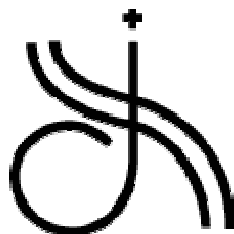


JesuitSocialServices

Development of a Young Adult Restorative Justice
Conferencing Proposal for Victoria-Final Report
July 2006



Jesuit Social Services

Preface

The Victorian Justice system is a world leader in developing enlightened and effective strategies for responding to criminal behaviour. Minimising incarceration and providing a range of community based alternatives has been a hallmark of this leadership. Consistent with this approach, Jesuit Social Services proposes an extension of the range of program options open to Magistrates in Victoria.

This report identifies the need to expand the scope of restorative justice in Victoria and recommends a number of steps to achieve this end. Principally, this report identifies the need to allow more young adult offenders aged 18 to 25 years the opportunity to consider participating in a restorative justice conference. Group conferencing in Juvenile Justice has already been a proven success among adolescents. In 2003 Jesuit Social Services commenced operating the metropolitan group conferencing program. This program offers young people appearing before the criminal division of the Children's Courts, who would otherwise enter the Juvenile Justice system, the opportunity to participate in a group conference as an alternative to being placed on a correctional order.

Our current program brings together the young offenders and victims of crime (or their representatives) together with their families, to develop a plan that attempts to repair the harm done by the crime and to prevent further offending. Through this process, 80% of participants have been successfully diverted from the juvenile justice system, and the reparation needs of victims have been addressed. Subsequently, in December 2005, the Victorian Parliament passed the first legislative provision for group conferencing in the Children's Court, to be rolled out in October 2006.

While this represents an important first step, young adults are also responsive to restorative justice conferencing. Jesuit Social Services recommends expanding restorative justice conferencing to those young adults aged 25 years and under, considered suitable by the courts.

By implementing the recommendations made in this report:

- Young adults with no prior adult court appearances would be eligible to access restorative justice conferencing through referral under the existing *Criminal Justice Diversion Program*.
- Young adults found guilty by the courts at the pre-sentence stage may also be referred to restorative justice conferencing.
- All sex offences and individuals committing serious crimes of violence would continue to be excluded from the program (as they are in the existing Children's Court program).

- Young adults would be required to complete their reparation agreements prior to the court approving diversion from court appearance, or prior to sentencing from the court.

The program could be extended to young adults already on existing correctional orders where, for therapeutic reasons, it was considered appropriate that a restorative justice conference could assist in the young person's rehabilitation and in victim healing. Referrals could be received from victims or their representatives. This stage of the proposal is based upon the existing post-sentencing adult program operated by the Restorative Justice Unit in the Department of Corrective Services in New South Wales.

This report is the product of extensive consultation with key stakeholders in the adult and Children's Courts jurisdictions and reflects a broad consensus on the modifications necessary to achieve a young adult restorative justice program. As a result, it builds upon the last ten years of restorative justice conferencing practice in the Children's Court to offer the adult courts a new sentencing alternative that will meet with support from key stakeholders.

By implementing these recommendations Victoria has the opportunity to enhance its reputation as a world leader among progressive criminal justice systems.

I commend this report to you.

Julie Edwards
Chief Executive Officer

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Acknowledgements

Jesuit Social Services wishes to acknowledge the generous financial support of the Myer and Reichstein Foundations in the development of this policy proposal paper.



THE MYER
FOUNDATION

This framework is based on consultations with an advisory group of key stakeholders and people interested in the further development of restorative justice in Victoria. As part of the consultation Jesuit Social Services released a policy discussion paper to encourage exploration of the use of restorative justice conferencing for young adult offenders aged 25 years and under. Feedback was received from a wide range of organizations and community members. While the views expressed in this document do not reflect those of any one individual member of the advisory group, we wish to acknowledge some of the key people who contributed to this work below.

Key Stakeholders and Advisory Group Membership

Eugene Cullity	Chairperson
Carmel Benjamin	Court Network
Peter Condliffe	Barrister, Owen Dixon Chambers, President, Victorian Association of Restorative Justice
Peter Coglan	Manager, Brosnan Centre, Jesuit Social Services
David Daley	Director, Community Corrections, Corrections Victoria, Department of Justice
Kathy Douglas	Lecturer, Legal and Justice Studies RMIT University
Julie Edwards	Chief Executive Officer, Jesuit Social Services
Mick Francis	Chief Executive Officer, Magistrates' Court of Victoria
Tony Hayes	Project Coordinator, Community Justice Program, Jesuit Social Services
Andrea Lott	Chief Executive Officer, VACRO
Noel McNamara	Crime Victims Support Association Inc
Andrew McGregor	Dowling McGregor and Thomas Barrister Solicitors
Paul Newland	Manager, Systems and Development Quality, Youth Substance Abuse Service
Simon Moglia	Victoria Legal Aid
Jan Noblett	Manager, Juvenile Justice and Youth Services Branch, Department of Human Services
Father Peter Norden	Policy Director, Jesuit Social Services
Laurel Sutton	Manager, Youth Affairs Office, Victoria Police
Teresa Zeralla	Manager, Disputes Settlement Centre

Formal feedback on the policy discussion paper was received from the following individuals and organizations:

- Noel McNamara and the Crimes Victims Support Agency
- Victoria Police

Victorian Aboriginal Legal Service

Ian Gray, Chief Magistrate, Magistrates' Court of Victoria

The Hon. Rob Hulls MP, Attorney General

Kathy Douglas, Lecturer RMIT University

The Hon. Sherryl Garbutt MP, Minister for Children, Minister for Community Services

- Office of Children, Juvenile Justice and Youth Services Branch, Department of Human Services.

About Jesuit Social Services

Jesuit Social Services is a community service organization that believes in the underlying value and dignity of human life. The organization engages disadvantaged young people, families and communities to promote their health and well-being and address their social exclusion. This is done by forming relationships as a basis for the effective provision of direct services, building capacity and effecting change through policy, advocacy and research.

The following characteristics flow from the pursuit of our mission:

- 1 Respecting the value, dignity and rights of each person.
- 2 Establishing robust relationships to enhance social inclusion.
- 3 Developing programs that facilitate growth and change.
- 4 Shaping public policy through research, advocacy and action.
- 5 Advocating with and for marginalized members of society.
- 6 Being committed to working in areas of unmet need.
- 7 Embracing differences of race, culture and faith.
- 8 Expressing Christian values and the mission of the Jesuit Order.
- 9 Working collaboratively for the greater good.

Jesuit Social Services is a progressive, vibrant organization with over 100 employed members of staff, and over a hundred active volunteers. We work in some of the most difficult and demanding areas of human service, including the areas of crime, addiction, mental illness, long-term unemployment and entrenched social disadvantage.

We are also involved at the community level, with inner city neighbourhoods in high-rise public housing estates. We have a particular involvement with the Vietnamese and the Horn of Africa communities. Jesuit Social Services, through its policy and research unit, is involved in public policy, research and advocacy on behalf of the disadvantaged members of our society.

We work closely with politicians, senior bureaucrats and the media, because we believe that collaboration in these areas is critical in bringing about change and a more just social order.

Specifically Jesuit Social Services operates the following programs and services:

- The **Brosnan Centre**, named after the late Father John Brosnan, provides support and services for young people aged 17-25 years being released from youth training centres and adult correctional facilities. The Brosnan Centre also operates **Perry House**, which provides supported residential care young offenders with an intellectual disability.
- **Community Justice Program**, operates the metropolitan juvenile justice group conferencing program for young people before the children's courts.
- **Connexions**, provides intensive outreach support and counselling programs to young people 16-25 years with a dual diagnosis of mental illness and substance abuse.
- **XLR8 Mentoring** operates in the outer southern and eastern regions of Melbourne and provides mentors for young people 12-21 years who have been involved in the juvenile justice system and are leaving care.
- **Communities Together** is a community development program working towards neighbourhood renewal with communities in the high-rise public housing estates in the City of Yarra. It includes the **African Youth Project**, which is based in Flemington and works with young people and their families from Horn of Africa communities.
- **Vietnamese Welfare Resource Centre** is based in the high-rise housing estate of Flemington responding to the needs of the Vietnamese Community
- **Gateway** provides pathways to education, training and employment for young people with complex problems. It includes the TOE program (providing adventure based outdoor experience and wilderness programs), the Arts and Culture Program (engaging young people in the visual arts and music studios) and the Gateway Kitchen.
- **Parenting Australia** provides a range of education, training and consultancy services that aim to assist isolated, vulnerable families with diverse needs. Current programs include Conversation Starters (working with vulnerable families in times of transition), and Support after Suicide.

- **The Ignatius Centre** is the policy and research arm of the organization. It focuses on policy issues relevant to our practice areas.

What is Restorative Justice Conferencing for Young Adults?

Restorative Justice Conferencing for young adults 18-25 years involves a facilitated meeting of the young adult defendants, their supporters, the victims and their supporters, (or their representatives), together with the police informant, the young adult's legal representative and other community representatives. The purpose of this meeting is to address the current offences and prevent further offending. The aim is to develop a reparation agreement with the victim(s) that allows the young adult offender to make amends for their offence. Other benefits include:

- Providing an opportunity for the young adult to accept responsibility for their offending in a real and tangible way
- Providing a safe mechanism for active victim involvement in the adult court criminal justice process
- Empowering the supporters of the young adult and the victim(s), which usually includes family members, through their involvement in the resolution process of the conference.

Young adult defendants who would otherwise receive a supervisory order can be referred to the program either via the existing Criminal Court Diversion program, (for first time offenders or others who are deemed appropriate for this program), or at the pre-sentence stage following a finding of guilt by the court. The reparation agreement must be completed by the young adult defendant before the diversion process is completed or before returning to court following the pre-sentence adjournment. The court retains its power to determine the final sentence it wishes to impose, after receiving a court report from the convenor of the conference on the process and full outcomes, including the reparation agreement and evidence of its full implementation.

History of Group Conferencing in Victoria

The first Juvenile Justice group conference pilot project commenced in April 1995 and was funded by the William Buckland Foundation (ANZ Trustees) for the first three years and operated by the then Mission of St James and St John (now Anglicare Victoria). Over the next five years the program continued to operate and was externally evaluated by the University of Melbourne and other external consultants. These evaluations showed that the program was offering something new to the Children's Court and was valued by the court as part of its varied response to the needs and deeds of young people.

The Victorian government accepted financial responsibility for the program in 1997. Further evaluations were funded by the government to compare conferencing outcomes with probationary results and to further investigate recidivism outcomes. These studies found the program was popular with the courts and valued by most participants. The rate of recidivism proved to be marginally better following a group conference compared with existing supervisory dispositions with matched populations. For group conferencing cases, diversion results were exceptional. Over 80% of young people received a non-supervisory order from the courts following a group conference.

In November 2005, The Children, Youth and Families Act was passed by the Victorian Parliament and provided for specific legislation to allow the Children's Courts to defer sentencing to allow a group conference to take place. In October 2006 it is anticipated that group conferencing will be expanded to all Children's Courts in Victoria.

Rationale for Young Adult Conferencing Proposal

In the Policy Discussion paper released in November 2005 by Jesuit Social Services, the following rationale was proposed in support of the need for a young adult conferencing proposal.

- The adult court system should have access to a proven restorative justice intervention that benefits victims, allows offenders to accept more responsibility for the harm of their actions and encourages community involvement in the development of credible reparation agreements and their implementation.
- The use of a conferencing rather than a mediation model strengthens social cohesion. The communities of support which form around the victims, offenders and professionals involved, collectively work out responses, roles and outcomes in the development of a reparation agreement. This process develops and enhances positive relationships. These social networks bring informal support and

resources together with the formal professional resources available to the conference in a collective problem solving process.

- Diversion from correctional intervention is a likely outcome for those young adult offenders who complete their reparation agreements. This is based upon the experience of the Juvenile Court program and the experience of other Australian and overseas adult court conferencing programs utilizing restorative justice.
- Conferencing builds moral capacity in young adults through exploring the harm caused by offending and implementing practical reparation agreements to make amends to the victims.
- Conferencing is a genuine diversion from correctional intervention, as it requires the voluntary consent of the defendants and their active participation in the preparation for the conference, the conference itself, and implementation of the reparation agreement. While the court ultimately decides whether correctional intervention is necessary, conferencing can provide a credible pathway to avoid involvement in the correctional system. It is not a pseudo-correctional intervention.
- Young adults who have a greater capacity than children to complete reparation agreements. It is therefore more likely that victims will receive reparation and genuine apologies where young adults are involved in conferencing. The aim in the young adult model is for reparation agreements to be completed before diversion or final sentencing takes place.
- Higher levels of victim participation in decision-making can be expected where a victim-sensitive approach is practised, which encourages their appropriate involvement.

How it might work

The following flow-chart outlines how cases could be referred for a restorative justice conferencing intervention. During the consultation process there was agreement from all the key stakeholders that these points of entry into the program were the most appropriate. It was also suggested that the implementation process should take place in two stages to allow the program to build community support.

Two points of entry are proposed. One is via the existing criminal court diversion program and the other is through the power of the court to defer sentence for a period of up to six months.

Restorative Justice Conferencing Flow Chart for Young Adults Aged 18-25 years

Alternative Sentencing Pathways to Restorative Justice

Stage 1 Implementation - Court Referrals

Diversion Referrals

Restorative justice conferencing provides an additional program option within the existing Criminal Justice Diversion Program by providing Magistrates with the opportunity to consider diversion for cases where a more significant sentencing option may otherwise have been imposed.

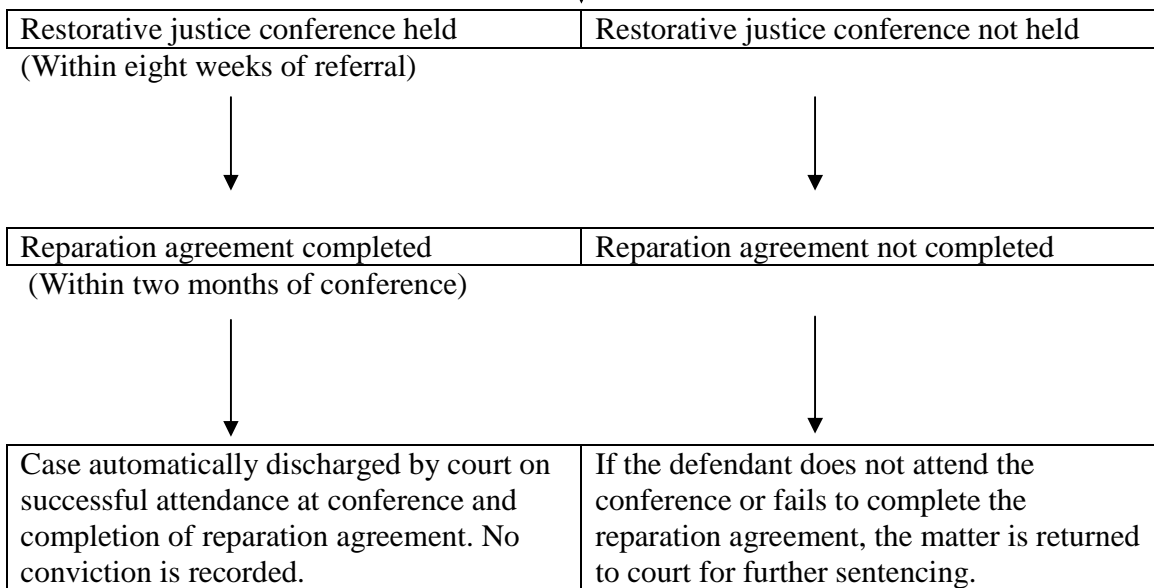
S128A Magistrates Court Act 1989 Adjournment to undertake Diversion Program

- Initial inquiries can come from police, police prosecutors, legal representatives, magistrates and the defendant
- Defendant acknowledges responsibility after legal representative has received a full brief and advised their client of the risks and benefits of the restorative justice process
- Same referral criteria as existing Juvenile Justice Group Conferencing Program – excludes serious crimes of violence and all sex offences, but offences are more serious than existing diversion cases and require a significant restorative intervention if the defendant is going to receive diversion
- Criminal Justice Diversion Program Coordinator assesses the defendant as suitable for diversion and likely to benefit from a group conference
- Criminal Justice Diversion Program Coordinator receives expressions of interest from victim(s) for involvement in the restorative justice process and police assist in contacting the victims
- Police prosecutor and defendant consent to referral
- Criminal Justice Diversion Program Coordinator contacts Restorative Justice Conferencing Program to discuss the matter, establishes approval to proceed with referral.



Magistrate hears application for diversion in chambers and may adjourn the case provided certain conditions are met. These include:

1. The defendant to “attend a restorative justice conference and be willing to implement a reparation agreement arising from the conference”.
2. The court will receive a written report from the convenor of the conference which confirms the defendant’s attendance, agreement to a reparation arrangement and completion of the all the tasks involved in the reparation agreement.



Deferral of Sentence Referrals

The deferral of sentence referrals take place after a finding of guilt by the court and before final sentencing by the court. (The current Children's Court Group Conferencing program becomes an option at this point of the sentencing process.)

Section 83A Sentencing Act 1991 Deferral of Sentence or Pre-sentence Referrals (Currently maximum 6 months deferral, Magistrate's Court only, must be aged 18-25 years.)

- Young adult offenders 18-25 years, pleading guilty and found guilty of offences in the Magistrates Courts
- Same exclusions as diversion cases, no sex offences or serious crimes of violence.
- Offender makes informed consent to referral
- Usually legal representative proposes referral after consultation with their client
- Magistrate stands the matter down for an at-court immediate assessment to be conducted by Corrections Victoria Court Advisory Staff who may consult with Restorative Justice Program as part of this process
- If staff finds the offender suitable, court is advised immediately.



Court adjourns the matter for 6 months on the condition that the offender attends a group conference, attends appointments during the preparation for the conference and completes any reparation agreement negotiated at the restorative justice conference. Other conditions may also be imposed.



Pre-conference preparation and consultation with offender, his/her support group, victim(s) and support base, police informants, legal representative, and other persons affected or involved. Neutral venue hired – 6 weeks



Restorative justice conference held- 1-2 weeks



Reparation agreement implemented- 3 months



Court report written – 1 week



Return to court for final sentence - which takes into account the process and outcomes of the restorative justice intervention and the performance of the defendant on deferral of sentence.

Stage 2 Implementation

Therapeutic Post Sentence Referrals

At Stage 2, young adults on existing correctional orders may be referred as part of their rehabilitation or case management plan. Victims or their representatives can also make a referral on a voluntary basis. The current NSW adult post-sentencing program operates at this stage of the sentencing process. Referrals come primarily for therapeutic reasons (e.g. victims seeking closure), and can include very serious offences.

Referral criteria:

- No court involvement, no diversion, voluntary referrals
- Young people aged 18-25 years on correctional orders, community based or custodial (no offence exclusions at this stage)
- Custodial orders can be prior to release or on parole
- Referrals can come from victim(s) or their representatives, offender or anyone involved with the offender such as a case supervisor or prison chaplain.



Reasons for referral

Following referral, assessment and briefing is conducted by Restorative Justice Convenor to determine whether a restorative justice conference would be an appropriate response. Reasons may include:

- To assist case management objectives
- For personal development of the offender
- To reduce recidivism
- If it is likely that the victim and offender will have more contact, there may be a need to negotiate an agreement regarding contact arrangements and prevention of further offending
- Offender wants to take active responsibility for prior actions as part of his/her rehabilitation objectives.

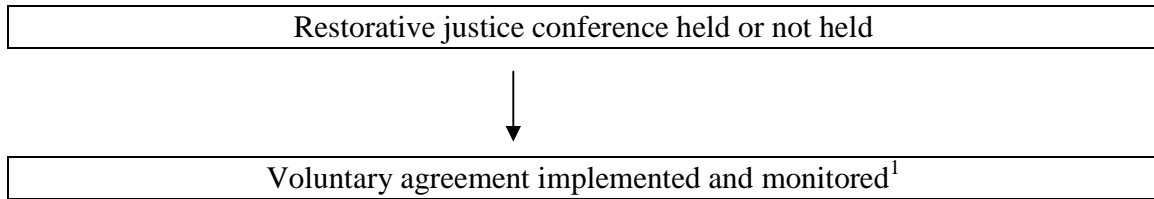


Assessment

Motivations and expectations of all parties are carefully assessed. The views of correctional case managers are consulted in this assessment. Realistic objectives are determined for the conference. These are negotiated with all participants.

- Assessment and briefing of the offender and their supporters
- Decision made to proceed
- Assessment and briefing of the victim(s) and their supporters
- Decision made to proceed
- Assessment and briefing of what professional supports are required for a successful conference (i.e. police, Legal and/or other community representatives)
- Decision made to proceed.





The Values of Restorative Justice Conferencing

“The greatest risks identified by most critics involve implementation which fails to be true to the values underlying restorative justice. It is crucial that the values be clearly understood and frequently articulated to guard against the dangers of straying from them in practice.”²

Jesuit Social Services believes that the values of restorative justice conferencing for young adults will resonate with broad community values of building relationships, respect, responsibility, remorse, repair of harm, recovery for both victim and offender and the prospect of restoration for the offender. These values highlight the intention of restorative justice to more closely reconcile the consequences of offending with the impact on victims and the community. While restorative justice conferencing operates within the criminal justice system, it is a voluntary diversionary strategy and there are no sanctions applied within the program other than application of correctional intervention by the court, if the young adult offender does not complete the reparation agreement.

The values expressed in restorative justice conferencing are identified in Diagram 1 of Pg 20. These are:

- **Relationships**

At Jesuit Social Services our primary aim in Community Justice - the name of our group conferencing program - is the “building of relationships”. Crime involves the violation of people, property and the relationships that exist between and within these entities. Restorative justice views crime from this perspective and the violation imposes obligations and liabilities on various parties to the incident.

¹ The assessment procedures are based upon the procedures followed in the *New South Wales Restorative Justice Unit Department of Corrections Draft Manual of Procedures Victim Offender Group Conferencing*.

² Building Community Support for Restorative Justice Principles and Strategies by Kay Pranis (previously Restorative Justice Planner Minnesota Department of Corrections). 2000 (Available at www.realjustice.org)

Our priority in bringing together victims, offenders and their affected communities is to ensure their emotional and physical safety. While their participation in conferencing is voluntary, all parties involved are well informed and prepared by trained facilitators. It is a great challenge to all participants to have the courage to attend a conference. It is through the acknowledgement of our “collective vulnerability” as flawed human beings, who need others in order to survive and prosper, that a solidarity is created. This enables the group to work together to heal the impact of the offence and create a powerful resolution to the particular circumstances of the offences.

- **Respect**

In a group conference everyone sits in a circle. The circle is symbolic of the equal right of every human being to be treated with dignity and respect. All human beings are capable of error and improvement. Those most affected by the harm are given priority in speaking – for example the victim(s) and their supporters and the supporters of the offender. Rarely are their voices heard in the criminal justice system.

Cultural and spiritual differences of all participants are considered in the preparation and design of the conference. Decision-making at the conference is handed over to the participants. The participants are empowered with information from the professionals (e.g. the police, legal representatives and community professionals) but professional domination is avoided.

The process and guiding rules of the conference are explained by the convenor prior to commencing, and agreed upon by all participants to ensure transparency in decision-making and fairness in the process. Any agreed outcomes must be considered fair, no more onerous than existing court sentencing outcomes and must avoid any stigma. Victims are not exploited as props for a program oriented primarily for the rehabilitation of offenders.

- **Responsibility**

The group conference cannot proceed unless the young adult offender(s) have accepted responsibility for their contribution to the offence and its harmful impacts. This acceptance is an active response, where the conference is holding them accountable. They must tell their story of the offence which involves “owning up” to their involvement and telling the truth of their involvement.

But it is not only the offender that responsibility falls upon in restorative justice. Truth telling affects everyone at the conference and all participants are encouraged to speak honestly about the incident and the harm and how to heal its effects. Community members take responsibility by participation in a collective problem-solving process that involves the acknowledgement of other participants’ pain and suffering. Responsibility involves being accountable for the implementation of outcome agreements. The proposal to locate the young adult conferencing program at both diversion and deferral of sentence

stages requires the **young adult offender to complete the outcome reparation agreement prior to the court agreement to diversion.**

- **Remorse**

A group conference provides the young adult offender with an opportunity to demonstrate genuine remorse to the victims and their supporters. This can be a very powerful moment in the conference and it also provides the victim with an opportunity to accept the apology and demonstrate forgiveness. Often there are multiple expressions of apology and remorse made by the young adult offender during and after a conference in the informal proceedings that take place³. There is no obligation on the victim to accept any apology or expression of remorse on the part of the offender, although this often happens.

This expression of remorse is also extended into the post-conference phase where the young adult offender is frequently required to formulate and write a personal letter of apology to the victim. This is sent to the victim, via the conference convenor, after the magistrate has seen a copy of the letter.

Equally powerful in providing relief to the victim and recognition for the harm done can be the expression of empathy by the supporters of the offender and regret for the impact of the offender's actions on the victim and their supporters.

- **Repair**

Restorative justice conferencing provides an opportunity for the young adult offender to move towards repairing the damage that has been done. The focus moves from the past event of harm to the present capacity to heal damaged relationships and harms. The young adult offender is provided with an opportunity to "put things right".

The active demonstration of remorse is reflected in the reparation agreement, where the young adult offender makes amends to the victim in a tangible, agreed outcome plan.

Victims are able to make suggestions for plans and frequently the young adult offender(s) and their support group take up these suggestions. Victims can be compensated financially by the offender making payments through an intermediary party such as the conferencing program (thereby protecting privacy). Victims can nominate a charity of their choice, where a young adult offender might be able to complete voluntary work for a set number of hours.

The young adult offender may also undertake reparation activities directed towards others affected by their actions, such as local communities. Community professionals and the support group for the young adult offender will act to support the agreed outcome plan and help ensure the plan is completed by the designated time or court return date.

³ The South Australian Study noted this finding in their final report. See section 4 of this document.

- **Recovery**

A group conference helps to resolve the impact of crime on victims and communities. There are usually many unanswered questions surrounding any crime and the conference provides a safe mechanism for victims and others to ask questions and receive answers from the young adult offender. Through the telling of the stories of “what happened” and “how people were affected”, participants are able to gain a more complete picture of the events; in effect, the conference acts as a debriefing process.

Restoration implies that things are repaired or made good. The process from preparation to completion of the reparation agreement is aimed at helping all the participants deal with the harm and find resolution.

- **Rehabilitation**

The group conference also aims to deal with the rehabilitation needs of the young adult offender. Most crime is reactive and thoughtless. The conference forces the offender(s) to reflect a number of times on their actions and the consequences of these actions in the preparation for the actual conference, and in the implementation of the agreed outcome plan. Through hearing about the real and powerful social and psychological impacts of their crime on the victim, and on the supporters of both the victim and the offender, the offender can forge a determination and resolve to avoid any repetition of such a harmful act.

In addition, the conference highlights the unmet needs of the young adult offender and other contributing factors relating to the offence committed. Victims are partly motivated to attend the conference because they want to ensure that there are no further victims. This inevitably requires the conference to address this in the outcome agreement.

While a conference is a micro-intervention and cannot address structural inequities in our society which contribute to crime, it can harness the resources of the immediate communities of care and support that surround the victim and the offender. As a professional, the convenor can identify in the preparation stage “What are the successful ingredients in this particular case for an effective conference?” and ensure that those resources are made available to the conference.

- **Restoration**

A group conference can draw upon participants’ highest potential through the synergy created when a group is working as one on creative problem solving. The young adult offender is given the opportunity to redeem him/herself in the eyes of those who care about them most in the world.

At diversion stage, there is the hope that if they complete the reparation agreement no adult conviction is recorded against their name, thus removing the potential barrier to employment that a recorded conviction may create.

At deferral of sentence stage, the court can divert young adult offenders from correctional supervision regimes after they have considered a report from the convenor on the young adult offender's **participation in the group conference and their implementation of the reparation agreement.**

In the post-sentencing stage, the therapeutic value of the conference for the offender is that it offers an opportunity to accept responsibility for the harm done and to repair some of the harm and move forward in their rehabilitation objectives.

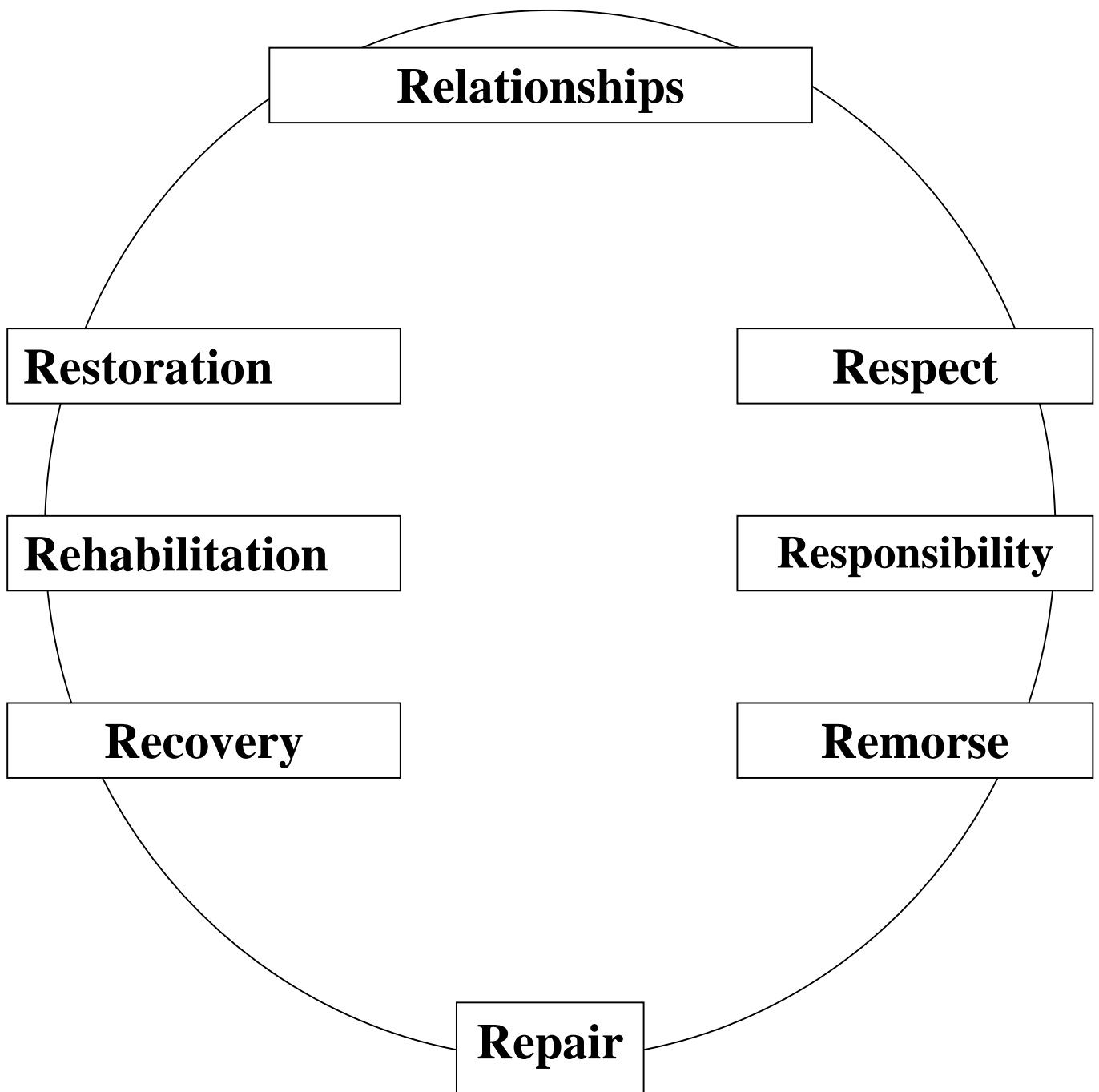
In all stages the victim and their supporters are able to actively participate in giving their account, ask questions concerning the offence(s), make suggestions concerning a reparation agreement and contribute to the decision-making process in the conference. In addition they are likely to receive direct reparation from the offender in the form of a written apology, community work, financial restitution and symbolic forms of reparation particular to the circumstances of the case.

The courts provide this opportunity for the people most affected by crime to participate and the results of the process help the court find a solution that redresses a wrong and helps people recover their strength of character and community. *“Restorative justice nurtures hope of healing for victims, change for offenders and greater civility for society”*⁴

⁴ Restorative Justice in New Zealand: Best Practice Part C Statement of Restorative justice Values and Processes pg 3 at www.justice.govt.nz/restorative-justice

Diagram 1 The Values of Restorative Justice Conferencing

Young Adult Restorative Justice Conferencing



Feedback from Stakeholders

The policy discussion paper on the development of a young adult restorative justice proposal was sent via mail to a range of stakeholders and the documents could also be downloaded from the JSS website at www.jss.org.au. The responses received from stakeholders who received copies of the Executive Summary and Policy Discussion paper were very positive. Some agencies were supportive, but chose to reserve their comments should the government decide to propose such a program.

Response from Chief Magistrate Ian Gray

Chief Magistrate Ian Gray writes, *“the existing Juvenile Justice Group Conferencing Program operating in the Childrens Court will be extended in 2006 with legislative framework included in the Children, Youth and Families Act 2005. This development reflects the success of the program and its benefits to young offenders, victims and respective communities. The Magistrates Court of Victoria is committed to the development of restorative justice approaches in line with recommendations made in 2004 in both the Attorney-General’s Justice Statement and the Court’s Strategic Directions Paper.*

The Neighbourhood Justice Centre-to commence in Collingwood in 2007 will provide a responsive, problem-solving approach to breaking the cycle of offending, governed by principles of therapeutic and restorative justice. The Moorabbin court complex, also due for completion in 2007 will be comprised of six court rooms and is a project designed to support the delivery of justice facilities by providing modern functional and secure facilities”.

“I consider both the Neighbourhood Justice Centre and the new court at Moorabbin as potentially suitable pilot locations for your proposed program, involving up to 200 young adult offenders. Subject to further consultation to consider issues such as legislative framework, referral processes, resources and accommodation, I offer my support for the proposed initiative.”

Response from Crime Victims Support Association Inc.

Noel McNamara from the Crime Victims Support Association had the following statements to make about the proposals contained in the policy discussion paper.

“Having had the pleasure of helping the Jesuit Restorative Justice Young Adults Conferencing proposal, we believe this innovative program is ideal for young non-violent offenders up to the age of 25 years.

One

For first timers, and as an enhancement to our existing Criminal Justice Diversion program that now exist in all Magistrates Courts, a conference will allow victims- if they so wish-to meet the offender at mutually convenient times at a safe location-This differs from the current program where the victim is only given the option to turn up to the court at a specified time to suit the court. Most don't attend because of that.

Two

At Deferral of Sentencing stage, after a finding of guilt but before sentence.

“Unlike the children’s court program, the young adult proposal requires the offender to complete the reparation agreement in full prior to having the matter dismissed by the court at diversion or before receiving their final sentence upon return to court. This will result in higher levels of victim satisfaction with restorative justice because the reparation must be completed before the court makes its final decision.

As the Crime Victims Support Association and Victim Support Agencies are involved, it leads us to play a crucial role in conferences by supporting and representing victims, for there will always be victims who do not want to meet the offender face to face but want victim representation, and that they need to be compensated for their time and other expenses in this essential service. Also, when victim don't wish to be involved, victim support agencies attend conferences and do victim awareness training. Victim Support agencies has provided this service to the program. ”

Response by Victoria Police

Victoria Police indicated their formal support for the proposal. “The Victoria Police Youth Affairs Office has been extensively involved in the development of group conferencing in Victoria and as such is supportive of the concept for a similar restorative justice model for 18-25 year olds”. They expressed the hope that a similar forum to the Children’s Court Group Conferencing Advisory Committee be established to be the “driving force for the implementation of this model where Victoria Police and other government stakeholders would have a key role in the development of this concept”.

They noted that the “proposed model would need to be cognizant that the public perception of sentencing for adults may not be as supportive for older offenders as they have been for the youth model”. Further, the key issue for Victoria Police is that the proposed model would have “significant resource and financial implications in both the development and delivery of the model”. As a result, Victoria Police supports the staged implementation of the proposal as suggested in the policy discussion paper.

Response By Victorian Aboriginal Legal Service (VALS)

While the Victorian Aboriginal Legal Service is concerned about the general trend towards more harsh sentencing, as evidenced by the proposal to abolish suspended sentences, it supports the extension of the existing Juvenile Justice Group Conferencing

Program to young adults up to age 25 years. They support the use of “*sessional convenors and strongly support the recruitment and training of indigenous convenors, preferably from regional and metropolitan Victoria.*”

“The suggestion of consultation with RAJACS (Regional Aboriginal Justice Advisory Committees) is a sensible one. VALS values the use of trained indigenous convenors and consultation with RAJACS and “urge Jesuit Social Services to give prominence to this issue on the basis that Kooris are over-represented in jail and have a high breach rate on community - based orders. In addition, Kooris often do not benefit from mainstream diversion initiatives.”

VALS were concerned about locating the program in the criminal justice diversion program due to police having a veto power and that Koori people have a poor track record of accessing this option. VALS also believed that the requirement for no prior convictions is a bigger impediment for indigenous Australians. They support it being applied at the deferral of sentence stage. Perhaps the solution lies in increasing the participation rate of Kooris in the Criminal Justice Diversion Program with the help of the program development and associated consultation work required before the young adult conferencing program could commence. Chief Magistrate Ian Gray mentions the need for specific project implementation work in his supportive reply.

VALS did not support the “*pre-emptive exclusion of particular types of matters*”. VALS supports the primary objective of restorative justice conferencing as empowering of the victim and the offender and their communities of support to act restoratively. Consistent with this view, VALS states “*there is value in conferences being able to proceed even in cases where the victims participation is not possible. In this case the victims’ advocates can play a useful role*”.

Response by Office of Children, Juvenile Justice and Youth Services Branch, Department of Human Services

“The Juvenile Justice Group Conferencing Program may be transferable to an older cohort of young offenders at the lower end of the sentencing tariff. DHS experience supports restorative justice being a deferral of sentence option. It is not considered suitable for more serious offenders due to diminished likelihood of victim participation, the increased risk of revictimization of the victim and the increased difficulty of making meaningful reparation to the victim. In addition, group conferencing is a short-term intervention, which has only limited potential to address the more complex, longer-term needs of the serious young adult offender. A court suitability process is a useful method of providing advice to the court to ensure appropriate targeting of the program and in establishing consistency of interpretation of exclusionary offences such as “serious crimes of violence”.

“DHS experience suggests it has been useful for offenders to have at least commenced implementation of outcome plans prior to returning to court for final sentencing. DHS

supports the principle that access to the program be voluntary and the inclusion of victim awareness training.”

From Community Members

There was general support for the two locations for the program at diversion and pre-sentence and the staged implementation of the post-sentencing program. There was support for the current court diversion staff to be the gatekeepers for the diversion program and for the legal advisor to receive a copy of the police brief at the diversion stage.

There was also support for using existing legislation and for new legislation which would support the restorative justice intervention in the longer term. Corrections Victoria Court Advisory Staff are seen as the appropriate court advisory staff at the deferral of sentence stage, providing they receive appropriate funding to carry out this task.

There was support for the implementation of the outcome agreement to take place before the case was returned to court or diverted, rather than implemented after court, as in the juvenile court program. There was support for the staged implementation of the program, leaving the post-sentencing program for a second phase.

There was support for the court to remain the arbitrator of any failure of the group conference to reach an agreement on reparation (which is same as the existing Children’s Court program.) Similarly, the feedback supported the retention of the existing referral guidelines for the program in relation to the young adult model. There was support for excluding sex offences from the referral criteria.

The primary or overall goal of the program should be about empowering all parties, i.e. both victims and offenders and their respective communities. There was also support for the development of a pool of trained sessional group conference convenors from a more diverse range of people, in addition to the full time convenor model.

Finally, there was agreement that restorative justice conferencing should remain a voluntary option for all parties, even when ordered by the courts. Victim awareness training should be included in conferences where the victims refuse any form of involvement. The enforcement powers in relation to reparation agreements should be a matter for the courts.

Recent Evaluation Results from Adult Conferencing Programs

This section of the report looks at evaluation reports released since the Policy Discussion Paper on the Development of a Young Adult Restorative Justice Conferencing Program in October 2005.

- **The Final Report (August 2005) on the Adult Restorative Justice Conferencing Pilot in South Australia (produced by Flinders University)**

The final report notes that significantly fewer conferences were conducted than had been expected. This is a common finding and is consistent with results from the recent New Zealand Adult Pilots.

It supports the projections of the policy discussion paper that numbers can be anticipated to be small (below 200 per year in Victoria). This is because of careful assessment processes required and the challenge that restorative justice interventions presents to the courts and the potential participants. The Flinders University Study, however, notes that the significant increase in mediation referrals in Western Australia resulted from the high profile court-based approach of the mediation unit.

The general finding is that the conferences were generally **highly successful by almost any measurement.**

They recommend that the program needs a sound legislative footing to protect information in the conference in most circumstances. The importance of having a police presence at the conference was highlighted, as were the very high levels of victim satisfaction with the process.

- **The New Zealand Court Referred Restorative Justice Pilots (evaluated by The Crime and Justice Research Centre Victoria University, New Zealand)**

This extensive evaluation of 192 conferences and 539 offenders referred to the program took place in 2003/2004. It examined whether the program helped resolve the effects of crime for the victims, increased victim satisfaction levels and reduced the rate of recidivism by offenders compared with those undergoing conventional criminal justice processes.

They found that 92% of victims were pleased they took part in the process. Satisfaction levels for victims were high, but lower than those for offenders. The recidivism rate for conferenced offenders was statistically significantly lower than the matched comparison group of offenders undergoing conventional correctional supervision. Costs are comparable to supervisory costs for an offender for 12 months on a community supervision order (the program from which it is intended to divert offenders).

Conclusion

The Young Adult Restorative Justice Conferencing Proposal builds upon the experience and success of the Children's Court Group Conferencing Program, which is expanding statewide in 2006 under the legislative framework provided in the *Children Youth and Families Act 2005*.

It proposes that the young adult program be implemented in stages. The **first stage creates two entry points to the program:**

- An extension of the existing Criminal Justice Diversion Program that would allow for restorative justice conferences to be ordered for more serious offences with the approval of Victoria Police and the court;
- At the point of deferral of sentence (as currently happens in the Children's court program).

The main features of the proposed model in **Stage One** are:

- No change to the types of offences referred to the program i.e. excludes all sex offences and serious crimes of violence
- No change to the participants in the conference process; Victoria Police and legal representatives to be full participants and information providers to the process
- A commitment to increased use of both sessional and full-time convenors with increased capacity for Koori convenors and CALD convenors
- Consultation with Regional Aboriginal Justice Advisory Committees before commencing any program
- Young adult offenders to be required to complete the reparation agreement in full prior to diversion or return to court for final sentencing
- Corrections Victoria to be responsible for court-based suitability assessments at deferral of sentence stage
- Criminal Court Diversion program coordinators to be responsible for referral of cases at diversion stage
- Victims to be adequately supported at conferences by victim advocates and represented at conferences where face to face meetings are inappropriate. In other circumstances, where no victim is present, victim awareness training is to be provided in the conference.

The adult court remains in charge of the oversight and approval of matters referred to a restorative justice conference. It receives detailed court reports written by the convenor on the process and outcomes of the conference. The adult court determines the appropriate final sentence in all cases. It is proposed that an advisory committee be established, with an adult court Magistrate as the chair and representatives from all the stakeholders involved in the adult criminal justice system. There should be ongoing evaluation built into the program to monitor participant feedback and satisfaction, levels and types of reparation achieved, and recidivism rates for offenders who participate in the process.

The financial cost of conferencing requires that it should be targeted at defendants who would otherwise receive a correctional order. This justifies the time and effort and financial cost to Victoria Police, Victoria Legal Aid, victims groups, and the provider of

the conferencing program. It requires that careful assessments be conducted at court to ensure that only appropriate matters are referred to a restorative justice conference.

At stage two, a post-sentencing voluntary program is proposed, similar to the existing NSW adult post-sentencing program. This stage will enable victims or offenders on correctional orders to request a conference be held. Correctional Officers and other personnel involved in corrections, (such as prison chaplains and Prison Fellowship), often play a significant part in promoting the program's effective use in the healing and recovery process. The primary focus during **stage two** is to use restorative justice conferencing to help the offender and the victim in the healing process and to prevent further harm in the future.

There are considerable advantages to the Victorian community from this proposal. We know of no safer or better vehicle through which those *most affected* by crime can have a say in how a matter is resolved. Through the conferencing process, the healing potential in making amends for the harm that crime creates in our communities is significant. Victims can anticipate receiving direct reparation through offenders taking more responsibility for the impact of their actions. When successful, it is highly likely that the offender will avoid an adult court record at the diversion stage or avoid entering the correctional system at the deferral of sentencing stage.

Finally, with the establishment of the Victorian Association of Restorative Practices in 2005, Victoria has an association with considerable worldwide expertise in the techniques and processes for successful restorative practices. This enables a thriving and diverse community of restorative justice practitioners to be trained and established in this state. By adopting these proposals, Victoria would be amongst the forefront of Governments promoting adult restorative justice innovations in the criminal justice system.

References

Papers/Journal Articles

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Making Things Right A Vision for Criminal Justice Peter Norden SJ Catholic Social Justice Series No 28 Australian Catholic Social Justice Council 1996

Existing Victorian Legislative Provision

Children Youth and Families Act 2005 Sections 414 and 415 Deferral of Sentencing for Group Conference.

Magistrates Court Act 1989 No 51 Section 128A Adjournment to Undertake Diversion Program. State of Victoria. 1989

Sentencing Act 1991 No 49 Section 83A Deferral of Sentencing State of Victoria

Government Documents

New Directions for the Victorian Justice System 2004-2014 Attorney-Generals Justice Statement May 2004

New South Wales Restorative Justice Unit Department of Corrections Draft Manual of Procedures Victim Offender Group Conferencing.

New Zealand Court Referred Restorative Justice Pilots and other publications on best practices and other adult restorative justice pilots (for further information visit www.justice.govt.nz/pubs then click on restorative justice)

Websites

Jesuit Social Services www.jss.org.au

Victorian Association of Restorative Justice www.varp.asn.au