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This report provides an analysis of the restorative justice processes currently operating in Australia for juvenile offenders. The report aims to provide an overview of the effectiveness of youth conferencing, victim-offender mediation and circle sentencing when a young offender has committed an offence. While the report focuses specifically on juvenile offenders, the applicability of restorative justice for adult offenders is also demonstrated. Further, the report shows the educational training and facilities, and financial requirements needed for restorative justice to operate in Australian jurisdictions. Finally, a framework for possible reform in Australian jurisdictions is suggested, as the present legislative and policy mechanisms that regulate the operation of restorative justice practices in Australia have several shortfalls.

RESTORATIVE JUSTICE

‘Restorative justice’ refers to a variety of dispute and conflict resolution procedures to address offending, aimed at achieving the reparation of the relationships between the offender, the victim, and the community. Restorative justice practices rely on the participation of the victim. It involves a collaborative dialogue between victims and offenders in a manner distinct from other methods of dealing with the aftermath of the perpetration of offences. This contrasts against the traditional retributive justice system. The retributive system perceives crime as a violation of the state and accordingly grounds itself on the values of blame and punishment. Meanwhile, restorative justice views crime as a violation of people and relationships. Restorative justice principles include the rehabilitation of offenders, the reintegration of offenders into society, and the reparation of the harm caused to victims.

MODES OF RESTORATIVE JUSTICE

Conferencing

Youth Justice Conferencing is a formalised legal process which provides victims an opportunity to face the offender who has committed a crime against them. This process aims to give the victim a voice to express the harm caused against them, and for the offender to repair the harm they have caused.

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1 Heather Strang, Restorative Justice Programs in Australia (Final Report, March 2001) 2.
2 Ibid.
4 Ibid 382.
caused, with the support of their families and the community. A conference is run by a conference convenor. General participants include the offender, the victim (who does not have to be present for specific offences), both of their supporters, a police officer and the conference coordinator in attendance. Following discussions about the offence, the victim, the offender and their support networks attempt to come to a decision concerning an appropriate ‘outcome plan’ for the offender to complete. This can include, but is not limited to, an apology, community service, an education program or counselling.

**Victim-Offender Mediation**

Victim-offender mediation is run by trained mediators, who do not have a direct interest in the victim. The mediator facilitates the meeting between the victim and the offender, who are usually the only parties present in the process. In most jurisdictions in Australia, the process involves discussions between the victim and the offender about the offence and its impact, as well as determining how the harm resulting from the offence can be mended. These can include an apology, payment for the harm suffered or an explanation of why the offender acted in the way they did.

**Circle Sentencing**

Circle sentencing operates in Australia for adult Indigenous offenders in New South Wales and Western Australia. Circle sentencing involves individuals coming together and determining a sentence that does not result in incarceration for Indigenous offenders. Generally, the offender and their support groups, Indigenous elders, respected members in the community, the prosecution or police, as well as a magistrate attend a circle. If they consent, victims may also be involved in the

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6 Youth Justice Act 1992 (QLD); Young Offenders Act 1997 (NSW).
9 Ibid.
10 Ibid.
11 Criminal Procedure Regulation 2005 (NSW) s 19.
Circles bring together the thoughts of Aboriginal elders and magistrates, assessing the most appropriate sentence for the offender in light of the offender’s circumstances.  

IMPLEMENTATION OF RESTORATIVE JUSTICE  

**Education and training**  
There are several types of facilitators of juvenile restorative justice practices in Australia as each state and territory has individual restorative justice schemes. Juvenile justice conferencing facilitators are typically referred to as conference convenors. Conference convenors are responsible for preparing for the conference, facilitating the face-to-face dialogue, and following up the offender at the completion of the conference. There are no mandatory professional qualifications for conference convenors. However, there are required training courses that provide facilitators with the necessary theoretical understanding and practical skills to be able to successfully convene juvenile justice conferencing. When a juvenile offender is Indigenous, care is taken when implementing these restorative justice processes. A discussion regarding the Northern Territory’s ‘Ponki’ Mediation is included in this section, as this training program is designed to ensure that culturally appropriate measures are taken with Indigenous offenders through a blending of both Indigenous and Western mediation practices.

**Finance**  
Compared to community-based services and detention, conferencing is the cheapest option per child. The figures for real, recurrent government expenditure in Australia are as follows: community-based services are $103.14 per child; detention-based services cost $207.74; and, conferencing costs $20.73. These statistics need to be read in consideration with factors such as increased government funding and other relevant indicators.

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14 Kathleen Daly and Gitana Scifoni-Proietti, ‘The Elders Know...The White Man Don’t Know: Offenders’ Views of the Nowra Circle Court’ (2011) 7(24) Indigenous Law Bulletin 17.
17 Note that these figures present the cost for one child per day.
THE USE OF RESTORATIVE JUSTICE PROCESSES FOR SPECIFIC CRIMES

_Murder_
Murder is excluded from the scope of restorative justice where offenders are referred to the restorative justice program pre-sentencing. It is available for youth-commissioned murder offences in a few jurisdictions, only where the referrals occur post-sentencing. Due to the heinous nature and the gravity of murder, Australian practice deems restorative justice appropriate only when it occurs after sentencing; it is inappropriate to use restorative justice as a diversion from incarceration. Data is unavailable for restorative justice practices regarding murder offences, due to the highly sensitive nature of the programs. Hence, the effectiveness of restorative justice in this regard cannot be assessed.

_Sexual Assault_
In relation to sexual assault offences, the most commonly used form of restorative justice for young offenders is conferencing. The failure of the traditional criminal justice system to address sexual assault crimes has resulted in low conviction rates and a failure to meet victim needs. Consequently, victims of sexual assault crimes are more attracted to restorative justice programs. Empirical research suggests that restorative justice measures for sexual assault offences can create a deterrent for young offenders and reduce recidivism rates, particularly when offenders receive specialised treatment, such as therapy or counselling. Furthermore, restorative justice programs are more effective at meeting the needs of sexual assault victims by empowering their voice, validating their experience and facilitating relationship reparation. Restorative justice programs for sexual assault crimes may be implemented as an alternative to court proceedings or as a complementary mechanism post-sentencing, depending on factors such as the seriousness of the offence, the nature of the relationship between the parties and their willingness to participate in the program.

_Assault_
An analysis of the data and case studies demonstrates how restorative justice is used mainly for minor assault-related offences pre-sentence and post-sentence, including common assault and assault occasioning bodily harm. Serious assault-related offences are excluded from a number of legislative frameworks in each state and territory. However, if they were not excluded, serious assault-related offences were mostly referred post-sentence.
**Drugs/Trafficking**

In addressing drug crimes through restorative justice mechanisms, considering the appropriateness of the process as a complete alternative or complementary mechanism alongside traditional criminal justice system is imperative. Restorative justice programs to address drug crimes focus on educating the offenders about drugs and their harm, allowing them to rehabilitate out of their habits and/or addictions. These programs also seek to prosper relationships, which promotes willingness to reconcile. This report analyses the positive impact both conferencing and diversionary drug programs have had on Australian youths, as use and possession of illicit drugs are part of a wider social problem that can only be adequately redressed through withholding tenants of therapeutic justice.

**Property Offences**

Property offences were the most common offences committed by juvenile offenders in Australia between 2016-17. As restorative justice was initially implemented in Australia to address minor offending, juvenile justice conferencing is used highly in this offence category. Through an analysis of the available data, it was found that conferencing is less effective in reducing re-offending in juvenile offenders who committed minor property offences, and more effective in offences involving violence.\(^{18}\)

Governments, police and courts choose to divert young people from the more formal parts of the criminal justice system because punitive approaches and cautions are not effective in reducing reoffending rates and instead stigmatise the offender. The low effectiveness rates of restorative justice for lesser crimes such as theft and property crime are outweighed by the positive benefits for all parties including victim closure, the ability for parties to share their side of the story and address underlying factors contributing to youth crime. Conferencing provides a safe and supportive environment that helps children reintegrate into society and return to education. It can also help repair the harm done and foster the healing process for the victim. Furthermore, victims can choose not to attend because of fear, anger and belief that conferencing is not useful.

EFFECTIVENESS OF RESTORATIVE JUSTICE IN REDUCING REOFFENDING

Evidence regarding juvenile reoffending rates after restorative justice conferencing remains mixed. Early studies of juvenile restorative justice conferencing suggest that there was a reduction in reoffending rates for restorative justice conference participants when compared to the traditional juvenile court processes. However, later studies have been more critical, particularly when data is analysed in light of different variables such as the range of offences and the specific target groups for restorative justice conferencing. Some studies have suggested that restorative justice conferencing is more effective in reducing reoffending for violent crimes where there is a personal victim involved, as opposed to reducing reoffending for minor property crimes. While evidence relating to the lowering of recidivism rates is somewhat unclear, there is a body of evidence suggesting that restorative justice conferencing does have a positive impact in regards to both offender and victim satisfaction with the criminal justice system.

RESTORATIVE JUSTICE FOR ADULT OFFENDERS

In Australia, restorative justice programs are now widely available for youth offenders in all eight jurisdictions. The use of restorative justice for youth offenders was driven primarily by the belief that such programs provide youth with a ‘second-chance’ to turn their lives around. Youth offenders are typically considered to be less accountable for their actions than adults, and more amenable to change. However, the implication of this orthodox view is that it is ‘too late’ for adults, and that restorative justice will be inappropriate or insufficiently punitive for adult offenders. Accordingly, while restorative justice programs are now ubiquitous for youth offenders, the use of such programs for adult offenders has been relatively uncommon, and more restricted. However, while more research should be conducted in this area, the available evidence supports the expansion of restorative justice to adult offender crimes.

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REFORMS

Based on the analysis conducted in prior sections, this report identifies four areas for reform in Australia and subsequently recommends the following legislative and practice amendments:

Issue: Australia lacks a centralised, streamlined statute or policy regarding restorative justice practices. Each jurisdiction possesses its own legislation. This results in considerable variability in critical areas, including which offences are referable to restorative justice programs, meaning that youths may be denied the option of restorative justice by virtue of belonging to the wrong state or territory. Variability also reduces the credibility of the system.

Recommendation: The adoption of a national consolidated restorative justice framework, as recommended by the Australian Law Reform Commission in 1997.

Issue: Many restorative justice practices (youth justice conferencing and victim-offender mediation) are inappropriate, and therefore ineffective, for Indigenous Australians. The disregard for Indigenous Australians and their distinct cultural differences, combined with police discrimination, has led to indirectly discriminative restorative justice practices which are largely inaccessible to Indigenous youth. This inaccessibility is detrimental to Indigenous young people, who make up 54% of all youth in custody.\(^{22}\)

Recommendation: Implement training and education programs for prosecutors, defence lawyers, judges and restorative justice facilitators to support Indigenous-friendly restorative justice programs.

Issue: There is no mandatory requirement that conferencing facilitators must possess a minimum level of qualification (e.g. accredited psychology or sociology degrees). This is concerning, as conferencing may inevitably give rise to traumatic and sensitive material. Additionally, young offenders often lack the moral maturity and introspective skills required to promote victim satisfaction in the restorative justice process. Further, many young offenders lack the vocabulary, confidence and/or understanding to communicate their remorse.

**Recommendation:** Conferencing facilitators should be appropriately trained to deal with vulnerable, sensitive and potentially traumatic information which will often arise in the course of conferencing. Facilitators should also be trained on how to engage with young offenders, including using simple, comprehensible and restorative language during the conferencing process. Additionally, facilitators should engage with the young offender prior to the restorative justice process to explain to the offender the structure and purpose of the conferencing.

**Issue:** Restorative justice is not available for serious offences (such as sexual assault and murder) in many jurisdictions. The ‘Crimes Analysis’ section of this report reveals that restorative justice can be effective in serious offending (see: Section 5).

**Recommendation:** To equip facilitators, police, and lawyers with the training and resources necessary to carry out restorative justice for serious crimes. To repeal statute which explicitly excludes serious offences such as sexual assault and murder from the scope of restorative justice models. However, restorative justice for serious offending should remain as a post-sentence option, supplementing traditional punitive mechanisms such as incarceration; restorative justice may be inappropriate for serious offending if it occurs pre-sentencing as a diversionary method.
PART ONE:
INTRODUCTION
1.1 INTRODUCTION

1.1.1 THE TEAM
This project was headed by HAQ: Centre for Child Rights (HAQ), a non-governmental organisation in India, which strongly promotes and protects children's rights. The organisation undertakes research and presents documentation to facilitate public education and advocacy for children's rights, with its main pillars focusing on children, governance, and child protection. This report provides a comprehensive analysis of restorative juvenile justice practices in Australia, as a potential model for implementation in India.

This project was undertaken through HAQ’s international partnership with Macquarie University, an Australian university based in Sydney. The Macquarie student team worked with HAQ remotely. This project was co-supervised by Bharti Ali, co-founder and director of HAQ, and Debra Ronan, convenor of the international partnership unit at Macquarie University. The Macquarie student team consists of seven students:

- Shelby Sewak
- Chandla Serret
- Marina Bouchahine
- Adrian Saldarriaga
- Karen Liong
- Josephine Pan
- Eisha Farrukh

1.1.2 PROJECT OBJECTIVE
The primary objective of this report is to present detailed research and findings of the nature of juvenile restorative justice practices in Australia, with reference to statute and case studies across Australian jurisdictions, empirical research, and statistics. The report evaluates the effectiveness of these practices in relation to particular offences of varying degrees of seriousness and discusses the

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practical implementation of the restorative justice programs. This project is designed to offer HAQ a potential model and framework for the implementation of restorative justice practices in India, contributing to the organisation’s children’s rights advocacy work.

1.1.3 SCOPE AND LIMITATIONS

To achieve these objectives, this report will focus on Australia’s juvenile restorative justice practices. The report will focus on the effectiveness of these restorative justice practices in relation to five crimes: murder, sexual assault, drugs, assault and property crimes. The effectiveness of these programs will be assessed according to their ability to achieve objectives such as reducing offender recidivism and achieving victim satisfaction.

Furthermore, the report will consider the impact of restorative justice mechanisms in relation to the Australian Indigenous population, particularly regarding circle sentencing. This can potentially be used as a cultural comparator in India. The report will also discuss the practical implementation of restorative justice programs, identifying the associated education, training and financial requirements. A comparison between restorative justice practices for young offenders and adult offenders will also be included. Finally, the report offers recommendations for reform of Australia’s current restorative justice practices.

While a comprehensive analysis is provided in this report, the project is limited in two ways. Firstly, the report only considers the available research and statistics in Australia, which is particularly restricted for heinous crimes such as sexual assault and murder due to the lack of practice of addressing such crimes. Secondly, the findings reflect potential selection biases regarding the screening processes which ‘filter out’ offenders who are ineligible for restorative justice programs, alongside the subjective willingness of victims to participate in the programs.
PART TWO: BACKGROUND TO RESTORATIVE JUSTICE
2.1 BACKGROUND TO RESTORATIVE JUSTICE

2.1.1 RESTORATIVE JUSTICE

The term ‘restorative justice’ is used to refer to a variety of dispute and conflict resolution procedures to address offending, aimed at achieving the reparation of the relationships between the offender, the victim, and the community.\(^{24}\) This reparation is achieved through a collaborative process where all parties impacted by the offence engage with one another in a mediated setting to deal with the aftermath of the offence and its consequences.\(^{25}\) Restorative justice programs vary; however, all programs seek to result in the offender taking responsibility for their misconduct against the victim, and holding themselves accountable to the implications of their actions.\(^{26}\)

Many restorative justice programs rely on the participation of the victim\(^{27}\). These programs involve a collaborative dialogue between victims and offenders in a manner distinct from other methods of dealing with the aftermath of the perpetration of offences (such as trials and incarceration). In this way, restorative justice practices emphasise the importance of the victim’s voice in the decision-making process. Restorative justice places agency and focus upon the victim and therefore assists in the healing and empowerment of victims in a way the traditional retributive system does not. Ultimately, restorative justice seeks to repair the harm suffered by victims whilst also assisting in the reintegration of the offender back into society.\(^{28}\)

Simple retribution principles perceive crime as a violation of the state; justice is therefore based on a system of blame, conferring upon the state powers to administer punishment for those violations.\(^{29}\) Contrasting, restorative justice portrays crime as a violation of people and relationships,\(^{30}\) rather than a rule in the government’s lawbook. Restorative justice demonstrates that emphasis should be placed on the values that are violated when one commits a crime; crimes violate the values


\(^{25}\) Ibid.

\(^{26}\) Ibid 6.


\(^{30}\) Ibid 382.
underpinning law, rather than simply violating the law itself.\textsuperscript{31} These violations of obligations owed to other individuals (whether they be personal or impersonal) create harm and suffering which the offender must rectify.\textsuperscript{32} The offender thus possesses obligations and liabilities as a result of their illegal conduct.\textsuperscript{33}

This contrast may misrepresent retributive justice and restorative justice as antithetical to one another.\textsuperscript{34} However, restorative justice encapsulates retributive values, as it seeks to hold offenders accountable for their actions, to acknowledge and denounce their wrongdoing, and to set reparations.\textsuperscript{35} Essentially, restorative justice seeks to achieve retributive goals in a method that seeks holistic reparation. Hence, restorative justice can be a welcome addition to traditional criminal justice systems.

\section*{2.1.2 BACKGROUND TO RESTORATIVE JUSTICE IN AUSTRALIA}

Restorative justice programs in Australia were introduced as interventions for juvenile offending.\textsuperscript{36} There are not as many restorative justice practices offered to adult offenders compared to the number of conferencing options available to juveniles.\textsuperscript{37} This is largely because restorative justice emerged in Australia as a diversion program for young people. Restorative justice was implemented in Australia following New Zealand’s adoption of conferencing in 1989, after decades of dissatisfaction with the treatment of juvenile offenders.\textsuperscript{38}

The first restorative justice program in Australia was in the city of Wagga Wagga in New South Wales (NSW), in 1991.\textsuperscript{39} This was a police-run restorative justice model which focused heavily on reintegrative shaming,\textsuperscript{40} rather than rehabilitation or reparation. Reintegrative shaming focuses on

\begin{thebibliography}{99}
  \bibitem{31} Ibid.
  \bibitem{32} Ibid 377.
  \bibitem{33} Ibid.
  \bibitem{34} Jacqueline Joudo Larsen, \textit{Restorative Justice in the Australian Criminal Justice System} (Australian Institute of Criminology Report No 127, 2014) 35.
  \bibitem{35} Ibid 2.
  \bibitem{36} Heather Strang, \textit{Restorative Justice Programs in Australia} (Final Report, March 2001) 5.
  \bibitem{38} Heather Strang, \textit{Restorative Justice Programs in Australia} (Final Report, March 2001) 4.
  \bibitem{39} Ibid 6.
  \bibitem{40} Kathleen Daly and Hennessey Hayes, ‘Restorative Justice and Conferencing in Australia’ (2001) 186 \textit{Trends and Issues in Crime and Criminal Justice} 1, 4.
\end{thebibliography}
highlighting shame in criminal punishment as a means of deterring reoffending.\textsuperscript{41} It also does not place as much regard upon the victim like present restorative justice mechanisms. As such, the Wagga Wagga conferencing model was a controversial process.\textsuperscript{42} Following concerns about the effectiveness of the program’s structured reintegrative shaming, the Wagga Wagga conferencing program was succeeded in 1995 by the youth conferencing programs operating in NSW today.\textsuperscript{43}

Youth justice conferencing is presently operating in all states and territories.\textsuperscript{44} Some Australian jurisdictions also offer additional forms of restorative justice, such as victim-offender mediation. It is important to note that Australia lacks a national framework for restorative justice; each state and territory has its own legislation, mode of practice and limitations of restorative justice. However, all of these programs seek to exhibit the restorative justice principles outlined above, rather than values of reintegrative shaming. The structure and procedure of conferencing is detailed in the following Section: ‘Modes of Restorative Justice

\textsuperscript{41} Ibid.
\textsuperscript{42} Heather Strang, \textit{Restorative Justice Programs in Australia} (Final Report, March 2001) 6.
\textsuperscript{43} Ibid.
PART THREE: RESTORATIVE JUSTICE MODELS
3.1 RESTORATIVE JUSTICE MODELS

Conferencing, victim-offender mediation (‘VOM’) and circle sentencing are the most common restorative justice programs operating in the Australian criminal justice system. Though circle sentencing is used specifically for adult Indigenous offenders, this section of the report will explore the process of circle sentencing, demonstrating the ways in which Australia accommodates Indigenous offenders. The following section will explain the restorative justice programs operating in Australia, analysing the way in which each program works.

Table 1: Restorative Justice Models in Australia.

<table>
<thead>
<tr>
<th>Model</th>
<th>Description</th>
</tr>
</thead>
</table>
| Conferencing         | • Gives the victim (if they consent) an opportunity to face the offender and express the harm caused.  
                       | • Gives the offender a forum to ‘address’ and repair the harm they have caused. |
| Victim-Offender Mediation | • Run by train mediators.  
                             | • Mediator facilitates the meeting between the victim and the offender.  
                             | • Mostly indictable offences are referred under this model – highly confidential.  
                             | • Mostly post-sentence. |
| Circle Sentencing    | • Adult Indigenous offenders.  
                       | • Attendees: offender and support group, Indigenous elders/respected members, prosecution or police and magistrate.  
                       | Victims can be involved (consent).  
                       | • Elders and magistrates assess appropriate sentence for offender. |


46 *Criminal Procedure Regulation 2005* (NSW) s 19.
Table 2: Restorative Justice Models in Australia across jurisdictions.47

<table>
<thead>
<tr>
<th></th>
<th>Youth Conferencing</th>
<th>Victim-Offender Mediation</th>
<th>Circle Sentencing</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>VIC</td>
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<tr>
<td>ACT</td>
<td>X</td>
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</tr>
</tbody>
</table>

3.1.1 CONFERENCING

Youth Justice Conferencing (also known as family conferencing) is a formalised legal process, giving the victim an opportunity to face an offender who has committed a crime against them. The process aims to give the victim an opportunity to express the harm caused against them, and to give the offender a forum to ‘address’ and repair the harm they have caused against a victim, with the support of their families and the community. The applicability of conferencing for juvenile offenders is determined by assessing differing factors in each state and territory. These include; if the offender has pleaded guilty or been found guilty, the seriousness of the offence, the violence involved in the crime, the consent of the offender and victim, the harm caused toward the victim, the cultural background of the offender, as well as the amount of times the offender has received warnings under

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the relevant Act in each state and territory.\textsuperscript{48} Conferences can be referred by courts, the police and juvenile justice agencies pre-sentence, post-conviction or post sentence, depending on the severity of the crime. The offender is assessed against relevant criteria to determine their applicability to attend a conference, such as; their acceptance of responsibility, remorse, emotional feelings toward the victim, alcohol and substance abuse, and cultural factors.\textsuperscript{49}

The following list presents an overview of the type of people who can attend a conference in Australia:

- The offender;
- The victim or a victim's representative;
- The convenor of the conference;
- An adult who is responsible for the juvenile offender, as well as someone of the offender's choice;
- The offender's family (including extended family);
- The victim's family and other support;
- The police officer who is investigating the crime, and a specialised police youth officer;
- A legal practitioner who is advising the juvenile offender;
- A cultural consultant or developmental specialist;
- A well-respected member from Indigenous communities. For example, in Queensland, convenors must ask an elder, or other members of the Indigenous community to attend a conference if the offender is an Indigenous juvenile;\textsuperscript{50}
- If a juvenile offender is under a court order than the supervising officer can attend;
- If a juvenile attends school, then a school representative; and
- If approved, an observer can also attend.\textsuperscript{51}

\textsuperscript{48} Young Offenders Act 1997 (NSW); Youth Justice Act 1992 (QLD); Crimes (Restorative Justice) Act 2004 (ACT); Children, Youth and Families Act 2005 (VIC); Youth Justice Act 1992 (VIC); Young Offenders Act 1993 (SA); Young Offenders Act 1994 (WA); Youth Justice Act 2005 (NT); Youth Justice Act 1997 (TAS).


\textsuperscript{50} Jacqueline Joudo Larsen, Restorative Justice in the Australian Criminal Justice System (Australian Institute of Criminology Report No 127, 2014) 11.

\textsuperscript{51} Chris Cunneen, Rob White and Kelly Richards, Juvenile Justice: Youth and Crime in Australia (Oxford University Press, 5th ed, 2013) 338; Youth Justice Act 1992 (QLD); Young Offenders Act 1997 (NSW) s 47.
Though the structure of conferences varies, they generally take a standard form. The juvenile offender, the victim and both of their supporters, a police officer, and the conference coordinator attend the conference to discuss the impact of the offence. In some Australian states and territories, the victim does not have to attend a conference. As opposed to the adversarial criminal justice system, communication amongst the participants is facilitated by a conference coordinator and undertaken in an atmosphere of understanding and compassion. A conference convenor can be appointed by a conference administrator, who is satisfied that an offender has been referred for a conference. The offender is given an opportunity to discuss the offence and why they were involved, and their parents and supporters discuss how the offence has impacted them. Further, the conference facilitates discussion so that the victim can seek reassurances and ask the offender why they committed the offence against them. The attending police officer can also explain details of the offence, and advise the offender of the consequences that may arise if they re-offend in the future. Where offenders are Indigenous, efforts are made to ensure that an influential and well-respected individual from Indigenous communities attend the conference. This highlights how conferences are facilitated to accommodate cultural difference and to ensure they are culturally appropriate.

Following discussions about the offence, the conference convenor gives the victim an opportunity to propose a way the offender can amend the harm they have caused. After this, discussions ensue amongst the victim, the offender and their support networks to come to a decision concerning an appropriate ‘outcome plan’ for the offender to complete. This can include, but is not limited to, an apology, community service, an education program or counselling. When the outcome plan is written up, participants are nominated to ensure the juvenile offender completes the plan.

53 Young Offenders Act 1997 (NSW) s 42.
55 Ibid 66.
57 Ibid.
58 Ibid.
59 Ibid.
Australia, specific time periods are stipulated for an offender to complete an outcome plan, however, this varies in each jurisdiction.  

61 If an offender does not comply with the outcome plan, they will be processed through the traditional criminal justice system. However, in some jurisdictions there are other legislative ways of dealing with non-compliance, such as cautioning the offender.  

62 In Western Australia, court conferencing is also available. Though this operates similar to family group conferences, this process was developed for repeat young offenders, as well as those who committed more serious offences.  

63 To be referred to court conferencing, there must be an identifiable victim, the offender must agree to attend and the court must determine guilt for a juvenile offender.  

64


63 Ibid 12.

64 Ibid.
Figure 1: Conferencing Process in NSW.\textsuperscript{65}

\begin{itemize}
\item \textbf{STEP 1: INTRODUCTIONS}
Convenor asks all participants to introduce themselves.
\item \textbf{STEP 2: OFFENDER}
Offender explains what happened, while the convenor asks them questions.
\item \textbf{STEP 3: VICTIM}
Convenor asks the victim how the crime has impacted them.
\item \textbf{STEP 4: PARTICIPANTS}
Other participants (i.e. family) explain how the crime has impacted them.
\item \textbf{STEP 5: REACHING THE OUTCOME PLAN}
1. Convenor asks the victim what the offender can do to repair the harm.
2. Offender and support network propose an outcome plan.
3. Victim responds to the proposal while discussions continue about an appropriate undertaking.
4. Outcome plan is written up and agreed to by both parties.
\item \textbf{STEP 6: MONITORING THE OFFENDER}
Participants from the conference are nominated to ensure the offender carries out the action plan.
\item \textbf{STEP 7: REFRESHMENTS}
The conference concludes with refreshments and the execution of the outcome plan.
\end{itemize}

<table>
<thead>
<tr>
<th>State</th>
<th>Program</th>
<th>Legislation</th>
<th>Participants</th>
<th>Point of Referral</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>Youth Justice Conferences</td>
<td>Young Offenders Act 1997</td>
<td>Youth – 10 to 18 years</td>
<td>Police referral and court order Pre-sentence</td>
</tr>
<tr>
<td>QLD</td>
<td>Restorative Justice Conferencing</td>
<td>Youth Justice Act 1992</td>
<td>Youth – 10 to 18 years</td>
<td>Police referral and court order Pre-sentence</td>
</tr>
<tr>
<td>ACT</td>
<td>Restorative Justice Unit (Conferencing)</td>
<td>Crimes (Restorative Justice) Act 2004</td>
<td>Youth – 10 to 17 years</td>
<td>Available through police referral from time of arrest, as a court-ordered sentence, and post-sentence</td>
</tr>
<tr>
<td>VIC</td>
<td>Youth Justice Group Conferencing</td>
<td>Children, Youth and Families Act 2005</td>
<td>Young Adults – 10 to 20 years</td>
<td>Court order Pre-sentence</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th></th>
<th>Youth Justice Conferencing</th>
<th>Youth Justice Act 1992</th>
<th>Youth – 10 to 17</th>
<th>Police referral and court order</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
<td></td>
<td>Pre-sentence</td>
</tr>
<tr>
<td>SA</td>
<td>Family Conferencing</td>
<td>Young Offenders Act 1993</td>
<td>Youth – 10 to 18 years</td>
<td>Police referral and court order</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Pre-sentence</td>
</tr>
<tr>
<td>WA</td>
<td>Family Group Conferencing</td>
<td>Young Offenders Act 1994</td>
<td>Youth – 10 to 18 years</td>
<td>Police referral and court order</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Pre-sentence</td>
</tr>
<tr>
<td>NT</td>
<td>Youth Justice Conferencing</td>
<td>Youth Justice Act 2005</td>
<td>Youth – 10 to 18 years</td>
<td>Police referral and court order</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Pre-sentence</td>
</tr>
<tr>
<td>TAS</td>
<td>Community Conference</td>
<td>Youth Justice Act 1997</td>
<td>Youth – 10 to 18 years</td>
<td>Police referral and court order</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Pre-sentence</td>
</tr>
</tbody>
</table>
3.1.2 VICTIM-OFFENDER MEDIATION

Victim-offender mediation (‘VOM’) (also known as victim-offender conferencing) is run by trained mediators, who do not have a direct interest in the victim.\textsuperscript{67} The mediator facilitates the meeting between the victim and the offender, who are usually the only parties present in the process (unlike conferencing, which involves more participants).\textsuperscript{68} Oftentimes, VOM is the only process offered to juvenile and adult offenders who are incarcerated.\textsuperscript{69} The applicability of VOM is determined according to the nature of the offence, whether the offender has accepted responsibility for their actions, the physical safety of relevant parties, and the acceptance of both parties to participate. In most jurisdictions in Australia, the process involves discussions between the victim and the offender about the offence and its impact, as well as determining how the harm resulting from the offence can be mended.\textsuperscript{70} These can include; an apology, payment for the harm suffered, or an explanation of why the offender acted in the way they did.

The initiation of VOM is dependent on the relevant Act in each jurisdiction. In most states and territories, it can be initiated by the victim or offender, except in NSW under victim-offender conferencing where there is a sex offender, and in Western Australian under victim-offender dialogue. The table below demonstrates the types of VOM offered in each state and who has the power to initiate a mediation process.

\textsuperscript{69} Jacqueline Joudo Larsen, Restorative Justice in the Australian Criminal Justice System (Australian Institute of Criminology Report No 127, 2014) 18.
Table 4: Victim-Offender Mediation in Australia.\textsuperscript{71}

<table>
<thead>
<tr>
<th>State</th>
<th>Program</th>
<th>Legislation</th>
<th>Initiated by</th>
<th>Point of Referral</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>Victim-Offender Conferencing (Restorative Justice Unit)</td>
<td>No legislation</td>
<td>Victim or offender (there is an exception for sex offenders)</td>
<td>Post-Sentence</td>
</tr>
<tr>
<td></td>
<td>Reparative Mediation</td>
<td>Sentencing Act 1995</td>
<td>Victim, offender, magistrate/judge, police prosecutor, lawyers, victim support counsellors or Community Corrections/Youth Justice officers.\textsuperscript{72}</td>
<td>Post-conviction and pre-sentence</td>
</tr>
<tr>
<td></td>
<td>Victim-Offender Dialogue</td>
<td>No legislation</td>
<td>Victim can only initiate</td>
<td>Post-Sentence</td>
</tr>
<tr>
<td>NT</td>
<td>Correctional Centre Conferencing and Ponki Mediation</td>
<td>Community Justice Centre Act 2005</td>
<td>Victim, offender, lawyers, reintegration officers, judges, elders, witness assistance or community members.\textsuperscript{73}</td>
<td>Post-Sentence</td>
</tr>
</tbody>
</table>


\textsuperscript{72} Ibid.

\textsuperscript{73} Ibid.
Mediation and conferencing are distinguished through victim involvement. VOM generally requires victim involvement, however, conferencing can primarily proceed without the victim present. In most Australian jurisdictions VOM is referred post-sentence, though in Western Australia through reparative mediation and Tasmania through court-ordered mediation, VOM can be referred pre-sentence. VOM is highly confidential, as many serious and indictable offences, such as murder and sexual assault, are dealt with under the process in most states and territories.

Reparative Mediation in Western Australia is the only form of VOM that excludes serious offences.

### 3.1.3 CIRCLE SENTENCING

Circle sentencing operates in Australia for adult Indigenous offenders in NSW and Western Australia. While there are other Indigenous courts in Australia which have restorative characteristics, the Australia Institute of Criminology argues that these courts are not appropriate examples of restorative justice processes. Therefore, this report will focus on circle sentencing as its objectives are more closely linked to restorative justice objectives. Circle sentencing stems from an idea of individuals coming together and determining a sentence that does not result in incarceration for Indigenous offenders. The aims of circle sentencing include; empowering Indigenous communities during sentencing to come to a culturally appropriate resolution, promoting healing for victims and all other affected parties, encouraging the offender to mend the harm they have caused, and promoting community and cultural value. The attendees in circle sentencing

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74 Ibid 18.
75 Ibid.
76 *Criminal Procedure Regulation 2005 (NSW)* s 19.
77 Indigenous courts have been set up in New South Wales, Western Australia, Victoria, Queensland, South Australia, Australian Capital Territory.
79 Ibid 16.
81 Kathleen Daly and Gitana Scifoni-Proietti, ‘The Elders Know...The White Man Don’t Know: Offenders’ Views of the Nowra Circle Court’ (2011) 7(24) *Indigenous Law Bulletin* 17, 18.
include the offender and their support groups, Indigenous elders, respected members in the community, the prosecution or police, as well as a magistrate. Victims may also be involved in the circle if they consent. In NSW, circles bring together the thoughts of Aboriginal elders and magistrates, assessing the most appropriate sentence for the offender in light of the offender’s circumstances. Similarly in Western Australia, the offender, the magistrate, a legal professional and family relations gather at a table with Indigenous elders and other respected Indigenous members in the community to provide cultural advice to a magistrate when sentencing. Indigenous offenders must satisfy specific criteria to be referred to circle sentencing, including; pleading guilty and admitting responsibility for the offence. In Western Australia, the court operates similar to the Magistrates court, however, circles cannot hear matters relating to sexual or family violence.

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83 Kathleen Daly and Gitana Scifoni-Proietti, ‘The Elders Know...The White Man Don’t Know: Offenders’ Views of the Nowra Circle Court’ (2011) 7(24) Indigenous Law Bulletin 17, 18.
85 Ibid.
86 Ibid.
PART FOUR: IMPLEMENTATION OF RESTORATIVE JUSTICE
4.1 EDUCATION AND TRAINING

4.1.1 THE ROLE AND RESPONSIBILITIES OF CONFERENCE CONVENORS

Facilitators of juvenile restorative justice conferences in Australia are often referred to as conference convenors. Conference convenors, and in some jurisdictions support staff such as assistants and monitors, have the role of preparing for the conference, facilitating the face-to-face conference, and following up the offender throughout the completion of their outcome plan. A useful resource to understand this process can be found on the NSW Department of Juvenile Justice website. This website contains an online portal of all the policies and procedures relating to the appointment and management of conference convenors, and also contains all the resources relevant to all stages of Youth Justice Conferencing. These resources include a conference script, preparation documents, checklists, and running sheets.

**PREPARING FOR THE CONFERENCE:**

In preparation for the conference, convenors undertake the following responsibilities:

- Establish contact with the participants;
- arrange the date, time and venue of the conference;
- inform participants of their obligations and legal rights in the conference;
- assess the particulars of the offender’s case;
- identify any areas of risk and any criminogenic needs of the juvenile offender;
- identify any issues that the offender may require support for in the process of the conference; and
- maintain records of the preparation process and the details of the conference.

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FACILITATING THE FACE-TO-FACE CONFERENCE

The role of the conference convenor during the face-to-face conference is to facilitate the conference, negotiating with each participant to reach a suitable outcome plan.90 When negotiating the outcome plan, the conference convenor must have regard to what the juvenile offender will do to remedy the harms caused by the specific offence, and establish a plan to prevent future reoffending.91 The conference convenor is obliged to discuss the following throughout the face-to-face conference:92

- The specifics of the offence, including the circumstances and factors of the offence;
- the harm the offence has caused to the victim; and
- they must negotiate an outcome plan.

The conference convenor must also record the conference process and must write a report detailing the specifics of the conference, which may be used by the court when deciding on an appropriate sentence for the juvenile offender.93

FOLLOW-UP PROCESS

The conference convenor, and in some circumstances support workers appointed by the conference convenor such as monitors, assist the juvenile offender throughout the completion of their outcome plan. The conference convenor, or a designated support worker, will supervise the completion of tasks and activities agreed upon in the outcome plan through regular check-ins with the juvenile offender.94 Where the outcome plan agreed upon includes the making of reparation to the victim of the crime, the conference convenor will take care to supervise and support this entire process.95

91 Ibid.
In 2017 Suzuki and Wood conducted a study on Victorian youth justice group conference convenors, interviewing 25 conference convenors (30% of total number of convenors in Victoria) finding that convenors valued “adequate preparation, ensuring that the victim’s voice is heard, establishing a realistic outcome plan that reinforces accountability, and follow-up action.” From the convenor perspectives in this study, the researcher concluded that a ‘holistic’ approach to restorative justice conferencing requires attention to the three phases identified, “preparation, face-to-face dialogue, and follow-up.” The preparation phase enhances the face-to-face dialogue phase as it encourages participants’ involvement in the conferencing process. Further, the follow-up phases assist in maintaining the positive outcomes of youth justice conferencing, helping juvenile offenders to complete their outcome plan, leading to positive outcomes for the offenders, repairing the harm caused by the offender, and to their reintegration into their communities.98

4.1.2 QUALIFICATIONS AND TRAINING

JUVENILE JUSTICE CONFERENCE CONVENORS

As there are separate juvenile restorative justice schemes in each Australian state and territory, the specific training for restorative justice conference convenors differs. However, general observations regarding the specific training requirements of conference convenors can be drawn. Generally, there are no mandatory professional or vocational qualifications needed for the role of conference convenor, however qualifications in the youth justice or community services sectors are highly regarded for these roles.99 Further, skills that are required for this role include:

- group facilitation and active listening skills;
- organisational and time management skills to meet strict deadlines in the conferencing process;
- an understanding of restorative justice principles;
- an understanding of the issues affecting both juvenile offenders and victims of juvenile crimes;

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97 Ibid.
98 Ibid.
• an understanding of and the ability to work with community networks.  

Conference convenors are required to have a Working With Children Check (WWCC) and a National Criminal History Check (NCHC) to be eligible to facilitate these conferences. In NSW, to ensure the conferencing process is impartial and independent, conference convenors cannot be employed by the Department of Juvenile Justice who finance and implement these process. Conference convenors are employed on an as needed basis, and are required to attend and complete a four day induction training and assessment course. Eligible community members are encouraged to apply for these position, upholding the philosophical basis of “Youth Justice Conferencing being a community based negotiated response to offending.”

In some jurisdictions, conference convenors are required to attend a mandatory training course, usually over the span of four to five days. At the conclusion of this training course, conference convenors are required to demonstrate their competency in the skills taught at the training session, they are then given accreditation to convene juvenile justice conferences. Conference convenors are required to renew their training annually by attending a renewal training session, in some circumstances completing a practical assessment, and they must have conducted a minimum amount of conferences per year. Complimenting this mandatory training is the availability of peer mentoring. This mentoring is available to newly instated convenors to assist in the practical application of the restorative justice theory they are trained in. In jurisdictions where there is no

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103 Ibid 4.
106 Ibid, 5.
standard training or accreditation scheme, there have been suggested reforms pushing for these schemes, as they provide a higher standard of professional practice across conference convenors, and allow for high quality and efficient conferencing practices, and more consistent outcomes.\textsuperscript{109}

Accompanying these general training requirements for conference convenors in Australia, the United Nations has released a report providing a general guide to implementing restorative justice processes in the juvenile criminal justice system.\textsuperscript{110} In this report they outline the specific aims of training for restorative justice facilitators, highlighting the importance of developing “child-sensitive skills” when facilitating the restorative justice process.\textsuperscript{111} The recommendations in the report stress the importance of training facilitators in all relevant diversionary and non-custodial restorative justice process.\textsuperscript{112} Further, “guidelines and standard operating procedures” need to be developed for all relevant professionals involved in the restorative justice process.\textsuperscript{113}

\textbf{VICTIM-OFFENDER MEDIATORS}

Each state and territory have their own system of victim-offender mediation, and therefore training programs for mediators vary. However, general observations can be made. In states and territories where victim-offender mediation is available to juvenile offenders this process is often commenced through a victim contacting victim services in their respective jurisdiction. Victim services are a part of the public service system and are run through government funded offices. These offices facilitate the process of victim-offender mediation from the first stage of contacting the offender, to organising the logistics involved with the mediation, as well as running the mediation session itself.\textsuperscript{114} Since


\textsuperscript{111} Ibid 40.

\textsuperscript{112} Ibid.

\textsuperscript{113} Ibid.

victim-offender mediation is a process which is a highly sensitive and emotional process, it is highly confidential. Therefore, there is a lack of information available about the specific role of mediators in this process and the training they are required to complete. There are no requirements for mandatory tertiary qualifications for victim-offender mediators, however, tertiary qualifications in the behavioural sciences, such as psychology and sociology, are highly regarded for these positions. Further, work experience in correctional services or the justice system is also highly valued, as most victim-offender mediation occurs post-sentence and in conjunction with a custodial sentence. There are also internal training requirements that victim-offender mediators are required to complete, accompanied by on-the-job training, however these training programs are confidential, and the specific details could not be disclosed. Further, in WA, the victim-offender mediation unit requires victim-offender mediators to become nationally accreditor mediators. To become a nationally accredited mediator, individuals must:

1. Complete an external training program that teaches the skills, knowledge and ethical understanding required to become an effective mediator.
2. Successfully complete an assessment.
3. Apply to a Recognised Mediator Accreditation Body to gain accreditation.
4. Register their accreditation on the National Register.
5. Must renew their accreditation every 2 years to ensure competency, by completing 25 hours of mediation practice and 25 hours of professional development.

**INDIGENOUS FACILITATORS:**

In Queensland, where this is a large indigenous population, experience with and an understanding of the Indigenous community is highly desirable in conference convenors. Further, when indigenous juvenile offenders are referred to conferencing, in most jurisdictions an Elder or a well-respected member of the Indigenous community is encouraged to attend the conference. In victim-offender mediation, Indigenous facilitators are highly valued. They bring a unique perspective and understanding of the cultural and historical context of the Indigenous community, which is essential for creating a meaningful and respectful mediation environment.

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mediation, there has been an initiative to incorporate cultural mediators into this process, especially for prisoners who have come from remote indigenous communities.

In 2008 a mediation training program was developed in the Northern Territory by the Community Justice Centre (CJC) and the North Australian Aboriginal Justice Agency (NAAJA) which brought together traditional Indigenous practices of mediation with western mediation models.118 This program was specifically focused on providing victim-offender mediation training for individuals living in the remote Indigenous communities of the Tiwi Islands, located 80km north of Darwin in the Northern Territory. The Tiwi Islands has a population of around 2500 people from four ‘skin groups’, culturally and linguistically diverse communities. This victim-offender mediation program is called ‘Ponki’ mediation, coming from the traditional Tiwi language meaning ‘welcome’, ‘peace’, and ‘it’s finished.’119 This program is designed for mediation between prisoners in Darwin who have committed serious crimes and the victims of their crimes, and more broadly between the offender and the indigenous community on the Tiwi Islands. The four ‘skin group’ (the four groups of Indigenous communities on the Tiwi Islands) mediators are present at all mediations, to represent each community in the conflict resolution process. Ponki Mediators are trained in traditional Indigenous mediation rules, culturally appropriate and sensitive processes, and western mediation techniques.120 The cross-cultural blending of Indigenous and western mediation methods has worked well in this community, as it helps the successful re-integration of prisoners after they have served custodial sentences, it brings a sense of closure to victims, and it allows the community to have a voice in the harm caused by the offender. The Ponki mediation training program has been extended to members of the Tiwi Island community to provide a framework for them to deal with conflict within the local community, and there is evidence to suggest that these mediation training programs have the potential to resolve conflict on a community level, at times preventing serious offending from occurring.121

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121 Ibid 24.
4.2 FINANCE

For comparison, community-based youth services refer to an alternative to detention where a sentence order or un-sentenced order such as conditional bail is served in the community.\textsuperscript{122} Furthermore, note that the below statistics should be considered with other indicators. For example, low costs could reflect less investment in programs for children offered by the government or less intensive case management for these orders. Costs are also affected by geographic dispersion, and other factors that may limit the ability to reduce overheads through economies of scale.\textsuperscript{123} Furthermore, it is interesting to note that the daily average costs of supervising young offenders are higher than adult offenders likely because of the more extensive supervisions required, as well as limited opportunity for economies of scale to reduce costs in the smaller youth justice systems.\textsuperscript{124} Table 5 also discusses some of the reasons for increases or decreases in expenditure and these factors should be taken into consideration when interpreting the data. For example, in South Australia, the increase in detention expenditure in the years 2015-2016, was due to infrastructure and security upgrades. Higher expenditure in 2012-2013 was also attributed to an increase in youth training centre.\textsuperscript{125} Please also keep in mind that there are differences in the calculation of government expenditure on youth services across different states and territories (Tables 6 and 7).

Moreover, there are no relevant statistics for cost of training and education of facilitators because Australia does not have a mandatory training scheme. Any training undergone by facilitators and mediators are voluntary and would be specific to the institution they personally chose to carry out their training, whether at university, TAFE or other educational facility. Additionally, there are no recorded statistics on any training undergone through state agencies due to confidentiality reasons (please refer to the education and training section for more information).

*Note that the following statistics are for services provided to 10-17-year-olds.

\textsuperscript{123} Ibid 17.21.
\textsuperscript{124} Ibid 17.21.
\textsuperscript{125} Ibid app 17A.8.
4.2.1 METHOD OF CALCULATING COSTS

Community-based Supervision (Table 8)

- Costs per child is calculated by the recurrent expenditure per day divided by the daily average number of youth subject to such supervision.\textsuperscript{126}
- Recurrent expenditure per day is calculated as annual recurrent expenditure divided by 365.25 (days in a year).
- Daily average number of young people is calculated by summing the number of days each young person spends under supervision during the year (irrespective of age) and dividing this total by 365.25.\textsuperscript{127}

Detention-based Supervision (Table 9)

- Cost per child is calculated by the recurrent expenditure on detention-based supervision per day, divided by the daily number of young people subject to detention-based supervision.
- Recurrent expenditure per day is calculated by dividing the annual recurrent expenditure by 365.25 (days in a year).
- Daily average number of youth is calculated by summing the number of days each young person spends in detention within a year (irrespective of age) and dividing this total by 365.25 (days in a year).\textsuperscript{128}

Group Conferencing (Table 10)

- Cost per group conference is calculated by total expenditure on conferencing divided by number of concluded conferences.\textsuperscript{129}

Note that data (subject to caveats) is comparable within the same jurisdiction (same state or territory), but not comparable across different jurisdictions. The method of calculation differs across states and territories (Table 7). Here, “real expenditure” refers to expenditure adjusted by inflation.

\textsuperscript{126} Productivity Commission, Australian Government, Annual Report on Government Services: Chapter 17 Youth Justice Services, (Report, 2018) 17.22
\textsuperscript{127} Ibid 17.22.
\textsuperscript{128} Ibid 17.23.
\textsuperscript{129} Ibid 17.24.
For the most recent national data 2016-2017, average costs per day per child for community-based supervision was $140 (Table 6). The average cost per day per child was $1482 for those subject to detention-based supervision (Table 9). In comparison, the cost on average per group conference was $7152 (Figure 3). However, these figures differ depending on the state and territory (Tables 8, 9 and 10). Across Australia, the total expenditure on detention-based supervision, community-based supervision and group conferencing was $769.5 million in 2016-2017, with detention amounting to 62.6 per cent or $482.1 million.\(^\text{130}\)

According to Table 11, overall costs per child for real recurrent government expenditure (expenditure adjusted by inflation) in Australia for detention-based youth services is $207.74. This is in comparison to group conferencing costs which are $20.73 and community-based services which amount to $103.14.\(^\text{131}\) This was the data recorded by individual state agencies. Table 6 explains the amounts attributed to different costs in detention, community services and conferencing. For example, overall total across Australia spent on salary for conferencing was about $27.5 million. Conferencing is evidently cheaper than detention services but this must be read in light of factors listed in Table 5.\(^\text{132}\) Please refer to the appendix for more detailed statistics.

Figure 2: Recurrent expenditure on youth justice services per young person aged 10-17 years in the population (2016-2017)

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\(^\text{130}\) Ibid 17.6.
\(^\text{131}\) Ibid app 17A.8.
\(^\text{132}\) Ibid app 17A.9.
PART FIVE:
CRIME ANALYSIS
This section of the report will assess how restorative justice has been implemented to address the commission of the following crimes: murder, sexual assault, common assault, drug crimes and property crimes. Each state and territory possess its own criminal statute and restorative justice legislation. The distinctions between each jurisdiction’s approach to restorative justice will be discussed, where relevant.

The following analyses regarding the use of restorative justice to address each crime will discuss:

- The relationship between the nature of the offence and restorative justice;
- The implementation of the restorative justice process;
- The effectiveness of the process, where data is available; and,
- Relevant case studies, including victim and offender testimonials, where available.

Together, this section provides a comprehensive overview of the effectiveness of Australia’s restorative justice practices when applied to crimes of varying degrees of seriousness. For the purpose of this analysis, heinous crimes will include murder and sexual assault. Minor crimes will refer to assault, drug offences and property crimes.

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133 Crimes Act 1900 (NSW); Young Offenders Act 1997 (NSW); Crimes Act 1958 (VIC); Children Youth and Families Act 2005 (VIC); Youth Justice Act 1992 (VIC); Criminal Code 1899 (QLD); Dispute Resolution Centre Act 1990 (QLD); Criminal Law Consolidation Act 1935 (SA); Young Offenders Act 1993 (SA); Criminal Code Act 1924 (TAS); Youth Justice Act 1997 (TAS); Criminal Code Act Compilation Act 1913 (WA); Young Offenders Act 1994 (WA); Youth Justice Act (NT); Crimes Act 1900 (ACT); Crimes (Restorative Justice) Act 2004 (ACT).
5.2 MURDER

There is little recorded practice of using restorative justice for juvenile, or even adult, offenders who have been charged with murder. This is largely owed to the exclusion of murder from restorative justice legislation and practice, and the confidentiality of restorative justice testimonies where murder is not excluded from practice. Upon analysing the restorative justice laws and practices in each state and territory, it is evident that restorative justice is not used to address the commission of murder where the restorative justice process occurs pre-sentencing. However, restorative justice has expanded to include the offence of murder where the referral of the convicted offender into the restorative justice process occurs post-sentencing.

This section will first outline the offence of murder and its legislated punishments in Australia. This will be followed by a discussion of the nature of murder and the competing views regarding its applicability for restorative justice. Finally, this section will provide an overview of the present restorative justice mechanisms used to address juvenile offenders convicted on murder charges. Note that the literature and research regarding the application of restorative justice in addressing murder offences in Australia is considerably limited, due to the lack of practice. Brief reference has been made to research studies conducted in the United Kingdom and Canada to illustrate both the benefits of applying restorative justice to more serious offending, as well as the hesitations that accompany the inclusion of serious offending.

5.2.1 THE OFFENCE OF MURDER

Murder is a criminal offence across all states and territories in Australia. The specific legislative definition of murder varies across each state and territory, however murder is ultimately regarded as conduct, resulting in death, which is committed intentionally with reckless indifference to human life. Legislation generally dictates that the offence of murder may attract a punishment of life.

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134 Crimes Act 1900 (NSW) s 18; Crimes Act 1958 (VIC) s 3; Criminal Code 1899 (QLD) s 302; Criminal Law Consolidation Act 1935 (SA) s 12A; Criminal Code Act 1924 (TAS) s 158; Criminal Code Act Compilation Act 1913 (WA) s 279; Crimes Act 1900 (ACT) s 12.
135 Crimes Act 1900 (NSW) s 18.
imprisonment, or a term deemed appropriate by the Court.\textsuperscript{136} Victorian legislation regards 25 years as a standard sentence for murder.\textsuperscript{137}

Western Australia is the only State whose criminal statute explicitly distinguishes between murder committed by adults and murder committed by children. A ‘child’ is defined as any person below the age of 18 years.\textsuperscript{138} Pursuant to s 279 of the Criminal Code Act Compilation Act 1913 (WA), an adult who is convicted of murder must be sentenced to life imprisonment unless the sentence would be unjust (considering the circumstances of the offence and the offender) and the offender is unlikely to be a threat to the safety of the community.\textsuperscript{139} In this case, the offender is liable to imprisonment for 20 years.\textsuperscript{140} However, if the offender is a child, the child is liable to either life imprisonment, or ‘detention in a place determined from time to time by the Governor’.\textsuperscript{141} Presently, this detention is typically located in Western Australia’s sole youth detention centre, Banksia Hill Detention Centre.\textsuperscript{142} The legislation does not specify the length of detainment in the youth detention centre. The specific period of detainment is determined by the judiciary, with regard to the specific facts and circumstances of each case.

\subsection*{5.2.2 THE RELATIONSHIP BETWEEN RESTORATIVE JUSTICE AND MURDER}

Restorative justice in Australia was traditionally implemented to address juvenile offenders who committed minor offences.\textsuperscript{143} The conventional punishment for these offences would often be a minor penalty, such as a police caution.\textsuperscript{144} Youth justice conferencing would replace this minor punishment. Indeed, murder falls outside the traditional scope of restorative justice, considering the gravity of the offence. Additionally, the sentence typically imposed upon offenders convicted of murder is imprisonment, as outlined above. While the legislative has failed to outline any justifications as to why restorative justice laws exclude murder, academia addressing the controversial use of

\begin{thebibliography}{9}
\bibitem{136} Crimes Act 1958 (VIC) s 3(1).
\bibitem{137} Ibid s 3(2)(b).
\bibitem{138} Criminal Code Act Compilation Act 1913 (WA) s 1.
\bibitem{139} Ibid s 279(4).
\bibitem{140} Ibid s 279(4)(b).
\bibitem{141} Ibid s 279(5).
\bibitem{144} Ibid.
\end{thebibliography}
Restorative justice for heinous offences may explain government hesitation for embracing restorative justice to address such offences.

First, the diversion of offenders away from the criminal justice system may perpetuate perceptions that crimes such as murder are treated less seriously.\textsuperscript{145} The fear of exacerbating this perception is a significant factor contributing to the hesitation to include murder, especially where the restorative justice program operates pre-sentencing. Pre-sentence processes involve the court or the police referring the offender to youth justice conferencing instead of, or alongside, incarceration.\textsuperscript{146} This may inadvertently contribute to the belief that offenders are being shielded from punitive mechanisms or are receiving lesser sentences. Hence, the exclusion of murder from most restorative justice processes may be attributed to this underlying belief.

Second, families of murder victims may be unwilling or unable to cooperate with the perpetrators of these offences, considering the heinous nature of the offence in question. Although victims (or relatives of victims) are not forced to participate in restorative justice programs such as conferencing, requiring their participation may result in an imbalance of interests.\textsuperscript{147} Victims may find themselves playing a passive role in conferencing, serving as an 'educational vehicle'\textsuperscript{148} for the benefit of offenders. Requesting people to face the person convicted of murdering their loved one, especially if the conferencing program diverts the offender away from the criminal justice system, may be deemed inappropriate. A United Kingdom study conducted on restorative justice victim satisfaction rates for heinous offending revealed that victim satisfaction was higher when the accused had already been found guilty.\textsuperscript{149} Therefore, victim satisfaction may increase where the restorative justice conferencing occurs post-sentencing (or post-conviction, at the very least) as the offender has already been held guilty and received a sentence.

Third, restorative justice conferencing for serious offending requires a degree of moral maturity which young offenders may not necessarily possess. Conferencing requires the offender to admit their guilt,

\begin{enumerate}
\item[145] Ibid 361.
\item[146] Heather Strang, Restorative Justice Programs in Australia (Final Report, March 2001) 49.
\item[149] Ibid 368.
\end{enumerate}
take responsibility for their actions and the consequences, and understand the nature of their wrongdoing. However, research demonstrates that young offenders may not possess the cognitive and emotional capabilities for analysing the cause and nature of their offending.\(^{150}\) Further, young offenders may not be equipped with the capacity to assess how to rectify the situation and bring healing to themselves and the victim(s).\(^{151}\) The practicalities of young offenders’ capabilities to effectively participate in the conferencing process may result in the belief that restorative justice may be an unsuitable means of dealing with a heinous offence such as murder.

However, restorative justice practices are broadening to respond to serious offending.\(^{152}\) While the application of restorative justice to offences resulting in death are limited, the Australian Institute of Criminology has indicated that restorative justice may be more effective in cases where victims experience significant trauma.\(^{153}\) This may be due to two reasons. First, victims’ desires to receive closure may be higher in the context of more severe cases.\(^{154}\) A Canadian study conducted on victims of violent crimes revealed that many relatives of homicide victims would be willing to meet with the offender to receive answers to their questions, and communicate their feelings about the offender’s actions, if given the opportunity to do so.\(^{155}\) Second, witnessing the severity of the impact of their actions may be beneficial for the self-reflection and rehabilitation of young offenders.\(^{156}\) This may translate into decreased risks of reoffending.\(^{157}\) Hence, applying restorative justice to serious crimes such as murder may achieve the restorative justice goals of: repairing the harm suffered by victims, restoring the relationship between victims and offenders, and reintegrating offenders into the community upon release.\(^{158}\)

\(^{151}\) Ibid.
\(^{153}\) Ibid 33.
\(^{155}\) Ibid.
\(^{157}\) Ibid.
Furthermore, there has been an increase in juveniles committing acts intended to cause injury, including murder, within the last decade. Since 2001, the proportion of juveniles committing crimes intended to cause injury in Victoria has increased from 30% to 50%. This increase may have prompted the expansion of restorative justice to include murder in some states and territories, in a bid to address the rise of serious youth offending.

5.2.3 RESTORATIVE JUSTICE PRACTICES

Many statutes governing the practice of restorative justice exclude murder from the scope of offences which attract referrals to restorative justice procedures. Pursuant to s 8(2)(c) of the Young Offenders Act 1997 (NSW), youth justice conferences in NSW cannot be held for offences which 'result in the death of any person'. Similarly, murder and attempted murder are excluded from restorative justice practices in Tasmania and the Australian Capital Territory (ACT). Further, while there are no express exclusions in Victorian legislation, youth justice group conferencing excludes murder in practice. South Australian law is similarly restrictive in its restorative justice practices, facilitated through family conferencing, which is limited to 'minor' offences.

Notably, the above modes of youth justice conferencing and family conferencing are commenced pre-sentencing. Murder is excluded from the restorative justice practice where the restorative justice process occurs pre-sentencing. However, restorative justice models which occur post-sentencing do not appear to exclude murder from their scope. These models include the Justice Mediation Program in Queensland (note however that this is restricted to adult offenders); Victim-Offender Dialogue in Western Australia (while this program is offered in many states and territories, Western Australia is the only jurisdiction which does not exclude murder from its legislation or practice); and, Correctional Centre Conferences in the Northern Territory. These models will be explored further below.

159 Penny Armytage, Youth Justice: Review and Strategy (Executive Summary, July 2017) 8.
160 Young Offenders Act 1997 (NSW) s 8(2)(c).
162 Ibid 8.
163 Ibid.
164 Ibid.
165 Ibid 19.
166 Ibid.
167 Ibid.
Table 12: Restorative justice models available to the offence of murder.\textsuperscript{168}

<table>
<thead>
<tr>
<th>State</th>
<th>Method</th>
<th>Point of Referral</th>
<th>Can it be used to address murder offences?</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>Youth Justice Conferencing</td>
<td>Pre-Sentencing</td>
<td>No: excluded in legislation.</td>
</tr>
<tr>
<td></td>
<td>Youth Justice Group Conferencing</td>
<td>Pre-Sentencing</td>
<td>No: there are no exclusions specified in legislation, however murder is excluded in practice.</td>
</tr>
<tr>
<td>VIC</td>
<td>Youth Justice Group Conferencing</td>
<td>Pre-Sentencing</td>
<td>No: there are no exclusions specified in legislation, however murder is excluded in practice.</td>
</tr>
<tr>
<td></td>
<td>Youth Justice Conferencing</td>
<td>Pre-Sentencing</td>
<td>No: there are no exclusions specified in legislation, however murder is excluded in practice.</td>
</tr>
<tr>
<td>QLD</td>
<td>Post-Sentence Justice Mediation (Program)</td>
<td>Post-Sentencing</td>
<td>Yes: note, however, that this program is exclusive to adults (individuals aged 17 years and over).</td>
</tr>
</tbody>
</table>

\textsuperscript{168} Ibid 8, 9, 19.
<table>
<thead>
<tr>
<th>State</th>
<th>Conference Type</th>
<th>Stage</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>SA</td>
<td>Family Conferencing</td>
<td>Pre-Sentencing</td>
<td>No: no offences are specifically excluded from legislation, however the legislation stipulates family conferencing is only for youth who admit to committing a minor offence. Murder is not considered a ‘minor offence’.</td>
</tr>
<tr>
<td>WA</td>
<td>Family Group Conferencing</td>
<td>Pre-Sentencing</td>
<td>No: excluded in legislation.</td>
</tr>
<tr>
<td></td>
<td>Reparative Mediation</td>
<td>Post Conviction and Pre-Sentencing</td>
<td>No: excluded in legislation.</td>
</tr>
<tr>
<td></td>
<td>Victim-Offender Dialogue</td>
<td>Post-Sentencing</td>
<td>Yes: any offence type is referable. Murder is commonly referred.</td>
</tr>
<tr>
<td>NT</td>
<td>Youth Justice Conferencing</td>
<td>Pre-Sentencing</td>
<td>No: excluded in legislation.</td>
</tr>
<tr>
<td></td>
<td>Correctional Centre Conferencing/Ponki Mediation</td>
<td>Post-Sentencing</td>
<td>Yes: no offences are specifically excluded. Murder and manslaughter are generally referred to this program.</td>
</tr>
<tr>
<td></td>
<td>Community Conference</td>
<td>Community conference is a sentencing option</td>
<td>No: excluded from legislation.</td>
</tr>
<tr>
<td>----------------</td>
<td>----------------------</td>
<td>---------------------------------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>TAS</td>
<td>Victim-Offender Mediation</td>
<td>Post-Sentencing</td>
<td>No offences specifically excluded. However, most offences are indictable offences.</td>
</tr>
<tr>
<td></td>
<td>Court-Ordered Mediation</td>
<td>Pre-sentencing</td>
<td>No offences are specifically excluded. However, most offences are indictable offences.</td>
</tr>
<tr>
<td>ACT</td>
<td>Restorative Justice Unit</td>
<td>From Apprehension to Post-Sentence</td>
<td>No.</td>
</tr>
</tbody>
</table>

In Queensland, the Justice Mediation Program (JMP) is facilitated in cases of very serious offending, including murder.\(^{169}\) The JMP is limited to adult offenders; juvenile offenders cannot be referred to the program.\(^{170}\) Referrals to the JMP are rare.\(^{171}\) However, the program is available as a post-sentence referral, and is instigated upon request by the victim, the victim’s family (in offences resulting in death) or the offender.\(^{172}\) Any party may indicate they wish to meet the other party after the court process has concluded and the offender is in prison or on parole.\(^{173}\) Queensland’s placement of the JMP as a post-sentence process, rather than a pre-sentence option, avoids perceptions that restorative justice unfairly shields the offender from the punitive process. Thus, the post-sentence placement of the JMP may justify its appropriateness for a heinous offence like murder.

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\(^{169}\) Ibid 20.  
\(^{170}\) Ibid 19.  
\(^{171}\) Ibid 20.  
\(^{172}\) Ibid 19, 20.  
\(^{173}\) Ibid 20.
Many States and Territories offer a restorative justice model known as ‘Victim-Offender Dialogue’ (VOD). For the purposes of murder, this section will focus solely on Western Australian practice. While NSW offers victim-offender conferencing, it is restricted to adults.\textsuperscript{174} Additionally, while other jurisdictions do not explicitly exclude murder, the Australian Institute of Criminology has indicated that the Western Australian model has actually received referrals regarding murder.\textsuperscript{175} This is also a post-sentence process which can only be initiated by a victim upon their request to meet with the offender. Unlike the JMP in Queensland, the VOD is applicable to both juvenile and adult offenders.\textsuperscript{176} The goal of VOD is to assist the victim in coping with the trauma caused by the offender.\textsuperscript{177} Participation in the process is entirely voluntary.\textsuperscript{178} VOD will not proceed if either party is unwilling to participate, or if the Victim-Offender Mediation Unit determines that either party is at risk of being further traumatised.\textsuperscript{179} While any offence is referable for VOD, murder offences are common.\textsuperscript{180} The VOD is the only restorative justice model in Western Australia which includes murder within its scope. Family group conferencing and reparative mediation are two other restorative justice methods in Western Australia. However, these two methods expressly exclude homicide offences, pursuant to the Young Offenders Act 1994 and the Sentencing Act 1995.\textsuperscript{181} Both of these methods occur pre-sentencing, further substantiating the notion that the applicability of restorative justice for murder largely depends on when restorative justice is employed in the criminal justice process.

This notion is further supported when considering that the Northern Territory excludes murder, attempted murder and manslaughter from its youth justice conferencing process which occurs pre-sentence through a police or court referral.\textsuperscript{182} However, the Northern Territory Community Justice Centre implements a program called Correctional Centre Conferences (CCC) pursuant to the Community Justice Centre Act 2005. This is a reintegration scheme targeted at offenders who are returning to their communities after incarceration.\textsuperscript{183} This is a post-conviction and post-sentencing

\textsuperscript{174} Ibid 19.
\textsuperscript{175} Ibid 20. This is significant as, even though restorative justice legislation may not exclude murder from its scope, actual referrals based on murder offences may be rare, or non-existent.
\textsuperscript{176} Ibid 19.
\textsuperscript{177} Ibid 20.
\textsuperscript{178} Ibid.
\textsuperscript{179} Ibid.
\textsuperscript{180} Ibid.
\textsuperscript{181} Ibid 8, 19.
\textsuperscript{182} Ibid 9.
\textsuperscript{183} Ibid 20.
procedure which is voluntary.\textsuperscript{184} Additionally, offenders do not receive reduced sentences.\textsuperscript{185} The program simply seeks to assist the reintegration of offenders and reduce recidivism.\textsuperscript{186} Victims attend voluntarily and matters have included murder.\textsuperscript{187}

Outcomes of the JMP, VOD and CCC are confidential due to their highly sensitive nature.\textsuperscript{188} Unfortunately, communications are not published or released by authorities.\textsuperscript{189} Statistics regarding the rehabilitation of offenders, the reintegration of offenders, victim’s experiences and recidivism rates, are unavailable. Consequently, at present, it is not possible to assess the effectiveness of these programs in Queensland, Western Australia and the Northern Territory. However, the Australian Institute of Criminology has acknowledged that research continues to suggest that restorative justice may be more effective for serious offending and more effective post-sentence.\textsuperscript{190} This is likely due to the fact that young offenders who commit serious offences witness the trauma and suffering that their actions have inflicted upon the relatives of victims. This would be a confronting experience for many young offenders and could catalyse emotions of remorse and a willingness to reform their behaviour.

\textbf{5.2.4 CONCLUSION}

Converse to traditional notions of the applicability of restorative justice, some areas of Australia have deemed restorative justice an appropriate method to address murder offences. It is imperative to note that the timing of the restorative justice process in the criminal justice system is critical in shaping perceptions of restorative justice; processes which occur pre-sentencing may not be appropriate for offences like murder, which carry heavy gravity and severe implications (psychological and emotional) for victims. Contrastingly, post-sentence restorative justice portrays the wellbeing of victims as a significant goal. Hence, restorative justice laws and practices in Australia suggest that restorative justice for heinous crimes like murder may only be appropriate where it occurs post-sentence.

\textsuperscript{184} Ibid.
\textsuperscript{185} Ibid.
\textsuperscript{186} Ibid.
\textsuperscript{187} Ibid.
\textsuperscript{188} Ibid.
\textsuperscript{189} Ibid.
\textsuperscript{190} Ibid, vii.
5.3 SEXUAL ASSAULT

5.3.1 DEFINING SEXUAL ASSAULT

For the purposes of this section, the terms ‘rape’ and sexual assault’ will be separately defined, however both terms will be referred to as ‘sexual assault’ or ‘sexual offences’ for the remainder of the topic. Rape and sexual assault are criminal offences across all states and territories within Australia, with the specific legislative definition of these crimes varying across each jurisdiction. Rape is ultimately regarded as sexual penetration of a person, or other sexual intercourse such as oral sex, without their consent and without reasonable belief that consent was provided.\(^{191}\) In all jurisdictions, rape may attract a punishment of life imprisonment, or a term deemed appropriate by the Court. NSW and Victorian legislation regard 25 years as a standard sentence for rape. Sexual assault, or indecent touching, is ultimately regarded as sexual touching of another person without their consent and without reasonable belief that consent was provided.\(^{192}\) This offence attracts a variable punishment that ranges from 2 years\(^{193}\) to 14 years imprisonment.\(^{194}\)

5.3.2 DEBATE SURROUNDING THE USE OF RESTORATIVE JUSTICE

The appropriateness of using restorative justice programs for sexual assault crimes has been widely debated. Due to the orthodox assumption that sex offences are ‘too serious’ to be dealt with outside of the criminal justice system, few jurisdictions exist in Australia where sexual assault cases are eligible to be referred to restorative justice practices.\(^{195}\) Many feminists, legal scholars, and victim support organisations have cautioned against the adoption of restorative justice processes for sexual assault, arguing that the conference setting may exacerbate existing power imbalances between victims and

\(^{191}\) Crimes Act 1958 (VIC) s 38, Criminal Law Consolidation Act 1935 (SA) s 5.

\(^{192}\) Crimes Act 1958 (VIC) s 40.

\(^{193}\) Criminal Code Compilation Act (WA) s 323.

\(^{194}\) Criminal Code Act 1983 (NT) s 192(40).

offenders, jeopardise victim safety, and proliferate the victim-blaming culture that is prevalent in patriarchal society.\textsuperscript{196}

These concerns arise largely from the fact that sexual assault is a gendered crime, borne from power imbalances where the victims are disproportionately female, and offenders are male.\textsuperscript{197} The informal nature of restorative justice practices can result in power imbalances, allowing offenders to manipulate the process to expose victims to further intimidation, abuse, and blame.\textsuperscript{198} Accordingly, critics highlight that restorative justice processes could potentially result in re-victimization or re-traumatisation of the victim, particularly where the sexual assault experienced is more severe in nature, or where there is a pre-existing relationship between the victim and offender.\textsuperscript{199} In cases where there is a history of abuse, re-victimisation may easily occur as overt or discreet manipulation, coercive control, or intimidation by the offender can spark trauma in the mind of the victim.\textsuperscript{200}

Furthermore, critics have also argued that sexual assault victims may be inadequately prepared to further their own interests in a conference setting, and may feel pressured to agree to outcomes that they are not comfortable with, in the name of achieving reconciliation.\textsuperscript{201} In this way, it has been argued that restorative justice may not be sufficiently punitive compared to the criminal justice system, potentially resulting in outcomes that are ‘too soft’ relative to the seriousness of the crime.\textsuperscript{202} Accordingly, critics fear that offenders will gravitate towards restorative justice solely to avoid stricter and more severe penalties found in court prosecution, leading to disingenuous apologies and promises.\textsuperscript{203} If approached in this way, restorative justice could carry symbolic implications, diminishing the gravity of sexual assault.\textsuperscript{204} Thus, feminists fear that shifting to a restorative justice model could

\textsuperscript{197} Ibid.
\textsuperscript{198} Kathleen Daly, ‘Restorative Justice and sexual Assault: An Archival Study of Court and Conference Cases’ (2006) 46(2) British Journal of Criminology 334, 337.
\textsuperscript{199} Ibid 338.
\textsuperscript{202} Kathleen Daly, ‘Restorative Justice and sexual Assault: An Archival Study of Court and Conference Cases’ (2006) 46(2) British Journal of Criminology 334, 337.
\textsuperscript{204} Kathleen Daly, ‘Restorative Justice and sexual Assault: An Archival Study of Court and Conference Cases’ (2006) 46(2) British Journal of Criminology 334, 338.
undo years of progress made towards moving sexual assault crimes from the private into the public sphere.\textsuperscript{205}

5.3.3 THE BENEFITS OF RESTORATIVE JUSTICE

Despite the aforementioned criticisms of restorative justice’s appropriateness in dealing with sexual violence crimes, research has shown that victims of sexual assault are increasingly being drawn to restorative justice practices over the criminal justice system. This is largely due to the ever-present inadequacies of the formal legal process in successfully dealing with sexual assault crimes.\textsuperscript{206} Despite many legal reforms to improve the court system’s handling of sexual violence cases, these crimes continue to have low conviction rates, and are reportedly unable to meet victims’ multifaceted needs.\textsuperscript{207} According to a 2014 report by the Centre for Innovative Justice, victims of sexual assault in Victoria had a mere 1% chance that their case would lead to a successful conviction.\textsuperscript{208} Similarly, data gathered by the Australian Centre for the Study of Sexual Assault, demonstrated that 88.5 out of 100 Australian victims that report sexual assault to police will not have their case proceeded with by the police or the prosecution, or will be dismissed or acquitted in court.\textsuperscript{209} In other words, approximately 9 out of 10 victims that do report their assault to police will not receive any formal legal redress.\textsuperscript{210} These results are even more concerning when considering that sexual assault is one of the most underreported crimes, with reporting rates ranging between 5-30% in NSW, and approximately 17% in Victoria.\textsuperscript{211} The poor prosecution and conviction rates for sexual assault crimes are largely due to the persistent difficulties that victims of sexual assault face in satisfying legal and evidentiary burdens, as well as the unsuitability of an adversarial legal system in dealing with gendered crimes.\textsuperscript{212} For sexual assault crimes committed by juveniles, even lower prospects of conviction have

\textsuperscript{205} Ibid.
\textsuperscript{207} Ibid.
\textsuperscript{208} Centre for Innovative Justice, Innovative Justice Responses to Sexual Offending: Pathways to Better Outcomes for Victims, Offenders, and the Community (Report, 2014) 16.
\textsuperscript{209} Kathleen Daly, Conventional and Innovative Justice Responses to Sexual Violence (ACSSA Issues No 12, September 2011) 4.
\textsuperscript{210} Ibid.
\textsuperscript{212} Ibid 662.
been reported.\textsuperscript{213} This is likely due to the fact that juvenile sex offender cases often lack corroborating and forensic evidence, involve delays in reporting, and result in warnings and directions made during trial that undermine children’s credibility and evidence.\textsuperscript{214}

Moreover, the trial process itself often works against victims’ needs, facilitating dissatisfaction and disillusionment with the criminal justice system. For instance, according to Naylor,\textsuperscript{215} the trial process will only be meaningful for victims if there is an early acknowledgement of guilt by the defendant. However, the nature of an adversarial trial system mitigates the realisation of this essential requirement for victim satisfaction, as defence lawyers will often advise their clients to plead not-guilty if they assess that there is a high probability of acquittal.\textsuperscript{216} According to a report by the ABS on sexual assault, sex offenders are more likely than any other offenders to plead not-guilty, proceed to trial, and be acquitted of the offence.\textsuperscript{217} A not-guilty plea leaves the victim to prove beyond a reasonable doubt that there was a lack of consent, and that the defendant was aware of this lack of consent.\textsuperscript{218} This onerous process requires victims to relive their traumatic experiences as they undergo intrusive cross-examination and questioning, whilst also facing many rape-myths entrenched in patriarchal society.\textsuperscript{219} Accordingly, studies have found that victims who do run rape trials often experience re-traumatisation under the adversarial process, with some victims describing the process as a ‘second rape’.\textsuperscript{220}

Victims of sexual assault also tend to report that lack of information on the progress of their case, delays in the trial, and length of proceedings cause significant distress, hindering their emotional healing.\textsuperscript{221} Additionally, the change in status from being treated as a victim to being treated as a witness upon the commencement of legal proceedings often results in disempowerment.\textsuperscript{222} Even

\textsuperscript{213} Riddhi Blackley and Lorana Bartels, Sentencing and Treatment of Juvenile Sex Offenders in Australia (Trends and Issues in Crime and Criminal Justice No 555, July 2018) 5.
\textsuperscript{214} Ibid.
\textsuperscript{216} Ibid.
\textsuperscript{218} Crimes Act 1900 (NSW) ss 61HA, 611.
\textsuperscript{220} Jo Lovett and Linda Regan, A Gap or a Chasm? Attrition in Reported Rape Cases (Research Study No 293, February 2005) 73.
\textsuperscript{221} Kathleen Daly, Conventional and Innovative Justice Responses to Sexual Violence (ACSSA Issues No 12, September 2011) 6.
\textsuperscript{222} Ibid.
where a conviction is reached, a large number of victims report feeling traumatised and dissatisfied by their treatment in court, expressing that they rarely felt believed or taken seriously, and that the trial excessively focused on victim, rather than offender, behaviour.\(^{223}\)

Given the shortcomings of the traditional criminal justice system, restorative justice has been praised for being more amenable to meeting victims’ complex needs, holding a variety of benefits that allow healing to occur.

As mentioned, while the traditional criminal justice system may achieve a sense of justice through convictions and legal sanctions, the system’s adversarial nature can cause the victim to feel separated and voiceless, significantly limiting their ability to obtain emotional and psychological healing and closure. Research has identified the needs of victims that are often neglected or subject to oversight by courts. These include the need for social acknowledgement and support, which is limited by a court’s public challenge to the victim’s credibility; the need to establish a sense of power and control over their lives, which can be restricted by court rules and procedures; the need to have an opportunity to voice their story in a comfortable and personal way, which can be stifled by close-ended questions in court; and the need for control of re-traumatising triggers, that are often perpetuated by the adversarial nature of court proceedings.\(^{224}\)

Accordingly, the primary benefit of restorative justice programs is that it provides the opportunity for victims of sexual assault to participate directly in the justice process, to fully voice their story, and be heard by their offender.\(^{225}\) Evidence shows that such programs provide a counterpoint to the loss of power and control inherent in sexual assault\(^{226}\) which can be perpetuated by police and court processes. As offenders are required to firstly admit their wrongdoing, parties will generally spend more time discussing the effects of their behaviour on the victim and devising outcomes to resolve the harm caused, rather than debating the truth of the events that occurred.\(^{227}\) In this way, restorative

\(^{223}\) Ibid 7.


\(^{227}\) Ibid.
justice programs can provide victims with a sense of validation not found in the trial process, ensuring that their suffering is acknowledged by the perpetrator and by members of their community.\textsuperscript{228}

The flexible and informal nature of restorative justice also provides a less-threatening environment than court that can be more responsive and easily tailored to victims’ differing needs, especially for more vulnerable victims such as children and adolescents.\textsuperscript{229} Furthermore, unlike adversarial court proceedings, restorative justice can facilitate relationship reparations and address sexual violence for victims of intra-familial sexual violence who do not wish to terminate their relationships.\textsuperscript{230} This can help increase the safety of children and other family members where future or ongoing contact with the offender is unavoidable.\textsuperscript{231} On the other hand, restorative justice may provide the support necessary to encourage victims to end abusive relationships where they have previously been unable to do so.\textsuperscript{232}

\textbf{5.3.4 THE IMPLEMENTATION OF RESTORATIVE JUSTICE TO ADDRESS SEXUAL ASSAULT OFFENCES}

In Australia, the use of restorative justice for sexual assault crimes is rare due to concerns relating to its appropriateness for sexual assault crimes. Where it has been used, conferencing has been the primary mode of restorative justice for sexual assault cases.

South Australia is the only jurisdiction in Australia that has routinely referred cases of sexual assault to restorative justice programs. These programs are primarily used as a diversion from court for juvenile sex offenders who admit to their wrongdoing. However, juvenile offenders have also been referred at the pre-sentencing and post-sentencing stage. South Australia is also the only jurisdiction to use conferencing for adult sex offenders pre-sentencing.

In NSW, adult sex offenders are also eligible to be referred to victim-offender conferencing, however these are available post-sentencing only. The processes are driven by the victim’s needs, to attend

\textsuperscript{228} Ibid.
\textsuperscript{229} Ibid.
\textsuperscript{231} Ibid.
\textsuperscript{232} Ibid.
to any trauma and emotional psychological pain caused by the incident. Offender-focused programs have been used in Australia in the NSW Cedar Cottage pre-trial diversion program – however this program has since been discontinued.

5.3.5 CONDITIONS FOR SUCCESS

In a review of restorative justice programs, Bolitho found the following conditions as the most determinative of positive outcomes across all successful programs dealing with sexual assault crimes:\(^{233}\)

Specialisation

The first key feature of all well-established restorative justice practices for sexual assault victims is the use of facilitators that are specialised and experienced in working with crimes that involve complex power dynamics.\(^{234}\) Due to the sensitivities of this issue, the level of knowledge and experience required of facilitators working with sexual assault crimes is greater than those working with other crimes.\(^{235}\) Generally, staff and facilitators should be trained in sexual-assault counselling and the dynamics of violence with high-level skills of trauma-informed care.\(^{236}\)

Screening

Successful programs must also have a thorough screening phase to ensure success.\(^{237}\) This is because participants that lack suitability or interest will not benefit from restorative justice and are thus, routinely screened out of the process. For instance, according to Bolitho, only 8% of cases referred to conferencing in NSW actually proceeded to a face-to-face conference.\(^{238}\) A thorough screening process is also critical to ensure victim safety in conferences, which is a determinative factor for

\(^{233}\) Jane Bolitho and Karen Freeman, The Use and Effectiveness of Restorative Justice in Criminal Justice Systems Following Child Sexual Abuse or Comparable Harms (Royal Commission into Institutional Responses to Child Sexual Abuse, 2016) 43-44.

\(^{234}\) Ibid.

\(^{235}\) Ibid.


\(^{237}\) Ibid 44.

success, as victims who feel threatened or unsafe will not be able to properly engage with their offender and will be at risk of re-traumatisation.\textsuperscript{239}

\textit{Flexibility and Responsiveness}

Timing of the conference, and its flexibility and responsiveness to participants needs is another crucial requirement for success.\textsuperscript{240} Successful programs prioritised responding to participants needs and circumstances, rather than maximising efficiency, as is usually the case with court processes. Additionally, they were available at different stages of the justice system and included options to choose direct engagement with the offender, or a representative facilitator communicating on behalf of the victim.

\textit{Specialist Sex Offender Treatment}

Successful restorative justice programs must require completion of specialist sex offender treatment programs, either as a prerequisite of restorative justice participation, or as a condition of the program.\textsuperscript{241} In NSW’s Victim Offender Conferencing program, offenders will only be suitable for participation if they have completed a sex offender treatment program.\textsuperscript{242} Similarly, in South Australia’s Family Conferencing Model, more than 50% of offenders undertake sex offender treatment programs as a condition of their outcome plan.\textsuperscript{243} These treatments play an important role in restorative justice for sexual assault crimes, as research suggests that they can have a powerful impact on reducing sexual reoffending.\textsuperscript{244}

\textit{Other Factors}

Some other notable conditions include that the programs be victim-initiated, that participation is completely voluntary and consensual, and that there is thorough victim preparation to ensure

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\textsuperscript{239} Jane Bolitho and Karen Freeman, \textit{The Use and Effectiveness of Restorative Justice in Criminal Justice Systems Following Child Sexual Abuse or Comparable Harms} (Royal Commission into Institutional Responses to Child Sexual Abuse, 2016) 44.

\textsuperscript{240} Ibid.

\textsuperscript{241} Ibid.


\textsuperscript{243} Jane Bolitho and Karen Freeman, \textit{The Use and Effectiveness of Restorative Justice in Criminal Justice Systems Following Child Sexual Abuse or Comparable Harms} (Royal Commission into Institutional Responses to Child Sexual Abuse, 2016) 44.

\textsuperscript{244} Ibid 45.
\end{flushright}
readiness before meetings. Additionally, successful programs also use advocates and experts where required, include accountability mechanisms such as regular reporting by offenders, and allow matters to be withdrawn, deferred, or referred to the police at any time.

### 5.3.6 OUTCOMES

Overall, empirical research suggests that there is a possibility to safely practise restorative justice programs in response to sexual offences. According to Deakin-Greenwood and Bolitho, ‘restorative justice is the primary and best-documented avenue through which victim-survivors and either direct perpetrators or institutional representatives can come together to have difficult, usually emotional conversations about what happened, why, and to what effect.’ The effectiveness of restorative justice practices in this area will be evaluated in relation to reducing recidivism and achieving victim satisfaction.

**RECIDIVISM**

Research suggests that restorative justice conferences have greater crime reduction potential compared to court processes, with ‘all social processes of expressing disapproval that have the intention or effect of involving remorse' in an offender being a ‘more effective deterrent to crime than formal punishment’. Such processes can therefore morally educate the offender about what is right and wrong, driven by self and social disapproval in a reintegrative, rather than stigmatising, way. This, in turn, can create a deterrent to recidivism.

Although the capacity for restorative justice to reduce recidivism for sexual assault crimes has been widely debated, research has documented some positive results in reducing sexual reoffending in adult and young offenders. Empirical evaluations on the Cedar Cottage Pre-Trial Diversion Program NSW, which worked exclusively with adult intra-familial sex offenders, have found significantly positive reductions in reoffending.

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245  Ibid.
246  Ibid.
According to Butler et al., those who were accepted into the program reoffended significantly less than those who did not participate and instead went through normal court procedures. Furthermore, in a notable study comparing court and restorative justice conferencing outcomes for juvenile sex-offenders, Daly found that reoffending rates were much higher for young offenders processed in court (66%) than for those processed in conferences (48%). Additionally, in a later evaluation focusing on recidivism outcomes, Daly et al. found that conference youth who reoffended were less likely than court youth to commit sexual re-offences (12% compared to 18%). Reoffenders who were finalised in court had higher levels of recidivism for all types of offences, being charged for 13.7 new offences compared to conference reoffenders who were charged with 6.1 new offences. However, these differences were largely contingent on the prior offending history of the offender, as those with no prior offending history maintained the lowest recidivism rates. Referral to restorative justice conferencing also resulted in longer delays between reoffending, but only for those youth with no prior offending history. Additionally, youth offenders that had no prior offending history did not commit any sexual re-offences.

Nevertheless, restorative justice conferencing does provide a pathway into sex-offender treatment programs and therapy services for the defendant involved, which can play an instrumental role in reducing reoffending. According to Daly, reoffending rates were lower for both court and conference-finalised youth offenders that undertook a treatment program. Court sentenced youth that did not partake in the sex-offender treatment program had a 75% reoffending rate, compared to a 50% reoffending rate of those that were referred to a sex-offender treatment program. Similarly, 53% of conference-finalised youth that did not take part in treatment programs reoffended, compared to 43% of those who did. Accordingly, referral to counselling or specialist treatment programs was a strong predictor of reduced

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250 Ibid.
253 Ibid 249.
254 Ibid 257.
255 Ibid 256.
256 Ibid.
259 Ibid 349.
260 Ibid.
reoffending, regardless of whether the youth offender was finalised in court or conference.\textsuperscript{261} Nevertheless, Daly et al. found that conferenced juvenile offenders were more likely to be referred to treatment programs than court youth, as 79 conferenced youth were referred to counselling compared to 49 court youth, and 52 were referred to specialist sex-offender treatment programs compared to 37 finalised in court.\textsuperscript{262} In this sense, restorative justice programs have a greater potential to reduce reoffending than court processes by facilitating greater referrals to treatment programs. At the very least, restorative justice is not worsening reoffending.

However, subsequent findings suggest that referral to specialised treatment programs only significantly reduced the rate of reoffending in youth that had no prior offending history.\textsuperscript{263} Youth sex-offenders with no prior offending history offended much sooner if they were not referred to the specialist treatment program (2.7 years vs 4.7 years).\textsuperscript{264} No significant reduction in reoffending speed was found for youth referred to specialist treatment programs if they had prior offending history.\textsuperscript{265} Accordingly, these findings suggest that juvenile sex offenders with no prior offence history are likely to be the most responsive to behavioural changes from both referral to conferencing, and referral to specialist treatment programs. Nonetheless, it can be concluded that restorative justice programs can safely be used for youth sex offenders regardless of pre-offending history without any risk of increasing reoffending rates.

**VICTIM NEEDS AND SATISFACTION**

As mentioned, restorative justice provides a victim-focused mechanism to increase access to justice by empowering and validating the victim’s voice, while simultaneously recognising offender accountability. There is strong empirical evidence to suggest that restorative justice practices are significantly effective in meeting victim needs and providing satisfaction in response to youth sexual assault cases.

\begin{itemize}
\item \textsuperscript{261} Ibid.
\item \textsuperscript{262} Ibid 348.
\item \textsuperscript{263} Kathleen Daly et al, ‘Youth Sex Offending, Recidivism, and Restorative Justice: Comparing Court and Conference Cases’ (2013) 46(2) Australian and New Zealand Journal of Criminology 241, 257.
\item \textsuperscript{264} Ibid.
\item \textsuperscript{265} Ibid.
\end{itemize}
Evidence from a study on Victim Offender Conferencing in NSW suggested that the specific justice needs identified by both victims and offenders were consistently met throughout their participation in the restorative justice process. This reflected a 95% success rate and included cases involving sexual assault. Furthermore, Daly’s study of the South Australian Family Conferencing model found that, through conferencing as opposed to courts, victims were more likely to receive a verbal and written apology and more likely to achieve an agreement from the young offender to stay away from them. Furthermore, offenders were more likely to attend counselling, and more specifically specialist sex offender counselling, as a result of conferencing compared to court process. Importantly, Daly emphasises that during family conferencing, a much higher admission of guilt (94%) occurred in comparison to courts where only 51% of cases proved a sexual component. This early admission reveals a distinct benefit of restorative justice that provides the victim-survivor with validation of their experience. In addition, Daly’s research showed that conference cases were finalised and settled much quicker than court cases, with a median of 2.5 months compared to 5.7 months, respectively. These findings suggest that restorative justice processes can successfully meet the needs of victims by providing access to justice that promotes an emotional and psychological healing process, generates closure in a time-efficient manner, achieves offender accountability and ensures the victim receives an agreement or outcome that is satisfactory and reflective of their needs.

Case Study

Furthermore, the effectiveness of restorative justice practices to meet victim needs and achieve satisfaction, alongside recognising offender accountability, is illustrated in a case study produced by the Queensland Government’s Department of Child Safety, Youth and Women focusing on restorative youth justice. The case concerned a young male, 16 years of age, charged with carnal knowledge of a child under 16 years. The victim sought counselling and suffered emotionally and socially after the offence, losing a close mutual friend. The matter was referred to restorative justice conferencing and required the offender to attend a specialist intervention service prior to the

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268 Ibid.
conference due to the nature of the offence. The conference was attended by the victim, offender, their parents, counsellors for each party, a representative from a sexual offending support agency, the referring police officer and two convenors. The conference allowed both parties to share their experience and how this affected their lives, with the victim expressing her feelings through her counsellor using a Victim Impact Statement. The offender accepted responsibility for his actions and apologised to the victim, her parents and his own parents. He agreed to stay away from the victim’s neighbourhood so she felt safe, to attend therapeutic counselling sessions and to repair the victim’s relationship with the mutual friend. Therefore, this case illustrates the ability of restorative justice practices, as an innovative mechanism and alternative to court proceedings, to address the needs of victims of sexual offences by providing them with a ‘greater degree of justice than the court’. This case also demonstrates the ability of restorative justice to empower the victim by valuing their voice and facilitating their active participation, ensuring they are not re-victimised or silenced while confronting the offender and seeking justice.

5.3.7 CONCLUSION

Overall, the empirical research and data suggests that restorative justice practices for youth sexual assault crimes can be an effective mechanism for achieving victim satisfaction, recognising offender accountability, repairing relationships and reaching an agreement that suits both parties. However, the appropriateness of restorative justice depends heavily on a number of factors that must be taken into consideration.

Such factors include the seriousness of the offence and the age of the perpetrator and victim. These factors may influence the willingness of parties to engage in restorative justice practices as a mechanism to repair the relationship, reintegrate the offender within society and achieve an appropriate outcome. Furthermore, in deciding whether restorative justice is an appropriate mechanism to repair relationships between victims and offenders, it is important to consider the nature of the relationship. For example, for a friendship or familial relationship, achieving reparation may be a valuable and important goal for both parties. However, once again, this depends on the

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circumstances of the case and the seriousness of the offence, which may influence the willingness of victims to engage in direct confrontation with the offender.

In South Australia, restorative justice practices are generally used pre-sentencing or as a diversionary measure to steer victims and offenders away from traditional court processes. In cases of minor offences this may be a suitable and effective alternative to court proceedings, particularly where reparation of the relationship is a priority for both parties. In cases concerning more serious offences, restorative justice may be suitable to create a deterrent for the offender through the provision of a moral education and accountability for their actions without strict legal actions. Furthermore, implementing restorative justice mechanisms as alternative programs to traditional legal pathways creates opportunities for the victim’s voice to be heard and validated, while facilitating their active participation in the justice process. This also provides both parties with the choice and flexibility to reach a mutual agreement and outcome that protects all interests while achieving justice.

However, in more serious cases where a legal sanction is mandated and sought by the victim, restorative justice may be effective as a complementary mechanism for justice post-sentencing. This can empower the victim to voice their feelings to the offender, a voice that may be silenced or overseen by traditional court proceedings. This has the potential to provide the victim with a sense of healing and closure alongside the legal outcome. Furthermore, the conference may contribute as a deterrent to the offender reoffending in the future, as they receive moral and accountability for their actions alongside a legal punishment.

Overall, the appropriateness of restorative justice as a mechanism to act in complementation with traditional court outcomes, or as a complete alternative, significantly depends on the above considerations and the circumstances of the case. While it is arguable that the traditional criminal justice system may be necessary to achieve justice through legal accountability of the offender and through the imposition of legal sanctions, restorative justice can provide a mechanism for emotional healing and relationship reparation that the traditional may neglect. As analysed above, evidence strongly suggests that restorative justice can also provide an effective mechanism to simultaneously reduce the likelihood of recidivism and meet the needs of victims in a more meaningful, practical way.
While the implementation of restorative justice practices in relation to sexual assault crimes in Australia is limited by jurisdiction and other variables that determine its suitability, it is arguable that the practices are effective as both an alternative and complementary dispute resolution mechanism. Due to the subjective nature and variability between cases, it can be speculated as a point of law reform that restorative justice practices should be made available to all victims, therefore providing them with a choice. This can empower victims of sexual assault to choose the legal pathway to achieving justice that suits their individual needs. This notion is strongly supported by Deakin-Greenwood and Bolitho, who argue that ‘by expanding our justice processes and reimagining a system that includes a restorative justice framework, victims could be offered choices, options, and to make decisions about what they want, and the terms on which they may want to engage with the person responsible for their harm’.272 Furthermore, restorative justice can act as a powerful deterrent for young offenders, providing them with a strong sense of moral education, creating opportunities for reintegration into society and achieving accountability without serious court-ordered punishment.

5.4 ASSAULT OFFENCES

Restorative justice is applicable to a range of assault offences in Australia committed by young offenders. However, the use of restorative justice in assault-related offences is greatly dependent on the severity of the assault committed. It is evident, through an analysis of the data and case studies, that restorative justice is used mainly for minor assault offences, including common assault and assault occasioning bodily harm.\(^{273}\) Restorative justice processes continue to be limited for serious assault-related offences, though recent literature suggests that restorative justice is more effective with serious assaults.\(^{274}\)

Due to the availability of data and case studies, this section of the report will focus on ‘common assault’ and ‘assault occasioning bodily harm’ in NSW and Queensland. First, a definition will be provided of common assault and assault occasioning bodily harm. As there are a range of assault offences in all states and territories in Australia, a definition will provide an overview of the differing acts perpetrated by an offender that can be dealt with under restorative justice processes. Second, an analysis will be provided of the applicability of restorative justice to minor and serious assault-related offences. Third, an analysis of the differing restorative justice processes used in Australia will be provided, focusing on case-studies from youth justice conferencing in Queensland.

5.4.1 DEFINING ASSAULT

Under Australian law, assault is an intentional act and is recognised as an unlawful offence against an individual, regardless of the severity of the assault.\(^{275}\) There are various charges for acts of assault, depending on the jurisdiction where the assault took place, as well as the severity of the assault. The offence of assault ranges from ‘minor assaults’ such as common assault, and ‘assault occasioning bodily

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\(^{275}\) *Crimes Act 1900* (NSW); *Crimes Act 1958* (VIC); *Criminal Code 1899* (QLD); *Criminal Law Consolidation Act 1935* (SA); *Criminal Code Act 1924* (TAS); *Criminal Code Act Compilation Act 1913* (WA); *Criminal Code Act 1983* (NT); *Crimes Act 1900* (ACT).
harm’, to serious assault offences such as intentionally causing grievous bodily harm and sexual assault.\textsuperscript{276}

In NSW, ‘common assault prosecuted by indictment’ occurs when an individual intentionally assaults a person without occasioning actual bodily harm.\textsuperscript{277} The perpetrator of the assault may be subject to imprisonment for two years in NSW if found guilty beyond reasonable doubt.\textsuperscript{278} While common assault can involve physical contact, this does not have to be present to prove that an assault has occurred.\textsuperscript{279} For example; attempting to hit someone without striking them, showing a weapon to frighten another person, as well as threats to injure or hurt another person can establish common assault. Further, pushing a person, spitting, slapping, and throwing an object at an individual without causing actual pain are legislatively prohibited and can result in imprisonment in NSW.\textsuperscript{280} In Queensland common assault occurs where a victim suffers only minor injuries or where a perpetrator has threatened to assault a victim, resulting in maximum imprisonment for up to three years.\textsuperscript{281} Similarly to NSW, this includes attempting to hit or even spitting at an individual.

On the other hand, ‘assault occasioning bodily harm’ is differentiated from common assault in NSW and Queensland as the victim suffers actual bodily harm.\textsuperscript{282} A perpetrator may be subject to imprisonment for five years in NSW or seven years in Queensland if found guilty beyond reasonable doubt under this section.\textsuperscript{283} For example; actual bodily harm can include scratches and bruises,\textsuperscript{284} as well as psychological injuries that move beyond temporary emotions and feelings.\textsuperscript{285}

\textsuperscript{276} Ibid.
\textsuperscript{277} \textit{Crimes Act 1900} (NSW) s 61.
\textsuperscript{278} Ibid.
\textsuperscript{279} Ibid.
\textsuperscript{280} Barwick CJ in \textit{The Queen v Phillips} (1971) 45 ALJR 467, 472.
\textsuperscript{281} \textit{Criminal Code} 1899 (QLD) s 335.
\textsuperscript{282} \textit{Crimes Act 1900} (NSW) s 59; \textit{Criminal Code 1900} (NSW) s 339.
\textsuperscript{283} Ibid.
\textsuperscript{284} McIntyre \textit{v} R (2009) 198 A Crim R 549, [44].
\textsuperscript{285} Li \textit{v} R [2005] NSWCCA 442, [45].
5.4.2 THE RELATIONSHIP BETWEEN RESTORATIVE JUSTICE AND ASSAULT

Restorative justice processes have primarily been used to address minor assaults, rather than more serious assault offences involving young offenders.286 The application of restorative justice to more serious and violent assaults by young offenders continues to be limited, though there continues to be a large body of literature claiming there is positive outcomes.287

The benefits of restorative justice, particularly in juvenile conferencing, for minor assault-related offences is evident for both the victim and their family, the offender, as well as the community.288 Restorative justice allows offenders to communicate their thoughts without using violence or threats, as the process takes into account the age of the offender and their maturity level. Further, the process attempts to ensure the victim is mentally and emotionally prepared to meet the offender who committed an assault against them, allowing them to have a voice and ‘regain a sense of meaning and control over their lives’.289 This process is further facilitated when the victim of an assault-related offence has family members participating in the process with them, which is often ignored in the criminal justice system.290 Both victims and perpetrators of an assault who participate in a restorative justice process, participate in a way that accommodates their needs and ensures they feel comfortable. For example; they can participate face-to-face or they can communicate indirectly, such as through Victim Impact Statements which are written or taped recordings of the impact of the crime.291

Victim-preparedness is a voluntary and crucial element of restorative justice processes and plays a large role in determining the inapplicability of restorative justice processes to victims of more serious

287 Lawrence W Sherman and Heather Strang, Restorative Justice: The Evidence (The Smith Institute, 2007) 54.
289 Ibid 16.
violent assaults. Young victims experience many negative impacts from assault experiences, including: physical harm, emotional effects (anger, depression, shame) and importantly a sense of disempowerment. The lasting effects of violent assaults can be short term or long term, and in some instances resulting in post-traumatic stress disorder (‘PTSD’). Thus, while victims may feel satisfaction directly after a process, this satisfaction for some victims lessens over time, especially when they have been subject to a serious crime that creates long-lasting illnesses. Thus, restorative justice processes are viewed as more appropriate for minor assault-related offences, as the victim can be more prepared to face an offender who has been convicted of a common assault offence against them.

Further, repeat juvenile offenders who commit serious offences oftentimes cannot be referred to juvenile conferencing in Australia. Indigenous people in Australia continue to be disproportionately represented in the criminal justice system, as they enter early into the system, beginning a cycle of incarceration. Thus, Cunneen draws the conclusion that Indigenous offenders are less likely to take part in juvenile conferencing than non-Indigenous youth, and are more likely to have an unsuccessful outcome if they participate in conferencing. In the context of assault for Indigenous juveniles this is particularly disheartening, as the most common offence committed between 2017-2018 by Indigenous people in Australia was acts intending to cause injury. Therefore, Indigenous offenders continue to be disproportionately impacted by the criminal justice system, which encroaches on their interaction with restorative justice processes.

295 Ibid.
296 Ibid.
5.4.3 RESTORATIVE JUSTICE PRACTICES

Most youth conferences in Australia can be referred pre-sentence when an offender has committed an offence amounting to common assault or assault occasioning bodily harm. However, Western Australia excludes an offence amounting to ‘assault occasioning bodily harm’ for ‘Family Group Conferencing’ by way of the Young Offenders Act 1994 (WA). Further, legislation governing conferencing in states and territories, prohibit the use of specific types of conferencing for serious violent crimes. In the context of victim-offender mediation, common assault to more serious assault offences are referable, however, most of these offences can only be referred post-sentence. Interestingly, Reparative Mediation in Western Australia, and Court-Ordered Mediation in Tasmania allow serious assault offences to be referred pre-sentence (except sexual assault for Reparative Mediation in Western Australia).

Table 13: Restorative justice processes for assault offences.

<table>
<thead>
<tr>
<th>State</th>
<th>Program</th>
<th>Point of Referral</th>
<th>Can it be used for assault offences?</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>Youth Justice Conferences.(^{299})</td>
<td>Pre-Sentence</td>
<td>Yes: however, sexual assault is excluded.</td>
</tr>
<tr>
<td>VIC</td>
<td>Youth Justice Group Conferencing.(^{300})</td>
<td>Pre-Sentence</td>
<td>Yes: there are no crimes explicitly excluded from restorative justice. However, serious violent crimes are practically excluded.(^{301})</td>
</tr>
<tr>
<td></td>
<td>Youth Justice Conferencing.(^{302})</td>
<td>Pre-Sentence</td>
<td>Yes: no crimes are explicitly excluded.</td>
</tr>
<tr>
<td></td>
<td>Restorative Justice</td>
<td>Police referral and court order</td>
<td>Yes: used for common assault and assault occasioning bodily harm</td>
</tr>
</tbody>
</table>

\(^{298}\) These include ‘Youth Justice Group Conferencing’ in Victoria, ‘Family Conferencing’ in South Australia, ‘Family Group Conferencing’ in Western Australia, ‘Youth Justice Conferencing’ in the Northern Territory and ‘Restorative Justice Unit’ in the Australian Capital Territory.

\(^{299}\) Young Offenders Act 1997 (NSW).

\(^{300}\) Children, Youth and Families Act 2005 (VIC).


\(^{302}\) Youth Justice Act 1992 (VIC).
<table>
<thead>
<tr>
<th></th>
<th>Conference</th>
<th>Pre-sentence</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>QLD</td>
<td></td>
<td></td>
<td>harm.</td>
</tr>
<tr>
<td>SA</td>
<td>Family Conf.</td>
<td>Pre-Sentence</td>
<td>Yes: there are no crimes explicitly prohibited. However, legislation says youth who admit they have committed a 'minor' offence are referred.</td>
</tr>
<tr>
<td>WA</td>
<td>Family Group Conf.</td>
<td>Pre-Sentence</td>
<td>Yes: restorative justice can be used for common assault. However, cannot be used for any other assault offence.</td>
</tr>
<tr>
<td></td>
<td>Reparative Mediation</td>
<td>Post-Conviction and Pre-Sentence</td>
<td>Yes: however, sexual assault is excluded.</td>
</tr>
<tr>
<td></td>
<td>Victim-Offender Dialogue</td>
<td>Post-Sentence</td>
<td>Yes: any offence referable.</td>
</tr>
<tr>
<td>NT</td>
<td>Youth Justice Conference</td>
<td>Pre-Sentence</td>
<td>Yes: but restorative justice is excluded for violent offences.</td>
</tr>
<tr>
<td></td>
<td>Correctional Centre Conf. and Ponki Mediation</td>
<td>Post-Sentence</td>
<td>Yes: generally used for more serious offences.</td>
</tr>
</tbody>
</table>

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2. Young Offenders Act 1993 (SA).
3. Ibid.
6. Ibid ss 281, 317, 317A(a), 317A(b), 318, 323, 324, 393.
8. There is no specific legislation governing this form of restorative justice in Western Australia.
10. Ibid.
<table>
<thead>
<tr>
<th></th>
<th>Community Conference.</th>
<th>Sentencing Option</th>
<th>Yes: however, sexual assault is excluded.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TAS</strong></td>
<td>Victim-Offender Mediation.</td>
<td>Post-Sentence</td>
<td>Yes: there are no crimes explicitly excluded in legislation. However, most mediation processes involve offences which are indictable.</td>
</tr>
<tr>
<td></td>
<td>Court-Ordered Mediation.</td>
<td>Pre-Sentence</td>
<td>Yes: there are no crimes explicitly excluded in legislation. However, most mediation processes involve offences which are indictable.</td>
</tr>
<tr>
<td><strong>ACT</strong></td>
<td>Restorative Justice Unit.</td>
<td>From Apprehension to Post Sentence</td>
<td>Young offenders are referred for less serious offences. Less serious are defined as offences against a person subject to imprisonment for 10 or less years. For example; ‘common assault’ and ‘assault occasioning actual bodily harm’.</td>
</tr>
</tbody>
</table>

While it is difficult to assess the limited data exploring the effectiveness of restorative justice in the context of assault offences, an analysis of specific case studies on juvenile offenders in Queensland explores the effectiveness of youth conferencing on a case-by-case basis. The following two case

314 Youth Justice Act 1997 (TAS).
316 Sentencing Act 1997 (TAS).
studies were presented from Queensland to show the processes that are undertaken during youth conferencing, reflecting on the effectiveness arising out of the process. These cases demonstrate how focusing on re-offending outcomes to assess the effectiveness of restorative justice can oftentimes draw attention away from the effectiveness of restorative justice toward victims, families, and the psychological and emotional conditions of an offender.  

**CASE STUDY 1:**

**OFFENCE**

A 10-year-old boy threw an item at a victim’s head and verbally threatened the victim in a school classroom, stating that he would have another individual sexually assault his sister. Both the victim and offender had been ‘best friends’ prior to the offence and their families knew each other. He was charged with common assault, as well as making threats.

**PROCESS**

- The parents of both of the boys were involved through pre-conference interviews, expressing concerns about the loss of friendship to both the families, and the victim and offender.
- The offender originally claimed his verbal actions ‘were a joke’.
- The offender and the victim, their parents, a police officer, as well as the school guidance officer were all in attendance at the conference.
- Important cultural factors were brought up when the offenders father made a speech about his Cook Islander culture, exploring the role of men and the respect that should be shown toward women.

**EFFECTIVENESS**

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322 Ibid.  
323 Ibid.  
324 Ibid.
The offender began to understand that his behaviour had impacted the victim, apologising to both the victim and the victim’s parents. The offender thanked his mother for attending the conference and supporting him during the process. The conference was successful, promoting healing amongst all the parties involved due to the offender’s actions. As a result of the conference, the offender and victim restored their friendship, as well as the friendship between their families.\textsuperscript{325}

\textbf{REFLECTION}

The case study reveals how restorative justice seeks to make an offender understand the impact of their actions, rather than focussing specifically on punishment. The process allowed a platform for the offender’s father to express important cultural needs and values, evoking emotion and understanding amongst the participants.\textsuperscript{326}

\textbf{CASE STUDY 2:}

\textbf{OFFENCE}

Melissa and Jake were both friends and 15 years old. Melissa and other male friends arranged to assault Jake at a train station, believing that he had sexually assaulted someone that they knew. Jake was kicked, punched and hit in the head with broken glass.\textsuperscript{327} One of the co-offenders produced a knife, making threats to murder Jake. While the assault was taking place, Melissa walked away, refusing to help Jake.

In court, Melissa was convicted on one charge of assault occasioning bodily harm.\textsuperscript{328} She was sentenced to a restorative justice order, having had no interaction with the juvenile justice system.\textsuperscript{329}

\textbf{PROCESS}

- Jake and his mother attended an interview with a restorative justice convenor, expressing the impacts of the crime on her family and her son.

\textsuperscript{325} Ibid.
\textsuperscript{326} Ibid.
\textsuperscript{327} Ibid 9.
\textsuperscript{328} Ibid.
\textsuperscript{329} Ibid.
At first, Jake and his mother did not wish to engage in conferencing, fearing it would expose him to further harm. Further, the victim did not wish to speak about the assault as it had traumatised him.

The victim’s mother decided to attend a conference following a detailed discussion by the convenor about the process, while Jake remained hesitant. He did not attend any support services that were offered to him.

The conference was held at a community centre a couple of months later.

Melissa learned that Jake had searched for her after the assault had taken place, thinking she had been injured (he had not realised she was involved in the assault at that time).

Jake learned more about the assault and Melissa’s thoughts since the offence had taken place.

It came to fruition that the accusation made by Melissa that Jake had sexually assaulted her friend was false.

EFFECTIVENESS

The conference was effective in amending the relationship between the victim and offender, as well as their families. Melissa verbally apologised to Jake, and he accepted the apology. The offender stated that she would be a witness against the co-offenders. Jake stated that he wanted Youth Justice to monitor their agreement, though he trusted Melissa to keep her commitment. Jake’s mother was satisfied with the process, stating that the process allowed them to gain closure, allowing her son to move on.330

REFLECTION

This conference reveals the importance of victim-preparedness. Following a detailed discussion about the restorative justice process by the convenor, the victim’s mother felt supported to meet the offender. However, as the victim was still traumatised, the conference was conducted when he was prepared (this was outside of the standard period of six weeks).331

330 Ibid.
331 Ibid 10.
5.4.4. CONCLUSION

While minor assault-related offences are referred to restorative justice processes, there continues to be debate that serious offences could have positive outcomes. Though there continues to be minimal data assessing the effectiveness of crime specific assault-related offences, the case studies explored reveal promising outcomes for victims, offenders and their families.
5.5 DRUG OFFENCES

5.5.1 DEFINING DRUG OFFENCES

In Australia, the category of illicit drug offences that encompass the dealing and trafficking of illicit drugs are the manufacturing or cultivating of illicit drugs and the possession or use of illicit drugs.\(^{332}\)

According to 2017-18 data published by the Australian Bureau of Statistics (ABS) in 2019,\(^{333}\) the number of youth offenders prosecuted for illicit drug offences has decreased for the second year. Despite this, illicit drug offences remain one of the most common types of crimes committed by youth offenders in Australia (second to unlawful entry with intent).\(^{334}\)

Most offenders prosecuted under drug charges are for minor offences of possession or use of drugs rather than the more serious offences of dealing, trafficking, or manufacturing. In the context of the use of juvenile restorative justice in Australia, with exception of NSW, all states and territories allow for restorative justice mechanisms to be utilised when dealing with illicit drug offences, with the nature and seriousness of the offence being taken into account when police or courts are deciding whether these mechanisms are appropriate.

5.5.2 THE PRACTICE OF RESTORATIVE JUSTICE TO ADDRESS DRUGS OFFENCES

The ethos behind using restorative justice practices in dealing with illicit drug crimes centres around the fact that traditional punishments have not affected recidivism rates.\(^{335}\)

If the severe penalties, which have been imposed for serious crimes like drug trafficking, were effective in reducing crime rates and improving community safety, the incidence of crimes would have been reduced decades ago.\(^{336}\) Crimes of such kind remain common irrespective of the levels of penalty imposed. Victims of crimes committed by drug-dependent offenders can voluntarily become involved in restorative justice

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\(^{333}\) Australian Bureau of Statistics, Recorded Crimes – Youth Offenders (Principal Offence), Australia, 2017-18 (Catalogue No 4519.0, 15 March 2019).

\(^{334}\) Ibid.


programs at various stages in the criminal justice system, whether that be after arrest, while the offender is on bail, or when the sentence is adjourned or deferred.\textsuperscript{337}

Table 14: Restorative justice processes for drug offences.

<table>
<thead>
<tr>
<th>State</th>
<th>Program</th>
<th>Victim participation</th>
<th>Point of referral</th>
<th>Eligible offences</th>
</tr>
</thead>
<tbody>
<tr>
<td>VIC</td>
<td>Youth Justice Group Conferencing</td>
<td>Conference can proceed without a victim present</td>
<td>Court order, Pre-sentence</td>
<td>Use or possession of illicit drugs</td>
</tr>
<tr>
<td>QLD</td>
<td>Restorative Justice Conferencing</td>
<td>Conference can proceed without a victim present</td>
<td>Police referral and Court order Pre-sentence</td>
<td>Unlawful possession of dangerous drugs under Drugs Misuse Act 1986</td>
</tr>
<tr>
<td>SA</td>
<td>Family Conferencing</td>
<td>Conference can proceed without a victim present</td>
<td>Police referral and Court order Pre-sentence</td>
<td>No explicit exclusions, however in practice used for drug possession and use</td>
</tr>
<tr>
<td>WA</td>
<td>Victim-offender dialogue</td>
<td>Initiated by the Victim</td>
<td>Court order, Post-sentence</td>
<td>Any offence is referable.</td>
</tr>
<tr>
<td></td>
<td>Reparative Meditation\textsuperscript{341}</td>
<td>Initiated by victim, offender, magistrate/judge, police prosecutor, lawyers, victim</td>
<td>Court order, Post-conviction and pre-sentence</td>
<td>Unlawful possession of dangerous drugs with intent to sell/supply, selling/supplying drugs and cultivating</td>
</tr>
</tbody>
</table>

\textsuperscript{337} Drug and Specialist Court Review Queensland Courts, Part A Foundational Principles (November 2016) 8.
\textsuperscript{338} Children, Youth and Families Act 2005 (VIC).
\textsuperscript{339} Youth Justice Act 1992 (QLD).
\textsuperscript{340} Young Offenders Act 1993 (SA).
\textsuperscript{341} Young Offender's Act 1994 (WA); Sentencing Act 1995 (WA).
<table>
<thead>
<tr>
<th></th>
<th>Support counsellors or Community Corrections/Youth Justice officers</th>
<th>Prohibited plants under Drugs Misuse Act 1981</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NT</strong></td>
<td>Youth Justice Conference[^342]</td>
<td>Conference can proceed without a victim present</td>
</tr>
<tr>
<td><strong>TAS</strong></td>
<td>Community Conference[^343]</td>
<td>Conference can proceed without a victim present</td>
</tr>
<tr>
<td></td>
<td>Victim-offender dialogue</td>
<td>Initiated by Victim or Offender</td>
</tr>
<tr>
<td></td>
<td>Court-ordered Mediation[^345]</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>ACT</strong></td>
<td>Restorative Justice Unit[^346]</td>
<td>Conferences cannot proceed without a victim (or their nominated substitutes) participation</td>
</tr>
</tbody>
</table>

[^342]: Youth Justice Act 2005 (NT).
[^343]: Youth Justice Act 1997 (TAS).
[^345]: Sentencing Act 1997 (TAS).
[^346]: Crimes (Restorative Justice) Act 2004 (ACT) — operating in phase one.
5.5.3 DRUG DIVERSION AND RESTORATIVE JUSTICE

Restorative justice underpins the use of drug diversion programs in Australia. The rise of drug diversion in Australia was in part a response to the growing recognition that traditional criminal sanctions were having little impact on drug and drug-related offenders as mentioned above. In circumstances where an offender’s drug use is linked with their offending behaviour, criminal sanctions will have little impact on the reduction of reoffending than diversion into treatment programs. Through treating drug use, offending behaviour may also be reduced, removing the impetus for drugs to be used for offending. Since diversion seeks to lower the incidence of crime by changing the motivation of the offender, it supports the theory behind restorative justice; that is, individuals are provided an opportunity for empowerment and increased relevance of outcomes through direct involvement in the system and influence over punishment and sanction options. Further, while many statutes governing the practice of restorative justice exclude drug and trafficking from offences that attract restorative justice for juveniles, there are mechanisms available for drug diversion programs in many jurisdictions.

Table 15: Legislative provisions for police drug diversion from the criminal justice system for youths.

<table>
<thead>
<tr>
<th>State</th>
<th>Police diversion program</th>
<th>Statutory Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>Youth cautioning and conferencing</td>
<td>Young Offenders Act 1997</td>
</tr>
<tr>
<td>VIC</td>
<td>Juvenile cautioning</td>
<td>Children and Young Persons Act 1989</td>
</tr>
<tr>
<td></td>
<td>Juvenile justice group conferencing</td>
<td>Children, Youth and Families Act 2005</td>
</tr>
<tr>
<td>QLD</td>
<td>Youth cautioning and conferencing</td>
<td>Juvenile Justice Act 1992</td>
</tr>
<tr>
<td>WA</td>
<td>Juvenile cautioning and conferencing</td>
<td>Young Offenders Act 1994</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Region</th>
<th>Program</th>
<th>Diversion Scheme/Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>SA</td>
<td>Cautioning and family conferences</td>
<td>Young Offenders Act 1993</td>
</tr>
<tr>
<td>NT</td>
<td>Juvenile Pre-diversion Scheme</td>
<td>Youth Justice Act 2005; Police Administration Act 1978</td>
</tr>
<tr>
<td>TAS</td>
<td>Youth Diversion Program</td>
<td>Youth Justice Act 1997</td>
</tr>
</tbody>
</table>

**WARNINGS AND CAUTIONS**

Warnings or cautions are the least restrictive diversionary option and can be issued instead of a formal charge. These forms of diversion are most likely to be used for minor offences, primarily with juvenile offenders. They operate similarly in all jurisdictions. Warnings are intended to be informal and given 'on the street' with no requirement for the person to admit guilt. Where the offences or circumstances surrounding the offence are more serious, officers may choose to issue a caution. This is a more formal procedure that generally takes place once a person has admitted guilt. Cautions are generally issued for summary offences and indictable offences which may be dealt with summarily, but not major offences such as drug trafficking. Police officers possess a great deal of discretion when it comes to deciding whether to issue a caution. They must consider the seriousness of the offence, the level of violence involved, the harm caused to the victim, the nature and extent of offending by the person, and the number of previous warnings or cautions issued.

**CONFERENCING**

Youth or family conferencing is provided as a diversionary option in all states and territories. Generally, referral to a conference is for more serious offenders or offences and those with a history of warnings, cautions or offending. If it is deemed inappropriate for a conference to be held (the formal process to reach that decision and how the conferences are conducted has been discussed...
earlier in this report) the matter is normally dealt with by the Courts.\textsuperscript{352} The outcome 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.\textsuperscript{353} It will also include drug treatment as it is an influence on their offending behaviour.\textsuperscript{354} By and large, the agreed outcomes must not be more onerous than a court would order. Offenders who do not comply with the outcomes of a conference will reappear in court and may return to the traditional criminal justice system.\textsuperscript{355}

\textbf{DRUG DIVERSION PROGRAMS}

In light of the growing body of research pointing to a connection between drug use and offending, government policy has acknowledged the need to respond with non-traditional options.\textsuperscript{356} In 1999, the Council of Australian Governments agreed on a nation-wide diversionary scheme aimed at diverting offenders into drug education, assessment and treatment.\textsuperscript{357} The Illicit Drug Diversion Initiative, has been implemented in all states and territories, with some variation among jurisdictions. All measures funded under the initiative involve the following:

- Offenders are diverted by police into assessment for education or treatment, or directly into drug education program.\textsuperscript{358}
- If an offender completes drug education or treatment, the offence is expiated, but if they do not participate or fail to complete the program, they are referred back to the criminal justice system.\textsuperscript{359}

An example of this can be provided from Queensland’s approach to drug diversion. If police make a restorative justice referral and a conference cannot be convened, section 38 of the Youth Justice Act 1992 (Qld) acknowledges that alternative diversion programs under restorative justice, such as

\begin{itemize}
  \item Ibid.
  \item Ibid.
  \item Ibid 5.
  \item Ibid.
\end{itemize}
educational programs, can be undertaken. These programs must be designed to help the child understand the harm caused by their behaviour and allow the child an opportunity to take responsibility for the offence they committed. The Act stipulates where a child commits an offence against the Drugs Misuse Act 1986 by unlawfully possessing a dangerous drug, the court can refer the child to education sessions. If this is agreed upon by the chief executive, the child before the matter will proceed to the drug diversion court. If the child is then able to attend the session on the stated date, the proceedings of the offence come to an end and the child is not liable to be further prosecuted for the offence. The conviction is also not recorded, despite the child being found guilty.

5.5.4 EFFECTIVENESS OF RESTORATIVE JUSTICE FOR ILlicit DRUG OFFENCES

The success rates of diversionary options such as drug courts and cautioning programs are assessed largely with regard to their impact on reoffending rates. The research in this field is dated and is not positive in relation to Indigenous reoffending rates. Although research indicates some decline, reoffending among Indigenous participants generally remains higher than that of non-Indigenous offenders. Despite this, the Indigenous Sentinel Study reported in 2003 that there seemed to be positive impacts in reducing drug use and offending among Indigenous participants of select Illicit Drug Diversion Initiative programs, although this was based on ‘the very limited information available’. For example, an evaluation of the Juvenile Pre-Diversion scheme found that diversion was offered to 61% of youths who were apprehended within the first three years of the Northern Territory agreement. The recidivism rate of the juveniles who were diverted was lower than for juveniles who proceeded through the court system.

360 Youth Justice Act 1992 (QLD) s 38 (1)(c).
361 Ibid s 38 (2)(a).
362 Ibid s 38 (2)(b).
363 Youth Justice Act 1992 (QLD) s 172 (2).
Approximately 21% of agreements in Queensland during 2016-17 involved young people completing counselling or educational programs through victims and/or family members requesting that juveniles participate in counselling or drug rehabilitation programs as part of their conference agreement. A growing body of literature has revealed that early intervention and therapeutic programs can be very effective in achieving significant reductions in crime. Given that restorative justice is associated with high levels of compliance in the completion of agreements, orders, and other programs, it offers an excellent opportunity to promote ‘therapeutic justice’ and more sophisticated and holistic responses to offending for young people with multiple, complex needs.

A survey of the available research demonstrates that the use of restorative justice to address the offence of drug possession does not have a great impact on recidivism for non-victim offences. Victim offences have a higher success rate and impact on reducing recidivism than non-victim offences. Braithwaite in Crime, Shame and Reintegration points to the positive benefits of shame under the context of family conferencing involving users of illicit drugs. This process of reintegrative shaming attempts to reintegrate the offender back into the community of law-abiding citizens by shaming the crime, not the criminal. When the victim is a family member, the chances of reoffending are lower.

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370 Some policy considerations in relation to this approach include (i) the voluntary nature of community support services versus the statutory requirement to complete conference agreements; (ii) the option of providing assisted referrals for ‘at risk’ young people versus including therapeutic interventions as part of a conference agreement; and (ii) the capacity of the service system to meet the needs of young people. The Youth Justice Supply Analysis (June 2016) found gaps in the service system, including a lack of tailored services that are able to meet the needs of the Youth Justice Cohort. Some services also have a limited geographic spread across the state.
Substance abusers routinely steal from family and friends who protect offenders by refusing to report their crimes. Substance abusers often feel guilt associated with placing their loved ones in such a conflicting and compromising position. However, restorative justice programs can provide an opportunity for healing. Through the process of confronting the pain felt by familiar victims and acknowledging the shame both parties feel in association with the crime, the offender may be more motivated to commit to a rehabilitation program; meetings with more unfamiliar victims may not be able to evoke the same feelings of remorse and motivation to reform. Hence, restorative justice offers the prospect of shaking the substance abuser out of what Braithwaite describes as “drift” – where the person drifts in and out of the habit and the criminal justice system, rather than confronting their substance problem. Under the context of family conferencing, it provides family members of a juvenile substance abuser with the opportunity to cry out for help. The juvenile must sit and listen to the concerns and suffering of their family, whilst facilitators criminalise the harm rather than the abuse.

Overall, the appropriateness of restorative justice as either a complete alternative or complementary mechanism alongside traditional criminal justice system is imperative for this type of crime as it focuses on educating the offenders about drugs and their harm, allows them to rehabilitate out of their habit and prospers relationships which promotes willingness to reconcile.

5.5.5 CONCLUSION

Due to the lack of quantitative, qualitative and anecdotal evidence which would provide a thorough and accurate assessment of the impact restorative justice practices have had on youth committing illicit drug offences in Australia, limited conclusions can be made. It is undeniable, however, that no other process within the criminal justice system is better suited to treating this offence; traditional methods err in providing youths with an opportunity to heal from cases of addiction and witness the impact that their behaviour has had on those around them and their victims. It is important to note that juvenile crime is not just a legal problem – it is also a social problem with social causes and effects such as substance misuse, disengagement from education or training, employment difficulties,

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Ibid 228, 232, 244.
Ibid 231.
Ibid 240.
lack of income, neuro-developmental delays, homelessness and social exclusion.\textsuperscript{378} For drug and trafficking offences, factors such as family drug abuse, witnessing peers taking drugs, the availability of drugs in their community contribute to increasing the likelihood of young people offending.\textsuperscript{379} If implemented effectively, restorative justice practices in regards to illicit drug offences have the potential to transform a youth’s life and positively influence their future decisions.

5.6. PROPERTY CRIMES

5.6.1 DEFINING PROPERTY OFFENCES

Property offences are a broad category of crimes which include, but are not limited to, theft, robbery, criminal trespass, arson, wilful property damage, shoplifting, and graffiti offences. The seriousness of the offence varies from violent property offences such as aggravated robbery, to minor property offences such as shoplifting or trespass. In the context of the use of juvenile restorative justice in Australia, all states and territories allow for restorative justice mechanisms to be utilised when dealing with non-violent property offences. Referrals to restorative justice programs are made by police or the court, who take into consideration the nature and seriousness of the offence to determine restorative justice mechanisms are appropriate.

5.6.2 RESTORATIVE JUSTICE PRACTICES

Property offences are one of the most common crimes dealt with through restorative justice mechanisms in all Australian states and territories. Statistically, property crimes are the most common offence committed by juvenile offenders in Australia. In 2016-17 theft was the most common offence committed by people aged between 10 and 17 years, totalling 36%. Non-violent property offences are one of the most common offences dealt with through restorative justice mechanisms as they constitute minor offences and are therefore viewed as lower risk crimes. All Australian jurisdictions allow for juvenile restorative justice mechanisms to be used for non-violent property offences. However, the severity of the property offence and the individual criminal history of the offender can impact whether or not restorative justice mechanisms are used in each individual case. Further, the stage at which a restorative justice mechanism is initiated for property offences is most often pre-sentence. However, victim-offender mediation can be used post-sentence in the case of more serious crimes such as aggravated robbery offences, where a victim is identified and desires

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381 Ibid, 8, 60% of 2016-2017 offences dealt with through conferencing in QLD were property offences.
an apology or payment to compensate the stolen property.\textsuperscript{383} There are multiple avenues for restorative justice mechanisms to be initiated, through police referrals and by court order, as either a sentence or as a means to reach an appropriate sentence for the juvenile offender. Restorative justice processes for property crimes can operate as an alternative to traditional criminal justice processes, as many minor property crime offenders are diverted away from the court process by police to juvenile justice conferencing. However, restorative justice also runs parallel to the criminal justice process, as conferencing can be used as a sentence, and victim-offender mediation operates post-sentence.

The dominant mode of restorative justice employed in each jurisdiction for juvenile property offences is youth conferencing. There are additional programs which are available to young offenders in some jurisdictions, such as victim-offender mediation which is often employed post-sentence for serious property offences involving violence, where a personal victim can be identified. The following table provides an overview of the programs available for juvenile offenders in all Australian states and territories, displaying which property offences are eligible for conferencing and mediation.

<table>
<thead>
<tr>
<th>State</th>
<th>Program</th>
<th>Point of Referral</th>
<th>Eligible offences</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>Youth Justice Conferences\textsuperscript{384}</td>
<td>Police referral and court order</td>
<td>Property offences – ranging from minor to serious offences.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Pre-sentence</td>
<td>hasyllyy</td>
</tr>
<tr>
<td>QLD</td>
<td>Restorative Justice Conferencing\textsuperscript{385}</td>
<td>Police referral and court order</td>
<td>Property offences – ranging from minor to serious offences.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Pre-sentence</td>
<td>hasyllyy</td>
</tr>
</tbody>
</table>

\textsuperscript{384} Young Offenders Act 1997 (NSW).
\textsuperscript{385} Youth Justice Act 1992 (QLD).
<table>
<thead>
<tr>
<th>ACT</th>
<th>Restorative Justice Unit (Conferencing)</th>
<th>Available through police referral from time of arrest, as a court-ordered sentence, and post-sentence</th>
<th>Non-violent property offences. Excludes serious property offences which carry an imprisonment term of over 14 years.</th>
</tr>
</thead>
<tbody>
<tr>
<td>VIC</td>
<td>Youth Justice Group Conferencing</td>
<td>Court order Pre-sentence</td>
<td>Property offences – ranging from minor to serious. In practice violent crimes are excluded.</td>
</tr>
<tr>
<td></td>
<td>Youth Justice Conferencing</td>
<td>Police referral and court order Pre-sentence</td>
<td>Property offences – ranging from minor to serious.</td>
</tr>
<tr>
<td>SA</td>
<td>Family Conferencing</td>
<td>Police referral and court order Pre-sentence</td>
<td>No explicit exclusions, however in practice used for minor non-violent property offences.</td>
</tr>
<tr>
<td>WA</td>
<td>Family Group Conferencing</td>
<td>Police referral and court order Pre-sentence</td>
<td>Minor property offences. Excludes arson offences.</td>
</tr>
<tr>
<td></td>
<td>Reparative Mediation</td>
<td>Court order Post-conviction and pre-sentence</td>
<td>Serious property offences.</td>
</tr>
</tbody>
</table>

386 Crimes (Restorative Justice) Act 2004 (ACT).
387 Children, Youth and Families Act 2005 (Vic).
388 Youth Justice Act 1992 (Vic).
389 Young Offenders Act 1993 (SA).
390 Young Offenders Act 1994 (WA).
391 Sentencing Act 1995 (WA); Young Offender’s Act 1994 (WA).
<table>
<thead>
<tr>
<th></th>
<th>Victim-offender Dialogue&lt;sup&gt;392&lt;/sup&gt;</th>
<th>Court order</th>
<th>Serious property offences.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Post-sentence</td>
<td></td>
</tr>
<tr>
<td><strong>NT</strong></td>
<td>Youth Justice Conferencing&lt;sup&gt;393&lt;/sup&gt;</td>
<td>Police referral and court order</td>
<td>Non-violent property offences.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Pre-sentence</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Correctional Centre Conferencing and Ponki Mediation&lt;sup&gt;394&lt;/sup&gt;</td>
<td>Court order</td>
<td>Serious property offences.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Post-sentence</td>
<td></td>
</tr>
<tr>
<td><strong>TAS</strong></td>
<td>Community Conference&lt;sup&gt;395&lt;/sup&gt;</td>
<td>Police referral and court order</td>
<td>Non-violent property offences.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Pre-sentence</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Victim-offender Mediation&lt;sup&gt;396&lt;/sup&gt;</td>
<td>Court order</td>
<td>Serious property offences (indictable offences).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Post-sentence</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Court-ordered Mediation&lt;sup&gt;397&lt;/sup&gt;</td>
<td>Court order</td>
<td>Serious property offences (indictable offences).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Post-sentence</td>
<td></td>
</tr>
</tbody>
</table>

<sup>392</sup> Not governed by specific legislation.
<sup>393</sup> Youth Justice Act 2005 (NT).
<sup>394</sup> Community Justice Centre Act 2005 (NT).
<sup>395</sup> Youth Justice Act 1997 (Tas).
<sup>396</sup> Not governed by specific legislation.
<sup>397</sup> Sentencing Act 1997 (Tas).
5.6.3 RELATIONSHIP BETWEEN PROPERTY OFFENCES AND RESTORATIVE JUSTICE

In 2016-2017, the most frequently referred offence to restorative justice conferences was property offences which attributed to 60% or 4242 of 7092 offences referred. Theft was also one of the other major offences diverted to conferencing.\textsuperscript{398} The Australian Government has therefore attempted to divert young offenders away from the formal aspects of the criminal justice system to ensure that they are able to grow and develop in a social, positive and supportive environment. Cautions and detentions have been two methods employed by the police and courts in an attempt to minimise reoffending, but these have proven to be ineffective. For property and theft crimes, there is a focus on restorative justice to repair the harm done to the victims through mutually constructed agreements that focus on repairing property damage or returning the stolen good. These beneficial aspects of restorative justice to repair the harm done and to address the underlying causes of offending are not present in a mere custodial sentence.\textsuperscript{399} Victims are attracted to the process of conferencing because it helps them share their side of the story in a safe environment.\textsuperscript{400} Police and courts require the attendance of offenders to give them an environment which can facilitate their reintegration into society and return to education.\textsuperscript{401}

However, victims can choose not to attend conferencing and the reasons for non-attendance are varied. Some victims believe that conferencing is not useful whilst others do not want to re-hash the experience.\textsuperscript{402} Other reasons for non-attendance include being fearful of the process, being too enraged to face their offender and believing that no real harm has been done.\textsuperscript{403} This is often the reason why conferences take place weeks or months after the crime has taken place, whether this becomes a diversionary (police-referral) or pre-sentencing (court-referral) method. Corporate victims were also less likely to attend conferences than individual victims although, the main reason for this is because corporate victims sent letters in place of physical attendance. Moreover, since

\textsuperscript{399} Ibid 60-61.
\textsuperscript{403} Ibid 70-71.
youth offending was so common, to attend all youth conferences would take too much time from an employee's day. Nonetheless, principles for restorative justice indicate that offenders have an obligation or a liability to make things right and repair the harm that they have caused. For example, conferences have led to agreements whereby people return items that they have stolen or clean up the property damage and vandalism they have caused. As part of this healing process, the victims' needs for information, restitution, validation, safety and support are achieved through the conferencing process. Restorative justice maximises participation, dialogue and mutual agreements between the victim and offender, thereby striving to ensure that all parties are satisfied with the outcome of conferencing.

Victims also often attend the conferences because they seek closure. After a crime, victims can face physical and emotional injuries, suffer from stress, anger and depression and may feel unsafe. Victims noted that being able to share the impact of the crime, seeing the offender show remorse and having a say in the agreement formed in the conference, assisted them in managing the effects of the crime. Table 17 also indicates the positive attributes of young offenders understanding the harm they caused and agreeing to make things right.

The objective of the courts and police in referring young offenders to restorative justice processes is to divert them from further progression into the criminal youth justice system. This is because the sooner young offenders come into contact with the formal aspects of the system, the greater the likelihood is that they will reoffend and re-enter the system. Furthermore, restorative justice can help reduce the tendency for violence, help children return to education and ultimately improve

404 Ibid 70-71.
410 Ibid 56.
their career prospects. These beneficial outcomes are achieved in programs such as conferencing, which provide the opportunity for victims, offenders and their families to explain the impact of the offence. Counsellors and police officers also explain the impact on society and bring in an educative aspect to the conferencing experience. As Figure 3 indicates, in 2016-2017, 91.1% of conferences successfully led to an agreement between the parties. This figure was 89.8% for Aboriginal and Torres Strait Islander young offenders. Furthermore, conferencing can help promote apologies. Research indicates that offenders who apologised were three times less likely to be reconvicted within four years than those who did not apologise. Although there are young people who can feel pressured to apologise, conferencing provides the opportunity for those who genuinely want to apologise to do so. Providing this opportunity which is not available in the court system can thus benefit both the victim and offender.

Moreover, a study conducted by the University of Canberra indicated that restorative justice shifted the offenders’ perception of the justice process. The study involved assessing the views across a range of crimes from property offences to more violent crimes for children all the way up to the age of 29. Greater procedural justice was experienced through a more fair and respectful treatment in the conference than in court. Offenders also valued the greater opportunity to repair the harm caused as opposed to a court proceeding and showed increased respect for the police and the law. Data collected by the Department of Justice in Queensland also noted that 98% of 351 offenders, parents and victims said that the restorative process was fair and up to 99% were satisfied with the agreement that was reached in the conference. Similar results were found in Western Australia. In South Australia, conferencing also correlated with increasing positive attitudes towards the

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418 Ibid 355.
421 Ibid 31-32.
422 Ibid 31-32.
offender over time. Moreover, victim fears of further emotional and physical harm have reduced following conferences.\textsuperscript{423} Restorative justice has also contributed to more efficient court processes as appropriate cases are diverted to conferencing, leading to less backlog in courts.\textsuperscript{424} Without an alternative to the court process, the outcome of a formal trial is likely to have resulted in costly and intensive outcomes such as supervised orders or detention.\textsuperscript{425} The involvement of family members and the community in conferencing is beneficial to the offender as it can help reduce feelings of isolation and shame whilst providing support.\textsuperscript{426} Table 18 indicates the benefits of restorative justice processes for the victims and offender including the safety they felt at conferences and the fairness.\textsuperscript{427} However, some young people did find it difficult to talk to their victim or offender (Table 19).

Furthermore, punitive approaches to addressing property offences are largely ineffective. A NSW Review stated that empirical studies conducted in Australia, the United States, Europe and New Zealand showed that juvenile incarceration, trying children in adult courts, boot camps and other punitive methods are ineffective in reducing juvenile crime.\textsuperscript{428} Rather, punitive approaches are a costlier means of dealing with young offenders. Not only do these methods stigmatise the offender, incarceration also reinforces criminal behaviour rather than providing the young person with a positive environment and role model.\textsuperscript{429} Moreover, incarceration fails to address underlying factors contributing to youth offending including mental health and family issues.\textsuperscript{430} Rather, during detention, some young offenders are subject to injury as a result of assault. Detention can also create an environment for self-harm. Tables 20, 21 and 22 indicate that 206 young people were injured in detention and recorded 176 incidents of self-harm. These issues are unlikely to occur if children are diverted from the courts and from a custodial sentence.\textsuperscript{431}

\bibitem{footnote12} Ibid 12.
\bibitem{footnote125} Ibid 8-9.
\bibitem{footnote126} Ibid 17.
\bibitem{footnote127} Ibid 8-9.
\bibitem{footnote128} Ibid 17.
\bibitem{footnote129} Ibid 17.
\bibitem{footnote130} Ibid 17.
\bibitem{footnote131} North Australian Aboriginal Justice Agency, Submission No 2 to Youth Justice Review Panel, A Review of the Northern Territory Youth Justice System (July 2011) 17.
\bibitem{footnote132} Ibid 17.
\bibitem{footnote133} Ibid 17.
Additionally, courts may reinforce the deviant identity of young offenders by stigmatising the offender themselves. Conferences, on the other hand, stigmatise the criminal behaviour rather than the offender and can foster social integration through restitution and opportunities to apologise.\textsuperscript{432} Detention and cautions for young people are therefore ineffective and harmful for the future growth of the offender. An Australian study conducted in 2006 indicated that cautions for property and theft were ineffective in keeping young offenders from out of the formal criminal justice system and from reoffending. Theft contributed to 57.6\% of all cautioned crimes and 10.5\% was attributed to property crimes.\textsuperscript{433} Of these young offenders, male offenders 16 years of age or older and offenders who were cautioned for property crimes were more likely to reoffend.\textsuperscript{434} In the five years after their caution, male offenders, the youngest offenders (aged 10-13) and offenders who were caution for theft offences were more likely than other age, sex and offence groups to receive a custodial penalty.\textsuperscript{435} However, it is, important to note that only a small proportion of each group that is more likely to receive a custodial sentence, under 10\%, actually receives a custodial sentence. Additionally, the study noted that offenders cautioned for property damage had more court appearances than theft and other offences.\textsuperscript{436}

\textbf{CASE STUDY 1: TYRONE\textsuperscript{437}}

\textit{Background Information}

Tyrone, a 14-year-old was charged with property and theft offences. He stole two cartons of alcohol from a bottle shop and wallets, handbags and cigarettes from unlocked motor vehicles. Tyrone knew many of the victims. Tyrone’s criminal history includes two prior court appearances for which he was sentenced to unsupervised youth justice orders.

\textsuperscript{434} Ibid 5.
\textsuperscript{435} Ibid 5-6.
\textsuperscript{436} Ibid 1-15.
Restorative Justice Process

The youth conference was held four months after the offences were committed. Four adult victims, who were still upset at Tyrone, attended to understand why their properties were targeted. Tyrone and his mother were fearful of the victims, believing they would be rude and angry towards him. The police officer also noted that he did not believe in restorative justice.

During the conference, Tyrone was able to speak honestly and openly. He showed remorse and demonstrated he understood how his victims felt whilst also engaging in discussions. The community representative and police officer explained the impact of Tyrone’s offending on the community and the resources that went into investigating the crimes.

Outcome

Tyrone offered a verbal apology to the victims at the conference. He also agreed to complete voluntary work at the local school and agreed to write apology letters and statements of intent where he would promise to attend school each day, not to steal from others and to help his younger siblings stay out of trouble with the law. These tasks aimed to repair the harm that Tyrone did and restore community relations. Tyrone completed all the tasks that were assigned to him during the conference within one week.

Victims’ Experiences

- One victim said that being able to speak with Tyrone put her at ease.
- All victims commented on the high level of respect during the conference.
- All victims commended Tyrone on owning up to his actions and behaviour.

Offender’s Experience

- His fears about how the victims would act were unwarranted. The convenor reassured him that the conference meeting is a safe place in which Tyrone can share his story.
CASE STUDY 2: JOSEPH

Background Information
Joseph, a 15-year-old, committed several property and fraud offences. Joseph was intermittently living on the streets and not attending school. Joseph was sentenced to a court ordered restorative justice order. One month later, he was sentenced to a court diversion referral. A co-convenor model was chosen due to the seriousness and complexity of the offences.

Restorative Justice Process
The youth conference was held six months after the offences were committed. Joseph’s father, a member of the Rotary Club where Joseph committed the property offence, a police officer, and Drug and Alcohol Counsellors attended. Two convenors were also assigned for the process. Joseph’s father was able to discuss the impact of his offending on the family, Joseph’s mental health and theft committed by other young offenders to their family home.

The Rotary Club member was able to speak about the difficulties in cleaning up after the vandalism and property damage that Joseph did as well as all the time spent by volunteers doing so.

The police officer spoke about the implications of the damage to motor vehicles and property offences on the community.

Outcome
- Joseph agreed to undertake two sessions of volunteer work at the Rotary Club.
- Joseph has not reoffended in the three months since the conference.
- He no longer associates with the co-offenders and has full-time employment.

Victims’ Experience
- One victim declined to attend the conference for fear of ongoing harassment from Joseph.

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438 Ibid 7-8.
• One of the victims commented on how enthusiastic Joseph was during the conferencing process, and how proud the victim was of the volunteer work that Joseph has agreed to do.

• One of the victims said that Joseph enthusiastically completed his volunteer work. The victim was so amazed that he indicated he would invite Joseph back to the property he damaged once everything was complete.

Offender’s Experience

• Joseph spoke in a defensive manner about why he was caught with drugs.

• Joseph was enthusiastic about his volunteer work and has distanced himself from other co-offenders.

CASE STUDY 3: BRODIE AND RANDAL

Background information

Brodie and Randal, two 15-year-olds, were referred by police to a restorative justice conference two months after attempting a robbery. The victim was of similar age to the offenders. The victim was also assaulted in the process of the robbery. Prior to this incident, Brodie and Randal had never been in trouble with the law.

Restorative Justice Process

The youth conference was held six weeks after the referral. The conference was attended by the referring police officer, the two offenders and their parents, a legal representative for the offender, two restorative justice convenors and a representative from a victim support agency. Participants displayed high levels of emotions including sadness, embarrassment and anger.

The convenors ensured that all parties were silent when a participant was telling their stories. This helped maintain a level of composure in the room whilst allowing participants to be heard. The

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439 Ibid 15-16.
victim’s parents were able to explain how distraught they were after the incident as they received numerous phone calls and were subject to social media attention. They also explained the impact of the crime on the victim’s siblings.

Outcome
Both offenders gave the victim a verbal apology and all participants we able to move forward. The victim and offender later met in the shopping centre by coincidence and showed that they had put aside the past incidence by shaking hands and acknowledging that everything was settled between them.

Victim’s Experience
- Victim said the conference helped him “move on”.
- The victim said that he no longer feared retribution from the offender.

Offenders’ Experiences
- The conference was able to guide the offenders to an understanding of the impact of their crime on the victim.

CASE STUDY 4: UNNAMED YOUNG OFFENDER

Background Information
A 15-year-old boy who maliciously damaged property with fire, which resulted in damage to a function centre.

Restorative Justice Process
The young offender met the victim at the conference. The conference was also attended by a representative from the Fire Brigade and the Queensland Police. The young person had mental

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health issues and was accompanied by their counsellor. The conference focused on the offence and the underlying issues contributing to it.

Outcome
An outcome plan was developed which required the completion of work hours, the attendance at a local Police Youth Centre and counselling. The offender successfully completed the agreement.

Victim's Experience
- The victim reported a high degree of satisfaction with the process.

Offender’s Experience
- The offender was satisfied with the process and as a result willingly completed the outcome plan agreement.

CASE STUDY REFLECTIONS
Conferencing is not a soft option for young offenders, as it is difficult for young offenders to own up to their actions and face their victims.\(^{441}\) Underlying issues and reasons for reoffending are addressed during the conference as the family of the offender have the opportunity to speak about the issues the young person is facing.\(^{442}\) Community members can also discuss how the crime has impacted the community and all participants are able to contribute in forming a mutually agreed upon settlement.\(^{443}\) Conferencing also focuses on the future potential of the youth rather than merely punishing him for his offence. For example, agreements have led to volunteering to repair property damage and promising to attend school every day.\(^{444}\) Victims also benefit in meeting their offender, stating a reduction in fear and an increase in their perceptions of safety, as evidenced in Tyrone’s conferencing.\(^{445}\) For Joseph, the conference was able to help him re-connect with his family and his local community.\(^{446}\) Moreover, the above case studies indicate that police participation is essential in

\(^{442}\) Ibid 7-8.
\(^{443}\) Ibid 2-3.
\(^{444}\) Ibid 2-3.
\(^{445}\) Ibid 3.
\(^{446}\) Ibid 7-8.
helping the young person fully understand the impacts of their actions.\textsuperscript{447} Furthermore, giving the victims a voice in the justice process can help heal the harm and trauma they have experienced. Having friends, family and other support persons for both the victim and offender can also help facilitate the process of healing by providing a supportive and positive environment for discussion.\textsuperscript{448}

CONCLUSION

Restorative Justice for lesser crimes such as property offences and theft provide various social and emotional benefits for both the victim and offender. For the victim, there is a renewed sense of belief in the criminal justice system, closure and reduction in both fear and anger. The offender on the other hand, is able to make amends and reintegrate into society and education. Conferencing provides the offender with the opportunity to repair the harm done and address underlying factors that contribute to youth crime. The process and agreements made in conferences often help repair relationships. The alternative approach of cautions and detention are also largely ineffective, and children can face issues such as assault and self-harm. These other methods also stigmatise the offender. Evidently, despite less result with reoffending rates for lesser crimes, the social and emotional benefits for all parties are undeniable.

\textsuperscript{447} Ibid 8.
\textsuperscript{448} Ibid 2-3, 7-8, 15-16.
PART SIX: EFFECTIVENESS OF CONFERENCING – REOFFENDING RATES
6.1 EFFECTIVENESS OF CONFERENCING – AN ANALYSIS OF REOFFENDING RATES

Evidence regarding juvenile reoffending rates after restorative justice conferencing remains mixed. Early studies of juvenile restorative justice conferencing suggest that there was a reduction in reoffending rates for restorative justice conference participants when compared to the traditional juvenile court processes. However, later studies have been more critical, particularly when data is analysed in light of different variables such as the range of offences and the specific target groups for restorative justice conferencing. Some studies have suggested that restorative justice conferencing is more effective in reducing reoffending for violent crimes where there is a personal victim involved, as opposed to reducing reoffending for minor property crimes. While evidence relating to the lowering of recidivism rates is somewhat unclear, there is a body of evidence suggesting that restorative justice conferencing does have a positive impact in regards to both offender and victim satisfaction with the criminal justice system.

As each Australian jurisdiction has its own individual juvenile restorative justice scheme, there is no national evidence available to demonstrate the effect of restorative justice practices on recidivism rates. Further, much of the research conducted on recidivism rates for restorative justice mechanisms in Australia does not differentiate between offences. Therefore, it is difficult to quantify whether these measures are more effective for minor offences, such as minor property, assault, and drug offences, than for more serious offences. In light of the ad hoc evidence available, this section of the report will focus on analysing the body of evidence available in regard to the NSW youth justice

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conferencing, and expand on the more recent evidence flowing from reports assessing Queensland’s and ACT’s juvenile restorative justice schemes.

6.1.1 REOFFENDING IN NSW – CONFERENCING VS COURT

Since the enactment of the NSW youth justice conferencing system, a large body of statistical analysis has been conducted to compare the recidivism rates of juvenile offenders whose matters were resolved through youth justice conferencing against offenders whose matters were resolved through the Children’s Court.

In 2002, Luke and Lind conducted a study analysing the reoffending patterns of young offenders referred to youth justice conferences under the newly initiated NSW scheme in its first year of operation (1998–1999). Through this study, they analysed 590 first time juvenile offenders who were referred to conferencing, with 3,830 juvenile offenders who were referred to the Children’s Court. They compared the reoffending patterns on two measures: ‘the number of days to first reappearance (at court or at a conference)’ and ‘the number of reappearances per year during the follow-up period.’

They found that there was a moderate drop in reoffending rates for the conferencing group – approximately, a 15–20% reduction in reoffending for all offenders involved in conferencing, as opposed to offenders processed through the court. Offenders involved in conferencing took longer to re-appear in the criminal justice system by a significant margin.

This early study has been criticised on two accounts. First, Luke and Lind failed to acknowledge that a significant number of juvenile offenders referred to conferencing were low-risk offenders, and that their status as a low-risk offender would invariably affect the results for reoffending rates. Second, Luke and Lind had limited control factors on participants such as Indigenous status, which is proven to have a significant impact on recidivism rates long-term. However, while Luke and Lind’s study has its limitations, their results remain worthy of note, as their study fits within broader findings of reductions in recidivism rates when restorative justice practices are employed in the context of juvenile offenders.

In 2012, Smith and Weatherburn examined past research and the available data on NSW Youth Justice Conferencing and the NSW Children’s Court, to compare the recidivism rates between the two systems.\textsuperscript{456} Employing propensity score methods in their analysis of the available data, they attempted to overcome the selection bias limitations of previous studies. They conducted the analysis on a 2007 sample of 918 juvenile offenders referred to conferencing and 918 juvenile offenders processed through the court. The results of their study concluded that there was no significant difference in the re-offending between conferencing and the court process.\textsuperscript{457} Smith and Weatherburn caveated the results of their study by acknowledging that the sample size of their study was only large enough to detect substantial differences, not small effects of 5% or less. Smith and Weatherburn further acknowledged that reducing re-offending is not the only aim of the Australian criminal justice system; one of the aims of the system is also to ‘do justice’ to both the victim and the offender.\textsuperscript{458} There is evidence to suggest that the court process is stigmatising for juvenile offenders, and that this stigmatisation in the context of juvenile offenders can increase the risk of re-offending.\textsuperscript{459} A restorative justice conferencing model presents an alternative to this stigma that goes along with court process. In this sense it may prove effective in reducing re-offending, however this was not proved in Smith and Weatherburn’s study.

In 2013, a study conducted by Wan, Moore and Moffatt on the impact of the Young Offenders Act 1997 (NSW) on the imposition of custodial sentences upon juvenile offenders, found that alternative modes of justice such as youth justice conferences and the use of cautions have been effective in diverting both Indigenous and non-indigenous juveniles from custodial sentences.\textsuperscript{460} This study demonstrates the effectiveness of the diversionary mechanism of youth justice conferencing employed in NSW, as it shows the positive impacts a specific juvenile program with the aim of reducing incarceration rates for juvenile offenders can have.

\textsuperscript{456} Ibid.
\textsuperscript{457} Ibid, 16.
\textsuperscript{458} Ibid, 16.
6.1.2 REOFFENDING IN QLD AND THE ACT – RECENT DEVELOPMENTS

In Queensland in 2016, the Youth Justice Act 1992 (QLD) was amended to broaden the court referral pathways for restorative justice conferencing for juvenile offenders. Following these amendments, the Queensland Government has undertaken an evaluation of the effectiveness of the Restorative Justice Project, analysing its effectiveness in regards to re-offending rates, victim and offender satisfaction, and the program’s ability to respond to demands of juvenile offenders in Queensland’s criminal justice system.\(^{461}\) The program aimed to increase the availability of restorative justice processes to young offenders, to increase Indigenous participation in these processes, to increase community and victim participation in these processes, and to increase the use of restorative justice conferencing for serious offences committed by juveniles.\(^{462}\) The evaluation report found that the increase in the use of restorative justice practices in QLD did have a positive effect on reoffending rates in the first year, also noting the further reparative benefits of these practices on the participants, the victims, and the wider community, noting that there was a high rate of compliance in the completion of conferencing agreements.\(^{463}\)

The findings of this evaluation report in regards to reoffending rates over the first year of implementation were as follows:

- 59% of juvenile offenders who completed a conference from July 2016 to December 2016 did not reoffend within six months of their conference;
- 7% of juvenile offenders who attended a conference showed a substantial decrease in the frequency and seriousness in their reoffending;
- 11% of juvenile offenders who attended a conference showed a slight decrease in the frequency and seriousness of their reoffending; and
- In total, 77% of juvenile offenders either did not reoffend or showed a decrease in the magnitude of their reoffending.\(^{464}\)

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\(^{462}\) Ibid, p. 5.

\(^{463}\) Ibid, 8, 96% of agreements were completed between 2016-17.

\(^{464}\) Ibid, 8.
Accompanying these overall findings, the evaluation report further analysed the effectiveness of restorative justice conferencing on reoffending rates by different cohorts of juvenile offenders. The key findings were as follows:

- Reoffending rates were lower by 28% for young people who did not have extensive criminal histories;
- Reoffending rates were higher for those who had a history of supervised orders (74%), and for juvenile offenders who had already participated in conferencing previously (52%).

From this data, an inference can be drawn that restorative justice conferencing has had a positive impact on re-offending rates. However, the effectiveness of restorative justice programs varies when different variables are considered, particularly the criminal history of a participant. While the data presented in this evaluation report demonstrates the effectiveness of restorative justice conferencing for juvenile offenders, it does not differentiate reoffending rates between offence classes or across the varying seriousness of offences.

Complimenting this research from Queensland, in 2018 the Australian National University (ANU) and Australian Institute of Criminology (AIC) conducted an impact evaluation study on the restorative justice conferencing program in the ACT. The authors attempted to overcome past criticisms of measuring recidivism rates for juvenile restorative justice processes, using improved methods of measuring recidivism. They found that the nature of the cohort chosen for conferencing in the ACT may have an impact on the rates of recidivism, as they found that on average, restorative justice participants were at higher risk of reoffending in general. The cohort participants were more likely to be male, with criminal histories, and charged with violent or property offences. However, when adjustments to the data were made through a multivariate model, the authors of the report found that restorative justice participants were less likely to reoffend (20%) than non-restorative justice participants (29%). Long term estimates on reoffending also found that participants of restorative justice were less likely to reoffend in a five-year period (47%) than non-

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467 Ibid, 3.
468 Ibid, 4.
469 Ibid, 11.
restorative justice participants (57%). In a 10-year period, these trends in reoffending were also confirmed as reoffending rates were less for restorative justice participants (54%) than non-restorative justice participants (64%).

This report further analysed recidivism rates on a number of different variables. The authors found that for property offences, juvenile offenders with a prior record who participated in conferencing had a significantly lower risk of reoffending than those who participated in non-restorative justice process. However, this trend did not extend to first time property offenders, where conferencing did not reduce the risk of reoffending. Further, the reverse was the case for crimes involving violence. Restorative justice processes were more effective in reducing recidivism for first time offenders of violent crimes, and less effective on recidivism rates for offenders with prior criminal history.

Further, in their study of the ACT’s restorative justice programs, Sherman, Strang and Woods found that recidivism rates were lowered when restorative justice practices were used for violent offences where a personal victim is impacted, with restorative justice processes being less effective at reducing reoffending for minor property offences such as shoplifting. These findings have also been confirmed in their more recent study in 2015, comparing data on the effectiveness of restorative justice programs over the past two decades from the Australian system and the United Kingdom. Their overall findings on recidivism rates further support the findings of their earlier study. Moderate effects on the recidivism of restorative justice participants in both Australia and the United Kingdom were found. However, it was revealed that restorative justice failed to reduce recidivism rates for property crimes, effectively reduced recidivism for violent crimes.

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470 Ibid, 3.
472 Lawrence Sherman, Heather Strang, and Daniel Woods, Recidivism patterns in the Canberra reintegrative shaming experiments (RISE) (Report Canberra: Centre for Restorative Justice, Research School of Social Sciences, Australian National University, 2000).
6.1.3 CONCLUSION

As found by Smith and Weatherburn, there are many limitations to providing accurate recidivism rates in the context of juvenile restorative justice conferencing.\textsuperscript{475} However, though the conclusion of their study was that there was no significant reduction in reoffending rates for juvenile offenders referred to restorative justice conferencing, they acknowledged that this evidence does not prove that conferencing models do not work effectively when assessed against victim and offender satisfaction.\textsuperscript{476} Through recent reviews of both Queensland’s and the ACT’s current restorative justice schemes, there is positive evidence to suggest that restorative justice conferencing can have a positive impact on certain groups of juvenile offenders.\textsuperscript{477} Further, there is evidence to suggest that restorative justice practices are effective in reducing reoffending rates in offenders committing crimes involving violence and where there is a personal victim to the crime, rather than property offences.


\textsuperscript{476} Ibid, 6.

PART SEVEN:
RESTORATIVE JUSTICE AND ADULT OFFENDERS
7.1 RESTORATIVE JUSTICE AND ADULT OFFENDERS

The development of restorative justice programs has occurred largely within the area of juvenile justice. The use of restorative justice for youth offenders was driven primarily by the belief that such programs provide youth with a ‘second-chance’ to turn their lives around. Youth offenders are typically considered to be less accountable for their actions than adults, and more amenable to change. However, the implication of this orthodox view is that it is ‘too late’ for adults, and that restorative justice will be inappropriate or insufficiently punitive for adult offenders. Accordingly, while restorative justice programs are now ubiquitous for youth offenders, the use of such programs for adult offenders has been relatively uncommon, and more restricted. This section provides an overview of the current availability of adult restorative justice programs in Australia and explores whether restorative justice is an appropriate and effective response for adult-offender crimes.

7.1.1 OVERVIEW OF RESTORATIVE JUSTICE FOR ADULT OFFENDERS IN AUSTRALIA

While restorative justice has focused predominantly on youth offenders, the availability of programs dealing with adult offenders has grown in recent years:

478 Jane Bolitho, ‘Restorative Justice for Adults: Should We Do More?’ in Jane Bolitho, Jasmine Bruce, and Gail Mason (eds), Restorative Justice: Adults and Emerging Practice (Institute of Criminology Press, 2012) 17, 17.
479 Ibid.
**Conferences**

Adult conferencing programs have been piloted in numerous jurisdictions over the years, but are currently only available in NSW, South Australia and Queensland for all adults, as well as Victoria for young adults (up to 20 years of age only). While conferencing has been used for youth offenders at a variety of stages of the criminal justice system, they are typically only available for adult offenders at the pre-sentencing or post-conviction stage. Additionally, parties are generally referred to adult conferencing following a guilty plea or a finding of guilt. Despite this difference in timing, the format and process of adult conferences are almost identical to youth justice conferences.

**Victim-Offender Mediation**

While conferencing is not widely available for adult offenders, victim-offender mediations are available for youth and adults in all jurisdictions except Victoria and ACT. These differ from conferencing mainly in that they require the victim to be present and are usually only available post-sentencing and post-conviction. For both youth and adult commissioned offences, victim-offender mediations will only be used where the offender accepts responsibility and where both parties voluntarily participate. As with conferences, victim-offender mediations with adult offenders usually follow the same process and procedure as when used with youth offenders.

**Circle Sentencing**

Circle sentencing is a unique mode of restorative justice that focuses strictly on Indigenous adult offenders, available only in NSW and Western Australia. The process is designed to be more culturally appropriate and responsive to Indigenous Australians than traditional court systems. The main motivation is to reduce indigenous reoffending and provide greater satisfaction to participants. It is important however, to distinguish circle sentencing from typical restorative justice programs, as

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484 Ibid 8.
486 Ibid 33.
487 Ibid 19.
488 Ibid 18.
489 Ibid 6.
491 Ibid iv.
they are less victim-centric, focusing mostly on offender-rehabilitation. Nonetheless, they still embrace many key restorative justice values, as they engage parties affected by crime in a dialogue outside the formal court system.

7.1.2 DIFFERENCES BETWEEN YOUTH AND ADULT OFFENDERS

Criminology Professors Chris Cunneen and Rob White found that while juvenile crimes are usually less serious and less costly in economic terms than adult crimes, juvenile offenders often need more intensive and more costly interventions than adult offenders, for the following reasons:

**Juvenile offenders have complex needs**

Although many of the problems faced by juvenile offenders, such as substance abuse, mental illness and/or cognitive disability are also present in adult criminal justice populations, they can cause greater problems among young people, who are more susceptible—physically, emotionally and socially—to them. Adding to the complexity of juvenile offenders is the compounding of these problems due to their psychosocial immaturity.

**Intellectual disability and mental illness**

Intellectual disabilities are prevalent among young people who come into contact with the juvenile justice system. Intellectual disabilities are also substantially more common for young people entering custody than young people in the general population, adults within the criminal justice system and the general Australian population. A 2008 study conducted by Professors Matt Frize, Dianna Kenny

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492 Ibid.
494 Ibid.
496 Ibid.
and CJ Lennings examined 800 young offenders on community-based orders in NSW. This study found that over-representation of intellectual disabilities was particularly high among Indigenous juveniles and that juveniles with an intellectual disability are at a significantly higher risk of recidivism than other juveniles.\textsuperscript{498} Mental illness is also over-represented among juveniles in detention compared with those in the community. The Young People in Custody Health Survey, conducted in New South Wales in 2015, found that 83.3 percent of young people in custody reported symptoms consistent with a mild, moderate or severe psychological disorder.\textsuperscript{499}

\textbf{Juvenile offenders require a higher duty of care}

Juvenile offenders require a higher duty of care than adult offenders. In Australia, juveniles in detention are classified as legal minors. Accordingly, the state provides in loco parentis supervision, a common law principle which enables other persons standing in a parental role either on a permanent or temporary basis (such as teachers, adult siblings, grandparents and carers) to make decisions on behalf of a child or young person lacking capacity.\textsuperscript{500} Incarcerated juveniles of school age are required to participate in schooling and staff-to-offender ratios are much higher in juvenile than adult custodial facilities, to enable more intensive supervision and care of juveniles. For these reasons, research at the New Economics Foundation in 2010 found that juvenile justice supervision could be highly resource-intensive.\textsuperscript{501}

\textbf{Juveniles have a higher chance of growing out of crime}

Many juveniles grow out of crime and adopt law-abiding lifestyles as young adults. Hence, many juveniles who have contact with the criminal justice system will not continue offending over their lifetime.\textsuperscript{502} As juveniles are not yet fully entrenched within the criminal justice system, juvenile justice interventions can help to foster juveniles’ desistance from crime. Conversely, the potential exists for


a great deal of harm to be done to juveniles if juvenile justice authorities apply ineffective or unsuitable interventions.\textsuperscript{503}

**Juveniles as victims of crimes**

Youths are disproportionately the perpetrators and victims of crime. As Kelly Richards conceptualises:

> Young people aged 15 to 24 years are at a higher risk of assault than any other age group in Australia and males aged 15 to 19 years are more than twice as likely to become a victim of robbery as males aged 25 or older, and all females.\textsuperscript{504} Statistics also show that juveniles comprise substantial proportions of victims of sexual offences. In 2007, the highest rate of recorded sexual assault in Australia was for 10 to 14 year old females, at 544 per 100,000 population.\textsuperscript{505} For males, rates were also highest among juveniles, with 95 per 100,000 population 10 to 14 year olds reporting a sexual assault.\textsuperscript{506}

Kathleen Daly’s research demonstrated that the boundary between juvenile offenders and juvenile victims can easily become blurred as it is important to recognise that juveniles are frequently the victims of offences committed by other juveniles.\textsuperscript{507} This was demonstrated through the finding that between 1989–90 and 2007–08, almost one-third of homicide victims aged 15 to 17 years were killed by another juvenile.\textsuperscript{508} As such, juvenile victims and juvenile offenders are unlikely to be entirely discrete and research consistently shows that these phenomena are interlinked. Thus, the high rate of victimisation of juveniles is a critical differentiation between the way restorative justice practices are conducted for youth as it is widely acknowledged that victimisation is a pathway into offending behaviour for some young people.\textsuperscript{509}

\textsuperscript{503} Ibid.
\textsuperscript{506} Ibid.
\textsuperscript{507} Kathleen Daly, ‘Girls, peer violence, and restorative justice,’ (2008) 41(1) Australian and New Zealand Journal of Criminology 109, 123.
\textsuperscript{508} Kelly Richards, Police-Referral Restorative Justice for Juveniles in Australia: Trends & Issues in Crime and Criminal Justice (Australian Institute of Criminology, Report No. 398, 2010); Kelly Richards, Juveniles’ Contact with the Criminal Justice system in Australia (Australian Institute of Criminology, Report No. 7a, 2009).
7.1.3 OUTCOMES OF RESTORATIVE JUSTICE FOR ADULT OFFENDERS

Although there have not yet been any Australian studies directly comparing restorative justice outcomes between youth and adult offenders, it can be inferred from the available research that restorative justice produces similar outcomes when used for both juveniles and adults.

**Recidivism**

Empirical evaluations of adult restorative justice programs conducted in Australia have produced mixed and inconclusive results on their capacity to reduce reoffending rates. In an early study on the impact of circle sentencing programs in NSW, Potas et al. found positive reductions in reoffending for adult offender participants.\(^{510}\) However, a follow up study by Fitzgerald found no significant impact on the frequency and seriousness of reoffending, or time taken to reoffend.\(^{511}\) In this study, 46% of adults who were circle sentenced committed at least one offence in the 15 months post-circle sentencing, compared to 38% of those who were court sentenced.\(^{512}\) In the 15 months post-sentencing, both groups committed the same number of proven offences, with an average of 1.5 proven offences committed within 15 months post-sentence.\(^{513}\) While 78% of the offenders that were circle sentenced committed fewer offences in the 15 months post-sentencing than the 15 months pre-sentencing, these results were directly comparable with 77% of the control group who were court sentenced.\(^{514}\) Moreover, the time taken to reoffend was not affected by circle sentencing when all variables were accounted for, including prior offence history, age, sex, and offence type.\(^{515}\) The researchers also found no statistically significant difference in terms of seriousness of re-offences following circle sentencing, as 56% of the circle sentence group that reoffended committed a less serious crime, compared to 45% of the control group.\(^{516}\) A study by Jones on NSW Forum Sentencing for adult offenders corroborated these results, finding that participation in this restorative

\(^{512}\) Ibid 4.
\(^{513}\) Ibid.
\(^{514}\) Ibid.
\(^{515}\) Ibid 7.
\(^{516}\) Ibid 6.
justice program had no significant impact on the likelihood, frequency, or seriousness of reoffending for adult offenders.\footnote{Craig Jones, ‘Does Forum Sentencing Reduce Re-Offending?’ (2009) 129 Crime and Justice Bulletin: Contemporary Issues in Crime and Justice 1, 12.}

While the above findings paint a poor picture of the capacity for restorative justice to reduce reoffending for adult participants, it is possible that weak outcomes were found simply due to the inherent limitations in the design of the above studies.\footnote{Jacqueline Joudo Larsen, Restorative Justice in the Australian Criminal Justice System (Australian Institute of Criminology Report No 127, 2014) 15.} For instance, Larsen highlights how these results may have been skewed by the fact that researchers did not impose adequate restrictions on eligibility for the control group to match those in the circle sentenced group, and did not use appropriate techniques to minimise selection-bias.\footnote{Ibid.} Additionally, results were limited by the short follow-up periods utilised in both studies.\footnote{Ibid.} Despite this, it is important to note that these results are comparable to recidivism outcomes for young offenders, with evaluations producing similarly mixed results. For instance, in a review of a wide range of youth restorative justice programs, Smith and Weatherburn found that there was no significant difference between youth processed in court or conference in terms of frequency of reoffending, time taken to reoffend, and the seriousness of any re-offences.\footnote{Nadine Smith and Don Weatherburn, ‘Youth Justice Conferences Versus Children’s Court: A Comparison of Re-Offending’ (2012) 160 Crime and Justice Bulletin: Contemporary Issues in Crime and Justice 1, 6.}

As reoffending outcomes for both juvenile and adult offenders are mixed, it can be inferred that the capacity for restorative justice to affect recidivism is not necessarily affected by the age of the offender, and is instead dependent on an array of complex factors and variables. In fact, there is persuasive international research finding that restorative justice can successfully reduce reoffending for both adult and youth offenders, particularly for serious and violent crimes with direct victims.\footnote{Joanna Shapland et al, Does Restorative Justice Affect Reconviction? Fourth Report from the Evaluation of Three Schemes (London Ministry of Justice, 2008); New Zealand Ministry of Justice, Reoffending Analysis for Restorative Justice Cases: 2008 and 2009 (Ministry of Justice, 2011).} Thus, more rigorous research is required in this area to acquire clearer and more conclusive results. Nevertheless, it is important to recognise that focusing solely on reoffending outcomes ignores the other areas in which restorative justice can have positive impacts, including victim satisfaction and
offender accountability, compliance with orders, and attitudinal change. The main takeaway of these findings is that, at the very least, restorative justice produces similar reoffending outcomes as court-based processes, and does not increase reoffending rates in any way for adult and youth offenders.

**Victim Needs and Satisfaction**

Although evidence on reoffending has produced mixed and unclear results, research on the effectiveness of restorative justice’s capacity to meet victims’ needs and ensure satisfaction in cases involving adult offenders has proven more promising. An empirical study by People and Trimboli found that victims experienced a high level of satisfaction and a strong sense of due process with NSW’s Community Conferencing for Young Adults Program. Approximately 58-74% of participants felt they received substantial information about the conference and what was expected of them, and 97% reported that they understood what was happening. Additionally, 73-85% of participants believed that the process was fair to the offender, 61-76% believed it was fair for victims, 96% strongly agreed that they were able to express their views, and 93% felt the process treated them well and respected their rights. In this sense, victims and offenders were able to receive procedural justice, and were empowered to engage in the process. Moreover, 91% of participants were highly satisfied with their outcome plan, with the majority viewing it as fair to the victim and offender. Satisfaction levels did not change when victimless and direct-victim crimes were compared, suggesting that restorative justice should also be effective for crimes with differing degrees of seriousness committed by adult offenders. Additionally, results suggested that restorative justice can help facilitate offender attitudinal change, as a majority of adult offenders in the NSW adult program believed that the offence they committed was wrong, and understood the consequences that their actions had for victims.

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524 Ibid.
525 Julie People and Lily Trimboli, *An Evaluation of the NSW Community Conferencing for Young Adults Pilot Program* (NSW Bureau of Crime Statistics and Research, 2007).
526 Ibid viii.
527 Ibid.
528 Ibid.
529 Ibid 54.
530 Ibid.
Furthermore, in an evaluation of circle sentencing outcomes, victims reported high levels of satisfaction with the process, as they were well supported and empowered to speak openly and confront their offender. Offenders also reported that the process had a positive impact on them, leading to attitudinal change and a willingness to accept responsibility for their actions. Similarly, in an evaluative study of South Australia’s Adult Conferencing Pilot Program, Goldsmith, Halsey, and Bamford found that the majority of victims reported high levels of satisfaction with the process, and offenders showed genuine acceptance of their wrongdoing, and readiness to make apologies. Participants in the program also believed that adults were better able to express and communicate their feelings of remorse to victims than young offenders, potentially leading to better outcomes and attitudinal change. Rossner has made similar note of the potential for adult restorative justice programs to produce better outcomes than youth offender programs, highlighting how adults are generally more mature and better able to emotionally engage with victims. In this way, adults are more likely to understand the impact and consequences of their actions, and more willing to make amends.

Nevertheless, the above results are comparable to those from evaluations of youth justice conferences, suggesting that restorative justice is no less effective when utilised for adult offenders. For instance, in an earlier evaluation of youth justice conferences, Trimboli similarly found that victims reported high rates of satisfaction with the conferencing process, and that offenders were highly likely to accept responsibility for their actions and make apologies—thus facilitating victim healing. International studies have also corroborated the findings that adult and youth programs yield similar results. In an early international study on victim offender mediations, Umbreit found that victim satisfaction with the program, and with the justice system, remained the same across victims of both

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532 Ibid 48.
534 Ibid.
536 Ibid.
537 Julie People and Lily Trimboli, An Evaluation of the NSW Community Conferencing for Young Adults Pilot Program (NSW Bureau of Crime Statistics and Research, 2007) 54.
adult and youth offender crimes. These findings suggest that victims will be highly satisfied with victim offender mediations regardless of the age of the offender. Additionally, following a review of both domestic and international literature, Bolitho concluded that restorative justice for victims of both youth and adult crimes leads to high levels of satisfaction, provides due process, and can facilitate victim healing and reconciliation.

7.1.4 CONCLUSION

Based on the above research, it is clear that adult restorative justice programs are just as successful in meeting victims needs and producing high levels of satisfaction as their youth program counterparts. While more research should be conducted in this area, the available evidence supports the expansion of restorative justice to adult offender crimes.

PART EIGHT: REFORMS MOVING FORWARD
8.1 REFORMING RESTORATIVE JUSTICE IN AUSTRALIA: MOVING FORWARD

8.1.1 CONSOLIDATION OF RESTORATIVE JUSTICE LEGISLATION AND PRACTICE

While all states and territories in Australia implement restorative justice programs, there is considerable variability between the jurisdictions regarding the legislation and the procedures involved in the different restorative justice practices. Although the move to encourage restorative justice practices for juvenile offenders is promising, each jurisdiction regulates youth conferencing and mediation in different ways. An important reform recommendation put forth by the Australian Law Reform Commission in 1997 which continues to remain relevant is the consolidation of national standards for juvenile conferencing. The commission established guidelines that should be introduced nationally when reforming youth conferencing, including:

1. The implementation of restorative justice programs by groups or individuals independent of law-enforcement bodies. Specifically, the Australian Law Reform Commission suggests the involvement of youth workers or lawyers who were heavily involved with the community where restorative justice is being practiced.
2. Methods to monitor the agreed outcome plans and undertakings in a conference, ensuring that penalties are not punitive compared with what a court would order in an adversarial context.
3. Methods to ensure that juvenile offenders do not gain criminal records if they have participated in juvenile conferencing.
4. Ensuring that restorative justice programs do not create power imbalances and operate in an oppressive way against the young offender.
5. Ensuring that juvenile offenders have access to an Australian legal practitioner before entering into an agreement to participate in a conference.

6. Determining whether schemes should be regulated legislatively, to ensure there is accountability during the process and that the process is ‘less ad hoc’.\textsuperscript{542}

7. Assessing and monitoring the effectiveness of youth conferencing to ensure it does not create a cycle of re-offending and that it does not draw more youth into the criminal justice system.\textsuperscript{543}

As demonstrated throughout the report, the differences in conferencing and dialogue practices in each state and territory continues to attract well-founded criticism towards restorative justice programs. The present lack of a national Act statutorily entrenching the above guidelines decreases the credibility of Australia’s restorative justice practices; many of these recommendations seek to increase accountability and transparency. Furthermore, the variable availability of restorative justice program across each jurisdiction means that some juveniles (and adults) miss out on the opportunity to access restorative justice if their jurisdiction does not make it available to them. Ultimately, the absence of a consolidated set of restorative justice policies may reduce public faith in the system. Having a national Restorative Justice Act in Australia will ensure that the regulations of restorative justice practices are streamlined.

8.1.2 APPROPRIATENESS AND EFFECTIVENESS OF RESTORATIVE JUSTICE FOR INDIGENOUS COMMUNITIES

CRITICISMS OF PRESENT RESTORATIVE JUSTICE PROGRAMS

Restorative justice programs have faced repeated criticisms regarding their appropriateness and effectiveness in Indigenous communities.\textsuperscript{544} To date, restorative justice has been criticised for:

1. Failing to negotiate and consult with Indigenous communities and Indigenous organisations to ensure restorative justice accommodates for Indigenous values and culture.

2. Discriminating against Indigenous Australians, as police refuse to refer Indigenous youth to restorative justice programs. This criticism is exacerbated by the turbulent relationship

\textsuperscript{542} Ibid 357.
\textsuperscript{543} Ibid.
\textsuperscript{544} Ibid.
between Indigenous youth and law enforcement, as Indigenous youth have been regulated by colonial laws that are often in stark contrast to Indigenous customary law.

3. Disregarding the cultural differences between Indigenous Australians and non-Indigenous persons. Present modes of restorative justice (with the exception of circle sentencing, which is currently restricted to adults) do not accommodate for Indigenous cultural values, including recognising the relationship dynamics between Indigenous youth and elders.

The necessity for reform to provide restorative justice practices which support Indigenous youth is apparent when considering the high rates of Indigenous youth incarceration. In June 2018, the Australian Institute of Health and Welfare (AIHW) reported that 980 juveniles were in detention on an average night throughout Australia. Of these 980 juveniles, 54% were Aboriginal or Torres Strait Islander. Only 3.3% of the total Australian population identifies as Indigenous (note that this figure encapsulates both Indigenous adults and Indigenous youth). Evidently, Indigenous juveniles are incarcerated at a rate proportionate to their percentage of the population.

The present lack of restorative justice models which accommodate for the cultural distinctions within Indigenous communities can be detrimental. The sentencing and subsequent detention of Indigenous youth (especially with regard to minor offences such as theft) can be detrimental to their well-being and livelihood. The lack of appropriate restorative justice programs increases Indigenous contact with the incarceration system; this in turn contributes to the risks of Indigenous maltreatment and death in custody. Once Indigenous youth come into contact with the criminal justice system and obtain a criminal record, they are effectively ‘trapped’ in the cycle due to stigma and unnecessary arrests based on prior offending. As restorative justice is a means to divert offenders away from the criminal system, intentionally opening restorative justice for Indigenous youth can have significant positive ramifications for their livelihood and wellbeing as it can assist in their rehabilitation. Finally, restorative justice can acknowledge the systematic generational oppression and abuse suffered by Indigenous people at the hands of the Australian government, which may exacerbate their

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545 Youth Detention Population in Australia 2018 (Australian Institute of Health and Welfare Bulletin 145). Note that this figure encapsulates only an average night, not the total number of youth in detention on one specific date.
546 Ibid.
547 Australian Bureau of Statistics, Estimates of Aboriginal and Torres Strait Islander Australians, June 2016 (Catalogue No 3238.0.55.001, 31 August 2018).
548 Royal Commission into Aboriginal Deaths in Custody (Final Report, April 1991) vol 5 [79].
549 Ibid.
susceptibility to criminal behaviour. It offers a form of reparation to assist Indigenous young people to break free from the cycle of entrenched-offending and incarceration, and reform their lives.

Thus, this report advocates for the development of Indigenous-friendly restorative justice programs. This includes, for example, extending circle sentencing in NSW and Western Australia to juveniles rather than limiting the program to adults. It must be emphasised that, when developing these programs, lawmakers and policymakers are communicating and collaborating with members of Indigenous communities and Indigenous rights organisations. This will ensure that these programs are culturally sensitive and appropriate for Indigenous communities.

**REFORM**

A crucial reform in this area is encouraging education and training efforts to support restorative justice programs for Indigenous youth. Training programs and education are central to advising justice agencies about their role in shaping restorative justice practices, specifically for Indigenous youth. Individuals in Australia only interact with restorative justice models if they are participating directly in the process. However, justice agencies should focus on training and educating prosecutors, defence lawyers, judges and restorative justice facilitators to better understand restorative justice practices. While the legal profession may tend to be resistant to restorative justice processes, persons involved in the profession are heavily involved in youth conferencing. Hence, educating legal professionals, law enforcement and facilitators on the importance of Indigenous restorative justice programs can minimise the discriminatory attitudes persisting among other stakeholders in the implementation of these procedures.

**8.1.3 FACILITATOR QUALIFICATIONS AND OFFENDER PREPAREDNESS**

**OFFENDER GENUITY AND MATURITY**

A common critique of restorative justice, particularly in regards to more serious offending, is that restorative justice operates on the assumption that both parties (victim and offender) possess 'a

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551 Ibid 148.
generous, empathetic, supportive and rational human spirit" and a ‘degree of moral maturity and empathetic concern’. Many outcome plans require the offender to express an apology to a victim as a means of reparation. Incorporating an apology may also lead to lower rates of recidivism, as research suggests that when an offender makes a sincere apology, they are less likely to reoffend than those who do not wish to apologise. However, a study conducted by Daly in 2003 reported that 53% of offenders in her restorative justice research were more concerned about restoring their name and reputation than offering genuine apologies and repairing the harm caused to the victim. Additionally, depending on the maturity level of the offender and their interpersonal skills, offenders can feel pressured to apologise, without feeling remorseful towards the victim they have harmed. Consequently, victims may leave the restorative justice program still feeling distressed and dissatisfied.

REFORM

The lack of maturity typically present in young offenders has been described as an ‘inherent limitation’ of restorative justice, rather than a gap which can be filled or reformed. However, this report suggests that it is possible to aid young offenders in developing maturity and understanding, to engage effectively within the restorative justice process. Riley and Hayes’ 2017 study found that most young offenders did not understand the entirety of the conferencing process; they did not understand what the conference facilitators were asking them, they struggled to grasp the seriousness of what they had done, and they were unable to articulate their remorse.

A major downfall of restorative justice in Australia is the lack of minimum mandatory qualifications for conferencing facilitators. This is concerning, considering that young offenders may require significant guidance and assistance during the conferencing process. Furthermore, conferencing

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553 Ibid.
559 See Section 4: Implementation of Restorative Justice.
facilitators must be equipped to navigate potentially traumatic situations. Any restorative justice system must sufficiently train restorative justice facilitators and ensure that facilitators are qualified for their roles, considering the vulnerable and sensitive nature of conferencing, especially for serious offences.

Additionally, it is critical to sufficiently train facilitators to use simple, comprehensible and restorative language during the conferencing process. Facilitators should also engage with the young offender prior to the restorative justice process to explain to the offender the structure and purpose of the conferencing. This may help destress the offender, as stressful situations may exacerbate their verbal or oral limitations and result in the offender suppressing their emotions out of fear or anxiety. This training also ensure that the dialogue meets the oral competency of the young offenders involved. When the offender is able to understand the proceedings, including the trauma the victim suffered, and when the offender is able to communicate their own remorse and regret for their conduct, both victim and offender satisfaction can increase. This is especially important where restorative justice is practiced in Indigenous or ethnic communities, as offenders may not necessarily possess English as their first language.

8.1.4 MAINSTREAM EXTENSION OF RESTORATIVE JUSTICE FOR SERIOUS CRIMES

CURRENT PRACTICE

The practice of restorative justice is generally restricted to the commission of minor offences, with few exceptions in some States and Territories. The Crimes Analysis Section of this report (see: Section 5) revealed that restorative justice can be effective in serious offending such as sexual assault, particularly in assisting in victim healing from trauma, victim satisfaction, and reducing recidivism. However, South Australia is presently the only jurisdiction which routinely offers restorative justice for sexual offences.

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REFORM

Accordingly, this paper advocates for present restorative justice legislation and practice to adopt the following reforms:

1. To equip facilitators, police and lawyers with the training and resources necessary to carry out restorative justice for serious crimes.
2. To repeal statute which explicitly excludes serious offences such as sexual assault and murder from the scope of restorative justice models.\(^{561}\)
3. That, in accordance with the analysis conducted on serious crimes in this report, the point of referral to restorative justice for serious crimes like murder and sexual assault should be restricted to post-sentencing.

Note that post-sentencing referrals to promote the use of restorative justice for serious crimes may be beneficial in three notable ways:

1. The conviction and sentencing of the offender coupled with the use of restorative justice programs may assist in victim healing. The completion of the trial system may allow the victim to feel that they have received justice (as opposed to a pre-sentencing referral which may perpetuate the perception that the offender is evading justice) while the restorative justice program will cater to the victim’s needs for closure and healing.
2. The restorative justice program may assist the offender in dealing with their crimes and the consequences of their actions in a way that incarceration alone is unable to. Specifically, restorative justice may help the offender on an emotional and psychological level. This in turn may reduce recidivism and assist in their reintegration into society.
3. Assisting in the offender’s reintegration into society is particularly significant where the offender is serving a lengthy sentence (as is often the case in more serious crimes), and therefore may ordinarily face difficulties adapting to life after imprisonment.

\(^{561}\) Note that this report merely seeks to include serious offences within the scope of restorative justice practices; this report is not suggesting that serious offenders must be referred to restorative justice at every instance.
PART NINE: CONCLUSION
Restorative justice processes provide an alternative method of justice for juvenile offenders in Australia. They are a welcome addition to any existing criminal justice system, as they offer potential benefits for victims, offenders and the community. Restorative justice allows the victim and offender to address the harm caused and express the way in which the offence has impacted their lives. While restorative justice has been used in various jurisdictions in Australia for differing crimes, the statistics and case studies discussed in this report present mixed views on the effectiveness of the process. Australia has traditionally only referred offenders to restorative justice models when they have committed a minor offence, such as assault, property and drug offences. Through the process of victim-offender mediation, some heinous crimes, including murder and sexual assault, can be referred to restorative justice processes post-sentence. However, the nature of the crime, the extent of harm caused, victim-preparedness and offender maturity levels continue to affect the availability of restorative justice for offenders. Nonetheless, the research that has been conducted into restorative justice reveals that it may be as effective as the criminal justice system in reducing reoffending, rehabilitating and reintegrating offenders, and assisting in healing victim trauma.

This report reveals that restorative justice processes can be used as an alternative to the traditional processes of criminal justice or as a complementary mechanism. Notably, this report has demonstrated the potential for restorative justice to address serious, as well as minor, offending. The expansion into serious offences must be carefully considered with regard to the point of referral in the criminal justice system, as well as the level of training required for conferencing facilitators.

Australia’s restorative justice system would benefit from considerable improvements. A national, consolidated framework for restorative justice should be implemented to ensure that access to the restorative justice system is not dependent on the jurisdiction the offender presides in. Restorative justice systems must be reformed to be suitable and accessible to Indigenous communities. Facilitators should be required to meet minimum qualification standards. Finally, restorative justice legislation should not explicitly exclude serious offending. While these flaws cannot be ignored and
must be reformed, Australia's restorative justice practices may provide an informative framework for the future development of restorative justice in other jurisdictions.
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Criminal Code Act 1924 (TAS)

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Sentencing Act 1995 (WA)

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|------------|---------|---------|---------|---------|---------|

(a) See table 17A.10 for further information on the comparability of these data.

(b) In NSW, the increase in expenditure on community-based supervision between 2015-16 and 2016-17 is due to the Youth on track program. Further, in 2016-17, youth justice conferencing moved to community programs, and data are no longer recorded separately.

(c) In Queensland, there was an increase in user cost of capital for 2013-14 as a result of the completion of the Cleveland Youth Detention Centre Stage 1. The 2012-13 financial year was the first period where youth justice services had a dedicated budget. Therefore, data from 2012-13 onwards are not comparable with data in earlier reports.

(d) In WA, following an incident at Banksia Hill youth justice detention centre in January 2013, young offenders were detained at an adult facility to the end of the financial year 2012-13. The additional costs incurred by the adult facility have not been included in these data.

(e) In SA, there was an increase in detention-based expenditure for 2015-16 associated with infrastructure and security upgrades. For 2013-14 there was a decrease in all community-based expenditure due to the Metropolitan Aboriginal Youth Family Services program relocating to another division and the realignment of some services. Higher expenditure incurred in SA in 2012-13 was associated with commissioning a new youth training centre, increasing population capacity in the training centres from 82 to 96 young people and an increase in umbrella or other government department expenses as a result of new sustainment funding.

(f) In Tasmania, following significant internal restructuring of the Department in 2015-16, the calculation methodology for allocation of umbrella costs changed. The total departmental overhead allocated to Children and Youth Services decreased in 2014-15 and further decreased in 2015-16. This led to a decrease in reported umbrella costs. Maintenance expenditure was also less following a facility upgrade program in the prior year. In 2013-14, salary expenses increased due to additional funds being provided for health services at Ashley Youth Detention Centre. Payroll tax ceased in October 2012.

(g) In ACT, community-based expenditure for 2015-16 are not comparable with previous years due to the integration of child protection and youth justice to a single case management system in July 2015, and the subsequent changes to expenditure reporting for 2015-16.

(h) In the NT, Territory Families performed an asset revaluation in 2016-17 which resulted in a decrease in detention-based expenditure. Youth justice services was transitioned from Department of Correctional Services to Territory Families in 2016-17, however Group Conferencing remained with Police, Fire and Emergency Services. The increase in community-based youth justice services was due to an increase in FTE for youth outreach and re-engagement teams, apportioning umbrella costs methodology and expanded programs in the non-government/specialist service providers. The increase in 2015-16 was due to the relocation to the Berrimah site and introduction of the high security unit. In 2013-14 the Department of Corporate and Information Services Free of Charge detention-based services expenditure decreased significantly compared to 2012-13 as a result of NT Corrections being split from Department of Justice (now Department of Attorney General and Justice), and is now a standalone department. The costs incurred by other departments also decreased significantly compared with 2012-13. A review of NT expenditure data was undertaken during 2013-14. The review showed that Group Conferencing Program funding (administered by NT Department of Correctional Services for the first time in the 2012-13 financial year) delivered in partnership with NT Police was previously reported under Community Corrections funding, and have now been revised accordingly. The number of FTE positions associated with Group Conferencing has reduced in 2013-14 so group conferencing expenditure has decreased since 2012-13. Some of these positions have been incorporated into other non NT Police programs. Some expenditure information (for example, utilities and maintenance costs) is included for the first time in 2012-13. These costs were able to be separately identified for youth justice services following machinery of government changes in August 2012, whereby the Department of Correctional Services was established. The Youth Justice Division moved from within the Department of Justice to within the Department of Correctional Services.
Table 6: State and Territory Government Recurrent Expenditure on Youth Justice (2016-2017)

<table>
<thead>
<tr>
<th>Expenditure on detention-based supervision</th>
<th>Unit</th>
<th>NSW</th>
<th>Vic</th>
<th>Qld</th>
<th>WA</th>
<th>SA</th>
<th>Tas</th>
<th>ACT</th>
<th>NT</th>
<th>Aust</th>
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</thead>
<tbody>
<tr>
<td>Recurrent expenditure</td>
<td></td>
<td></td>
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<td></td>
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<tr>
<td>Salary expenses and expenses in the nature of salary (e.g., superannuation and FBT)</td>
<td>$'000</td>
<td>74 452</td>
<td>52 169</td>
<td>46 206</td>
<td>33 841</td>
<td>18 206</td>
<td>7 923</td>
<td>7 906</td>
<td>12 001</td>
<td>252 704</td>
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<td>75</td>
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<td>850</td>
<td>850</td>
<td>850</td>
<td>850</td>
<td>7 013</td>
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<td>10 388</td>
<td>5 473</td>
<td>8 699</td>
<td>420</td>
<td>1 403</td>
<td>146</td>
<td>1404</td>
<td>42 140</td>
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<td>4 448</td>
<td>1 946</td>
<td>1 309</td>
<td>823</td>
<td>271</td>
<td>125</td>
<td>474</td>
<td>13 056</td>
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<td>Other operating expenses (e.g., utilities, maintenance etc.)</td>
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<td>7 512</td>
<td>2 423</td>
<td>6 032</td>
<td>2 041</td>
<td>812</td>
<td>2 271</td>
<td>2 294</td>
<td>30 186</td>
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<td>11 164</td>
<td>8 010</td>
<td>67 612</td>
<td>3 625</td>
<td>582</td>
<td>2 639</td>
<td>244</td>
<td>989</td>
<td>2 842</td>
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<td>11 199</td>
<td>80 104</td>
<td>67 175</td>
<td>50 463</td>
<td>24 797</td>
<td>10 653</td>
<td>11 436</td>
<td>19 618</td>
<td>376 239</td>
</tr>
<tr>
<td>Total</td>
<td>$'000</td>
<td>111 993</td>
<td>80 104</td>
<td>67 175</td>
<td>50 463</td>
<td>24 797</td>
<td>10 653</td>
<td>11 436</td>
<td>19 618</td>
<td>376 239</td>
</tr>
</tbody>
</table>

Expenditure by umbrella or other government department(s)

| Total expenditure by umbrella or other government departments | $'000 | na | 10 830 | 10 257 | 147 | 1 856 | 433 | 2 198 | 4 048 | 29 769 |

Grants to non-government/specialist service providers

| Grants to non-government/specialist service providers | $'000 | 442 | 671 | na | 210 | – | – | na | na | 1 323 |

Capital grants to non-government/specialist service providers

| Capital grants to non-government/specialist service providers | $'000 | – | – | na | na | – | – | na | na | – |

| Total | $'000 | 442 | 671 | na | 210 | – | – | na | na | 1 323 |

Operating revenues from ordinary activities

| Total operating revenues | $'000 | 3 186 | – | 285 | 496 | 70 | – | – | 81 | 4 058 |

| Total expenditure (youth justice agency expenditure and umbrella/other department expenditure), less revenues and payroll tax (where applicable) | $'000 | 105 641 | 89 652 | 77 146 | 50 325 | 25 733 | 11 086 | 13 834 | 23 002 | 396 220 |

Value of capital assets used in the provision of youth justice services

| Land | $'000 | 48 363 | 113 567 | 13 079 | 7 660 | 9 900 | 454 | 3 493 | 6 200 | 202 735 |
| Buildings | $'000 | 295 370 | 119 751 | 239 534 | 60 461 | 75 287 | 8 706 | 38 347 | 22 821 | 860 277 |
| Plant and equipment | $'000 | 120 624 | 61 | 2 096 | 338 | 2 573 | 28 | 19 | 192 | 10 381 |
| Total | $'000 | 348 258 | 233 949 | 254 709 | 68 459 | 87 760 | 9 188 | 41 858 | 29 213 | 1 073 393 |

User cost of capital (based on 8 per cent of total value of capital assets)

| Notional user cost of capital | $'000 | 27 861 | 18 716 | 20 377 | 5 477 | 7 021 | 735 | 3 439 | 2 337 | 85 872 |

| Total expenditure, including notional user cost of capital | $'000 | 133 502 | 108 368 | 97 523 | 55 802 | 32 754 | 11 821 | 16 983 | 25 339 | 482 092 |

Expenditure on community-based supervision

| Recurrent expenditure | $'000 | 36 222 | 18 322 | 37 596 | 15 441 | 9 336 | 2 117 | 2 243 | 2 877 | 124 154 |

| Payroll tax (where subject to payroll tax) | $'000 | 1 707 | 839 | – | na | 450 | – | na | 152 | 3 149 |

| Administrative expenditure | $'000 | 7 976 | 2 700 | 5 425 | 5 260 | 437 | 1 445 | 407 | 700 | 24 351 |

| Client costs | $'000 | 125 | 576 | 555 | 249 | 45 | 16 | na | na | 1 577 |

| Other operating expenses (e.g., utilities, maintenance etc.) | $'000 | 6 093 | 1 147 | 18 316 | 3 159 | 677 | 168 | na | 475 | 30 035 |

| Debt servicing fees | $'000 | – | – | – | – | – | – | na | na | – |

| Annual depreciation | $'000 | 1 121 | 721 | 1 277 | 669 | 105 | – | na | – | 3 987 |

<p>| Total | $'000 | 53 340 | 24 305 | 63 160 | 24 778 | 11 051 | 3 746 | 2 649 | 4 204 | 187 253 |</p>
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<th>SA</th>
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<th>ACT</th>
<th>NT</th>
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<td>19,147</td>
<td>na</td>
<td>6</td>
<td>49</td>
<td>2,162</td>
<td>na</td>
<td>3,047</td>
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<td>–</td>
<td>na</td>
<td>na</td>
<td>–</td>
<td>–</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$'000</td>
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<td>19,147</td>
<td>na</td>
<td>6</td>
<td>49</td>
<td>2,162</td>
<td>na</td>
<td>3,047</td>
</tr>
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<td></td>
<td></td>
<td></td>
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</tr>
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<td><strong>Total expenditure, including notional user cost of capital</strong></td>
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**Expenditure on group conferencing**

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<th>Qld</th>
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<th>SA</th>
<th>Tas</th>
<th>ACT</th>
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<td>200</td>
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Table 7: Comparability of Government Recurrent Expenditure 2016-2017

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(a) Data are not comparable across jurisdictions and should be interpreted with caution. See table 17A.10 for further information on the comparability of these data.
(b) In Victoria, departmental umbrella expenditure cannot be readily attributed to a specific program or group of clients.

na Not available. − Nil or rounded to zero.

Source: State and Territory governments (unpublished).
Table 8: Cost Per Young Person Subject to Community-based Supervision (2016-2017 dollars)

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<th>Qld</th>
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<th>Tas</th>
<th>ACT</th>
<th>NT</th>
<th>Aust</th>
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<tr>
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<td>275.0</td>
<td>127.8</td>
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<td>11,383</td>
<td>6,128</td>
<td>3,090</td>
<td>7,099</td>
<td>239,344</td>
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<td>137.92</td>
<td>154.94</td>
<td>163.32</td>
<td>101.60</td>
<td>113.33</td>
<td>131.28</td>
<td>119.17</td>
<td>133.12</td>
<td>140.45</td>
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<tr>
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<td>1,294.0</td>
<td>615.0</td>
<td>280.0</td>
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<td>69.0</td>
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<td>3,249</td>
<td>4,229</td>
<td>219,773</td>
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<td>Cost per day, per young person subject to community-based supervision on an average day</td>
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<td>150.44</td>
<td>141.54</td>
<td>110.01</td>
<td>103.03</td>
<td>91.53</td>
<td>128.93</td>
<td>87.72</td>
<td>125.62</td>
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<td><strong>2014-15</strong></td>
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</tr>
<tr>
<td>Average daily number of young people subject to community-based supervision</td>
<td>no.</td>
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<td>1,025.0</td>
<td>1,393.0</td>
<td>635.3</td>
<td>332.0</td>
<td>142.3</td>
<td>73.0</td>
<td>148.0</td>
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<td>60,275</td>
<td>47,604</td>
<td>66,633</td>
<td>24,921</td>
<td>10,252</td>
<td>4,185</td>
<td>3,010</td>
<td>3,644</td>
<td>220,524</td>
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<tr>
<td>Cost per day, per young person subject to community-based supervision on an average day</td>
<td>$</td>
<td>127.93</td>
<td>127.03</td>
<td>130.96</td>
<td>107.40</td>
<td>84.54</td>
<td>80.52</td>
<td>112.87</td>
<td>67.41</td>
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<td>1,076.0</td>
<td>1,412.0</td>
<td>723.2</td>
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<td>195.5</td>
<td>83.0</td>
<td>175.0</td>
<td>5,496.7</td>
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</tbody>
</table>

(a) The number of young people under community-based supervision on an average day is calculated by summing the number of days each young person spends under supervision during the year (irrespective of age) and dividing this total by the number of days in the financial year. To derive the average daily cost per young person under community-based supervision on an average day, total recurrent expenditure on community-based supervision is divided by 365.25. This figure is then divided by the average daily number subject to community-based supervision.

(b) Data reported for this indicator are not comparable and need to be interpreted with caution.

(c) Unit costs presented in this Report are not necessarily comparable to local unit costs reported in jurisdiction-specific annual reports due to different methods of calculation.

(d) Time series financial data are adjusted to 2016-17 dollars using the General Government Final Consumption Expenditure (GGFCE) chain price deflator (2016-17 = 100). See chapter 2 for details.

Source: State and Territory governments (unpublished); table 2A.49.
Table 9: Cost Per Young Person Subject to Detention-based Supervision (2016-2017 dollars)

<table>
<thead>
<tr>
<th>Unit</th>
<th>NSW</th>
<th>Vic</th>
<th>Qld</th>
<th>WA</th>
<th>SA (e)</th>
<th>Tas</th>
<th>ACT (f)</th>
<th>NT</th>
<th>Aust</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average daily number of young people subject to detention-based supervision</td>
<td>314.0</td>
<td>145.0</td>
<td>180.0</td>
<td>155.5</td>
<td>57.6</td>
<td>11.6</td>
<td>16.0</td>
<td>48.0</td>
<td>927.7</td>
</tr>
<tr>
<td>Total recurrent expenditure on detention-based supervision</td>
<td>$000</td>
<td>156 005</td>
<td>71 451</td>
<td>88 066</td>
<td>51 222</td>
<td>22 227</td>
<td>14 499</td>
<td>18 356</td>
<td>11 366</td>
</tr>
<tr>
<td>Cost per day, per young person subject to detention-based supervision on an average day</td>
<td>$ 1 364.61</td>
<td>1 349.12</td>
<td>1 339.51</td>
<td>901.97</td>
<td>1 056.49</td>
<td>3 431.01</td>
<td>3 140.92</td>
<td>648.30</td>
<td>1 279.99</td>
</tr>
</tbody>
</table>

(a) The number of young people under detention-based supervision on an average day is calculated by summing the number of days each young person spends under supervision during the year (irrespective of age) and dividing this total by the number of days in the financial year. To derive the average daily cost per young person under detention-based supervision on an average day, total recurrent expenditure on detention-based supervision is divided by 365.25. This figure is then divided by the average daily number subject to detention-based supervision.

(b) Data reported for this indicator are not comparable and need to be interpreted with caution.
(c) Unit costs presented in this Report are not necessarily comparable to local unit costs reported in jurisdiction-specific annual reports due to different methods of calculation.
(d) Time series financial data are adjusted to 2016-17 dollars using the General Government Final Consumption Expenditure (GGFCE) chain price deflator (2016-17 = 100). See chapter 2 for details.
(e) For SA, data for 2015-16 onwards are not directly comparable to prior years as capital costs were previously unavailable.
(f) The Blueprint for Youth Justice in the ACT 2012-22 has introduced a number of initiatives to reduce youth involvement in the justice system, decreasing the number in the ACT’s single detention centre.

Source: State and Territory governments (unpublished); table 2A.49.

Table 10: Cost Per Group Conference (2016-2017 dollars)

<table>
<thead>
<tr>
<th>Unit</th>
<th>2016-17</th>
<th>2015-16</th>
<th>2014-15</th>
<th>2013-14</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Unit</td>
<td>NSW</td>
<td>Vic</td>
<td>Qld</td>
</tr>
<tr>
<td></td>
<td>Number of concluded group conferences</td>
<td>no.</td>
<td>1 022.0</td>
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<tr>
<td></td>
<td>Total recurrent expenditure on group conferences</td>
<td>$000</td>
<td>994</td>
<td>2 331</td>
</tr>
<tr>
<td></td>
<td>Cost per concluded group conference</td>
<td>$</td>
<td>972.32</td>
<td>10 791.67</td>
</tr>
<tr>
<td></td>
<td>Number of concluded group conferences</td>
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<td>1 209.0</td>
<td>248.0</td>
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<tr>
<td></td>
<td>Total recurrent expenditure on group conferences</td>
<td>$000</td>
<td>1 651</td>
<td>2 066</td>
</tr>
<tr>
<td></td>
<td>Cost per concluded group conference</td>
<td>$</td>
<td>1 365.58</td>
<td>8 398.33</td>
</tr>
<tr>
<td></td>
<td>Number of concluded group conferences</td>
<td>no.</td>
<td>1 169.0</td>
<td>228.0</td>
</tr>
<tr>
<td></td>
<td>Total recurrent expenditure on group conferences</td>
<td>$000</td>
<td>4 569</td>
<td>2 025</td>
</tr>
<tr>
<td></td>
<td>Cost per concluded group conference</td>
<td>$</td>
<td>3 857.06</td>
<td>8 881.46</td>
</tr>
<tr>
<td></td>
<td>Number of concluded group conferences</td>
<td>no.</td>
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<td>253.0</td>
</tr>
<tr>
<td></td>
<td>Total recurrent expenditure on group conferences</td>
<td>$000</td>
<td>5 926</td>
<td>1 956</td>
</tr>
<tr>
<td></td>
<td>Cost per concluded group conference</td>
<td>$</td>
<td>4 544.62</td>
<td>7 729.84</td>
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Table 11: State and Territory Government Real Recurrent Expenditure on Youth Justice

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<tbody>
<tr>
<td><strong>Total government expenditure on youth justice services</strong></td>
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<td></td>
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</tr>
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<td>NSW</td>
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<td>156 505</td>
<td>162 528</td>
<td>144 429</td>
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<td>88 066</td>
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<td>51 222</td>
<td>54 352</td>
<td>52 981</td>
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<td>13 933</td>
<td>11 396</td>
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<td>18 356</td>
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<td>$'000</td>
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<td>11 366</td>
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<td>457 700</td>
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<tr>
<td><strong>Total government expenditure on community-based youth justice services</strong></td>
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<td>66 897</td>
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<tr>
<td><strong>Total government expenditure on group conferencing</strong></td>
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<tr>
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<td>1 956</td>
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<td>47 545</td>
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<td><strong>Total government expenditure (detention, community and group conferencing)</strong></td>
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</tr>
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Services (2016-2017 dollars)
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<td>$201.54</td>
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<td>$218.21</td>
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<td><strong>200.84</strong></td>
<td><strong>208.08</strong></td>
<td><strong>207.74</strong></td>
</tr>
</tbody>
</table>

Total government expenditure on community-based youth justice services

| NSW  | $81.06  | $82.60  | $83.09  | $76.61  | $87.21  |
| Vic  | $90.47  | $89.22  | $86.98  | $89.31  | $83.07  |
| Qld  | $127.36 | $138.33 | $137.08 | $137.45 | $150.99 |
| WA   | $98.45  | $101.77 | $100.05 | $100.96 | $101.98 |
| SA   | $80.71  | $69.99  | $64.82  | $66.62  | $71.68  |
| Tas  | $83.05  | $85.35  | $81.55  | $90.58  | $121.71 |
| ACT  | $70.65  | $81.46  | $86.54  | $90.88  | $85.62  |
| NT   | $127.97 | $137.16 | $137.41 | $168.21 | $281.80 |
| **Australia** | **$95.45** | **97.94** | **96.77** | **96.12** | **103.14** |

Total government expenditure on group conferencing

| NSW  | $8.35   | $8.21   | $6.22   | $2.28   | $1.35   |
| Vic  | $3.59   | $3.61   | $3.70   | $3.68   | $4.07   |
| Qld  | $23.41  | $12.24  | $11.29  | $15.38  | $27.38  |
| WA   | $143.47 | $148.16 | $138.88 | $117.45 | $94.38  |
| SA   | $11.62  | $12.48  | $11.44  | $11.56  | $10.27  |
| Tas  | $3.54   | $2.94   | $2.25   | $2.73   | $1.75   |
| ACT  | $23.12  | $19.23  | $24.63  | $18.74  | $16.76  |
| NT   | $245.03 | $190.41 | $190.98 | $197.28 | $220.28 |
| **Australia** | **$28.27** | **25.79** | **23.90** | **20.80** | **20.73** |

Total government expenditure (detention, community and group conferencing)

| NSW  | $307.38 | $307.71 | $313.34 | $278.28 | $270.27 |
| Vic  | $230.55 | $224.66 | $233.31 | $258.38 | $276.51 |
| Qld  | $321.43 | $333.02 | $339.33 | $354.37 | $375.21 |
| WA   | $450.24 | $456.14 | $457.15 | $434.88 | $421.93 |
| SA   | $230.88 | $222.61 | $213.90 | $269.97 | $288.21 |
| Tas  | $365.24 | $368.33 | $355.30 | $320.69 | $358.23 |
| ACT  | $599.42 | $630.00 | $647.65 | $605.68 | $572.95 |
| NT   | $875.18 | $754.71 | $916.00 | $1,478.18 | $1,507.92 |
| **Australia** | **$314.65** | **315.08** | **321.50** | **325.00** | **331.61** |
Table 17: Young Person’s Understanding of Harm and Sense of Accountability

<table>
<thead>
<tr>
<th></th>
<th>Strongly agree or agree</th>
<th>Neither</th>
<th>Strongly disagree or disagree</th>
<th>Missing values</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>What I did hurt someone</td>
<td>77%</td>
<td>7%</td>
<td>5%</td>
<td>11%</td>
<td>100%</td>
</tr>
<tr>
<td>I take responsibility for what I did</td>
<td>89%</td>
<td>1%</td>
<td>1%</td>
<td>10%</td>
<td>100%</td>
</tr>
<tr>
<td>I am willing to stay out of trouble</td>
<td>86%</td>
<td>2%</td>
<td>2%</td>
<td>10%</td>
<td>100%</td>
</tr>
<tr>
<td>I am less likely to offend like this again</td>
<td>84%</td>
<td>4%</td>
<td>3%</td>
<td>10%</td>
<td>100%</td>
</tr>
<tr>
<td>Going to a conference changed the way I think about what I do</td>
<td>84%</td>
<td>44%</td>
<td>2%</td>
<td>10%</td>
<td>100%</td>
</tr>
</tbody>
</table>

*Note: Positive responses count those respondents who answered ‘agreed’ or ‘strongly agreed’ with the question. Negative responses count those respondents who answered ‘disagreed’ or ‘strongly disagreed’.*

*Source: Restorative Justice Evaluation Survey Database.*

---

Table 18: Participant Responses to Satisfaction Survey 2016-2017

<table>
<thead>
<tr>
<th>Conference process</th>
<th>Young people (N = 300)</th>
<th></th>
<th>Victims (N = 191)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>I was treated fairly at the conference</td>
<td>279</td>
<td>93%</td>
<td>180</td>
<td>94%</td>
</tr>
<tr>
<td>I felt safe at conference</td>
<td>276</td>
<td>92%</td>
<td>179</td>
<td>94%</td>
</tr>
<tr>
<td>I understand what I agreed to at the conference</td>
<td>273</td>
<td>91%</td>
<td>180</td>
<td>94%</td>
</tr>
<tr>
<td>I am satisfied with the agreement</td>
<td>276</td>
<td>92%</td>
<td>175</td>
<td>92%</td>
</tr>
<tr>
<td>I had a genuine say in what went into the agreement</td>
<td>268</td>
<td>89%</td>
<td>177</td>
<td>93%</td>
</tr>
<tr>
<td>I think the agreement was fair</td>
<td>278</td>
<td>93%</td>
<td>175</td>
<td>92%</td>
</tr>
<tr>
<td>Conference outcomes</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I am satisfied with the outcome of the conference</td>
<td>256</td>
<td>85%</td>
<td>169</td>
<td>89%</td>
</tr>
</tbody>
</table>
Table 19: Listening and Talking to Others

<table>
<thead>
<tr>
<th></th>
<th>Young people (N = 300)</th>
<th>Victims (N = 191)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>I listened to what the victim/offender had to say</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Positive response</td>
<td>222</td>
<td>74%</td>
</tr>
<tr>
<td>I was able to talk to the victim/offender about what happened</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Positive response</td>
<td>185</td>
<td>62%</td>
</tr>
<tr>
<td>The Convenor listened to me</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Positive response</td>
<td>269</td>
<td>90%</td>
</tr>
<tr>
<td>Proportion of agreements completed</td>
<td>300</td>
<td>100%</td>
</tr>
</tbody>
</table>

Note: Positive responses count those respondents who answered 'agreed' or 'strongly agreed'.
Source: Restorative Justice Evaluation Survey Database.

Table 20: Young People Injured as a Result of a Serious Assault by Indigenous Status (2016-2017)

<table>
<thead>
<tr>
<th>Number of young people injured as a result of a serious assault</th>
<th>NSW</th>
<th>Vic</th>
<th>Qld</th>
<th>WA</th>
<th>SA</th>
<th>Tas</th>
<th>ACT</th>
<th>NT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aboriginal and Torres Strait Islander</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2</td>
</tr>
<tr>
<td>Non-Indigenous</td>
<td>5</td>
<td>2</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>6</td>
<td>2</td>
<td>-</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2</td>
</tr>
</tbody>
</table>

Rate per 10,000 custody nights

<table>
<thead>
<tr>
<th>Number of young people injured as a result of a serious assault</th>
<th>NSW</th>
<th>Vic</th>
<th>Qld</th>
<th>WA</th>
<th>SA</th>
<th>Tas</th>
<th>ACT</th>
<th>NT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aboriginal and Torres Strait Islander</td>
<td>0.2</td>
<td>-</td>
<td>-</td>
<td>0.3</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1.6</td>
</tr>
<tr>
<td>Non-Indigenous</td>
<td>1.1</td>
<td>0.3</td>
<td>0.7</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1.5</td>
</tr>
<tr>
<td>Total</td>
<td>0.6</td>
<td>0.3</td>
<td>0.4</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1.5</td>
</tr>
</tbody>
</table>

*a See box 17.11 and table 17A.16 for detailed definitions, footnotes and caveats. – Nil or rounded to zero.
Source: State and Territory governments (unpublished); tables 17A.16 and 17A.18.*
Table 21: Young People Injured as a Result of an Assault (Excludes Serious Assaults), by Indigenous Status (2016-2017)

<table>
<thead>
<tr>
<th></th>
<th>NSW</th>
<th>Vic</th>
<th>Qld</th>
<th>WA</th>
<th>SA</th>
<th>Tas</th>
<th>ACT</th>
<th>NT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aboriginal and Torres Strait Islander</td>
<td>27</td>
<td>4</td>
<td>14</td>
<td>na</td>
<td>8</td>
<td>4</td>
<td>–</td>
<td>23</td>
</tr>
<tr>
<td>Non-Indigenous</td>
<td>46</td>
<td>40</td>
<td>5</td>
<td>na</td>
<td>5</td>
<td>12</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>75</td>
<td>44</td>
<td>19</td>
<td>na</td>
<td>13</td>
<td>16</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Rate per 10 000 custody nights</td>
<td>5.1</td>
<td>3.5</td>
<td>3.0</td>
<td>na</td>
<td>7.1</td>
<td>44.3</td>
<td>–</td>
<td>17.9</td>
</tr>
<tr>
<td>Aboriginal and Torres Strait Islander</td>
<td>10.0</td>
<td>6.9</td>
<td>2.6</td>
<td>na</td>
<td>7.6</td>
<td>39.8</td>
<td>6.6</td>
<td>25.2</td>
</tr>
<tr>
<td>Non-Indigenous</td>
<td>10.0</td>
<td>6.9</td>
<td>2.6</td>
<td>na</td>
<td>7.6</td>
<td>39.8</td>
<td>6.6</td>
<td>25.2</td>
</tr>
<tr>
<td>Total</td>
<td>7.5</td>
<td>6.3</td>
<td>2.9</td>
<td>na</td>
<td>7.3</td>
<td>40.9</td>
<td>5.1</td>
<td>18.3</td>
</tr>
</tbody>
</table>

*See box 17.11 and table 17A.17 for detailed definitions, footnotes and caveats. The total for NSW includes two young people of unknown Indigenous status. na Not available. – Nil or rounded to zero.

Source: State and Territory governments (unpublished); 17A.17 and 17A.18.

Table 22: Incidents of Self-Harm or Attempted Suicide in Custody Requiring Hospitalisation, by Indigenous Status (2016-2017)

<table>
<thead>
<tr>
<th></th>
<th>NSW</th>
<th>Vic</th>
<th>Qld</th>
<th>WA</th>
<th>SA</th>
<th>Tas</th>
<th>ACT</th>
<th>NT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aboriginal and Torres Strait Islander</td>
<td>6</td>
<td>–</td>
<td>1</td>
<td>na</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>5</td>
</tr>
<tr>
<td>Non-Indigenous</td>
<td>5</td>
<td>1</td>
<td>–</td>
<td>na</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>11</td>
<td>1</td>
<td>1</td>
<td>na</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>6</td>
</tr>
<tr>
<td>Rate per 10 000 custody nights</td>
<td>1.1</td>
<td>–</td>
<td>0.2</td>
<td>na</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>3.9</td>
</tr>
<tr>
<td>Aboriginal and Torres Strait Islander</td>
<td>1.1</td>
<td>0.2</td>
<td>na</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>12.6</td>
</tr>
<tr>
<td>Non-Indigenous</td>
<td>1.1</td>
<td>0.2</td>
<td>na</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>4.4</td>
</tr>
<tr>
<td>Total</td>
<td>1.1</td>
<td>0.1</td>
<td>0.2</td>
<td>na</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>4.4</td>
</tr>
</tbody>
</table>

*See box 17.12 and table 17A.19 for detailed definitions, footnotes and caveats. na Not available. – Nil or rounded to zero.

Source: State and Territory governments (unpublished); tables 17A.18–19.
Appendix B: Figures

Figure 2: Cost Per Concluded Group Conference (2016-2017 dollars)

Figure 3: Proportion of Young People Who Receive Group Conferencing and Reach an Agreement, by Indigenous Status (2016-2017)