RESTORATIVE JUSTICE PROGRAMS IN AUSTRALIA

A Report to the Criminology Research Council

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Introduction

Restorative justice is a term which has recently emerged to refer to a range of informal justice practices designed to require offenders to take responsibility for their wrongdoing and to meet the needs of affected victims and communities. It refers to the restoration of victims, offenders and communities (Bazemore & Umbreit 1994; Brown & Polk 1996) and emphasises the repair of harm resulting from the crime, including harm to relationships (Daly & Immarigeon 1998).

Restorative programs are means of dispute and conflict resolution which are characterised by principles of restorative justice. Although there is a good deal of diversity of form in restorative justice programs, essential to all of them is the principle of direct participation by victims and offenders. Victims have the opportunity for a say in how the offence will be resolved, while offenders are required to understand the consequences of their actions and the harm they have caused. Another essential aspect is the attention given to the context in which the offence occurs: that, in Leslie Wilkins' famous words (1991) '...the problem of crime cannot be simplified to the problem of the criminal.' Bazemore & Umbreit (1995) suggest that a core principle in restorative justice is to balance offender needs, victim needs and the needs of the community as well. Here ‘community’ is usually seen primarily as the victim’s and offender’s ‘community of concern’ (Braithwaite & Daly 1994), that is those people in the lives of the victim and offender who care most about them, though it may encompass the broader community in which the offence took place as well.

A definition of restorative justice which has become widely accepted has been offered by Marshall (email, Marshall to McCold 1997), who describes it as 'a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.' Braithwaite (1999) suggests that this can be refined so that those 'with a stake' in the offence are defined as the victim(s), the offender(s) and the affected community, which includes the

families of the principals. In summary, Van Ness (1993:259) suggests that restorative justice rests on the following principles:

- Crime is primarily conflict between individuals resulting in injuries to victims, communities and the offenders themselves; only secondarily is it lawbreaking.
- The overarching aim of the criminal justice process should be to reconcile parties while repairing the injuries caused by the crime.
- The criminal justice process should facilitate active participation by victims, offenders and their communities. It should not be dominated by the government to the exclusion of others.

Although the concept of restorative justice has a lineage derived from many indigenous as well as pre-industrial Western justice traditions, the term was first used in its modern sense in the 1970s to refer to victim-offender mediation programs established in North America and now widely used in Western Europe as well. They aim to provide a process of resolution between the principals in a dispute, under the auspices of a mediator, with an emphasis on reparation. Parties other than the victim and offender are rarely present (Marshall and Merry 1990), the program is usually restricted to juvenile offenders and involves collaboration between police, probation and welfare agencies. Often the mediator meets separately with the offender and victim; sometimes the principals do not meet face-to-face at all. Although mediation is used in civil matters in Australia, principally in the Family Court, it has not been used extensively in criminal matters.

In Canada, circle sentencing emerged during the 1980s as a First Nations method of responding to offenders and is now used in a number of northern communities and to a lesser extent in urban settings too. It involves offenders, victims, the families of each and other community members in a discussion of the circumstances that underlie the causes of crime and is built on principles of mediation, indigenous peacemaking processes and consensus decision making (Stuart 1996). These programs have been criticised for their dependence on mainstream court processes and personnel in their operation (LaPrairie 1995). However, the manner in which the broader community engages in the process has

allowed a greater understanding of the ways in which those beyond the principals can be involved in restorative justice.

Meanwhile in New Zealand, decades of dissatisfaction with the treatment of juvenile offenders, especially those of Maori background, led in 1989 to the introduction of the *Children, Young Persons and Their Families Act,* which set out radically new principles and processes for youth justice in New Zealand. It also established new procedures for dealing with child protection issues. The Act aimed to include elements of traditional Maori practices of conflict resolution, principally the direct involvement in the resolution of the offence of both the offender and the victim and their families and supporters, with the objective of healing the harm caused by the offence. The Family Group Conference was the mechanism by which these practices were delivered. The intention was to provide a forum for those most affected by the offence, rather than the state, to resolve the conflict.

Restorative justice programs in Australia, resting on the principles outlined above, are mostly based on the conferencing model developed in New Zealand. They are usually seen as most suited for dealing with juvenile rather than adult offenders. This may be an evolutionary aspect of these interventions: in New Zealand, for example, after more than a decade of experience with juveniles, programs are being extended to adults. Even in the three jurisdictions where adult conferencing is taking place (Queensland, Western Australia and the ACT), the great majority of those selected remain young offenders. It may be that, with growing confidence in the effectiveness of restorative justice programs, they may become more commonly used for adults as well.

As well as being used at various points in the criminal justice system, restorative justice programs are also employed in Australia to limited extents in a variety of other settings. In care and protection matters the restorative characteristic of the intervention refers to the active engagement of the extended family and friends in arriving at decisions affecting family members. In schools, programs have been developed primarily to deal with

incidents of bullying, though they are also used in the resolution of staff disputes. Programs are also being used in the resolution of workplace disputes in the corporate sector. However, in Australia they remain primarily a justice intervention, usually as a diversion from court, though with some post-sentence applications, including in prisons. Although a variety of diversionary programs, including cautioning, Drug Courts and some initiatives in the Family court may be broadly labelled ‘restorative’, this paper restricts its coverage to programs involving meetings of victims, offenders and communities to discuss and resolve an offence. It deals primarily with developments in the use of these programs in ‘justice’, but there will also be reference to the state of play with programs in these other settings.

Restorative Programs in the Justice Setting

Diversion programs for young people have a long tradition in Australia. The first great experiment in addressing juvenile offending emerged from the 'child-saving' ethos of the late nineteenth century (Seymour 1988) with the establishment of a separate court system for offending children (Polk 1993). The Children's Court was assumed to be a benign institution acting in the best interests of the child and it was not until the 1960s that it began to be criticised both for its failure in the rehabilitation of children and its failure to protect their rights. Concerns also began to be felt about the stigmatising effects of contact with the formal justice system, resulting in moves toward pre-court diversion of juvenile offenders. Police cautioning was adopted in most Australian jurisdictions as a major alternative to charging for first-time offenders and less serious offences, while some States also introduced Children's Panels, with the more ambitious objectives of addressing underlying problems in the lives of young offenders.

However, by the late eighties, critiques of these diversion programs were growing. These related to their tendency to widen the net of social control by formally dealing with trivial offences that would previously have been ignored (Austin & Krisberg 1981), to concerns about the protection of the legal rights of young offenders (Naffine & Wundersitz 1994),

and to accusations of race, gender and class bias (Gale et al 1990, Alder & Polk 1982, Barry 1993). There was also a growing belief that the emphasis in juvenile justice ought to move from simple punishment towards making young offenders accountable for their actions, while at the same time involving families in making decisions about their children and in addressing the needs and rights of victims.

Developments in New Zealand conferencing proved influential through the nineties as each jurisdiction grappled with the shortcomings of its own juvenile justice system. Australia has never embraced victim-offender mediation, nor have sentencing circles with their hybrid indigenous and formal justice characteristics been tried here. But conferencing came to be seen as a viable response to dissatisfactions with existing diversion programs, even though considerable variation emerged between jurisdictions in the style and pace of that response, as we shall see.

New South Wales

Characteristics of the program

One of the first restorative justice programs in Australia was set up in Wagga Wagga NSW in 1991 by members of the NSW Police Service. It drew on aspects of the New Zealand conferencing program but differed in being run by police officers. The program ran controversially for several years (Bargen 1996) and, following recommendations in a 1994 NSW Government White Paper on Juvenile Justice, was succeeded in 1995 by a pilot scheme of Community Youth Conferences at six sites around the State. These were operated jointly by the police, the Department of Juvenile Justice, the NSW Children's Court and Community Justice Centres. In 1996 the Attorney-General's Department released a discussion paper (*Report of the New South Wales Working Party on Family Group Conferencing and the Juvenile Justice System*). This report recommended that a legislative scheme including 'community accountability conferences' be introduced into the juvenile justice system State-wide. As a result, the *Young Offenders Act* 1997 (see Appendix) became law in NSW in 1998. The Act sets out a legislative hierarchy of increasingly intrusive interventions for juveniles, ranging from police warnings to police

cautions to youth justice conferences, depending on a number of legislative criteria and eligibility tests, including the seriousness and persistence of the offending behaviour (Trimboli 2000). Administrative responsibility for the conferencing program was assigned to the Department of Juvenile Justice (Bargen unpublished) and the program began operating in mid-1998 (see Figure 1).

Under the Act, those eligible for conferencing are young people aged 10-17 who commit summary offences or indictable offences which can be dealt with summarily. These offences include assault, robbery, break, enter and steal, motor vehicle theft, theft, receiving, property damage and disorderly conduct. Offences specifically excluded are sexual offences, offences causing a death, certain drug offences, offences relating to apprehended violence orders and some traffic offences. They must have admitted their offence and consented to a conference being held.

The specific principles guiding the operation of youth justice conferences are set out in Part 5, Division 1, Section 34(1) of the Act. They draw on the provisions of the United Nations Convention on the Rights of the Child, the Beijing Rules relating to juvenile justice and other relevant international instruments (Bargen, unpublished). The Attorney General, in his second reading speech introducing the Bill (NSW Legislative Council 21 May 1997, p 8960), described the objectives of conferencing as follows:

> '[T]o encourage discussion between those affected by the offending behaviour and those who have committed it in order to produce an agreed outcome plan which restores the harm done and aims to provide the offender with developmental and support services which will enable the young person to overcome his or her offending behaviour.'

Families, extended families, victims and their supporters, police and the young person's lawyer are all entitled to attend. Victims may send a representative if they prefer not to attend themselves; if they attend they have power of veto over the conference outcome. Other people may be invited to attend, including Aboriginal community elders, interpreters and professionals such as social workers and probation officers.

Outcome plans are reached by consensus and are enforceable only when agreed to by both the victim in person and the offender: if the victim does not attend the conference, their agreement is not required. If the outcome plan is completed, no further action is taken; if no
outcome plan is agreed to, or if the plan is not completed, then the matter is sent back to the referral source and may go to court. All participants at the conference must be notified about whether the plan has been completed.

Implementation and administration:

Conferencing referrals can be made either pre-court by the police or by the court as a sentencing option. The Director of Public Prosecutions (DPP) can act as a 'referee' if there is a dispute between the police and a conference administrator regarding whether the referral meets the statutory criteria for acceptance.. At the end of the first year of operation, half of the referrals had come from police (Bargen, unpublished)

The referral is sent to the Department of Juvenile Justice (DJJ) where a conference administrator appoints an accredited conference convenor, who is responsible for preparing and conducting the conference. The administrator is responsible for monitoring successful completion of outcome plans. There are presently 17 administrators who are full time public servants attached to 17 DJJ offices across NSW: five are Aboriginal and one is a Pacific Islander. The conference convenors are engaged by contract and paid by the hour; they live and work in the local communities and there are currently about 480 of them in all parts of the State. There are also 80 police specialist youth officers, one for each Local Area Command in NSW, some of whose responsibilities are to identify cases to be refereed to a conference and to liaise with the conference administrators in their area. In the twelve months after June 1998, when the first conference was convened, 928 conferences were held involving 1155 young offenders; between July and November 1999, a further 827 conferences were held (Trimboli 2000). Although problems remain in NSW in getting referrals from the police, progress is being made through the

appointment of specialist police officers involved in the program and continuing close liaison between police and the conferencing administrators and convenors.

Evaluation

A major process evaluation was conducted in 1999 by the NSW Bureau of Crime Statistics and Research (Trimboli 2000). It had two components: the first was to determine whether specific statutory requirements of the Act relating to conference attendees and conferencing time-frames had been met; the second concerned measuring participants' satisfaction with both the process and the outcome plans. The latter involved a State-wide survey of 969 participants who were either victims, offenders or offender supporters, each of whom completed a short questionnaire at the end of their conference.

The evaluation found that most of the conferences in the sample met the statutory objectives of the Act. Most achieved the Act's intention of including victims and the offender's family in the conferences, though there were problems around arranging conferences within the timeframes stipulated in the Act. The evaluation also found exceptionally high levels of satisfaction with the conference experience among both victims, offenders and offender supporters. Over 90 percent felt the conference was fair to both the victim and the offender, over 90 percent felt they had had the opportunity to express their views and had been treated with respect, and at least 79 percent said they were satisfied with the way their case had been dealt with by the justice system.

Publications

Trimboli L 2000, *An Evaluation of the NSW Youth Justice Conferencing Scheme*, Sydney: New South Wales Bureau of Crime Statistics and Research, Attorney General's Department.

Victoria

Characteristics of the program

In 1995 the Juvenile Justice Group Conferencing Pilot Program was established under the auspices of Anglicare (Victoria). The program is not legislatively based and relies on the existing provisions of the *Children's and Young Persons Act* 1989. It operates from the Melbourne Children's Court only and is modelled on the New Zealand family group conferencing program. However, the program as applied in Victoria comes from an alternate dispute resolution model, and is not drawn from a restorative justice philosophy.

Participants are juveniles who have admitted their offence, who would otherwise go to court and who are likely to be given a Supervisory Order. A key feature is that the process is not used in minor or trivial matters; it is an attempt by the Court to deal effectively with young offenders at risk of progressing through the justice system.

The aim of the program is to address the offending behaviour by utilising the resources of the family and significant others, and empowering them in the decision-making process. Those attending the conference are the offender, their family, the police, legal representatives and community members. Victims may also attend, though it is possible for the conference to proceed without them, or with someone attending on their behalf. They develop a plan with the purpose of assisting the young person in avoiding further offending.

Originally the program aimed to target approximately 100 young offenders every year but has never achieved this scale; for example, in the first two years of operation, 40 conferences were held involving 42 young people (Markiewicz 1997a).

Implementation and administration

The pilot program is a joint venture of Anglicare, the Children's Court of Victoria, Victoria Police, Victoria Legal Aid and the Department of Human Services. These agencies and the Department of Justice are represented on a Steering Committee. The Project has received funding from the Buckland Foundation, the Department of Justice's Crime Prevention and Victims' Aid Fund and the Department of Human Services.

A range of possible diversion programs are currently being examined by Victoria's Departments of Justice and Human Services in line with the policy directions of the Bracks government.

Evaluation

Three evaluation reports of the pilot program have been conducted by independent consultants. The first (Markiewicz 1997a) related to its first two years of operation. It found that in the 40 conferences conducted in this period, outcome plans had been fully implemented in just over half of them. The second, published later the same year (Markiewicz 1997b), analysed a further 19 cases. Little difference in outcomes on reoffending were found between the conference group and a probation group comparison (though numbers were too small to test this scientifically). Ninety percent of plans were fully or partially completed.

The third evaluation was published in 1999 (Success Works Pty Ltd). It found that comparative recidivism rates for 71 conference participants and a matched probation group were similar and that the costs of the two programs were about the same (approximately $3000 per case). It also found that courts appreciated the additional option of the conference alternative and that the program appeared to have positive benefits for young people, families and victims. It recommended that conferencing be moved beyond that of a small localised project to become State-wide and that it continue to be auspiced by a non-government organisation to ensure the maintenance of strong community input.

Publications

Markiewicz A 1997a, *Juvenile Justice Group Conferencing in Victoria,*: *An Evaluation of a Pilot Program* , Melbourne: Children, Young People and Families Research Unit, University of Melbourne.

Markiewicz A 1997b, *Juvenile Justice Group Conferencing in Victoria*: *An Evaluation of a Pilot Program Phase 2* , Melbourne: Children, Young People and Families Research Unit, University of Melbourne.

Success Works Pty Ltd 1999, *Juvenile Justice Group Conferencing Project Evaluation* , Success Works Pty Ltd, Melbourne.

South Australia

Characteristics of the program

Conferencing in South Australia is a State-wide program introduced under the *Young Offenders Act* 1993 (see Appendix); as in most jurisdictions, it is the second level in a three-tiered juvenile justice system which also includes police cautions and the Youth Court (Wundersitz & Hetzel 1996). Over the first four years after the introduction of the Act, about 17 percent of all juvenile matters, representing about 1500 cases and 1800 offenders, went to a conference; about half of all juvenile apprehensions resulted in court appearances and about one third were dealt with by caution (Daly et al 1998). It is now strictly a pre-court diversion program, though for a brief period in 1993-94, the Port Adelaide Youth Court was permitted to interpret the Act as allowing the use of conferencing as a sentencing option. (The Port Adelaide experience was described as 'invaluable in showing that Family Conferences are an effective means of preventing recidivism when used as a sentencing option as well as a diversionary system' (McInnes & Hetzel 1996)).

According to the Act, conferencing is available for juveniles (aged 10-17 years) who commit a 'minor' criminal offence. The Act does not specify which offences are to be considered 'minor' but over the years since the introduction of the legislation, the South Australian Police Department has set out administrative orders to guide the decision (SAPOL General Order 8980, 1998). In general, this means that cases suitable for a conference include any offence for which the youth has already been formally cautioned, any offence which the police considers desirable for the victim to participate and any offence resulting in a loss of property between $5000 and $25000. The amount of

discretion police possess in deciding which cases should be conferenced, together with the fact that magistrates can also refer court matters to a conference, has meant that quite serious cases may be conferenced, including some sexual assaults (where both victim and offender are juveniles) and robberies.

At a minimum, those participating in the conference must include the offender, a specialist Police Youth Officer (PYO) and the Youth Justice Coordinator who acts as facilitator. At a minimum, two people must agree with the outcome reached in the conference, namely the PYO and the offender (SAPOL General Order 8980). Although the police possess power of veto over the outcome, this appears rarely to be exercised (Wundersitz 1996); if no agreement is reached, the matter is referred to the Youth Court where a magistrate decides the outcome. The offender is entitled to have a legal representative at the conference but this happens rarely (Wundersitz 1996). The Act states that the conference may require the offender to pay compensation (not to exceed $25,000, set by policy (Daly et al 1998)), to undertake community service of up to 300 hours and to apologise to the victim.

Implementation and administration

Conferences are convened by specialist Youth Justice Coordinators located in the Courts Administration Authority (CAA) Family Conference Team and employed by the CAA, which has administrative responsibility for the program. The Team has an office in Adelaide serving the metropolitan area and towns in the south of the State, and another in Port Augusta which has responsibility for the remainder of the State. Cases are referred to the Team by the dozen or so PYOs in the Adelaide metropolitan area; in country towns the officer in charge of each police station acts as the PYO. PYOs are responsible for all juvenile justice practices in their areas, including attendance at conferences. Their role at the conference is to describe the offence, to provide information about the victims if they are not present and to contribute to the discussion and the outcome (Daly et al 1998).

Evaluation

In 1996 the program was the subject of a comprehensive process evaluation by the South Australia Office of Crime Statistics (Wundersitz 1996). It examined the features of all 1880 cases listed for a conference in the year 1994-95 and included interviews with conference convenors, participants, lawyers, academics, police and other stakeholders.

The study looked at the characteristics of 'successful' conferences, where success was defined as a conference which was actually held and an agreement reached. It found that a higher proportion of cases involving male offenders than female offenders were rated as 'successful', no difference was found between older and younger offenders in terms of success but Aboriginality was found to be an important factor: a much higher proportion of Aboriginal offenders either did not attend or did not agree to an outcome. Offences against the person were found to be just as likely as property offences to be successful. About 80 percent of all conference outcomes were complied with in the agreed time frame. One of the principal problems identified was the non-attendance of victims: victims were present in fewer than half the conferences, though there was a very high level of satisfaction among those who did attend (Goodes 1995). Also of concern was the finding that victim supporters attended in fewer than ten percent of conferences; this was attributed to the limited resources available to undertake extensive pre-conference work. Wundersitz concluded that 'it is still too early to determine the effectiveness of the conference process, although...preliminary indications are positive' (p 123).

The South Australian program is also the subject of ongoing evaluation by Daly et al (1998), though this research has a different focus from the Wundersitz study. It draws on research on restorative and procedural justice to frame research questions about dimensions of restorative justice present in conferences, and whether perceptions of these dimensions vary by participant role, participants' demographics, the context or the kind of harm involved. It also investigates if it matters whether a conference is 'successful' for future behaviour and well-being (Daly et al 1998).

The sample of cases for this study consisted of 89 conferences in Adelaide, Port Augusta, Port Pirie and Whyalla relating to personal crimes of violence (assault, sexual assault, robbery) and the more serious kinds of property offences (break and enter, motor vehicle theft, property damage). All these conferences were observed and all offenders and victims in these cases were interviewed on two occasions; in addition, the YJCs and PYOs involved in these cases completed a self-administered survey. This research is continuing; preliminary results indicate that the great majority of both victims and offenders rated the conference process as fair, that victims were most often satisfied with their experience and that most would go to a conference again.

Publications

Wundersitz J 1996, *The South Australian Juvenile Justice System: A Review of its Operation*, Office of Crime Statistics, SA Attorney-General's Department, Adelaide.

Daly K, M Venables, M McKenna, L Mumford & J Christie-Johnston 1998, *South Australia Juvenile Justice (SAJJ) Research on Conferencing, Technical Report No. 1: Project Overview and Research Instruments*. School of Criminology and Criminal Justice, Griffith University, Queensland.

Queensland

Characteristics of the program

Conferencing for juvenile offenders was introduced to Queensland on a trial basis as part of the 1996 amendments to the *Juvenile Justice Act 1992* (see Appendix). Participants normally include the young person, a family member or caregiver, the victim or their representative together with a victim supporter, the referring police officer and two conference convenors. Solicitors may also attend, though in the role of supporter and protector of rights rather than legal adviser, and do so in about ten percent of cases. Police may refer a matter to a conference when the young person admits the offence and the victim consents; courts may make either an indefinite court referral to a conference without making a sentence order or alternatively may make a pre-sentence referral (see

Figure 2) . As well as juveniles referred under the Act, the programs also accept referrals for adult offenders under an administrative arrangement with police (Palk et al 1998). The Queensland program differs from all other jurisdictions in requiring the victim's consent to a conference being held, regardless of whether or not the victim chooses to attend.

Implementation and administration

Conferences are the responsibility of the Youth Justice Program, Families, Youth and Community Care Queensland, which funds all programs and trains and accredits all conference convenors. Implementation of the conferencing program has so far entailed four sites, each using a different model of service delivery. The Ipswich program is operated directly by the Alternative Dispute Resolution (ADR) Branch of the Department of Justice and Attorney-General. The Logan City program south of Brisbane is operated by a welfare-oriented non-government organisation, Youth and Family Services (YFS), which has strong community links. The Palm Island program is run by local respected Indigenous persons and elders who form the island's Community Justice Group, but local community problems have meant that no conferences have been held since 1998. In early 1999 another program, based in Cairns, was established by Family, Youth and Community Care Queensland to cover Far North Queensland. Conferences are convened from time to time outside these areas also.

In all these sites a great deal of effort goes into pre-conference work involving detailed discussions with the offenders, their parents and the victims. The aim is to explain the process, to obtain details on the case, and to help participants prepare for it by describing what happens and exploring outcome possibilities. At the beginning of the conference, formality is engendered by the police officer being asked to 'read out the charges', whereupon the officer reads from the official complaint and the offender is asked 'Do you admit to these charges?'.

In the first 12 months of operation (1997-98), there were 111 conferences (ten for Palm Island, 49 for Ipswich and 52 for Logan) and in the second year around 200, involving about 300 offenders. About half of all conferenced matters concerned theft and break and enter offences, another quarter were other property matters and almost 20 percent were violent offences (Hayes et al 1998). All told, in the period April 1997 to January 2001, 618 conferences were conducted State-wide, involving 826 offenders.

The 1999 State budget provided recurrent funding of $900,000 for conferencing, and Family, Youth and Community Care Queensland sees this decision as marking the transition of conferencing from a pilot to a permanent feature of the Queensland youth justice system. This level of funding is not sufficient to provide the program State-wide, but has preserved existing programs and enabled all courts in south-east Queensland dealing with juvenile matters to refer cases to conferencing (Family, Youth and Community Care Queensland, unpublished).

Evaluation

An independent team from Griffith University conducted an evaluation of two of the three pilot program sites in 1997-98 (Hayes et al 1998, Palk et al 1998). (Owing to the small number of conferences on Palm Island and logistical problems in visiting the site, the report excluded this program). Data for the study were derived from structured and unstructured interviews with conference participants immediately after the conference, and a telephone follow-up interview two months later; there were also interviews with key stakeholders, together with an analysis of program financial data held by the Department of Justice and official police and court data.

The study paid close attention to the costs of the pilots and concluded that they ranged from approximately $200 to about $900 per case (a detailed analysis appears on pages 43-48 of the report). Hayes et al observe that ‘The perfunctory nature of police and even court appearances may turn out to be cheaper than conferencing but at a higher social cost for victim-offender reconciliation and community development...Part of the intrinsic

success of the Queensland pilot appears to lie in the considerable preparatory work done by convenors which may result in a loss of comparative [financial] advantage with other dispositions' (p 48).

The study concluded that 'community conferencing has been highly successful in regard to the core goal of victim-offender reparation' and that '[P]articipation satisfaction levels were consistently high across a range of conferencing issues' (Hayes et al: 6). However, it observed that the number of referrals to the program was very low, which they attributed to the trial nature of the program, as there appeared to be strong support for it by the criminal justice community. The report recommended that conferencing services be made available State-wide and that the scope of referrals to conferencing be widened to allow all victims of juvenile crime to opt for a conference.

A 'commentary' on the evaluation report prepared in 1998 by the Juvenile Justice Program, Families, Youth and Community Care (unpublished), recorded some reservations expressed by stakeholders, especially concerning the report's recommendation that victims should be automatically given the right to a conference, regardless of the seriousness of the offence or the circumstances of the offender. There were also concerns about the cost of conferencing (though the evaluators observe that 'no per case estimates for court or caution could be obtained' for comparative purposes (Hayes et al p 43)). However, both the police and the government departments express general support for the existing programs.

Publications

Hayes H, T Prenzler & R Wortley 1998, *Making Amends: Final Evaluation of the Queensland Community Conferencing Pilot*, Brisbane: School of Justice Administration, Griffith University.

Western Australia

Characteristics of the program

In 1993, following consultation between justice, police, education and welfare agencies and the Aboriginal community, two pilot Juvenile Justice Teams were established in Western Australia, in each of Fremantle and Perth. These were modelled on the New Zealand conferencing program with the restorative aims of involving victims, empowering parents and making young people more accountable for their actions. In 1995, with the proclamation of the *Young Offenders Act* 1994 (see Appendix), Western Australia formally enacted conferencing for juvenile offenders aged 10-17 as a second tier between cautioning and court and teams were established State-wide.

Under the provisions of the Act, an offender who 'accepts responsibility for the act or omission constituting the offence' (S25(4)) may be referred to a Juvenile Justice Team by the police, the prosecutor or the court. About 65 percent of cases have been pre-court police referrals and the remainder from the Children's Court (Cant et al n.d.). The teams consist of a conference coordinator employed by the Ministry of Justice, a police officer, a representative of the Ministry of Education (when required) and, where the offender is of an ethnic or other minority group, a person nominated by members of that group, together with anyone else whom the coordinator wishes to invite. In the Perth metropolitan area there are seven full-time teams and there are 16 country sites where Teams can operate as well. In the metropolitan area, juvenile justice officers and police officers are assigned to work solely in the Teams. However, in regional areas, local juvenile justice and police officers establish Team meetings as and when required: they are not specialist Team officers, but generic field officers and operational police and come together when there is a referral to a Team. There is one full-time Aboriginal coordinator and each team is assisted by a part-time Aboriginal support worker.

The program tends to be used for first or early offenders and minor offences such as simple assault, stealing and burglary: driving offences and most serious violent and

sexual crimes are excluded. However, there is work being done on expanding the role of teams to deal with more serious offences and more persistent offenders (email communication, Bill Williamson, Manager, Juvenile Justice Teams). In 1997-8 there were about 2,800 referrals to conferences by police and the Children's Court in the Perth metropolitan area, about 84 percent of which were accepted: it appears that almost half of these matters were dealt with simply between the team and the offender, while the remainder were more formally constituted conferences (Daly et al 1998). In 1998-9 about 15 percent of all juvenile matters in the Children's Court relating to burglary, theft, car theft and simple assault cases were dealt with by the Teams: a small proportion (six percent) of sexual assault matters were also referred to the Teams (www.justice.wa.gov.au/division/policy/statistics.htm).

Those attending the conference, besides the team and the offender, must include 'a responsible adult', usually a parent or other relative (unless the offender is assessed as an independent person, in which case a person is appointed to that role by the team). The victim is invited to make submissions or otherwise participate as they wish; if they attend they have a power of veto over the outcome, which must be agreed by all those in attendance.

Implementation and administration

The Juvenile Justice Teams operate in partnership with the Ministry of Justice, police service and the Education Department.

Evaluation

In 1994 an evaluation of the two pilot programs was undertaken (Ministry of Justice 1994). There was some costing analysis of the two programs: each of them was estimated at $130,000 per annum, including the salary of the coordinators and a full time Aboriginal representative but excluding costs connected with the Ministry of Education officer and the police officer. The evaluation was largely qualitative, with views sought from offenders, offenders' parents, victims, referring police, Aboriginal organisations,

members of the judiciary and team members and overall a high level of satisfaction was expressed.

In 1998, Cant and Downey undertook an evaluation study of the operation of the *Young Offenders Act* 1994, including the Juvenile Justice Teams. They found that about 95 percent of offenders successfully completed the outcome agreed at the conference and that there were very high rates of satisfaction on the part of offenders, offenders' parents and victims. However, they commented that some of the offences dealt with were minor enough to have been dealt with by a caution in the first instance and that there was also evidence that cases that might have been dealt with by Teams were being sent to Children's Court (Cant & Downey 1998, p iv). They also reported concerns by the Aboriginal Justice Council and Aboriginal Affairs Department about relatively low referral rates of Aboriginal juveniles to the Teams (16 percent in the metropolitan area, though as high as 50 percent in some country areas), considering their over-representation in the justice system, possibly owing to the exclusion of young people with minor histories of misdemeanours (p v).

Publications

Ministry of Justice [Western Australia] 1994, *Juvenile Justice Teams: a Six Month Evaluation*, prepared by Neville Jones, Ministry of Justice, Perth.

Cant R & R Downey 1998, 'An Evaluation of the *Young Offenders Act (1994): Evaluation of the Young offenders Act (1994) and the Juvenile Justice Teams*, [Perth], Social Systems and Evaluation.

Tasmania

Characteristics of the program

In 1995 Tasmania Police adopted a conferencing program on the 'Wagga' model and 30 police officers were trained as facilitators; since then, a further 60 officers have been trained State-wide. Police conferencing, in the guise of a formal caution, has continued

under the new *Youth Justice Act* 1997 (see Appendix), which was proclaimed in February 2000. Although the legislation provides for the familiar three-tier juvenile justice system found also in New South Wales and South Australia (caution, conferencing, court), in practice the formal caution acts as a fourth tier. Under the new Act, a formal caution involves inviting the victim to attend; the police conference facilitator may seek on the victim's behalf costs, financial restitution, restitution consisting of up to 35 hours' work for the victim and an apology. Other outcomes may concern referral to developmental, drug or alcohol programs or anything else considered appropriate, but outcomes from a formal caution are not enforceable under the Act.

However, a primary purpose of the Act is to provide for a new community conferencing program. This is a pre-court diversion, referred by police, and is for offenders aged 10-17 who admit their offence. Offences excluded from conferencing are traffic offences, serious violence, sexual offences and dangerous weapons offences. As well as referral by police, the Act allows for court referral of young people found guilty of an offence.

The underlying principles are described in Section 5(1) of the Act; they mainly concern the need for the youth to accept responsibility for their behaviour and for victims and families to be involved in the process and outcome. Punishment is to be appropriate to age, maturity, cultural identify and to previous offending history, with the objective of developing a sense of social responsibility. The Act signifies a shift away from the welfare ideology that informed the previous system of juvenile justice: the new system deliberately separates youth crime from youth welfare.

Those who may attend the conference are the offender, the guardians and relatives of the offender, the victim and supporters, a police officer and anyone else whom the conference facilitator believes may be able to participate usefully. If the victim chooses not to attend, he or she must be asked whether they wish to be informed of the outcome.

A conference outcome may include a formal caution, an undertaking to pay compensation or make restitution, to undertake to perform up to 70 hours of community service, to apologise or anything else considered appropriate. The outcome should be arrived at by consensus, but at a minimum the offender, the police officer and the victim (if present) must agree. If no agreement is reached or the offender fails to comply with undertakings, the police officer may put the case before the court.

Implementation and administration

The new conferencing program is the responsibility of the Department of Health and Human Services. The 'old' program continues within the police service. There is considerable variability across the State in the pick-up rate for the new program, as well as for the continuing formal caution/police conference arrangement. As a guide, in the Eastern District which comprises about one quarter of Tasmania's population and deals with around 400 juvenile cases annually, over the past year almost two-thirds were dealt with by a formal caution, around 20 percent went to court, 15 percent to an informal caution, and seven percent to a conference (email communication, Sergeant John Lennox, Tasmania Police).

Evaluation

An evaluation of the conferencing program is being undertaken at the University of Tasmania Law School. The research aims of the study are to examine the use of conferencing within the juvenile justice system and its effectiveness as a diversionary mechanism, the extent to which the program applies principles of restorative justice, and the capacity of the police and responsible agency to execute the objectives of the Act. No report is yet available.

Australian Capital Territory

Characteristics of the program

Conferencing on the police-run 'Wagga' model was introduced as a pre-court diversion in the ACT by the Australian Federal Police in 1994. Admitted offenders are referred to the program entirely at the discretion of the apprehending police officer; as yet there is no governing legislation for the program. Offences excluded from eligibility are serious violent offences, all sexual offences, weapons offences, drug offences, drink driving offences and offences related to family violence. To date over two thousand conferences have been conducted.

Conferences are conducted by trained police officers. Conference participants include the offender and a minimum of four supporters, the victim and supporters if they wish to attend, together with the facilitator who may also invite the apprehending police officer, an interpreter or anyone else who may assist the conference.

Implementation and administration

The program is run entirely by the police with a small dedicated unit involved in receiving referrals from apprehending police officers. It is informally regarded as a disposition located between cautioning and court: most cases (including all those involved in the evaluation) would otherwise have been dealt with in court.

Evaluation

The ACT program has been the subject of a rigorous evaluation study conducted by the Australian National University, known as the Reintegrative Shaming Experiments (RISE). The research design for the study is a randomised controlled trial comparing the effectiveness of conferencing with normal court processing of young property and violent offenders and of drink drivers. The outcome measures are comparative rates of recidivism, comparative victim satisfaction, perceptions of procedural justice by both victims and offenders, and comparative costs. The first analysis of reoffending rates, comparing offending in the 12 months prior to entry into the study with 12 months after,

indicated mixed results. Conferencing of drink drivers actually resulted in a slightly, but significantly, higher rate of reoffending for those who had been assigned to a conference compared with those assigned to court. For juvenile property offenders, there was no significant difference between the two groups. However, for young violent offenders, those assigned to a conference reoffended at a significantly lower rate, committing 38 fewer offences per 100 offenders per year than those assigned to court (Sherman et al 2000). Broadly speaking, the program has been found to be more satisfying than court for victims and is perceived by both victims and offenders as fairer than court (Sherman et al 1998, Strang et al 1999). Information on costs will be available shortly.

Publications

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Northern Territory

Characteristics of the program

Conferencing on the 'Wagga' model was trialed in the Northern Territory in 1995-96 when the Northern Territory Police ran a series of 34 conferences in Alice Springs and

Yuendumu. Eligible offences were those which would otherwise have been dealt with in court, excluding serious violence, sexual offences and domestic violence, where the offender admitted the offence and both victim and offender agreed to a conference. The evaluation report (Fry 1997) found that of these 34 cases, 26 were concluded successfully: most victims were satisfied with the program and all offenders complied with their outcome agreement. The report recommended that the program be implemented throughout the Northern Territory.

In 1999, at the direction of the Chief Minister's Office, a diversionary conferencing program was established for post-court diversion for juvenile offenders aged 15-16 years. It is one of over 20 juvenile diversion programs run by the Department of Correctional Services and is offered to second-time juvenile property offenders. Offenders who refuse to take part and who are found guilty are automatically given a 28 day custodial sentence. In its twelve months of operation, there have been only six or seven referrals by magistrates, but it appears there have been a number of recent referrals in both urban and remote Aboriginal communities (Tom Stodulka, NT Anti-Discrimination Commissioner, personal communication 25 August 2000).

In early 2000, the Federal Government promised funds for the establishment of a pre-court restorative conferencing program and, after some initial delays, approval for some funding has recently been given by the Federal Attorney-General. Responsibility for the setting up and running of this program is in the hands of the Northern Territory Police. The program is already running to a limited extent, but the intention is to train 50-60 police officers before the end of 2000 so that the program can get underway Territory-wide early in 2001. Legislation governing the program is being prepared and the intention is that it will be put before the NT Legislative Assembly in November.

There is as yet no documentation on the intended operation of the program, but Superintendent Graham Waite, who is responsible for implementing the program, has

provided some information about what is intended (personal communication 20 September 2000). The following is based on his comments:

The program will be for juveniles aged 10-17 Territory-wide and there will be flexible criteria for eligibility. There will continue to be warnings and cautions for less serious offences, while serious violent offences will be excluded from the program. For minor-middle range offences, conferencing will be the normal disposition as long as the offender and the family agree. The intention is for victims to attend wherever possible, but their absence would not preclude a conference with the offender and extended family. The apprehending police officer will have a great deal of discretion in deciding to recommend a conference, bearing in mind the age and circumstances of the offender, prior offending and the seriousness of the offence. There will not be a victim veto on holding a conference, nor will it be essential for full admissions to be made: for example, if there is overwhelming evidence of responsibility for the offence but the police are aware of circumstances which make the offender reluctant to make admissions, then a conference may still be offered. Superintendent Waite emphasised that the process of holding a conference ought always to be a consensual one and at the forefront of consideration by the apprehending officer should be to divert from court wherever possible.

Publications

Fry D 1997, *A Report on Community Justice Programme 'Diversionary Conferencing', Police Trial Alice Springs Region*, Northern Territory Police.

Adult Conferencing

As we observed at the outset, in Australia restorative justice programs are usually seen as being most suitable for juvenile rather than adult offenders. This is probably due partly to a desire to try new programs first on less serious offenders, partly to a widespread, though misleading, view that these programs are most appropriate for trivial offences (see

Sherman et al 2000) and partly to the influence of the New Zealand experience, where family group conferencing was introduced as a specifically juvenile justice initiative.

However, three jurisdictions in Australia have been using conferencing programs with adults, even though the great majority of participants remain juvenile offenders. These are Queensland, Western Australia and the ACT.

In Queensland, where juveniles are defined as under 17 years, about one quarter of conferences conducted since the program began in 1997 have been adult offenders (though 48 percent of the total adult referrals have been 17 year olds). However, these are no legislative provisions to cover adult conferencing, and hence no privacy and other protections. Courts do not refer adults to conferencing and all cases are dealt with under administrative arrangements between police and Family, Youth and Community Care Queensland.

In Western Australia, a pilot project has recently been undertaken at Fremantle Magistrates court involving the conferencing of adult males who had entered a plea of guilty in relation to offences of burglary, stealing, larceny, fraud or assault and who were facing the likelihood of a custodial sentence. It was necessary for both police and the magistrate to agree to a conference before victims were contacted, and they had to be willing to participate for the conference to proceed. The pilot resulted in nine referrals leading to two completed conferences (six offenders refused a conference and in another case the victim refused). A research project involving the same eligibility criteria is now underway at Central Law Courts, Perth and the Fremantle Magistrate Courts and is being evaluated by researchers at Murdoch and Edith Cowan Universities.

In the ACT, age has never been a criteria for eligibility to participate in the police-run conferencing program and both adults and juveniles who admit their offence are eligible for the program at the discretion of the apprehending police officer.

Restorative Programs in the School Setting

Restorative justice in the school setting began in 1994 when conferencing was first used in the Maroochydore area of southern Queensland. This was followed by a series of trials in 75 Queensland schools in 1995-96, where one person at each school underwent training in restorative techniques for dealing with disputes and conflict. As a result, 89 conferences were held in this pilot study dealing with a variety of incidents in the school environment, including assaults, property offences, truancy and drug offences, as well as bullying and harassment. Despite the favourable reception the pilot received, it did not gain the financial support of the Queensland Department of Education. Although some schools continue to use the program, its resource-intensiveness and the need for cultural change in dealing with behavioural management has meant that the program has been limited in its effectiveness.

However, lessons learned in Queensland have been put to good use in New South Wales, where conferencing was introduced in 1997 into some government schools as part of the NSW Department of Education's *Alternative to Suspension* project. A pilot of twenty conferences were run, about half of them for incidents of bullying. The Department assessed the program as the most successful technique so far tried in dealing with bullying (internal Departmental report) It has since been used in situations of conflict involving both students, staff and other members of the school community and a trial is underway involving the training so far of 150 school staff State-wide. A major outcome measure for the program is the number of days lost to suspension and exclusion, and to date the numbers have decreased markedly in the trial districts (David Moore, Transformative Justice Australia, personal communication). The training program has now been refined so that, instead of single individuals from schools attending the training, schools have most of their staff attend a one-day course on how to apply restorative justice principles in dealing more constructively with school incidents of conflict. The conferences are usually run by school counsellors who already have skills in this area, but the success of the program appears to depend on staff in general putting

principles of restorative justice into practice in their day-to-day behavioural management of students and of workplace disputes.

In addition, Lewisham Primary School in Sydney has been the subject of a special behavioural management program under the auspices of the Department of Education. Every teacher in the school has been given twenty hours of training in restorative justice principles and techniques, followed by periodic 'booster' sessions, which has led to a change in behaviour management culture. This culture change seems to be a vital pre-requisite for restorative techniques to take root in the school setting, and failure to achieve it as was the case in Queensland (Thorsborne & Cameron, 2001) makes program success unlikely to be achieved.

In the Australian Capital Territory there has been considerable interest in restorative alternatives for behaviour management in schools. In 2000, the ACT Department of Education supported a training session by independent consultants on restorative principles and practices attended by twenty staff from eight schools. The Department recognises bullying and harassment as major problems, but also encourages the use of restorative conferencing in dealing with other conflicts, including conflict between staff in the workplace. An evaluation of the program in the primary, secondary and college sectors of ACT schooling is being undertaken by the Centre for Restorative Justice at the Australian National University.

Restorative Programs in the Care and Protection Setting

Restorative justice in care and protection refers to conferencing-type programs based on the principle that families ought to have the main responsibility for making decisions about care arrangements for family members because, given the resources, information and power, families themselves are in the best position to make the right choices. The goal is an outcome which takes account of the well-being of the family member, the needs of the whole family for support services and the accountability of all parties for the

care decisions made. (Swain and Associates 1993). Although the welfare of children is most often the object of the conference, issues around other family members such as the elderly or those with psychiatric or intellectual disability may also be dealt with this way.

Conferencing in care and protection, sometimes known as family group decision-making, was first trialed in Australia in 1992 when it was introduced in Victoria under the auspices of the Mission of St James and St John, an Anglican child welfare agency. It is based on the New Zealand model whereby the conference is attended by both professional services and family and friendship networks and is led by an independent facilitator. The professionals understand that their role is one of information-provision rather than decision-making. It is a three-stage process: first, the group as a whole identifies the issues which need to be addressed and options are outlined by the professionals; second, the family meets in private to discuss the issues and options and decides on a plan; thirdly, the professionals rejoin the family, the resourcing implications of the decision are discussed and the agreement ratified by all present. If the conference is about the safety of a child, the relevant statutory authority must be satisfied that the plan will not put the child at further risk. An evaluation of 19 conferences conducted in Victoria in 1993 (Swain and Associates 1993) found that over 80 percent of family members felt they had greater control and expressed satisfaction with both the process and the outcome, while the professionals involved also expressed strong support for the principles and practice of the conference model.

The program remains on a small scale in Victoria and impediments to wider application relate to resourcing - conferences are seen as slow and time-intensive - and to the reluctance of some professionals to allow what they perceive as dysfunctional families to make decisions for themselves when the safety of family members may be at risk.

Since the establishment of the Victorian pilot project there has been interest in the application of restorative justice for care and protection in several other States. The South Australian model is also based on the New Zealand program. The SA *Children's*

Protection Act 1993 states (Division 1) that a 'family care meeting' must be held before a decision can be made regarding any custody or guardianship issue for a child in need of care and protection. The purpose of the meeting is to provide an opportunity for the child's family, together with the professionals involved 'to make informed decisions as to the arrangement for best securing the care and protection of the child' (S 28(a)). The officer in charge of the program (Donnie Martin, Care and Protection Unit, Department of Family and Youth Services) advises that about 400 care and protection conferences a year are currently being held: this is a doubling since 1997 when a new evidence-based safety and risk assessment process was introduced. No formal evaluation has been conducted but over 80 percent of meetings reach a valid plan which is still in place at the time of the twelve month review (personal communication 10 September 2000).

The Australian Capital Territory has just established conferencing for families, following the passing of the *Children and Young People Act* 1999. It is very much on the three-part model of the other States and of New Zealand: an information sharing stage where the professionals set out their concerns and the support they can offer, a stage for families to consider the options in private and reach a decision about what they want to happen, and a stage for discussion and agreement by all parties to the plan. The program commenced in May 2000.

In New South Wales, the Department of Community Services (DoCS) has taken a slightly different approach. Its new legislation, the *Children and Young Persons (Care and Protection) Act* (which was passed in 1998 but has not yet been proclaimed) makes provision for the use of alternative dispute resolution (ADR), to be used 'as a strategy to explore the needs of the child or young person in order to plan how those needs might be met, or to resolve disputes between family members' (NSW Department of Community Services, unpublished draft). DoCS suggests that over 8000 cases of substantiated child abuse may be eligible for ADR meetings each year and it is hoped that there will be substantial savings in time by diverting cases from court. The intention is to establish ADR services across the State when the Act is proclaimed. ADR is intended to allow

families to have more control over the structure, timing and content of the meetings at which decisions will be made on care and protection. But New South Wales does not go so far as other jurisdictions have done, with DoCS retaining the final say on who attends the meetings and on 'bottom-line' care and protection requirements and the extent of restorative content of ADR is not clear.

DoCS includes under the rubric of ADR the conferencing pilot program used by Burnside, an agency of the Uniting Church, in conjunction with DoCS. This program follows the three-stage model used in New Zealand and other Australian States and is based on the same principles of family empowerment in the decision-making process. An evaluation was carried out in 1999 (Burnside unpublished) based on the twenty families who participated in the program between mid-1996 and mid-1998, usually to decide on the placement of children or to support their return home after living elsewhere. About two-thirds of family members felt the conference had helped the children; most professionals thought the risk to the children had been reduced because of the families' greater awareness of the reasons for concern about risk, their access to additional support and resources and the change engendered in family relationships by the process. The evaluation report notes that the new Act ought to facilitate the use of conferencing because the principles sit comfortably with those of the legislation. It recommends that the program be expanded but gradually, so as to ensure that facilitators and departmental professionals alike receive appropriate training for the preparation and conduct of the meetings.

Although there may be hopes by government of cost savings through the greater empowerment of families and a reduction in intrusiveness in family problems, both the New Zealand and Australian experience show that families need continuing community supports and professional services if conferencing is to be successful. Hassall and Maxwell in New Zealand warned as far back 1991 that 'the rhetoric of family responsibility can easily lead to the disappearance of the support of the state sector which is essential to the well-being of many families', while Swain & Ban reiterated in 1997

that it was unlikely that properly conducted conferencing in care and protection would reduce costs because of the needs of families for ongoing government-financed resources.

RJ in Other Settings

There is currently enthusiastic exploration of the application of conferencing in a variety of settings beyond police and the courts. For example, the NSW Department of Corrective Services has established a Restorative Justice Unit which offers victim-offender conferencing post-sentence (ie. for imprisoned or paroled offenders); so far it has received 46 referrals and conducted six conferences. Programs are being considered for areas as diverse as youth homelessness, hospital discharge planning, aged care/nursing home care, for the care of the children of women prisoners, and for custody disputes in the Family Court (Swain & Ban 1997). Finally, the use of restorative justice programs in resolving workplace disputes is a growing field (McDonald & Moore forthcoming).

Problems And Some Solutions In Devising And Implementing Programs

Upscaling problems

There is considerable variability between Australian jurisdictions in the uptake of restorative justice programs, though all States and Territories now have them to a greater or lesser extent. But independent of the level of uptake, there is remarkable consistency across Australia in the pattern of administrative and implementation problems, some of which may derive from the need for carefully and sensitively managed change across the justice system and in the community at large. Usually the program begins with a pilot undertaken by a small group of enthusiasts who perform well: the program is usually evaluated positively with a recommendation for wider use. The reasons for not upscaling the program usually relate to cost (though both formal evaluations and government departments making the decisions are often vague on this subject). Sometimes they relate to concerns about responsibility or ‘turf’. Often they concern a generalised sense of uncertainty about the value of the program and a kind of cultural resistance to the

restorative approach: this last is as evident in schools and other settings as it is in 'justice'.

Caseflow problems

Those jurisdictions which have implemented restorative justice programs have difficulties in common too. The programs sometimes have very limited eligibility criteria: they are usually restricted to juveniles, sometimes to first or early offenders, and eligible offences are often at the trivial end of the spectrum. This gives rise to criticism about the net-widening and mesh-thinning potential of a third tier of justice between cautioning and court, which is exacerbated when the referring agencies are conservative in the offences and offenders that they are prepared to recommend for these programs. Unlike New Zealand, where referral of juveniles to conferencing is mandated in the *Children, Young Persons and Their Families Act* of 1989 for all offences up to attempted murder for all admitted offenders, there is no imperative for referral by either court or police in any Australian jurisdiction, nor external oversight as to whether they do so or not. Even in those locations where the police either run the program themselves or have done so in the past, police have not shown great enthusiasm for referral. This difficulty may be an evolutionary one: in South Australia, where conferencing in justice has run longest, an education and training regime for police, specialist police youth officers and courts willing to divert suitable cases has reduced the caseflow problem, with around 17 percent of all juvenile cases now going to a conference (Daly 1998).

Safeguarding rights

Given the risks inherent in any informal justice procedure, there is some anxiety about the potential for the violation of due process protections of offenders (see for example Sandor 1994). These include admitting to offences in the belief that they will receive more lenient outcomes through conferencing, the potential at least theoretically for police intimidation and the lack of appeal mechanisms regarding outcome severity. As a program administrator, Bargen (unpublished) has expressed concern about ensuring that entitlements such as right to legal advice are consistently respected. There is also a

potential for victims to be 'revictimised' by taking part in conferences, leaving them more fearful or anxious than before (Strang unpublished).

Restorative justice and Indigenous communities

Perhaps the most controversial aspect of restorative justice programs in Australia concerns the question of their appropriateness and effectiveness in Indigenous communities. Cunneen (1997) summarised the criticisms as follows: a failure of those setting up restorative programs to negotiate and consult with Aboriginal communities and organisations; concerns about the discretionary powers of police over access to programs; inadequate attention to cultural differences; the undermining of self-determination through a tokenistic recognition of Indigenous rights.

Bargen has addressed this subject from an operational point of view. In reviewing the first year of operation of the NSW program in 1999 she observed:

> '...disappointingly, but perhaps not surprisingly, the Act is not yet working as it should in Indigenous communities. Cautioning rates and conference referral numbers for Indigenous children and young people remain low in many parts of the state. It is not always possible for an administrator to appoint an Aboriginal convenor in all appropriate cases. Many Indigenous people are still not aware of the existence of the Act nor of the part they can play in its operation nor of its potential to reduce the entry of significant numbers of Aboriginal children into the juvenile justice and ultimately adult criminal justice systems' (unpublished, p 19).

Wundersitz (1996) in her South Australian evaluation also observed that conferences did not appear to be working as well for Aboriginal cases, with around 12 percent of Aboriginal youths failing to appear for conferences. However, she noted that steps had been taken to address some of their special needs: wherever possible an Aboriginal conference convenor was assigned to the case and, rather than attempting contact by phone, these convenors preferred to visit Aboriginal youth and their families at home. Wundersitz suggested that '[T]his face to face contact is important in breaking down some of the mistrust which Aboriginal people often feel towards the criminal justice system, and it makes it easier for the coordinator to identify who, of the extended kin

network, needs to be invited to the conference' (p 117-118). Similar efforts are being made in NSW and Queensland too (Strang & Braithwaite forthcoming).

Restorative justice and ethnic communities

Similar problems exist in extending the reach of the new legislation into ethnic communities. The 'structural' criticism of conferencing concerns its inability to address the social causes of crime, while at the same time both referral practices and the conference

process itself may favour middle class, articulate participants. Despite the criticisms of Cunneen (1997) and others (see for example Kelly & Oxley 1999) about strategies to involve minority groups, much effort has been made in NSW to rectify this situation: for example, administrators in the Sydney region in 1999 used an innovative recruitment and training method developed in close association with those communities, resulting in an extra fifty new convenors.

Resource problems

Finally, on a practical front, limited financial resources may restrict the expansion of programs unless the political will exists to do so. As observed above, the costing of programs remains vague wherever it has been undertaken, especially in comparison with the alternatives of cautioning and court, though the Queensland evaluation report (Hayes et al 1998) suggested that '[A]t least several million dollars would be needed to fund the program State-wide' (p 60). It also observed that strategic issues needing to be addressed particularly in rural areas included transportation costs of conference participants, the location of conference coordinators and the status of convenors required only on an irregular basis: this is all true, but the same issues have been faced and dealt with, apparently successfully, in New South Wales, for example.

Effective Extension Of Restorative Justice Programs

Before considering the means by which programs could be extended a prior question concerns the desirability of doing so. It is early days for restorative justice: it may be the oldest way of conflict and dispute resolution, but it is only a decade since such programs began to be mainstreamed, and a much shorter timeframe in which evaluation studies have been conducted.

Even in relation to programs in the justice setting, where most of the evaluative research has taken place, we do not know yet very much about how effective the restorative approach may prove to be in reducing reoffending; this is especially difficult to estimate when programs are mostly directed at a population of offenders whose offences are minor and criminal careers brief. Large claims of 'success' among those who may never have reoffended anyway confuse and distract policymakers. RISE, the randomised controlled trial being conducted in the ACT, has recently shed important light on this subject: as we mentioned above, it found that while the Canberra conferencing program did no better than court for juvenile property offenders, and actually resulted in a slightly worse rate for drink driving offenders, it worked most effectively for young violent offenders who had been assigned to a conference, whose rate of reoffending was 38 percent lower than those assigned to court (Sherman et al 2000).

We already know that concerns exist about the potential for netwidening, for inadequate protection of offender rights in the context of non-judicial processing, and for conferences to be potentially coercive settings especially for young people (Warner 1994). They may be unduly intrusive and have the potential to impose harsher outcomes than would be meted out in court (Wundersitz 1996). They also may lack consistency and proportionality because of the focus on harm to the victim (Mason 2000). Concerns have also been expressed about the coercion of victims (see for example Reeves & Mulley 2000). However, results from RISE (Sherman et al 1998, Strang et al 1999) indicate that for the victims and offenders themselves, these considerations do not weigh heavily: both parties consistently report that they view conferencing as fairer than court and victims consistently indicate that they are more satisfied with conferencing than with court.

In the event that restorative justice programs prove worthy of extension beyond their present scope, experience to date indicate a number of issues that need to be addressed:

- it is necessary to identify what needs, benefits and outcomes are expected to be achieved by the program and to make decisions about the point of intervention, eligibility, voluntariness and admissions, referral arrangements and oversight and appeal processes.

- because the police, and to a lesser extent the courts, are likely to remain the gatekeepers for entry into any restorative program (absent statutory obligation to divert to conferencing, as exists in New Zealand), there must be high levels of consultation between the program administrators and the police at every level. Support only from above will not suffice: top-down direction by senior officers may not affect the rate of referral on the ground. Support only from below will not suffice either: a few enthusiastic junior officers are not likely to be able to influence referral beyond their immediate environs.

- Police and magistrates need information and training on a continuing basis about restorative alternatives so that they can make informed decisions about which offenders should be referred.

- A high degree of consultation is required with Aboriginal and ethnic communities and organisations in implementing restorative programs. This is already being done effectively in some locations in South Australia, Queensland and NSW, where conference convenors are local people who have already learned a great deal about the most effective ways of engendering positive attitudes towards the process and maximising the likelihood of compliance with agreed outcomes.

- State and Territory governments may be understandably cautious about committing resources to new justice initiatives when cost savings cannot be guaranteed, or even necessarily expected. Although there are in fact likely to be savings at the court and corrections end of the criminal justice system, it is unlikely that a successful program would provide net savings to government: families and communities need properly funded assistance to support effectively offenders who would otherwise be a direct charge on the public purse.

All these considerations would apply equally to the extension of restorative alternatives in welfare, school and other settings. We need assurance about their effectiveness through the conduct of rigorous evaluation studies, ongoing consultation with all the agencies whose cooperation is essential for the programs' viability and genuine consultation with Aboriginal and ethnic groups who feel especially marginalised in their dealings with government and whose input is essential to the success of the program.

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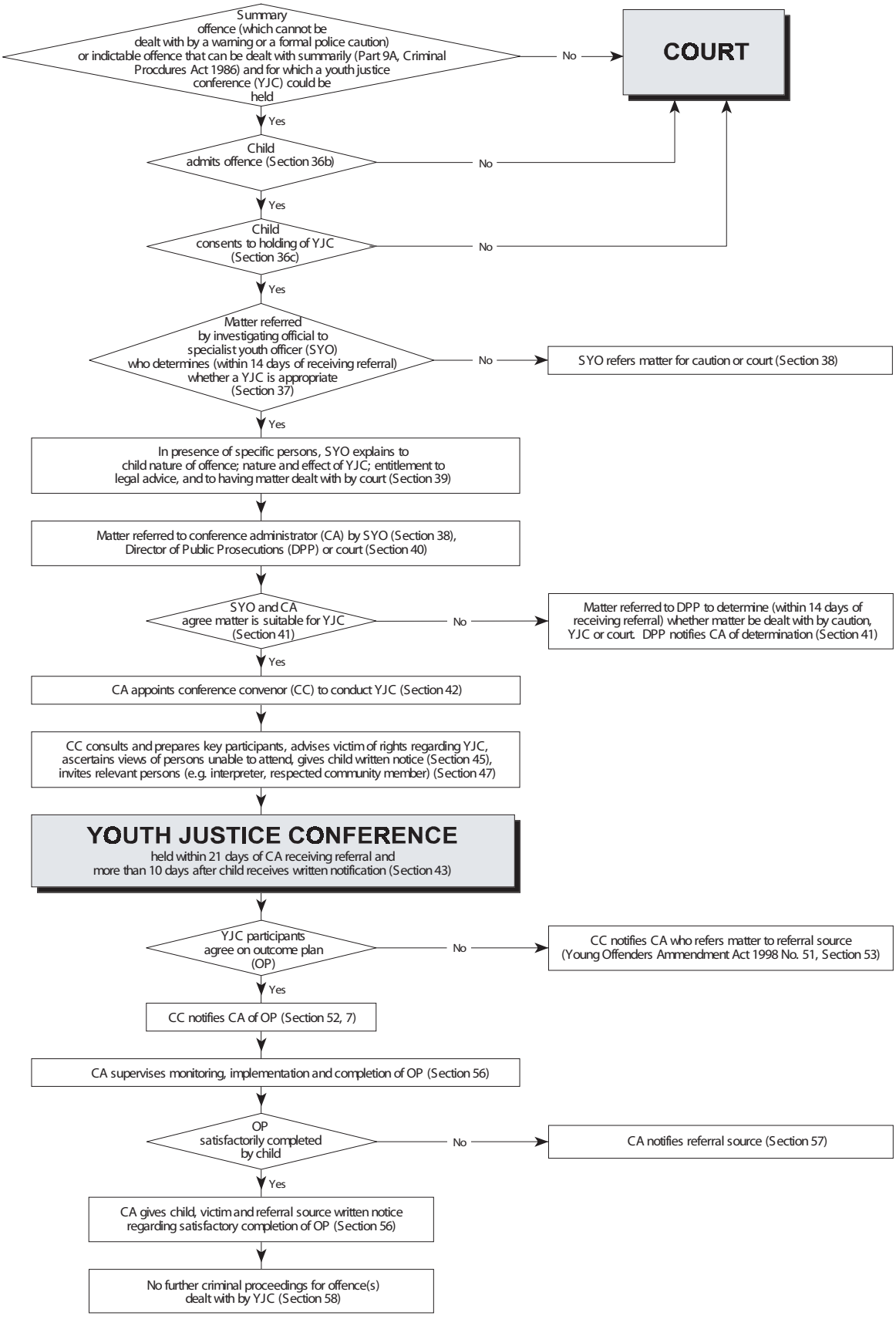
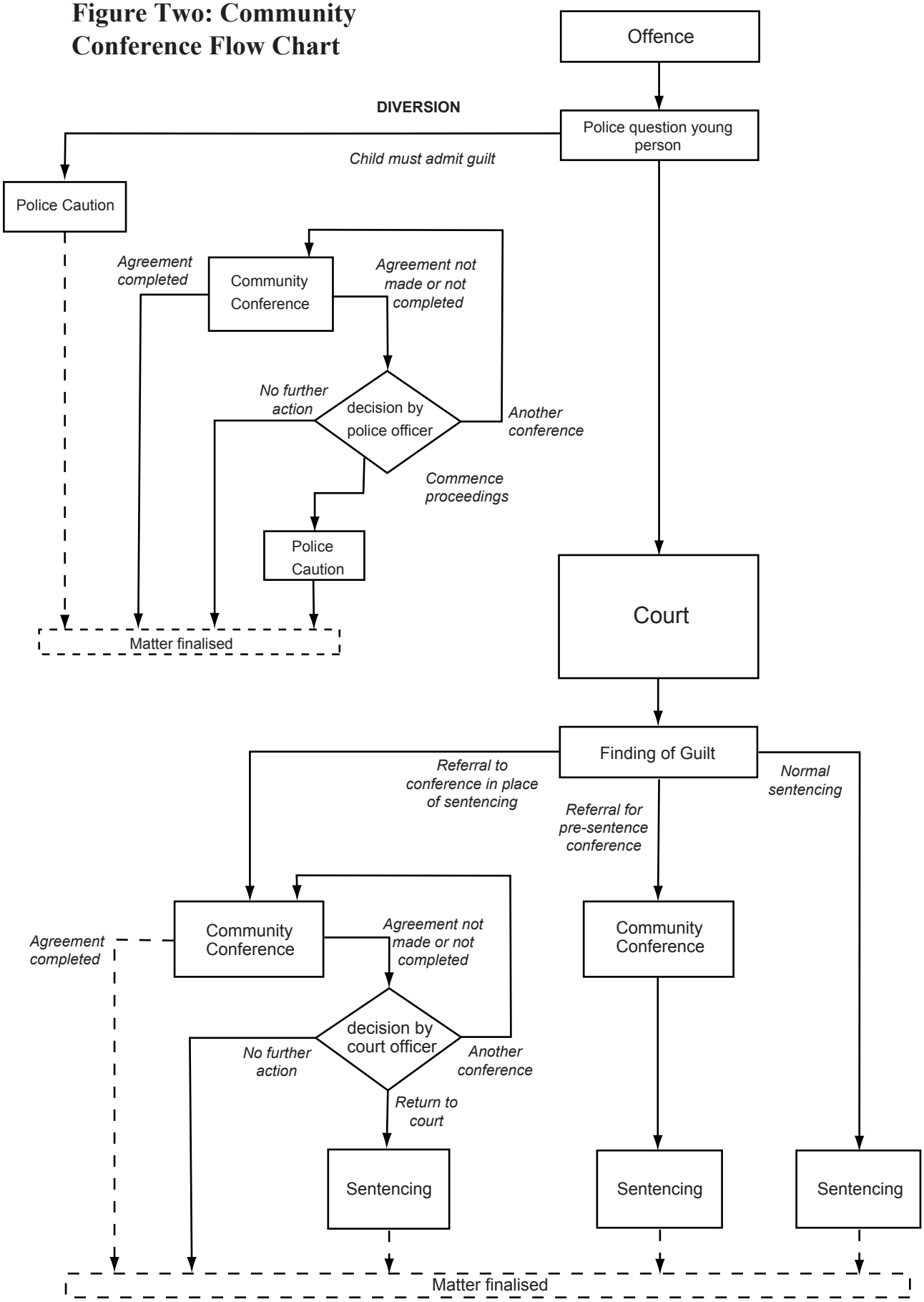
Figure 1: Overview of the operation of Youth Justice Confencing in NSW



From Trimboli L 2000, *An Evaluation of the NSW Youth Justice Conferencing Scheme*
Sydney: New South Wales Bureau of Crime Statistics and Research, Attorney General's Department, page 8

Figure Two: Community Conference Flow Chart



APPENDIX – RELEVANT LEGISLATION

New South Wales
Young Offenders Act 1997
http://www.austlii.edu.au/au/legis/nsw/consol_act/yoa1997181/index.html
Relevant sections: Part 5 - Youth Justice Conferences (s34-s61)

South Australia
Young Offenders Act 1993
http://www.austlii.edu.au/au/legis/sa/consol_act/yoa1993181/index.html
Relevant sections: s3(3)(a)-(d), s7, s9-12

Queensland
Juvenile Justice Act 1992
http://www.austlii.edu.au/au/legis/qld/consol_act/jja1992191/index.html
Relevant sections: Part 1C - Cautions and Community Conferences, Division 2 - Community conferences (s18A-s18P)

Western Australia
Young Offenders Act 1994
http://www.austlii.edu.au/au/legis/wa/consol_act/yoa1994181/index.html
Relevant sections: Part 5 - Dealing with young offenders without taking court proceedings (s24-s40)

Tasmania
Youth Justice Act 1997 (No. 81 of 1997)
http://www.thelaw.tas.gov.au/view/81%2B%2B1997%2BAT@EN%2B
Relevant sections: s5, s9, s13-s20