter is unresolved. For referrals from the court or from police officers, successful completion of the action plan allows the youth to exit the criminal justice system without a criminal record, although a formal caution is issued and is recorded on the police database.

Court conferencing is another option available in Western Australia. This operates in a manner similar to that of the family group conference but was developed for more serious or persistent young offenders who would be excluded from the JJT process due to their pattern of offending behaviour. To be eligible, a matter before the Children's Court must have an identifiable victim, the offender must agree to the referral and the court must determine guilt. The process is similar to that for family group conferencing and results in an agreement or action plan. If an agreement expires or is incomplete, another meeting may be arranged to discuss the youth's failure to undertake the negotiated terms. If the matter remains unresolved, it is referred back to the Children's Court. If an agreement is successfully completed, there must be no further sanction imposed upon the young offender by the court.

At the time of Strang's 2001 report, a pilot project involving the conferencing of adult males had been undertaken at the Courts of Petty Sessions in Perth and Fremantle. Offenders who pleaded guilty were referred to the project team prior to sentencing. For those offenders who were willing to participate in a conference, victims were contacted. Participation was voluntary for all. Once a conference was complete, a report would be prepared for the referring magistrate and consideration would be given to the outcomes of the conference when making a sentencing decision. In a comparison of

outcomes following a conference (36 offenders and their victims) with conventional court processes (47 offenders and their victims), it was found that both victims and offenders who participated in conferences were more satisfied, that conferenced offenders were more likely to take responsibility for their actions and that victim satisfaction was not related to satisfaction with the outcome of the process (Beven et al. 2011). Despite the positive results of the pilot study, adult conferencing has not been introduced in Western Australia.

South Australia

In South Australia, the *Young Offenders Act 1993* provides for young offenders aged between 10 and 18 years to be dealt with by a family conference. Where the youth has admitted to an offence that does not warrant prosecution and for which there is a victim, and the offence warrants the youth entering an undertaking, a family conference can be conducted by a Youth Justice Coordinator. It is an opportunity for the young person to take responsibility for their actions and to see firsthand how their behaviour has affected others. South Australia is the only jurisdiction in Australia that offers conferencing to young offenders who have committed sexual offences (Daly 2006).

The Adult Restorative Justice Conferencing Pilot ran between mid-2004 and June 2005 in an effort to extend restorative justice practices to adult offenders in South Australia. The model differed from youth conferencing as it was only available post-plea and not as an alternative to formal sentencing (Goldsmith, Halsey & Bamford 2005). Conferences followed the same process as those run for young offenders and included a wide range of offences. An evaluation of the pilot found that although only 12 conferences were completed in the pilot period, there were 'encouraging indicators' (Goldsmith, Halsey & Bamford 2005: 4) of the value in extending this option to adult offenders. In particular, high levels of victim satisfaction were reported and many offenders readily accepted responsibility for their actions and readily offered apologies (Goldsmith, Halsey & Bamford 2005). Based on the available information, it appears that the program did not continue beyond the pilot.

A second adult conferencing pilot, the Port Lincoln Aboriginal Conference Pilot, commenced in late 2007. Aboriginal defendants who reside in the area, have family in the local community and plead guilty are eligible to attend a conference prior to sentencing. Conference participants include a police prosecutor, an offender, a victim, supporters of both the offender and victim and respected members of a local Aboriginal community. The meeting, which is facilitated by a conference coordinator and a Baronial Justice coordinator, provides an opportunity to acknowledge the harm done to the victim and for participants to be involved in developing responses to address the offending behaviour. Following the conference, a report is provided to the magistrate to assist in sentencing. The goals of the pilot were threefold:

- involve members of the community and victims in order to make the offender is aware of the harm caused;
- encourage contrition and reparation; and
- support the magistrate's decision making with information leading to constructive sentencing options.

A review of the pilot conducted during 2007–08 found that it had achieved all but one of its stated aims. It was felt that the small scale of the pilot program was insufficient to influence community confidence in the sentencing process, however, all stakeholders were very supportive of the continuation of conferencing in Port Lincoln and felt that community confidence would increase over time (Marshall 2008). The program combines Indigenous sentencing practices with adult conferencing (Marshall 2008). The program was changed from a pilot to a permanent Courts Administration Authority program in February 2010.

Northern Territory

In the Northern Territory, restorative justice practices such as youth justice conferences are available under the *Youth Justice Act 2005* may be offered pre-arrest or pre-trial. The conferences involve a facilitated meeting between the victim and offender, and can also involve family members and persons who are important to the youth, such as teachers and community elders. It is an informal process, which is flexible with regard to different cultural

practices, such as for Indigenous participants who may wish to vary the time and place of the conference. The flexibility of the process allows outcomes to be culturally relevant. The conference is carried out by an authority figure who is considered to have the most influence over the juvenile's behaviour. They are generally facilitated by a police officer from the Youth Diversion Unit but can also be facilitated by an Aboriginal elder or other respected community member, or another suitable person. Efforts are made to ensure that where the youth is of Aboriginal, Torres Strait Islander or other ethnic descent, the conference is conducted in a culturally relevant and appropriate manner. Conferences can have a range of outcomes including, a verbal or written apology, restitution or repair to damage caused by the offender or the imposition of a range of conditions such as attending a relevant program or not associating with certain individuals. An analysis of reoffending outcomes for youth diverted (using warnings or conferences) from court in the Northern Territory between 2000 and 2005 found that diverted youths were significantly less likely to reoffend than those who were sent to court and that the time take to reoffend was longer for diverted youths (Cunningham 2007). The program has not been formally evaluated at this stage but the need to do so was emphasised in the Review of the Northern Territory Youth Justice System (Northern Territory Government 2011).

Australian Capital Territory

On 1 January 1994, restorative justice, in the form of diversionary conferencing was introduced on an experimental basis in the Australian Capital Territory through police-run conferences led by ACT Policing. The NSW Police model that originated in Wagga Wagga in 1991 was adopted. The operation of the police run conferences has been documented in several reports from the Re-integrative Shaming Experiment (RISE) project, which are discussed in more detail in section three of this report. The studies reported positive outcomes on victim and offender perceptions of fairness, victim feelings of safety and on reducing reoffending among offenders who were conferenced following a violent offence (Sherman, Strang & Woods 2000; Strang et al. 2011).

In 2001, the ACT Government outlined its intention to expand restorative justice options for the ACT criminal justice system. After extensive consultation with government agencies and community services, an Issues Paper was released which set out an innovative model of restorative justice. The model was to be underpinned by legislation and on 31 January 2005, the *Crimes (Restorative Justice) Act 2004* (the Act) commenced operation. The ACT Restorative Justice Unit is part of the Justice and Community Safety Directorate. Working in partnership with ACT Policing, the Restorative Justice Unit incorporates the operation of ACT Policing's former diversionary conferencing program.

The ACT scheme is unique and underpinned by principles of restorative justice; beginning with the fact that it is entirely voluntary and victim focused. The Act allows for less serious offences to be referred as a diversion or in conjunction with criminal charges. It limits the referral of serious offences to only after criminal proceedings have commenced and once the offender pleads or is found guilty of the offence. This reflects the commitment to ensure serious offences are dealt with appropriately within the criminal justice system while also providing victims, offenders and their supporters' opportunities to deal with the personal effects and impacts of crime through restorative justice.

Key points in relation to the ACT scheme include:

- victim-centric scheme—a process cannot proceed unless a victim or parent of a child victim (or substitute participant for either) participates, as well as the offender;
- voluntary for both offenders and victims—participants may withdraw from participating at any point in the process;
- available at every stage of the criminal justice system—from the point of apprehension through to post-sentence;
- once fully operational, available for both young and adult offenders for less serious and serious offences including family violence and sexual assault-related offences;
- no restrictions on the number of times a person may be referred; and
- accepting responsibility for the offence does not prevent an offender from pleading not guilty in court.

The *Crimes (Restorative Justice) Act 2004* is designed to be implemented in two phases. The first and current operational phase involves the referral of young offenders aged between 10 to 17 years of age for less serious offences involving a victim. The seriousness of a crime is determined by the penalty it would attract in a court of law. Less serious offences are defined as offences punishable by imprisonment for a term equal to or less than 14 years if the offence relates to money or property and 10 years in any other case such as offences against a person. Phase one excludes the referral of domestic violence and sexual offences to restorative justice.

Phase two will see the scheme expand to include adult offenders, as well as serious offences for both young and adult offenders. Guidelines to provide a framework for the management of domestic violence and sexual offences are currently being developed in consultation with key government and community stakeholders. Once fully operational, it will be available to both young and adult offenders for all types of offences. It sits parallel to the criminal justice system allowing matters to be referred as a diversion from, in conjunction with and separate to criminal proceedings.

Tasmania

A conference is one of the diversionary options available in the three-tiered Tasmanian Youth Diversion Program under the *Youth Justice Act 1997*. A young person may be referred to a conference by police or the Magistrate's Court (Youth Division). A youth must admit guilt to be eligible for referral and conferences must at least include a facilitator, the youth and a police officer. Conferences involving Indigenous youths must invite an Aboriginal elder or representative from an Aboriginal organisation. A youth cannot be prosecuted for the offence for which a conference was convened or issued with a caution if they fulfil all obligations agreed to in the undertaking made. Conference outcomes may include an agreement by the young person to apologise, repair damage, undertake volunteer work or community service, or take other steps to repair the harm caused by their actions. Outcomes from community conferences seek to ensure that young people take responsibility, make

restoration and reparation, and are deterred from further offending. Young persons who fail to fulfil the agreed undertaking may then be referred to court.

Circle sentencing

Circle sentencing often falls under the umbrella of Indigenous courts in Australia and it is important to distinguish between them for the purpose of this paper. Indigenous courts have been established in New South Wales, Victoria, Queensland, Western Australia, South Australia and the Australian Capital Territory as a means of providing a more culturally responsive and appropriate alternative to the traditional court system. The Indigenous courts seek, among other things, to provide a culturally appropriate process in which Indigenous offenders and their communities can participate. By increasing the cultural relevance of the court process for Indigenous offenders, these courts seek to dispense sentences that are more appropriate and more likely to have an impact on reoffending, thereby leading to a reduction in the rate of Indigenous imprisonment.

As discussed in the first section, such courts may have 'restorative' elements; however, they are not necessarily examples of restorative justice, largely due to the focus on offender rehabilitation and the traditional role of the victim in the process. For example, while the ACT Galambany Court is to provide support to victims of crime and enhance their rights and participation, this is not a primary goal at this point in time. It has been argued that although Indigenous courts are in part influenced by both restorative justice and therapeutic justice approaches, they actually belong in a separate category as neither of these approaches reflects the political and ideological objectives of Indigenous sentencing courts (Marchetti 2012; Marchetti & Daly 2007). Further, the goals of such courts are to provide more appropriate sentencing options for Indigenous offenders and in doing so, reduce both the overrepresentation of Indigenous offenders in Australian prisons and future offending. The healing of relationships between an offender, victim and community was not a primary goal of such courts (Marchetti 2012). For the purpose of the current review, only the circle sentencing courts operating in New South Wales and the community courts in Western Australia (which are closer to the ideals of

Box 1 NSW Circle Sentencing Case Study

An Aboriginal man attended a party where he became abusive, threatened other Aboriginal people and assaulted one female victim. The family hosting the party called the police who agreed to take him home. He abused and assaulted the police officer after entering his own home. The police officer had a close relationship with the offender's family, particularly with his grandmother.

The Circle discussed these relationships and stressed that the offender's actions had brought shame on his family, particularly his grandmother. The offender expressed a great deal of remorse about the shame he had brought on his grandmother.

The Circle discussed the offender's health, as he has some slight brain damage as a result of a previous assault. The Circle learned that the offender had been taking the wrong medication and it reacted with alcohol to make him violent. One Circle member volunteered to accompany the defendant to a psychiatrist to reassess his medication.

The elders in the Circle stressed that violence was not part of Aboriginal culture and that the offender's violent action was disrespectful to his culture and traditional Aboriginal law.

The Circle and police present at the meeting discussed relations between the Aboriginal community and police. They resolved to discuss ways to improve those relations.

The first assault victim from the party told the Circle about how it hurt her to be treated that way. She also described a number of other incidents where she had been the victim of an assault. The victim was well-known in the community, however, it was the first time she had spoken about the assaults and her experiences.

The Circle members formed a small group and assisted her in receiving victim's counselling and in making a victim's compensation application. The victim had also developed an alcohol problem as a result of her experiences and the group has helped her enter an alcohol treatment program.

Sentence

Six months and one week suspended sentence. The elders recommended he maintain contact with his elders and learn about his culture. Elder men in the Circle agreed to teach the offender aspects of traditional Aboriginal men's law and to assist him to better appreciate his culture.

Outcome

Since Circle Sentencing, the offender has been taking his correct medication and is completing his sentence satisfactorily.

Source: Lawlink NSW 2009

restorative justice as reparation of harm is among their goals and each seeks to more actively involve victims in the process, although all may operate in the absence of a victim), are reviewed in this report.

Circle sentencing is based upon the traditional practices conducted by Indigenous communities in Canada and was reintroduced in 1992 in the Yukon Territory and other Canadian communities, before being adopted in the United States in 1996 (Bazemore & Umbreit 2001). Circle sentencing places the sentencing court in a community setting in order to achieve the following goals (Bazemore & Umbreit 2001: 6):

- promoting healing for all affected parties;
- providing an opportunity for the offender to make amends;

- empowering victims, community members, families and offenders by giving them a voice and a shared responsibility in finding constructive resolutions;
- addressing the underlying causes of criminal behaviour;
- building a sense of community and its capacity for resolving conflict; and
- promoting and sharing community values.

The process is as much about the needs of victims and communities as it is about addressing offending. It is about resolving problems, building stronger relationships and preventing further offending from occurring. The 'circle' involves judges, lawyers, police officers, offenders, victims and community members coming together to determine an appropriate sentence for the offender.

New South Wales

The Circle Sentencing Program was established on a pilot basis in Nowra in 2002. The program has steadily expanded and now operates at nine courts across New South Wales. The program is underpinned by the Criminal Procedure Amendment (Circle Sentencing Program) Regulation 2005. Aboriginal community members and the magistrate determine the appropriate sentence in light of the offence and background issues. Victims can also be involved as well as respected members of the community and the offender's family. An example of a circle sentence process in New South Wales is set out in Box 1. The example depicts the coming together of the offender, the victim, Indigenous elders, the police officer, a judicial officer and support persons to discuss the offence, the offender's circumstances and the impact on the victim. As evident in this example taken from Lawlink NSW, Indigenous elders play an important role in reinforcing the incongruence of the offender's actions with Aboriginal culture and traditional law, and they also recommend an appropriate sentence to the magistrate.

An early evaluation of the program found high levels of satisfaction among the offenders, victims, community representatives, support persons and legal practitioners who had participated (Potas et al. 2003). The evaluation also found there were fewer barriers between courts and Indigenous people, as well as improved support for Indigenous offenders and that healing and reconciliation were promoted alongside support for victims. The program was considered successful and the evaluation recommended that it be expanded to other areas of the state. Notably, the evaluation was based on a very small number of circle sentencing case studies (n=8), of which information on reoffending was only available for four cases. Further, there was no control group and the follow-up periods for the four cases on which reoffending was assessed were either three months or six month, far shorter than the generally accepted norm of two years 'at-risk' time.

A further three studies have examined various aspects of Circle Sentencing. Fitzgerald (2008) examined reoffending among Indigenous offenders sentenced through Circle Sentencing and a sample of Indigenous offenders sentenced through the

Courts and matched to the Circle Sentencing group on Indigenous status, age at reference court appearance, gender, reference offence, date of reference court appearance, prior proven court appearances and prior imprisonment. The study was skewed towards Circles in Dubbo (40 of the 68 analysed) and the follow-up time (15 months) was relatively short. Taking these limits into consideration, the evaluation found no effects on the frequency of offending, the time taken to reoffend and the seriousness of further offending; however, it was acknowledged that the program's objectives go beyond reducing recidivism and a qualitative evaluation conducted by the Cultural and Indigenous Research Centre found the program had a number of positive outcomes for the community (including that barriers between Indigenous people and the courts were lowered, perception among participants that Circle Sentencing had an impact on reoffending and changes in offender behaviour such as drug/alcohol use, employment and relationships) and met seven of eight legislated objectives; that is:

- the format allowed for community involvement;
- empowered Aboriginal communities in the sentencing process;
- provided support to Aboriginal victims of crime;
- increased confidence in the sentencing process;
- reduced barriers between Aboriginal communities and courts;
- provided more appropriate sentencing options; and
- provided effective support to Aboriginal defendants.

This was confirmed in a further evaluation conducted in 2008 (Daly & Proietti-Scifoni 2009).

Western Australia

Although there have been community courts operating in various areas of Western Australia for some time, the first formal Indigenous court began operating in late November 2006 as a two year pilot program. The Kalgoorlie–Boulder Community Court aims to reduce the overrepresentation of Indigenous people in the justice system by employing culturally relevant processes. The court sits within the Magistrates Court. Participants—the defendant,

magistrate, lawyers and family members—sit at a table with elders and respected members of the Indigenous community who provide advice to the magistrate on cultural matters. To be eligible, defendants must plead guilty and accept responsibility for their actions. Victims may attend and when they do, are given an opportunity to discuss what they experienced. The court is able to sentence in the same way as the Magistrates Court and can hear the same matters, with the exception of sexual and family violence offences. In 2010, the pilot was extended for a further two years and was to increase the focus on referring a wider range of offenders to the court.

Victim–offender mediation

Victim–offender mediation (VOM), which is sometimes also referred to as victim–offender conferencing, began in Canada in 1974 and refers to meetings between victims and offenders that are facilitated by a trained mediator (Condliffe 2004). VOM usually involves fewer participants than conferences (often just the victim and offender) and is often the only option available to offenders who are serving a prison sentence. It is offered in all Australian states and territories with the exception of Victoria, South Australia and the Australian Capital Territory. While there is no formal VOM service offered in South Australia through the Department of Correctional Services, VOM has occurred previously on an ad-hoc basis. Where a victim approaches the Department with a request for VOM, all efforts are made to accommodate this request (Department of Correctional Services personal communication 2 December 2013). A summary of mediation across Australian states and territories is presented in Table 3.

VOM can occur for a range of offences and only if the offender accepts responsibility and both parties agree to participate. The process provides an opportunity for victims and offenders to discuss the offence, its impact on them and discuss how the harm caused could be repaired. These processes are available for both young and adult offenders in most states and territories and generally follow the same format.

Mediation differs from conferencing options in that these processes generally require victim involvement to proceed, whereas while victims are invited to conferencing, the process can proceed without their

involvement. In Australia, VOM often takes place following sentencing, however, it can be offered at other points. For example, in Western Australia, reparative mediation takes place post-conviction but pre-sentence (Victim–offender Mediation Unit 2013a, 2013b). Similarly, Tasmania offers a court-ordered mediation program at the pre-sentence stage. More often than not, VOM is confidential and offenders do not receive a reduction in their sentence.

New South Wales

In New South Wales, restorative justice is also offered at the post-sentence stage through the Restorative Justice Unit within Corrective Services NSW (Milner 2012). The Unit focuses on addressing the needs of victims through a process designed to heal some of the trauma caused by serious offending. The victim–offender conferencing offered by the Restorative Justice Unit operates within a best practice context and is based on key principles of voluntariness, full participation of the victim and offender, well-informed participants who are prepared for process, accountability, appropriateness, responsiveness and safety (Milner 2012). As Milner (2012: 88) notes ‘... there is no incentive for either party to participate, beyond the restorative potential for making things better’. Referral for a victim–offender conference may come from either a victim or offender, with the exception that referrals from sex offenders are not accepted. In such cases, a referral must come from the victim of a sex offence or a psychologist following successful completion of a treatment program (Milner 2012). The conference itself involves the two primary parties—the victim and offender—a trained facilitator and their support persons (which can include professional support for victims and a staff member from Corrective Services NSW to provide support to the offender). A great deal of preparation is undertaken with both primary parties prior to a conference and the offender’s capacity for taking responsibility is assessed as this is a key criteria determining whether a conference will proceed. Emotional and physical safety of participants is also a primary concern and is considered in the assessment of whether a conference is appropriate. An evaluation of the impact of the process on participants is currently being undertaken by the University of New South Wales and will conclude in late 2013 (Milner 2012; Milner personal communication September 2013).

Table 3 Victim–offender mediation in Australia

	Program name	Legislation	Eligible offenders	Excluded offences	Initiated by	Point of referral
New South Wales	Victim–offender conferencing (Restorative Justice Unit)	Not governed by specific legislation	Sentenced adult offenders	None, however, offences must have an identifiable victim	Victim or offender (with the exception of sex offenders)	Post-sentence
Queensland	Post-sentence Justice Mediation	<i>Dispute Resolution Centre Act 1990</i>	Adults (17 years and over)	None	Victim or offender	Post-sentence
Western Australia	Reparative Mediation	<i>Sentencing Act 1995</i> <i>Young Offender's Act 1994</i>	Youth and adults	Murder, sexual assault, kidnapping, deprivation of liberty, and domestic violence involving intimate partners	Victim, offender, magistrate/judge, police prosecutor, lawyers, victim support counsellors or Community Corrections/Youth Justice officers	Post-conviction and pre-sentence
	Victim–offender Dialogue	Not governed by specific legislation	Youth and adults	Any offence type is referable. Most commonly murder and sexual abuse	Victim only	Post-sentence
Northern Territory	Correctional Centre Conferencing and Ponki Mediation	<i>Community Justice Centre Act 2005</i>	Youth and adults	None, however, generally for very serious offences such as murder and manslaughter	Victim, offender, lawyers, reintegration officers, judges, elders, witness assistance or community members	Post-sentence
Tasmania	Victim–offender Mediation		Youth and adults	None stipulated in legislation, however, most involve indictable offences	Victim or offender	Post-sentence
	Court-ordered Mediation	<i>Sentencing Act 1997</i>	Youth and adults	None stipulated in legislation, however, most involve indictable offences		Pre-sentence

Queensland

The Justice Mediation Program (summarised earlier in this section) accepts post-sentence referrals at the request of a victim, victim's family or offender wishing to meet the other party after the court process runs its course. These requests are generally for very serious offences, for example manslaughter and murder. They require a separate process and may come at any time after sentencing. These mediations are generally case managed and conducted by the senior Justice Mediation Program staff. Usually the offender is in prison or on parole and they do not occur very often (Department of Justice & Attorney-General personal communication October 2013).

Western Australia

Mediation is offered for offenders and victims of crime in Western Australia through the Victim–offender Mediation Unit. The Victim–offender Mediation Unit provides three types of mediation services:

- Reparative (court-based) Mediation;
- Protective Conditions Process (a process that seeks to ensure that victims are protected from unwanted offender contact); and
- Victim–offender Dialogue process.

Reparative mediation is legislated for adults under the *Sentencing Act 1995* and available for youth under the *Young Offenders Act 1994*, which states that the court is able to request the provision of any information that it requires, such as a reparative mediation report. Reparative mediation may be undertaken for any offence with an identifiable victim including robbery, assaults, burglaries, damage and fraud. Offences of murder, sexual assault, kidnapping, deprivation of liberty and domestic violence involving intimate partners are excluded from reparative mediation. The process can only take place once an offender has been found guilty by a court and prior to sentencing (Victim–Offender Mediation Unit 2013a and 2013b). As a result, the court may make decisions regarding the offender's sentence using the information presented in a reparative mediation report. Both parties must agree to mediation and the process seeks enable the parties to communicate about the offence and its impact, as well as to reach an 'agreement' between the offender and victim with the goal of repairing the

harm caused by the crime. Outcomes may include and apology, an explanation of the offender's actions, the return of goods or property, payment for any harm or loss suffered, or any other agreement reached between the parties (Victim–offender Mediation Unit 2013a and 2013b).

In addition, the Department of Corrective Services also offers Victim–offender Dialogue, a post-sentence process that can only be initiated by a victim upon their request to meet face to face with the offender who committed crime(s) against them. Meetings are co-facilitated by qualified and experienced mediation officers working for the Victim–offender Mediation Unit. The process is in place to help a victim cope with the trauma caused by an offender and does not involve financial reparation, nor in many cases an apology. Both parties must be willing and prepared to participate, and participation is entirely voluntary. Victim–offender Dialogue will not proceed in any case where the Victim–offender Mediation Unit determines either party may be placed at risk by participating, including risk of further trauma. Any offence type is referable, with murder and sexual abuse offences the most common. Outcomes of the communication are confidential and as such, are not provided to the releasing or supervising authorities (Victim–offender Mediation Unit 2013b).

Northern Territory

The Northern Territory Community Justice Centre conducts Correctional Centre Conferences, a reintegration scheme for offenders returning to their home communities following incarceration, under the *Community Justice Centre Act* (NT). Participation for all parties is voluntary and offenders do not receive a reduction in their sentence. Victims may attend with support persons and of the matters held to date, offences have included murder and manslaughter. In the Northern Territory, VOM can also take the form of community-based mediation. The Ponki mediation program, which was established in April 2008, is based on the Correctional Centre Conferencing. Ponki mediation is available in the Tiwi Islands and draws on the influential role played by senior men and women within the families and communities affected. The program encourages accountability and an understanding by the offender of the impact

of their actions as a first step in repairing harm and becoming accepted by the community once more (Okazaki 2011).

Tasmania

VOM was established in Tasmania in 2001 with the commencement of Victims Support Services within the Department of Justice. It is open to both juvenile and adult offenders who have committed any offence, although the majority of cases involve indictable offences. VOM may be requested by either party following sentence, however, it usually occurs prior to release from prison. Outcomes may include an apology by the offender and/or an explanation of the offender's actions, however, Victims Support Services do not get involved in restitution. Further, while VOM is available in Tasmania, it does not take place very often.

A more formal program, set out in the *Sentencing Act 1997* also offers court-ordered mediation at the pre-sentence stage. Where a victim agrees, a court may adjourn proceedings in order for mediation to be undertaken following a finding of guilt. Mediation may be undertaken for any offence. A mediation report (either oral or written) describes on the attitude of the offender towards mediation, towards the victim and to the impact of their offence on the victim. It also reports on any agreement made regarding reparation. The court may make decisions regarding the offender's sentence using the information presented in a mediation report, however, it may also rule the whole, or any part of, a mediation report to be inadmissible. While court-ordered mediation is available in Tasmania, it does not take place very often.

Impact of restorative justice

At the time of Strang's 2001 review, restorative justice was a relatively new alternative to traditional criminal justice responses and as a result, few evaluations of restorative justice programs had been conducted. In the intervening years, the number of evaluations (both process and outcome) has grown markedly. Beven et al. 2011 note that a key criticism of restorative justice has been that it fails to deliver the much talked about restoration of victims and offenders. However, proponents suggest that this criticism is based on a misinterpretation of the goals of restorative justice; that it is unrealistic to think in terms of 'undoing' the crime, but that the impact of restorative justice can be measured through more specific goals (Beven et al. 2011).

The question of whether restorative justice 'works' has often been answered with reference to the traditional criminal justice for which it is an alternative and as with any intervention in the criminal justice field, the effectiveness of restorative justice has often been based on its impact on reoffending. In recognition of the aim of restorative justice to be more inclusive of victims, to encourage the offender to take responsibility for their crime(s) and to repair the harm caused by the crime, evaluations have also assessed participant (particularly that of victims) satisfaction. This section summarises the results of evaluations concerning these two areas of interest—reoffending and victim satisfaction—and looks briefly

at other aspects of restorative justice programs that have been evaluated.

A note on methodological issues

An assessment of restorative justice outcomes needs to be mindful of the variation in eligibility and processes implemented across the jurisdictions (as set out in section two of this report), and also to take into consideration the different methodological approaches to analysis and the substantial variation in the quality of studies. This is particularly important for studies comparing restorative justice outcomes with those of traditional criminal justice processes. Where the methodologies used differ significantly, it is not possible to compare the results of one study with another. Following a review of research comparing court with restorative justice Weatherburn, McGrath and Bartels (2012: 799) noted that the findings of many studies were compromised by 'small sample size, limited controls for selection bias, selective attrition, ambiguous comparison groups, and conclusions unwarranted by the evidence presented'.

One key methodological issue that is often not adequately addressed is that of selection bias.

Fewer restorative justice options are available for offenders who commit serious offences and who have a history of offending, with the exception of VOMs taking place at the post-sentence stage. This can lead to a selection bias, as low rates of reoffending are more likely to be found among offenders eligible for restorative justice than the more serious offenders for whom it is less likely to be an option. Randomised controlled trials (RCTs) are considered the most rigorous method of addressing selection bias. They involve the random allocation of eligible offenders and cases to two conditions—a restorative justice group or a control group. Weatherburn and Macadam (2013: 3) note that such an approach is ‘rare’ and that a widely used alternative is control through statistical techniques. Many studies control for relevant factors through regression analysis, or more recently, propensity score matching, which involves matching those who receive a treatment (in this context, those who participate in a restorative justice process) with ‘untreated individuals’ (Poynton 2013: 13), that is offenders who are processed through the traditional criminal justice system. While it is acknowledged that ‘propensity score matching is not a substitute for a randomised controlled trial...[it can have] a distinct advantage’ in producing matched control and treatment groups in some contexts (Smith & Weatherburn 2012: 6).

A further issue that is not adequately addressed in many evaluations is that of self-selection bias, arising when those deemed eligible and offered restorative justice, or ‘treatment’, choose not to proceed (Bergseth & Bouffard 2007). This is often dealt with by employing an ‘intention to treat’ design, where results are analysed based on treatment assigned rather than treatment actually delivered and experienced (Bergseth & Bouffard 2007). This is important from a policy perspective; if the program being tested becomes a policy, it is essential to take into account the reality that it will not always be delivered as intended and to calculate its benefit based on the actual take-up rate not an assumed one.

Impact on reoffending

While reducing reoffending is not the only goal of restorative justice, it is critical to be confident that restorative justice does not lead to increases in reoffending. Reducing recidivism is anticipated as an outcome due to the engagement of informal social controls through the inclusion of family, supporters and community representatives (Daly 2001) and the impact of meeting one’s victim face to face (Strang 2002). Informal social control is widely believed to influence offending. Hirschi’s (1969) social control theory was grounded in the belief that bonds with prosocial values, people and institutions prevent people from engaging in criminal behaviour. The social bonds required to prevent rule-breaking are achieved through four elements—commitments, attachments, involvements and beliefs. In essence, the poor opinion that friends and families may have of an individual’s deviant behaviour has the effect of inhibiting rule-breaking. Once offending has taken place, Braithwaite (1989) posits that reintegrative shaming inhibits further offending. Restorative justice processes encourage reconnection with prosocial bonds and one indication of the success of this through reduced reoffending.

Restorative justice processes are also underpinned by reintegrative shaming theory. Conferencing, one of the more common forms of restorative justice, is thought to be more effective than court processes in reducing reoffending due to the different stigmatising effects of each. That is, stigmatising of offenders in traditional processes serves only to reinforce their deviant behaviour, whereas conferences stigmatise the behaviour and not the individual (Smith & Weatherburn 2012), the importance of which is set out in Braithwaite’s theory of reintegrative shaming (1989). As evident in the brief summaries of evaluations of the various restorative justice programs reviewed in section two, evidence of the effectiveness of restorative justice is mixed. A meta-analysis of 22 studies examining the effectiveness of 35 individual restorative justice programs found that restorative justice was more effective than traditional criminal justice approaches, leading to reduced reoffending (Latimer, Dowden & Muise 2005). Similar findings were reported by Sherman and Strang (2007) in a review of research comparing restorative justice outcomes with those

from conventional processes. They reported ‘substantial reductions in repeat offending for both violence and property crime’ that restorative justice was found to be more effective with more serious offences and for crimes involving personal victims (Sherman & Strang 2007: 8).

To date, most studies have focused on the impact of restorative justice on reoffending among juvenile offenders due largely to the widespread use of restorative justice with this demographic. Smith and Weatherburn (2012) reviewed a range of studies that compared the impact of reoffending between those who undertook youth conferencing and those who only appeared in Children’s Court, as well as studies that compared conferencing and other measures such as cautions, mediation and orders to pay restitution. Authors of the review concluded that there was ‘little basis for the confidence that conferencing reduces re-offending at all’ (Smith & Weatherburn 2012: 6) and cited several methodological problems in studies on conferencing, such as a failure to adjust for differences between control and treatment groups, small sample sizes and restricted definitions of reoffending, among others. Consequently, Smith and Weatherburn (2012) revisited the question of whether conferencing was more effective in reducing reoffending than court using propensity score matching (see summary above). Their comparison of reoffending between young people participating in Youth Justice conferences in New South Wales and those eligible for a conference but processed through the Children’s Court in 2007 found no significant differences between the two groups in the proportion who reoffended, the length of time to first (proven) reoffence, the level of seriousness of reoffending, or the number of proven offences. This led to the conclusion that conferencing for young offenders in New South Wales ‘is no more effective than the NSW Children’s Court in reducing juvenile offending among young person’s eligible for a conference’ (Smith & Weatherburn 2012: 1).

Similar findings have been reported in samples of young adults. A recent BOCSAR study examined the likelihood of reoffending among two groups—young adults who participated in Forum Sentencing in New South Wales and young adults who were eligible but sentenced in conventional courts (Jones 2009). The

study found no evidence that Forum Sentencing had an impact on the key areas of concern; that is, reducing likelihood of reoffending, increasing the time taken to reoffend, reducing the frequency of subsequent offending and reducing the seriousness of subsequent offending. One possible explanation cited was the large number of offenders having committed ‘victimless’ crimes (such as motor vehicle regulatory offences). However, even after removing these offences from the analysis, there was no effect of Forum Sentencing. Further, the study did not apply appropriate restrictions on the control group to match this with the intervention group (eg eligibility for the control group was not restricted to defendants facing possible imprisonment) and did not reduce selection bias by conducting analyses on the basis of ‘intention-to-treat’. These design issues were addressed in a subsequent evaluation of Forum Sentencing, which also used propensity score matching to minimise selection bias (Poynton 2013). That evaluation also found no evidence that participation in Forum Sentencing reduces reoffending, although the findings should be interpreted cautiously given the short (12 month) follow-up period. Further, as the author notes (and as is discussed in section two of this report), reducing reoffending is one of six objectives of the program and it may be that Forum Sentencing results in other benefits while not performing worse than court on reoffending.

While RCTs in this field are indeed rare, there are several notable exceptions that add significantly to the evidence on the impact of restorative justice on offending. In Australia, the RISE project, an independent evaluation of the effectiveness of diversionary conferencing for victims and offenders, was undertaken by the Australian National University in partnership with ACT Policing between 1995 and 2000. Four experiments sought to test the impact of restorative justice in the Australian Capital Territory through the random assignment of offenders to either be dealt with through the courts or a diversionary conference for:

- violent offenders under 30 years;
- juvenile offenders charged with shoplifting from department stores;
- juvenile offenders who committed property crime against personal victims; and

- drink driving offences committed by both young and adult offenders.

The studies found that both victims and offenders reported that conferences were fairer than court proceedings and that there were greater benefits for victims who attended conferences (including feeling less fearful and having their sense of security restored (Strang et al. 2011). Reoffending was statistically significantly lower among offenders who were conferenced following a violent offence than among offenders who were processed through the courts (Sherman, Strang & Woods 2000). Offending rates among this sample dropped by 38 crimes per 100 offenders per year. No differences were found between the court and diversionary conference groups in the experiments involving juvenile shoplifters and juvenile property offenders, and the fourth experiment involving drink-driving offences resulted in a small increase (6 crimes per 100 offenders per year) in offending (Sherman, Strang & Woods 2000).

A further seven RCTs were conducted by the Justice Research Consortium (JRC) in the United Kingdom to assess the effectiveness of a scheme funded by the Home Office. These included the following:

- Two RCTs in London with adult offenders, one involved offences of burglary of a dwelling and the other involved street crime offences.
- Three RCTs in Northumbria. One involved cases with an identifiable victim for adult offenders at the pre-sentence stage, a second involved an identifiable victim of a property offence committed by young offenders and the third involved cases with an identifiable victim of a violent offence committed by young offenders.
- Two RCTs in the Thames Valley which both involved adult offenders who had committed violent offences.

Across the seven RCTs, offenders who participated in restorative justice were found to commit significantly fewer offences in the two year period following the conference than were offenders who were assigned to a control group (Shapland et al. 2008). Neither the likelihood of reconviction, nor the severity of reconviction, differed significantly between the two groups. With the exception of adult property offenders in Northumbria dealt with in the magistrates' courts, no single RCT resulted

in a statistically significant impact on reoffending (Shapland et al. 2008). More recently, Strang et al. (2013) completed a systematic review of the effect of face-to-face restorative justice conferencing on reoffending and victim outcomes, such as victim satisfaction, material restoration and emotional restoration. This review encompassed two of the three Canberra RISE RCTs, seven UK experiments and one RCT in the United States, and shows that across all 10 RCTs, restorative justice performed better than court in reducing reoffending (Strang et al. 2013).

A randomised controlled trial of a family conferencing program in Indianapolis, known as the Indianapolis Experiment, was conducted in 1997 (McGarrell et al. 2000) and research in 2007 published findings relating to reoffending among this group following a 24 month period (McGarrell & Hipple 2007). The original study involved the random allocation of first-time young offenders to either a control group (ie juvenile court) or a treatment group (ie family group conferencing). Of the total 782 youths who participated, 400 were allocated to the family conference group and 382 to the control group. The outcome measures were the rate and timing of reoffending, and the incidence of reoffending among the two groups. Results indicated that participation in Family Group Conferencing was related to a decreased incidence of reoffending and a longer period to the first reoffence. A slightly greater proportion of young offenders in the treatment group 'survived'; that is, they were not arrested for a new offence during the 24 month period, (52%, n=207), than did those in the control group (46%, n=176). There was significant difference in the survival rates of the two groups, with the control group failing at a faster rate in weeks 14 to 32 (McGarrell & Hipple 2007). Young offenders in the treatment group had an average of 1.29 rearrests in the 24 months following treatment, compared with an average of 1.67 rearrests among the control group.

Further, several studies have examined factors associated with reoffending, such as offence types and offending histories, among participants in restorative justice programs. In assessing data from RISE, which utilised RCTs, Sherman, Strang and Woods (2000) found that rates of reoffending were lower for violent offenders following conferencing rather than court processing, but not for property offenders.

Assessments of the impact of restorative justice conferencing on reoffending among youths in southeast Queensland found that reoffending was less likely among offenders for whom conferencing was the first intervention compared with young offenders whose first intervention involved a caution or court (Hayes & Daly 2004). In another study examining conference-specific factors, offender characteristics and reoffending, Hayes and Daly (2003) reported that young offenders who experienced remorse and whose outcomes were reached by consensus were also less likely to reoffend.

While the evidence is not overwhelming at present, there is a growing body of evidence that supports the assertion that restorative justice can reduce reoffending, however, more attention needs to be paid to the results of rigorous studies in order to state conclusively that it is 'a less expensive and more efficient way' (Weatherburn & Macadam 2013: 1) of addressing offending.

Impact on victim satisfaction

Historically, restorative justice was once widely used as a response to wrongdoing. As crimes committed against an individual became crimes against the 'King's peace' and later, against the state, the role of the victim was eroded (Strang & Sherman 2003). The reintroduction of restorative justice practices alongside the adversarial system is seen as redressing the balance. Although victims are considered to play a central role in restorative justice processes, this has been disputed (Richards 2009). Commentators have noted a range of indicators (low number of victims attending conferences, use of restorative justice for 'victimless' crimes such as graffiti, eligibility criteria being based on offenders) that restorative justice is primarily about reforming offenders than repairing the harm caused to victims (Richards 2009).

In developing the NSW Community Conferencing for Young Adults Pilot, the necessity of involving victims in the program was a contentious point during the development phase (Hart & Pirc 2012). Although it was considered that forums should only proceed if a victim(s) chose to participate, it was disregarded as

it seemed to be 'usurping the role of the court' (Hart & Pirc 2012: 75) and to be unfair to the offender as willing offenders would then be excluded. The decision was taken that a victim would be consulted in the early stages and their wishes considered but that forums would go ahead without their involvement if need be.

The benefits of restorative justice are not restricted to offenders alone. In an analysis of what victims need from restorative justice, Strang (2002) found that victims in the traditional criminal justice system commonly experience:

- a lack of attention to 'non-material dimensions of victimisation', for example, anger, fear and mistrust;
- no focus on repairing the injury caused by crime;
- failure of the criminal justice system to clearly communicate with victims regarding the status of the case;
- failure to provide victims with a legitimate and active role when dealing with offences committed against them; and
- perceptions of a lack of procedural fairness and dissatisfaction with outcomes due largely to having been excluded from the decision-making process.

It follows that given the widespread dissatisfaction with traditional responses, an important indication of the effectiveness of restorative justice practices when it comes to repairing the harm caused by crime are the responses of victims themselves. This is primarily examined through measuring victim satisfaction.

While the impact of restorative justice programs on reoffending is mixed, evidence from a range of studies indicates positive outcomes for victims who participate in face-to-face restorative justice programs in Australia and overseas (Hayes 2005; Latimer, Dowden & Muise 2005; Strang et al. 2006). Studies also consistently reported that victims felt they had been treated fairly and with respect (Hayes 2005; Shapland et al. 2007; Strang 2002).

In light of Hart and Pirc's (2012) comments regarding the role of victims in forums in New South Wales and the incorporation of restorative justice into existing criminal justice processes, the question must be asked—is placing the victim at the centre of the process reasonable and feasible? An entirely

different conceptualisation of 'justice' in the Western world is required to achieve this. As stated in section one of this report, restorative justice departs from the conventional criminal justice system in conceptualising crime as conflict between individuals, which leads to harm to victims and communities rather than a violation of law to be punished by the state. As a result, the role of the victim in restorative justice is a crucial one. In addition to being integral in the restoration of harm caused, being the party who has been harmed, 'victims turn out to be exceptionally important in requiring offenders to understand and take responsibility for the harm they have caused' (Strang 2004: 77). Positive outcomes reported from the ACT Scheme, which is victim-centric and designed to meet the needs of victims by empowering them to have a voice in how an offence has affected them, suggest that it is entirely feasible to place the victim at the centre of the process. Shapland et al. (2007) found that a larger proportion of victims who participated in restorative justice processes across the seven RCTs in the JRC scheme in the United Kingdom reported being satisfied than did victims who were in the control groups (72% *cf* 60%). Similar proportions of restorative justice victims and control group victims reported feeling the process was fair and significantly more restorative justice victims reported feeling more secure than did victims in the control groups (Shapland et al. 2007). The Indianapolis Experiment also reported increased satisfaction among victims who participated in conferences and both victims and offenders were more likely to recommend conferencing than were those who were allocated to the control group (McGarrell et al. 2000).

Importantly, Weatherburn and Macadam (2013) identify the need for research to examine whether victim's who report satisfaction following participation in restorative justice processes remain satisfied if an offender fails to complete the agreed undertakings.

Other impacts

While research has commonly examined victim satisfaction with restorative justice, it has generally overlooked their other experiences, although some have measured the impact on feelings of anger or fear (McGarrell & Hipple 2007; Shapland et al. 2007;

Strang 2002) and perceptions of safety (Strang 2002). Although reparation is considered 'a defining characteristic of restorative justice and a key benefit for victims of crime' it is not necessarily relevant for all victims (Stubbs 2007: 171). Although the findings should be interpreted with caution due to the small sample sizes involved, Beven et al. (2011) found that victims who participated in conferences were more likely than those whose cases were dealt with in the traditional court process to have higher perceptions of safety and in fact, on average, these perceptions of safety were higher than pre-offence levels. Beven et al. (2011) also found that victim satisfaction was not related to satisfaction with the outcome of the process; that is, a victim's overall satisfaction level was not affected by whether an outcome was lenient or harsh. The studies reviewed by Sherman and Strang (2007) consistently reported benefits to victims in face-to-face conferences, including reduced post-traumatic stress which led to improved mental health (Angel 2005; Angel et al. forthcoming).

Studies have also examined other aspects of restorative justice, such as offender satisfaction and compliance with restitution. For example, Latimer, Dowden and Muise (2005) found that offenders who participated in restorative justice practices were more satisfied than offenders who were processed through courts. A recent study that re-examined data from the ACT RISE experiments reported that restorative justice conferences did not have a significant impact on the perception of future offending among juveniles, although participation in a conference influenced positive perceptions on repaying the victim and society and on feeling repentant (Kim & Gerber 2011).

A small number of studies have examined the impact of participation in restorative justice practices on compliance with outcomes, primarily on restitution compliance (Latimer, Dowden & Muise 2005). A meta-analysis of these studies found substantially higher rates of compliance among offenders following restorative justice processes than those processed through traditional responses. Similar findings were reported by Sherman and Strang (2007) in their assessment of the effectiveness of restorative justice, which found that offenders in restorative justice were more likely to comply with outcomes than offenders with court-ordered outcomes. The

same review found that the desire among victims for revenge against offenders was lower among restorative justice participants compared with those experiencing formal responses and could lead to less violence in communities (Sherman & Strang 2007).

Others have considered the cost-effectiveness of restorative justice processes. A recent BOCSAR report that found that overall, Youth Justice Conferences were more cost-effective, costing 18 percent less per person, than the Children's Court in New South Wales (Webber 2012). More specifically, court-referred youth conferences cost four percent per person less and police-referred youth conferences cost 45 percent per person less than processing young offenders through the NSW Children's Court. Similarly, KPMG's (2010) evaluation of youth conferencing in Victoria found that the cost of referring a youth to conferencing was lower than the cost of administering a Community Based Order. Cost-effectiveness is an aspect requiring further research. In a tighter fiscal environment, the introduction or continuation of restorative justice programs (and similarly, other alternative approaches) will be significantly determined by their ability to deliver positive outcomes in a cost-effective manner.

Sherman and Strang (2011: 14) note the value for policymakers in assessments of effectiveness that consider the reduced costs of formal criminal justice options as a result of restorative justice and 'relative to the cost of providing [restorative justice conferences]'. That is, if restorative justice leads to reduced costs for policing, court and sentencing administration, prisons and community corrections but is relatively expensive to run, then it is not a cost-effective option. In an assessment of the seven UK RCTs, Shapland et al. (2008) compared the costs of crime prevented with the costs incurred in delivering restorative justice conferences, excluding costs associated with first establishing a restorative justice scheme. The seven experiments produced a benefit associated with decreased reconviction when compared with the running costs. At an aggregate level, the cost of running restorative justice conferences in London was £598,848 compared with £8,261,028 in the costs of crime prevented. Across the Northumbria RCTs, the costs of crime prevented (£320,125) were again greater than the running costs (£275,411). This was also

the case in the Thames Valley RCTs where costs of crime prevented (£461,455) were greater than the running costs (£222,463).

Finally, gaps have also been identified in knowledge of the impact of remorse in restorative justice. In particular, Weatherburn and Macadam (2013) note the need for further research to examine remorse between offenders who have participated in restorative justice and those who have been processed through the traditional criminal justice system.

Summary

The evidence on the impact of restorative justice on reoffending is mixed but a growing body of research suggests positive impacts for both victims and offenders. Research has demonstrated that contrary to popular opinion, restorative justice may be more effective for more prolific offenders; that it has the ability to prevent some offenders from further criminal activity, slows the offending of others (although it leaves some others unaffected); that it is more effective for violent rather than property offences, more effective post- rather than pre-sentence and while there are differing expectations of what the process offers, there is clear evidence that those willing to engage in the process do benefit (Strang 2010).

While the ability of restorative justice to reduce reoffending is still contested, a focus on reoffending outcomes alone fails to capture the extent of other benefits, such as, victim satisfaction, offender responsibility for actions and increased compliance with a range of orders, among others. Studies examining the impact of restorative justice have shown different results for different offences and offenders, as is the case for many other forms of intervention, including processing through the courts, among others. What is critical in terms of reoffending, is to be confident that restorative justice does not lead to increases in reoffending.

Challenges faced in the implementation and application of restorative justice

Previous issues in implementing restorative justice

In her 2001 review of restorative justice in Australia, Strang (2001) identified a range of issues affecting the implementation of restorative justice, including upscaling following pilot programs, caseload problems (including net-widening), safeguarding rights and whether it is appropriate and effective in Indigenous and ethnic communities.

Upscaling following pilot programs

Strang (2001) noted that in 2001 a common problem was found in successful pilot programs for which recommendations to implement more widely were not enacted. The reasons can relate to cost, responsibility or concern 'about the value of the program and a kind of cultural resistance to the restorative approach' (Strang 2001: 35). Since this time, many pilot programs have successfully been adopted and expanded, for example the Community Conferencing for Young Adults Pilot in New South Wales, which is now available to all offenders as Forum Sentencing. However, there remains some difficulty in upscaling pilot programs. For example, despite the positive results found in a pilot study of

conferencing of adult males in Perth and Fremantle in 2005, adult conferencing has not been introduced in Western Australia. Similarly, small-scale evaluations of the South Australian Adult Restorative Justice Conferencing Pilot which operated between mid-2004 and June 2005, and the Victorian Young Adult Restorative Justice Group Conferencing Program found some encouraging signs of effectiveness; however, the programs were not continued. It is difficult to draw conclusions regarding the continuing problems relating to upscaling of pilot programs as the reasons are not articulated clearly in the available literature; however, it is likely that cost is a key factor.

Another factor likely to affect the upscaling of restorative justice pilot programs relates to the ongoing perception of restorative justice as being a 'soft' option and as such, one that sits uncomfortably alongside many 'tough on crime' approaches. Where governments and policymakers take a strong view in support of punitive rather than therapeutic approaches to criminal justice, restorative justice programs are less likely to be supported. In the Australian context, the Queensland Government has cut funding for a range of restorative justice options such as youth conferencing despite the program being considered a 'success', with 95 percent of conferences reaching an agreement and 98 percent of participants reporting satisfaction with the outcomes (Queensland Government 2010).

Caseflow problems

Strang (2001) also reported problems relating to limited eligibility criteria and low referrals but noted that these particular issues may be resolved as restorative justice programs evolve over time and key stakeholders (such as, police and courts) come to better understand the goals of restorative justice and become more willing to refer offenders to programs. This was supported in a subsequent study in Queensland which examined the impact of police officers' understanding of, and attitude towards, youth justice conferencing in response to concerns over low rates of referral (Stewart & Smith 2004). The study found that exposure to conferencing through training and attendance increased understanding of, and confidence in conferencing and were required to increase police referrals (Stewart & Smith 2004).

Generally, it appears that since Strang's 2001 report, there has been a greater willingness to refer offenders as programs have become more widespread and more information has become available regarding their effectiveness. The Queensland Department of Communities reported that over 14,500 referrals have been made to the Youth Justice Conferencing Program (with 11,500 being conferenced) between 1997 and October 2008 (Queensland Government 2010). Although the impact of the recent changes to the *Youth Justice Act 1992*, which removes the ability of courts (as well as police) to refer young offenders to conference, is yet to be seen, court referrals to conference had accounted for 58 percent of all referrals in 2011–12 youth justice. Regardless, low referral rates remain a challenge for current programs, particularly in the early stages of implementation. For example, Hart and Pirc (2012: 77) listed

achieving sufficient and appropriate referrals, maintaining high rate of victim participation, improving recruitment, training and monitoring to ensure quality of facilitation, offender completion of the intervention plan, needs to be flexible and innovative to meet future challenges

as some of the challenges facing the NSW Conferencing for young adult offenders program. Similarly, an evaluation of the Young Adult Restorative Justice Group Conferencing Program, which was piloted between 2008 and 2010 in Victoria, noted a

low number of referrals during the set-up phase of the program (Keating & Barrow 2010).

Few Australian researchers have considered the potential for restorative justice practices to lead to net widening since Strang's 2001 report. In a longitudinal analysis of Tasmanian youth who had contact with the criminal justice system between 1991 and 2002, Prichard (2010) found no evidence of net-widening as a result of diversion (of which conferencing is a key feature). Similarly, as cited earlier in this report, a recent study by BOCSAR assessing the impact of the NSW YOA on the likelihood of young offender's receiving a custodial order, reported that conferencing (as part of the YOA, which also includes cautions) has had an impact on reducing the number of Indigenous and non-Indigenous young offenders who enter custody (Wan, Moore & Moffatt 2013). Conversely, in an evaluation of the NSW Community Conferencing for Young Adults pilot, People and Trimboli (2007) reported evidence of a net-widening effect; that is, the proportion of offenders sentenced to imprisonment in the two pilot sites did not decrease after the program commenced.

Safeguarding rights

The impact of restorative justice on the rights of both offenders and victims has been questioned since its introduction, but more particularly, since the widespread uptake of such programs. In 2001, concerns relating to offender rights centred around

the potential for the violation of due process protections of offenders...include[ing] admitting to offences in the belief that they will receive more lenient outcomes through conferencing, the potential at least theoretically for police intimidation and the lack of appeal mechanisms regarding outcome severity (Strang 2001: 35).

The primary issue of concern regarding victims was cited as the potential for re-victimisation as a result of participation in restorative justice programs (Strang 2001) and that too much focus is placed on the offender to the detriment of the victim. To date, there has been a tendency among advocates for victims and offenders to characterise any benefit for, or enhancement in the rights of, one party as 'any enhancement in the rights or interests of one...[as

occurring]...at the expense of the other' (Strang & Sherman 2003: 36). In contradiction to this zero-sum approach, whereby 'a win for offenders will always mean a loss for victims' (Strang 2002: 156), proponents of restorative justice note that 'the theoretical position of restorative justice is that win/lose can be avoided and transformed to win/win' (Strang & Sherman 2003: 36). Importantly, this position has found support in research of the outcomes of restorative justice for both victims and offenders. For example, the ACT Reintegrative Shaming Experiments found that positive outcomes for victims and offenders were most common for those involved in restorative justice and negative outcomes more common for both victims and offenders in traditional court processes (Strang & Sherman 2003).

As reported in the previous section, research examining the impact of restorative justice has been relatively consistent in reporting satisfaction with outcomes among victims, in particular that victims report feeling they have been treated fairly and with respect (Hayes 2005). While the concern relating to safeguarding victims' rights, particularly the potential for re-victimisation through participation in restorative justice processes, is legitimate, victims themselves report more 'just' outcomes from these processes than the court system (Strang & Sherman 2003). Similarly, offender satisfaction and compliance with restitution among those involved in restorative justice processes compared with traditional court processes (Latimer, Dowden & Muise 2005; Sherman & Strang 2007) are indicative of positive experiences for many offenders. Further, research has failed to show that offenders' rights are violated through participation in such processes (for a fuller discussion of these issues see Strang & Sherman 2003).

Appropriateness and effectiveness in Indigenous and ethnic communities

Specific criticisms that have been raised regarding the appropriateness and effectiveness of restorative justice programs include failure to consult with Indigenous communities when establishing programs, that access was a matter for police discretion, too little attention was paid to cultural differences and the programs were seen to undermine self-determination (Cuneen cited in

Strang 2001). Once implemented, such programs in Indigenous communities (Strang cited experiences in New South Wales and South Australia as examples) encountered a range of issues—low referral rates, few Indigenous conference convenors, high number of youths failing to appear for conferences and a lack of awareness among the Indigenous community of the potential benefits of restorative justice (Strang 2001).

To some extent, many of these issues are still faced by restorative justice programs across Australia. A review of diversionary options available to Indigenous youth for whom drug use was linked to their offending noted several barriers to referral and acceptance onto diversion programs (including restorative justice processes such as conferencing) and low completion rates among Indigenous youth (Joudo 2008). In order to counter these barriers, efforts have been made to increase the cultural relevance of restorative justice programs. For example, respected community members (including Indigenous elders) can be called upon to attend conferences involving offenders and victims from Indigenous or ethnic communities. In the Australian Capital Territory, the Restorative Justice Unit has an Indigenous Guidance Partner position which was developed to provide guidance and support to young Aboriginal and Torres Strait Islander offenders and their families who are referred to restorative justice. The position is dedicated to raising the profile of restorative justice with the Aboriginal and Torres Strait Islander community, improving engagement with and outcomes for young Aboriginal and Torres Strait Islander people referred to restorative justice through the provision of outreach services, guidance and support. The primary role of this position is to provide assistance to young Aboriginal and Torres Strait Islander offenders and their families throughout the whole process from the assessment and preparation stage to the conference and agreement phases. The position provides aid with transport to and from appointments and transport and support for community-based placements undertaken by Aboriginal and Torres Strait Islander young people as part of their agreements.

Further, some programs, such as the Port Lincoln adult conference pilot combine Indigenous sentencing practice with adult conferencing in order to provide a more culturally legitimate process for Indigenous offenders, victims and communities. In

addition, the widely used Circle Sentencing process is based upon the traditional practices of Indigenous communities in Canada and the success of such processes in Australia (Potas et al. 2003) is an indication that they are also relevant for Australian Indigenous communities (see also Marchetti 2012 for a discussion of culturally relevant sentencing processes for Indigenous Australians).

At present, few conclusions can be drawn regarding the effectiveness of restorative justice for racial and ethnic minority groups and further research in this area would be of value (Strang 2010).

Future challenges

Extending restorative justice to adult offenders

Restorative justice processes have primarily been used as a response to youth offending in the belief that it 'gives juveniles a chance to turn their lives around before it is too late' (Rossner 2012: 218); by extension, that it is too late for adult offenders. While a greater number of programs are now available in Australia, Daly (2012: 120) suggests that 'the introduction and popularity of Indigenous sentencing courts in Australia may have displaced government interest to resource other justice forms for adults such as conferencing'.

A growing number of studies have examined the impact of restorative justice with adult offenders, largely due to the more recent and limited use of restorative justice for this demographic. The evidence that has emerged has been somewhat mixed. In New Zealand, where restorative justice has been available to adult offenders since 1994 (Bowen, Boyack & Calder-Watson 2012), research suggests that these processes have produced benefits for victims and offenders (Morris & Maxwell 2003). An evaluation of the New Zealand Court-Referred Restorative Justice Pilot program reported no significant impact among adult offenders although high levels of satisfaction among victims and offenders were found (Trigg 2005). A subsequent evaluation found that participation in a restorative justice conference reduced both the likelihood and frequency of reoffending (NZ Ministry

of Justice 2011). Other international research has found a significant impact on the likelihood and frequency of reoffending (Shapland et al. 2008), positive attitudinal change among adult offenders and a commitment to help the victim to heal (Rossner 2012).

Australian research on the impact of Circle Sentencing in New South Wales has reported both reductions in reoffending (Potas et al. 2003), or in a more recent analysis, no effect on the frequency, seriousness or time taken to reoffend (Fitzgerald 2008). An examination of the impact of NSW's Forum Sentencing reported similar findings; that is, there was no evidence that participation in forum sentencing had an impact on the likelihood, frequency and seriousness of reoffending, nor on the time taken to reoffend among adult offenders (Jones 2009). It is difficult to draw conclusions when the methodology of studies lacks the appropriate level of rigour (see section two for a brief discussion of the limitations of both studies).

In an evaluation of the South Australian Adult Conferencing Pilot, Goldsmith, Halsey and Bamford (2005) reported high levels of victim satisfaction and among offenders, ready acceptance of, and the making of apologies for their behaviour. Participants who also had some experience of youth conferences felt that adult offenders were better able to express remorse than were youths. Rossner (2012) cites recent research that supports a neurological explanation for the differences in adult and youth behaviour. Further, as emotional engagement is central to restorative justice processes and adults are considered better able (ie mature enough) to understand the impact of their offending that lends to a genuine desire to make amends (Rossner 2012), it follows that restorative justice processes are just as, if not more, likely to lead to positive outcomes for adults than for young offenders.

Extending restorative justice to serious offences

Restorative justice processes are increasingly being used to respond to more serious offending and there is growing evidence of positive outcomes in this sphere. Sherman and Strang (2007) found that restorative justice was more effective with more

serious offences and for crimes involving personal victims. They also reported lower reoffending occurred more consistently with violent rather than property crimes. For example, a large proportion of cases dealt with by the NSW Department of Corrective Services Restorative Justice Unit (described in detail in section two of this report) are at the most serious end; that is, murder or manslaughter, armed robbery, dangerous driving causing death and serious assaults. Milner (2012: 97) notes that the application of restorative justice to date has been limited and that a growing body of evidence show that restorative justice may have most impact where 'the trauma experienced by victim is greatest'. One area where the use of restorative justice remains particularly controversial is that of cases involving gendered violence (Stubbs 2012). In a review of the evidence to date, Stubbs (2012: 206) emphasised the need to more carefully consider the conduct of restorative justice in these cases in order to ensure that it is 'safe and effective for victims' given the significant complexities involved in facilitating victim–offender contact where the relationships are intimate in nature. Restorative justice for domestic violence may be particularly fraught due to the 'power differentials between the parties' (Stubbs 2012: 99) and the constraints this may place on the choices and contributions made by victims during the process.

A recent report of conferences for sexual assault and family violence cases involving youth offenders in South Australia detailed the process and outcomes in nine cases based on police reports and interviews of victim/victim representatives and conference coordinators (Daly & Wade 2012). Many of the cases, which included sibling sexual assault, other sexual assault and child–parent assault, resulted in some positive outcomes, including that victims were empowered through their involvement, that the agreements and process were fair to offenders and that offenders took responsibility for their actions. In further analysis of three cases of youth violence towards parents from the same program, Daly and Nancarrow (2010) reported a detrimental impact for the victim if the offender did not accept responsibility.

An earlier study by Daly and Curtis-Fawley (2006: 234), which reported on archival analysis of 385 sexual offences committed by young offenders and

finalised between 1995 to 2001, suggested that it was better for victims if cases were dealt with via a conference rather than in court due primarily because a conference guaranteed that 'something happened'. The authors also noted that offenders with conferences were more likely than those dealt with through the courts to apologise to their victim, undertake community service and appropriate counselling programs. The authors noted that they 'came away from the study with a degree of confidence that conferences have the potential to offer victims a greater degree of justice than court' (Daly & Curtis-Fawley 2006: 235). Importantly, Richards (2009) notes that the demand for greater participation in the criminal justice process has come from victims of serious, personal crime rather than victims of minor or property offences, and cites research showing that many victims of less serious crimes choose not to become more involved in the process because they are too busy or the offence is too trivial, among other reasons.

Evidence from research and practice provides support for the application of restorative justice in even the most serious offences, however, caution should be exercised in cases involving partner and family violence for which a 'sophisticated understanding of the dynamic' (Daly & Nancarrow 2010: 171) is required. In order to better protect victims of partner or family violence during restorative justice, such processes may need to go beyond apologies and other forms of reparation, and provide access to support and services, in order for restorative justice to achieve its goals (Stubbs 2012). Similarly, given that restorative justice 'was never designed to reduce the risk factors known to be associated with involvement in crime' (Weatherburn & Macadam 2013: 14), it is important to better integrate processes by which referrals can be made to treatment or professional support for offenders.

Achieving 'restorativeness'

'Restorativeness' is said to be achieved 'through the provision of explanations, the offer and acceptance of apologies, and offers and acceptance of forms of compensation or reparation' (Goldsmith, Halsey & Bamford 2005: 3). Importantly, as Daly (2006: 11) has noted, 'restorative justice is limited by the abilities and interests of offenders and victims to

think and act in ways we may define as restorative'. That is, victims and offenders differ greatly in their willingness to engage in restorative justice processes, to listen and work to repair the harm (Daly 2003) and in doing so, determine the extent to which a process can achieve 'restorativeness'. Given the highly conversational nature of restorative justice processes, recent research has highlighted the need to consider the oral language abilities of offenders, alongside other key competencies, given the suggestion that oral language deficits among young offenders may have an adverse impact on conference outcomes (Hayes & Snow 2013), thereby hampering efforts to achieve 'restorativeness'.

A key question for restorative justice is whether restorativeness has translated into programs the way it was intended to. There is no simple response; given that there are so many variations in what is considered 'restorative' and many differences in the way programs are implemented. In essence, it is about repairing the harm done to victims and communities, and taken together with the variation in victim and offender approaches that were outlined by Daly (2006, 2001), it follows that this 'restorativeness' would be achieved in different ways for different individuals and communities across countries and cultures.

Among the challenges for restorative justice is that the theory is developing alongside the practice and it is worth remembering that 'just as restorative justice is a process rather than a particular program model...so the development of restorative justice theory and practice is also a process' (Umbreit, Coates & Vos 2004: 82), and some degree of disconnect is expected as one catches up with the other. For example, while many positive outcomes have been reported for victims, there remains much room for improving the sensitivity towards victims. A recent US study of VOM (Choi, Gilbert & Green 2013) reported a substantial disconnect between the principles of restorative justice and practice. In particular, victim needs were not appropriately met as they were often not prepared for the process, pressured on occasion 'by mediators to behave in certain ways' and also occasionally intimidated by the offender or their family (or both; Choi, Gilbert & Green 2013: 128). The authors highlighted the need for future studies to consider the extent of training for practitioners and monitoring systems to ensure that restorative justice processes are consistent with restorative justice theory and values (Choi, Gilbert & Green 2013).

Conclusion



Following the emergence of restorative justice practices in the 1990s and their widespread use in Australia and overseas, the body of research into the impact of such programs has grown steadily and now paints a picture of a range of processes that continue to evolve but that largely result in positive outcomes for both victims and offenders. The question 'does it work?' is asked of all interventions and in the criminal justice field this is most often answered by assessing the impact on reoffending. Yet the evidence for restorative justice remains mixed, despite the literature being replete with reports of high levels of victim satisfaction and perceptions that the process is fair. The critical issue here lies in the primary purpose of restorative justice. It is about repairing the harm caused by crime and as such, while reoffending is an important indication of a program's impact on an offender, it does not necessarily influence the ability to repair the harm caused; that is, to address the impact of restorative justice processes on a victim. Further, while some

significant issues remain, research conducted to date consistently demonstrates that restorative justice programs work at least as well as formal criminal justice responses.

Commentators have asked whether restorative justice practices can co-exist alongside formal criminal justice approaches and given the widespread acceptance of restorative justice, evident in the expansion of restorative justice to encompass adult offenders and more serious offences, this question seems to have been answered. Restorative justice practices provide an important supplement to the sanctions placed on criminal behaviour by the traditional criminal justice system. As Daly (2011: 241) advocates, 'it is also important to move beyond the simple oppositional contrast of retributive and restorative justice'. It may be that perhaps too much has been made of the differences between traditional criminal justice and restorative justice processes.

What is certain is that where restorative justice is done well, it goes beyond what traditional responses can achieve and as a result, the potential impact upon individuals, communities and society is substantial. Restorative justice is about more than traditional notions of justice—it is about repairing harm, restoring relationships and ultimately, it is about strengthening those social bonds that make a society strong. Rather than pitting restoration against retribution and seeking to find the ‘best’ answer to addressing offending, restorative justice practices

should be recognised as an additional response to offending; that is, restorative justice practices can be both ‘an alternative to, or an extension of’ traditional responses to criminal behaviour (KPMG 2010: 17). Perhaps in another decade or so, when the next review of restorative justice in Australia is compiled, debate and research in the area will have moved away from questions of ‘does it work’ to focus on how, when and for whom it works best.

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All URLs were correct at November 2013

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