

# Restorative Justice Developments in the Pacific Region: A Comprehensive Survey

Gabrielle Maxwell and Hennessey Hayes

*Restorative justice has grown in popularity around the world, and various restorative initiatives are in place or are being trialled in many countries. New Zealand and Australia have the most experience with restorative justice in the form of conferencing primarily for young offenders, although conferencing for adult offenders is increasingly being used in these jurisdictions. In the Pacific Islands older forms of customary practices endure despite the introduction of modern Western justice systems. In this article we provide a comprehensive review of these developments to show the degree to which this region has embraced restorative justice as a way of responding to crime.*

*Keywords: Restorative Justice; Group Conferencing; Reintegrative Shaming; Aboriginal Justice; Diversion; Recidivism*

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## Introduction

Restorative justice has attained substantial global appeal. Restorative initiatives are now in place, being trialled, or are being planned in all areas of the world (Sullivan & Tift, 2006). In this article we review restorative justice developments in the Pacific region. Specifically we examine the development in New Zealand of restorative practices in the youth justice system through family group conferences (FGCs) and police diversionary actions, and through restorative processes of conferences and community panels in the adult criminal justice system. In Australia, the use of conferencing with young offenders in each of the states and territories is examined. With respect to the Pacific Islands, we

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discuss customary practices in the Polynesian island of Western Samoa and in the islands of Melanesia.

The Pacific region is of particular interest. It has been the cradle of modern restorative justice within the Western justice systems in New Zealand and Australia where it demonstrates a variety of ways in which restorative theory can be effectively translated into practice within the structure of legislative frameworks and modern urban societies. At the same time, in the islands of Polynesia and Melanesia, a variety of examples of older indigenous forms of restorative practice are still operating. Thus this article provides an in-depth picture of both the new and the old. And it enables us to examine the strengths and weaknesses of both and their very different impact on participants.

### **New Zealand**

In most societies, restorative practices for resolving conflict have a long tradition prior to the development of formal western-style judicial systems. New Zealand is no exception. Within Maori society, *whanau* (families/extended families) and *hapu* (communities/clans) met to resolve conflicts and determine how to deal with problems affecting the family or community. In the 1980s some communities still continued these practices and increasingly there were calls for 'marae' (Maori community) justice along the lines of 'Aroha,' a programme in the Waikato that aimed to deal with historical sexual abuse in *whanau/hapu* meetings.

In 1989 New Zealand passed the Children, Young Persons and Their Families Act which departed radically from previous legislation aiming to respond to child abuse and neglect and offending. Primary responsibility for decisions about what was to be done was placed with extended families and they were to be given support in their role through services and other appropriate assistance to respond to needs. The key process for decision-making was to be the family group conference, which aimed to include all those affected directly together with representatives of the responsible state agencies (child welfare for care and protection cases and the police in the case of offending) (Hassall, 1996).

In the youth justice system,<sup>1</sup> other principles emphasized protection of rights of the children and young people and the importance of ensuring that responses to offending were at the lowest possible level, within time frames meaningful to the child or young person,<sup>2</sup> and appropriate to the offending rather than being simply a response to welfare needs (i.e., that processes were diversionary, timely, fair, and just). Such values are consistent with those in many other jurisdictions but in addition, new values required that victims of offending should be involved in the decisions, that young people were to be made accountable by making amends to their victims, and that plans should be put in place to respond to young people's needs to reintegrate them into society. Restorative justice theory was only emerging at the time this legislation was enacted but it soon became apparent that the core values of participation, repair, and healing, and reintegration of those affected by the offending were reflected in the New Zealand youth justice system. In particular, the process of the was family group conference recognized as a mechanism that could be used within the wider justice system to

provide restorative justice solutions to offending within a traditional system where the sanctions of the court could also be available when necessary.

Since 1999 the use of restorative justice practices in New Zealand has also spread downwards, with the development of the widespread use by the police of diversionary processes to respond to relatively minor offending of young people, and outward, with the development of legislation and processes for the delivery of restorative justice in the adult criminal justice system. In addition, the processes developed to respond to historical land grievances of Maori (the Waitangi Tribunal and the Treaty Settlement process) can be seen as examples of restorative justice, although for reasons of space, these will not be described here. The rest of this section of the article describes in more detail responses to offending through the use of family group conferences for young people, the use of police youth diversion for young people, and the use of community panel pre-trial diversion and restorative conferences for adults.

### *Family group conferences<sup>3</sup>*

In New Zealand, the police have four options available to them when a young offender is apprehended: (1) they may use an informal warning (17% of cases in a sample from 2000-2001 (Maxwell, Roberston, & Anderson, 2002); (2) they may use a written warning (27%); (3) they may arrange a diversionary plan (32%); and (4) they may make a direct referral for a FGC (8%): they may lay charges in the Youth Court which will make a referral for a FGC (when matters are not denied or proven) before deciding on outcomes (17%).<sup>4</sup> Although in general seriousness and history of offending are the major factors determining police practice, knowledge of the offender and the family background are also important factors. Thus a family group conference is part of the decision making procedure for the top 25% of offenders and includes all serious offending excluding cases of murder and manslaughter, which are referred directly to the adult courts.<sup>5</sup>

In 1990-1991, the first full year following the passage of the youth justice legislation, there were 5,850 family group conferences (Maxwell & Robertson, 1991). The numbers dropped to about 5,000 for a period in the early 1990s but by 2003-2004 they had risen to 7,660 (Department of Child, 2004). Family group conferences are arranged by youth justice co-ordinators (YJC) employed by the social welfare department-Child Youth and Family Services (CYFS). They are supported by youth social workers. Whose role includes preparing and consulting with participants, arranging a conference, arranging for its facilitation (usually by the YJC), and following up by reporting outcomes to all parties involved.

Normally those attending the FGC include the young offenders, their families, extended family members and other supporters, victims and their supporters, a representative of the police,<sup>6</sup> and the facilitator. In cases referred by the Youth Court, a Youth Advocate appointed by the court may attend and social workers or others associated with the delivery of services may attend if they had or are likely to have a major role in the rehabilitation or reintegration of the young person.

The conference itself will normally open with introductions, followed by a discussion of what has occurred. Then, likely options for responding are canvassed

before the young person and the family retire to develop a plan. In the final phase of the conference, all reconvene to discuss the proposed plan, modify it as appropriate and reach an agreement on its final form. Scripts are not used by facilitators and the actual arrangements with respect to venue and process can vary widely.

Major research studies in 1990-1991 (Maxwell & Morris, 1993, 1999) and 1999-2000 (Maxwell, Kingi, Robertson, Morris, & Cunningham, 2004a, 2004b) have been carried out to evaluate the system, describe its impact on participants, determine the extent to which the system meets restorative objectives, and identify factors related to achieving effective outcomes. The 1993 report was based on data from 203 conferences including observations of the process and interviews with the young people, family members, victims, and professionals involved. The 2004 research consisted of two main studies built around 24 co-ordinators. The retrospective study collected file data on 1,003 cases involving FGCs held in 1998 and obtained follow up file data two to three years later when 520 of the young people were located and interviewed. The prospective study observed a sample of 115 conferences held by the same co-ordinators in 2000-2001 and interviewed young people, family members, and victims.

The results of these studies confirm that in practice, the outcomes of family group conferences are largely restorative: all those involved participate (though this is true for only about half the victims) and agree with decisions, and the decisions focused largely on repair of harm and reintegration of offenders. However, there were some notable departures from best practice: only about half the victims and young people felt truly involved in the decision-making, some restrictive/punitive outcomes were noted in about half the conferences and the provision of rehabilitative and reintegrative service fell well short of the needs that were reported by the young people. This was especially disadvantageous in the area of education and training where the lack of educational qualifications and vocational skills was strongly related to re-offending and negative life outcomes.

These research studies have also identified a number of key factors that are associated with reduced offending and positive life outcomes. These include the fair and respectful treatment of all, the absence of stigmatic shaming, and the young person feeling supported, understanding the process, feeling forgiven, feeling remorseful and able to repair the harm, and forming an intention not to re-offend.

### *Police youth diversion*

As reported above, approximately three quarters of offenders are dealt with by the police themselves: nearly half (45%) of young people offending receive warnings, and the remaining third are dealt with by Youth Aid police officers through the use of diversionary plans (often referred to as alternative actions). In making these arrangements, the Youth Aid officer is guided by the key principles of the Children, Young Persons and Their Families Act 1989. The aims are to repair the harm that has been done, hold young people accountable for their offending, involve young people, families, and victims in the process of making decision, and divert children and young people from court and custody while keeping time frames as short as possible.

In practice, the Youth Aid officer, after obtaining a report from the investigating officer that normally includes victim information, visits the family and speaks to the young offender as well as to the parents to arrange a suitable plan. The victims and the school may also be visited. In our research (Maxwell, Roberston, & Anderson, 2002, which included 513 children or young people who had diversionary plans), the plans typically included apologies (65%). Most apologies were made in writing but some were in person or both. Financial reparation was made in 21% of the cases and donations were made to charity in another 4%.<sup>7</sup> Work was carried out in the community<sup>8</sup> (33% of cases in all): this was either related to the offending (18%) or was of a general nature (15%). In addition, in 19% of cases, arrangements were made for the parents and/or young offender to attend some type of programme for further schooling or training. Curfews or other restrictions were included in 11% of the plans and a variety of other measures (for example writing an essay) were reported for 15%.

A follow-up of the sample involved in the 2002 study obtained re-offending data on 1,438 of the young people described above and examined factors associated with re-offending (Maxwell & Paulin, 2005). Interviews were also conducted with 79 young people who had diversionary plans and 18 Youth Aid officers. Most of the young people said that they had completed their plans (82%), had been treated fairly and with respect (85%), that the tasks were fair and appropriate to the offense and their capacities, that the experience was positive, and that they felt supported (91%). Three quarters felt they had been treated with respect, were remorseful, and felt they had been forgiven and were not shamed or stigmatized. However, just over a fifth said their experience had not been positive and two-fifths said that they had not been directly involved in making the decision, and a similar number reported that they were not able to repair the harm that had been done.

Over 20% of the total sample of young people dealt with by the police re-offended<sup>9</sup> within 18 months. Re-offending was lowest for the group who had been warned (9%) or for those for whom the Police arranged a diversionary plan (16%). Thirty-seven percent of those referred for a family group conference re-offended compared to 51% of those charged in the Youth Court. These findings are consistent with differences between the samples in terms of previous records, gender, history of truancy and school exclusion, and being aged 14 years or older. However, there were also considerable differences between various areas in practice and these were also related to re-offending rates. Within the group diverted, specific factors related to re-offending were: being more likely to have had more elements in the diversionary plan, to have made donations and to have been of Maori or Pacific Island ethnicity.

### *Restorative justice processes for adults*

#### *Community panel pre-trial diversion*

In 1995 three pilot schemes—Project Turnaround, Te Whanau Awhina, and the Community Accountability Programme<sup>10</sup>—were funded by the New Zealand Crime Prevention Unit in collaboration with the police and local Safer Community Councils

to divert adult offenders appearing before the criminal courts. Each of these pilot schemes had elements of restorative justice. They began operating in 1995 and Project Turnaround and Te Whanau Awhina were evaluated in two studies conducted shortly afterwards (Maxwell & Morris, 1999; Smith & Cram, 1998). It is these schemes that we focus on in this section.

Project Turnaround is situated in Timaru, a provincial South Island city, and it shares its offices with the Safer Community Council and the Community Police. Most of the offenders referred to it are New Zealanders of European origin. On the offender's first appearance at court, judges divert selected offenders to the scheme and, if the subsequent panel meeting is attended by the offender and the plan agreed to is completed, the offender makes no further court appearance and the police withdraw their evidence. The panel members in Project Turnaround are volunteers who are selected to represent the community and trained in restorative justice principles. A police officer is normally present at most of the panel meetings and the victim is also frequently present. This process at Project Turnaround can be contrasted with a fully restorative process where decisions are made by those who are most directly affected by the offending rather than by appointed representatives of the community. However, the plans decided at the meetings involved making amends to the victim and the community and making arrangements for the offender of both a reintegrative and a rehabilitative nature. This focus on recompense to the victim and to the community is consistent with a restorative justice approach.

Te Whanau Awhina is situated on a marae (a communal centre including a meeting house and other buildings for customary activities as well as educational and training facilities) in Auckland, the largest city in New Zealand, and the community panel meetings are held in the wharehau (a traditional meeting house). Almost all the offenders referred to Te Whanau Awhina are Maori (the indigenous people of New Zealand). As in Project Turnaround, they are referred to the scheme by the judge at a court hearing. However, offenders who appear before a panel at Te Whanau Awhina are not necessarily diverted from further court appearances and sanctions.

At Te Whanau Awhina, the panel typically consists of three or four marae members, including one who takes the role of kaumatua (elder) and chairs the proceedings. In addition, the coordinator attends and takes the role of providing support to the offender. Other people likely to attend are the whanau (extended family) and friends of the offender. The police do not attend the meetings at Te Whanau Awhina nor usually do the direct victims although those managing the conferences identify both the offender's family and the Maori community as victims. Outcomes typically include plans relating to obtaining employment or job training and participation in marae-based programs and activities as well as responses to victims. Because victims rarely attend the meetings, Te Whanau Awhina is not fully consistent with restorative processes. However, the focus on reparation to victims and to the community and reintegration with family and whanau and with the Maori and the wider community is consistent with aspects of a restorative justice approach.<sup>11</sup>

The panels in Project Turnaround and Te Whanau Awhina have dealt with aggravated robbery, threat to kill, driving causing death, driving with excess alcohol, as well as the more 'routine' offenses of willful damage, theft, and burglary. Evaluations of this scheme in 1997 showed that most participants interviewed reported satisfaction with the process and the outcomes (Smith and Cram, 1998).

In a separate study (Maxwell, Morris, & Anderson, 1999) comparisons were made of re-offending for 100 participants from both these schemes with two separate control samples of 100 offenders dealt with by the courts who had not been referred to a restorative scheme. The referred and the control samples were matched on demographic and offense characteristics. Re-offending was assessed by a court conviction in the following 12 months.

Participants in both schemes were significantly less likely than controls to be re-convicted over the following 12 months. Reconviction was even less likely when the participant successfully completed the tasks assigned by the panels. In addition, the major offense of those participants who did re-offend was, on average, less serious (based on the penalties received) than for their matched controls. Furthermore, taking into account the costs of penalties, court and panel hearings, and other outcomes arranged for the two participant and control groups, the total costs were reduced by referral to the schemes. This was especially the case at Te Whanau Awhina where more serious offenders were involved and more of the matched controls received prison sentences as opposed to the increased proportion of those in the scheme that were diverted to sanctions in the community.

On the other hand, a recently released study of two more of the community managed restorative justice programs in Rotorua<sup>12</sup> and Wanganui in 2004 (Paulin & Kingi, 2005; Paulin et al, 2005) does not repeat these findings of reduced re-offending. Nevertheless, in Rotorua, satisfaction with plans was recorded for 83% of the participating victims and 95% said they were satisfied with the meeting. Nine out of 10 offenders completed all elements of their plans. Completion rates and victim satisfaction percentages were lower in the Wanganui program. Key problems were failing to monitor and to keep victims informed about progress on the plan, and providing for regular supervision and training opportunities for program personnel.

It seems clear, therefore, that despite the limits on the restorative nature of these schemes, they were more successful than courts in some key respects. The research conducted to date has been unable to identify the key factors in success but the participants who were interviewed at Te Whanau Awhina and Project Turn Around have referred to factors that are similar to those that were important for the young people who had taken part in FGCs: inclusion, repairing the harm, and the potentially negative effect of shaming as a result of court sanctions.

#### *Other community managed restorative programs for adult offenders*

By 2005, a total of 19 community managed restorative programs for adult offenders had been set up throughout the country. These vary in the way they operate and also in the way they are funded. Some use a modified community panel model and others a

conferencing model. Some are operated and managed by Maori and focus on Maori clients, although not exclusively. At least one offers the option of a process based on customary practice of ifoga in Samoa (Mulitalo-Lauta, 2005). Most do not take referrals of cases involving family violence but at least one reports that a significant proportion of its intake involves such cases. However, all work with cases referred by the District Court and espouse restorative principles and values as underpinning their operation. Currently an inventory is being undertaken to describe these programs with respect to the types of offenders referred and the way in which they operate so as to develop plans for an evaluation of them and the factors associated with successful operation.

*The court-referred restorative justice conference pilot*<sup>13</sup>

A pilot scheme of court referred restorative justice conferences began operation in September 2001 in the District Courts in Auckland, Waitakere, Hamilton, and Dunedin. This pilot is administered by the Department for Courts. Judges in the pilot courts are able to refer a range of cases for investigation with respect to whether or not a restorative justice conference is possible. All property offenses with maximum penalties of two years imprisonment or more and other offenses with maximum penalties of one to seven years are eligible for referral to a conference by the judge. Domestic violence offenses and sexual offenses are excluded.

The referral by the judge takes place after a guilty plea, and the coordinator employed by the Department in each of the courts then meets the offender to confirm that the offender is willing and appears able to participate in the restorative justice process. In some cases, the coordinator may also have contact with the victim. Cases where the offender is willing and appears able to participate safely in a conference and where the victim does not, at this stage, express an unwillingness to participate in a conference are referred to restorative justice facilitators from provider groups contracted by the Department for Courts. These facilitators have been trained and approved by the Department for Courts. Two facilitators<sup>14</sup> then meet with the victim and offender separately and convene a conference if the offender still appears able to participate safely, and both victim and offender are willing.

The restorative justice conference is a relatively informal meeting run by the facilitators. Support people for the victim and the offender are also usually present. Although the police, a probation officer, and the offender's lawyer are usually invited to attend the conference, they may decide not to. The intention is that the conference provides an opportunity for victims to have a say and for offenders to take responsibility for putting things right. These conferences, then, follow a different approach from the schemes using community panels: they are much more like family group conferences in that they rely on victims (and their support people) to come up with a plan or agreement and not panel members. However, they differ from family group conferences in that restorative justice conferences only take place if both the victim and offender agree to participate.

Conference agreements may include specific steps that the offender can take to put things right (for example, payment of money to victims or offenders carrying out

specific work). They may also contain rehabilitative or reintegrative features (for example, attendance by offenders at courses). They are, therefore, consistent with restorative justice values.

A report of the interactions at the conference, and any agreements reached, is provided to the judge prior to sentencing. This report is also given to the prosecutor and to the probation officer before sentencing. The judge must take the report of the restorative justice conference into account along with any other reports, such as pre-sentence reports, in deciding on the appropriate sentence and this obligation was recently strengthened by legislative changes (the Sentencing Act 2002 and the Victims' Rights Act 2002). Judges, however, can choose whether or not to incorporate into the sentence all or part of any agreement reached. Instead of imposing a sentence at this stage, the judge may choose to adjourn the case further in order for agreements reached at the restorative justice conference to be carried out by the offender. In these cases, a report is provided to the judge on completion of the agreements and the offender is subsequently discharged or sentenced. The explicit aims of these pilots are to offer better outcomes to victims, to increase their satisfaction with the criminal justice system, and to reduce re-offending.

The evaluation report on these pilot projects (Ministry of Justice, 2005) shows that 81% of the offenders who took part felt that their participation would stop the re-offending. Almost two-thirds felt more positively about the criminal justice system as a result of this experience.

### **Australia<sup>15</sup>**

Like New Zealand, Australia is a world leader in restorative justice conferencing with legislatively-based conferencing schemes in place in all but one Australian jurisdiction (Victoria). The rise of restorative justice in Australia was largely influenced by developments in New Zealand. Shortly after the passage of the Children, Young Persons and their Families Act 1989 and the introduction of family group conferencing in New Zealand, there was a steady stream of visitors between the two countries to share information on the developments.

Australia began trialling restorative justice conferencing in Wagga Wagga, New South Wales in 1991. However, unlike family group conferencing in New Zealand, which was administered by the welfare department, the scheme in Wagga Wagga was administered and run by police. The rationale for this administrative placement was that it would render conferencing "more truly diversionary" (Moore & O'Connell, 1994, p. 50).

In 1994, South Australia, consistent with its long history of innovation in juvenile justice (Wundersitz, 1997), was the first Australian state to enact legislation including family group conferencing. Since that time, all remaining Australian states and territories (with the exception of Victoria) have introduced diversionary legislation for young offenders that includes restorative justice conferencing. Conferencing is now firmly established in Australian juvenile justice. Below, the current developments in restorative justice conferencing in Australia are summarized for each jurisdiction building on Daly and Hayes (2001).

*South Australia (SA)*

SA is the jurisdiction with the most experience in conferencing. Following passage of the Young Offenders Act 1993, South Australia became the first Australian jurisdiction to implement a statutory conferencing scheme in 1994. Since implementation, SA annually conferences a large number of young offenders referred from police and the youth court. In the period January 1, 1999 to December 31, 2003, an average of 1,669 case referrals were finalized by the Family Conferencing Team (Office of Crime Statistics, 2000, 2001, 2002, 2003, 2004). Referrals to family conference come mainly from the Adelaide metropolitan area but about a third (36.5% during the period 1 July 2003 to June 30 2004) come from country areas across the state (Grant Thomas, Family Conference Team, South Australia, personal communication).

SA, like several other Australian jurisdictions, has adopted the “New Zealand Model” of family conferencing. This means that conferences are managed and run by professionals other than the police (e.g., civilian staff recruited and trained to convene conferences). The format for family conferences in SA is similar to that in New Zealand and other Australian jurisdictions. The Young Offenders Act 1993 indicates that family conferences will consist of: the family conference coordinator; the “youth” (who has admitted to the offense); victims and supporters for victims and offenders; and a representative of the police.

The process of family conferencing in SA is also similar to that in New Zealand and in other Australian jurisdictions.<sup>16</sup> Coordinators open conferences with introductions and a summary of what the conference is meant to achieve and what participants are expected to do. The conference then moves into the “storytelling” phase where young offenders are asked to account for their offending (i.e., describe the circumstances leading up to the offending, what they were thinking and/or feeling at the time) and victims are asked to describe the impact of the offending (e.g., any emotional and physical harms they have sustained). Offender and victim support persons also are invited to comment on how the offending has affected them and their families. The conference then returns to offenders where they are asked to reflect on the victims’ and their supporters’ comments and to relate how their stories have affected them. Here, the aim of the conferences is to encourage offenders to acknowledge the harm they have caused and to offer an apology to victims. During the final phase of the conference, all participants negotiate ways that offenders can make up for the offending. Examples include offering a verbal and/or written apology, performing work of the victims and/or community, and making a commitment not to re-offend.

One important jurisdictional feature of family conferencing in SA is that there is no schedule of offenses that may be referred to conference. While the Young Offenders Act 1993 indicates that offenders admitting to a minor offense may be referred to a family conference, SA nevertheless conferences a substantial proportion of person offenses, including serious assault and sexual assault. In 2003, approximately 17% of all offenses referred to family conference were a person offense (Office of Crime Statistics, 2004). Another differentiating feature is that the conference administration is located within the youth court, not the police.<sup>17</sup> The Family Conference Team of the South Australian

Courts Administration Authority has responsibility for managing family conferences. A third feature is that, unlike New Zealand, there is no provision for private time.

The family conferencing process in SA has been the focus of major research projects on restorative justice. The South Australian Juvenile Justice Project (SAJJ) began in 1998 with the aim of examining variable features of conferencing processes and their effects on participants and future behaviour. Specifically, SAJJ assessed the degree to which participants (i.e., young offenders, victims, and supporters) experienced “restorativeness”<sup>18</sup> and procedural fairness and how their conference experiences affected them afterwards (Daly, Venables, McKenna, & Christie-Johnston, 1998). Results from SAJJ analyses show that most participants judge family conferences as procedurally fair and that they are largely satisfied with outcomes (agreements) (Daly, 2003). However, fewer participants were “restored;” that is, there was notably less “positive movement between offender and victim” (Daly, 2002, p. 70; 2005). Furthermore, a re-offending study of SAJJ offenders shows that family conferencing has the potential to reduce offending. Hayes and Daly (2003) followed SAJJ offenders for 8-12 months after their conference and found that most offenders registered no new post-conference offenses.<sup>19</sup> They also found that offender characteristics such as age, gender, and prior offending were highly predictive of post-conference offending. However, when offenders were observed to be remorseful and when conference outcomes were decided by genuine consensus, re-offending was significantly less likely (Hayes & Daly, 2003).

In more recent research in SA, Daly and Curtis-Fawley (forthcoming) conducted an archival study of 387 sexual offenses involving young offenders finalized by formal caution, family conference, or the youth court. They found that when cases were referred to family conference, victims of sexual offenses had a better justice experience. This mainly was because “something happened;” offenders admitted to the offense and agreed to engage in some reparative activity (Daly & Curtis-Fawley, forthcoming).

### *New South Wales (NSW)*

Restorative justice conferencing appeared in Australia in Wagga Wagga NSW in 1991. The conferencing scheme trialled in Wagga was a police-run program and was largely informed by John Braithwaite’s theory of reintegrative shaming (Braithwaite, 1989). A statutory scheme based on the New Zealand model was introduced in 1998 following proclamation of the Young Offenders Act 1997. Youth justice conferences are available throughout NSW and in the period July 1, 1999 through June 30, 2004, an average 1,373 conferences were convened per year (NSW Department of Juvenile Justice, Annual Report, 2000, 2001, 2002, 2003, 2004).

NSW experimented with restorative justice for several years before implementing a legislated scheme. From 1991-1997, NSW trialled police-run and mediated conferencing schemes before introducing legislation that enabled its current form of New Zealand model restorative justice conferencing. In its current configuration, youth justice conferencing in NSW is administered from a central directorate in Sydney with five staff. Staff in 17 regional offices are responsible for local management of the scheme in areas defined according to police Local Area Commands. Approximately 400

contracted youth justice conference convenors recruited from the community work through the regional offices and are responsible for preparing participants for and facilitating conferences, which are available throughout NSW (Department of Juvenile Justice, 2004). There are limits on the types of offenses that may be referred to conference. The NSW Young Offenders Act 1997 covers summary offenses and indictable offenses that may be dealt with summarily. Offenses that cause the death of a person, serious sexual assaults, serious drug offenses, breaches of apprehended violence orders, and some traffic offenses are not covered by the Act.

Conferencing in NSW also has been subject to research scrutiny. In 2000, Trimboli undertook a comprehensive evaluation of the NSW youth justice conferencing scheme. Trimboli (2000) surveyed nearly 1,000 young offenders, victims, and supporters immediately following their youth justice conference to gauge participants' judgments of satisfaction and fairness with the conference process. She found that very large proportions of offenders, victims and supporters: (1) rated the conference process as fair for offenders (approximately 95%) and victims (approximately 91%); (2) perceived they were treated with respect (approximately 92%); and (3) were satisfied with outcomes (approximately 89%) (Trimboli, 2000). These outcomes are similar to the results obtained in other jurisdictions and highlight the procedural fairness inherent in restorative justice conferencing processes. In addition, Luke and Lind (2002) recently assessed the impact of youth justice conferencing on re-offending and found that conferencing resulted in a 15%-20% reduction in the estimated rate of re-offense, as compared to court.<sup>20</sup>

### *Queensland (QLD)*

QLD began trialling New Zealand model conferences following amendments to the Juvenile Justice Act 1992. Community conferences were convened in two southeast Queensland districts (Ipswich and Logan) as well as in a large indigenous community on Palm Island (off the northeast coast near Townsville). Community conferences were first convened in April 1997 and were administered by the Department of Justice and Attorney-General. Unlike other Australian jurisdictions running legislated schemes, community conferences in QLD could proceed in cases only where young offenders admitted to the offense and where victims consented to have a matter dealt with by way of a conference. The conferencing trial was evaluated in 1998 (Hayes, Prenzler, & Wortley, 1998; Palk, Hayes, & Prenzler, 1998), and results uncovered a range of issues that led to various legislative and administrative changes implemented in 2001-2002. These included concern regarding the need to obtain victim consent. Nevertheless, results from surveys with all young offenders, victims, and supporters (N=457) attending a community conference during the first 14 months of operation were highly positive. Large proportions of participants reported that they: were treated with respect (99%); were satisfied with agreements or outcomes (98%); and thought that the conference process was fair (99%) (Hayes, Prenzler, & Wortley, 1998; Palk, Hayes, & Prenzler, 1998).

Conferencing administration shifted to the QLD Department of Communities in 1998 following a state election. Further changes to conferencing administration were

implemented during 2001-2004 to bring QLD closer in line with the administrative arrangements in NSW. For example, a statewide coordinator located in a central office in Brisbane was established, along with several regional coordinators located throughout the state who manage a pool of casual conference convenors. In 2002, further amendments to the Juvenile Justice Act 1992 (which commenced in July 2003) resulted in removal of the victim consent requirement for conference referrals, and community conferences were renamed “youth justice conferences,” as in NSW. Following these amendments and administrative changes, conferencing services were expanded throughout QLD. As a result, referrals climbed from an average 250 per annum to approximately 2,000 by June 30, 2005 (Craig Jenkins & Martin McMillan, Queensland Department of Communities, personal communication, January 2005).

Youth justice conferencing in QLD also has been the subject of research scrutiny. In 2002, Hayes and Daly (2004) conducted the first re-offending study to learn how variable features of conferences and offender characteristics related to future offending. They followed a group of 200 young offenders for three to five years after their conference and found that 56% went on to commit one or more offenses following their conference. In addition to learning how age at first offense, age at conference, and gender were associated with post-conference offending, Hayes and Daly (2004) examined how several conference features bear on future offending. An interesting albeit counterintuitive finding related to age at conference emerged. The recidivism literature suggests that re-offending is more likely when young people begin offending (and are apprehended) at very early ages and their offending is more likely to persist compared to young people who begin offending when they are older (e.g., middle to late-adolescence). (Blumstein, Cohen, Roth, & Visher, 1986). However, Hayes and Daly (2004) found that re-offending was less likely for early onset offenders whose first offense (committed between the ages of 10 and 12) brought them to a youth justice conference, compared to early onset offenders whose first offense resulted in an official caution or court appearance. They concluded that: “...conferencing may be a more effective intervention for very young offenders who have a high risk of re-offending, compared to cautioning or court (Hayes & Daly, 2004, p. 181).

Another large qualitative field study of youth justice conferencing in QLD is currently underway. The aim is to learn how young offenders understand youth justice conferencing events and how these understandings are related to post-intervention behaviour.

#### *Australian Capital Territory (ACT)*

Restorative justice conferencing in the ACT first began in 1994 as a police-run scheme and was largely influenced by Braithwaite’s theory of reintegrative shaming (Braithwaite, 1989). It remained the longest running police-run conferencing program in Australia and ran without a legislative basis until January 2005. The Crime (Restorative Justice) Act 2004 commenced in January 2005 to enable restorative justice conferencing in the ACT. Following commencement of the Act, responsibility for conferencing shifted from the Australian Federal Police (AFP) to the Department of Justice and

Community Safety in Canberra. The Restorative Justice Unit is located in Departmental offices in Canberra City and is staffed by a manager, two AFP convenors, two civilian convenors and an administrative officer. Referral numbers are expected to be low (approximately 100 per annum) relative to other jurisdictions where legislated conferencing schemes have been in place longer. The ACT legislated scheme will be introduced in two phases. During phase one, only young people who have been charged or convicted of less serious offenses (i.e. excluding indictable only offenses, sexual assaults, and family violence matters) will be referred. In phase two, the scheme will accept referrals for all types of offenses, involving either young offenders or adult offenders. (John Hinchey, Canberra Department of Justice and Community Safety, personal communication, January 2005).

Conferencing in the ACT has been the focus of one of the most rigorous field experiments in restorative justice. The Re-integrative Shaming Experiments (RISE) began in 1995 to assess the effects of conferencing across four types of offenders (i.e., experimental groups): juvenile personal property; juvenile property-security (e.g., shoplifting from stores employing security staff); youth violence (including adults up to age 29); and drink drivers. Researchers compared the experiences of admitted offenders randomly assigned to court or conference, as well as their victims. Using structured interviews, researchers measured the degree to which offenders and victims perceived procedural justice, restorative justice, and reintegrative shaming. On measures of procedural justice, there did not appear to be much difference between the ratings given by offenders in court or conference (Strang, Barnes, Braithwaite, & Sherman, 1999:cf Tables 5-5 to 5-34).<sup>21</sup> However, significant differences were noted between conference and court assigned offenders on measures of restorative justice and reintegrative shaming. For example, significantly more offenders assigned to conference felt that the "treatment" allowed them to repay society/the victim. On measures of reintegrative shaming, significantly more offenders assigned to conference felt that they "understood what it [the offense] was like for the victim" and that they were able to make up for the offense (Strang, Barnes, Braithwaite, & Sherman, 1999:Tables 5-41 through 5-44).

Researchers also examined re-offending for court and conference assigned offenders across the four experimental groups. They looked at pre- and post-random assignment offending rates during the 12 months preceding and following court or conference. Comparing the offending rates for court and conference assigned offenders, RISE researchers found that the difference in pre- and post-assignment offending was greatest for young violent offenders in conference compared to young violent offenders in court; there was less re-offending by those assigned to conferences than those assigned to court. However, there were no significant differences noted across the remaining three experiments (Sherman, Strang, & Woods, 2000).

### *Tasmania (TAS)*

Restorative justice conferencing in TAS has been used since 1994 as a police-run scheme before proclamation of the Youth Justice Act 1997 in February 2000. Since 2000, a dual system has been operating with the police using the community

conferencing process to administer formal police cautioning as a primary diversion for young offenders. The Tasmanian Department of Health and Human Services (DHHS) has also been conducting community conferences since February 2000 following police referral. The police use specially trained police officers to facilitate their conferencing process and DHHS use external contracted facilitators. Conferencing has been available statewide since its inception within both police and DHHS.

Like Queensland, there are no upper limits on the types of offenses that may be referred to conference, and TAS convenes a substantial number of conferences each year. In the period July 1, 2001 to June 30, 2004, an average 363 conferences per annum were convened by DHHS (DHHS Annual Report 2003-2004). Police convened another average 311 conferences during the period July 1, 2002 to June 30, 2004 (Tasmanian Police Service). (Dr Helen Jessup, Youth Justice Services, Tasmanian Department of Health and Human Services, personal communication, March 2005).

Restorative justice conferencing in TAS has been subject to a study published by Prichard in 2002. Prichard observed a number of community conferences (N=34) and focused attention on how the shaming dynamics of restorative justice conferences potentially affect the parents of young offenders. He questioned Braithwaite's (1989) portrayal of parents in shaming ceremonies, as well as Braithwaite and Mugford's assertion that "the shaft of shame" called forth during a conference may bypass unmoved offenders but "pierce the hearts" of parents, which likely has the intended effect of inducing remorse in offenders (Braithwaite & Mugford, 1994). Prichard's analysis shows that sometimes shaming directed at parents can lead to unintended negative outcomes. Prichard observed that some parents responded to shame by offering apologies to all conference participants as well as some offering to do something for victims (e.g., help their child complete an agreement). However, shame directed at some parents led them to defend against connotations of bad parenting, to deny the blameworthiness of their children, or to adopt a detached orientation to the conference (Prichard, 2002).

### *Western Australia (WA)*

Juvenile justice teams were implemented following proclamation of the Young Offenders Act 1994 in WA. Young people charged with minor offenses can be referred to teams as a diversion from court processing.<sup>22</sup> Similar to other Australian jurisdictions, the teams (consisting of juvenile justice staff and other professionals) convene restorative justice conferences involving young offenders and their parents, victims and their supporters, and police.<sup>23</sup> The aim of a juvenile justice team conference is for all participants to agree on an "action plan" (an undertaking or agreement) for the young person. This may include an apology, work for the victim or direct restitution, community work, or other appropriate activities that are agreed to by all participants of the conference and that are not more punitive than likely court outcomes.

Restorative justice conferencing is now available throughout WA with referrals coming from both police and the youth court.<sup>24</sup> The WA Young Offenders Act 1994 placed a limit on the types of offenses that may be referred to juvenile justice teams.

Crimes of violence, sexual offenses, and drug and traffic offenses may not be referred to the teams. In late 2001, a court conferencing pilot commenced and the Children's Court in Perth expanded the range of offenses that can be referred to juvenile justice teams. The court conferencing pilot is still underway and may be expanded beyond the Perth metropolitan children's courts. The pilot has resulted in an increase in the number of referrals received by the teams from the period October 15, 2001 to June 30, 2003 (Department of Justice, 2003).

Amendments to the Youth Offenders Act 1994 (the Young Offenders Amendment Bill 2004) were proclaimed January 1, 2005 and have resulted in the commencement of a new restorative justice conferencing program targeting young Aboriginal "minor" offenders in remote WA.

The primary objective is to allow young Aboriginal persons situated in remote communities who have been charged with minor offences to have access to an alternative to court restorative justice processes. The new amendments allow Aboriginal community members to sit in conferences held within these communities instead of Department of Justice and/or Police Service representatives. (Ennio Cicchini, Western Australia Department of Justice, personal communication, April 2005)

Only one evaluation study of restorative justice conferencing in WA has been undertaken. In a study of 265 restorative justice conference participants (young people, their parents, and their victims) in Perth during 1996-97, the vast majority reported fairness and satisfaction with the process (Cant & Downie, 1998). To survey items related to fair treatment, 90-95% of young people and parents reported that the restorative justice conference process treated them fairly. Similar proportions of young people and their parents reported satisfaction with how the process dealt with their case. However, slightly fewer victims reported being satisfied (Cant & Downie, 1998, pp. 45-58).

### *Northern Territory (NT)*

Since August 1999, NT has been running a "post-court detention diversion program" (i.e., court referred victim-offender conferencing for young offenders in court as an alternative to custody). Court referred conferencing is available throughout the state only to second time property offenders between 15 and 17 years of age "...as an alternative to serving a mandatory sentence of 28 days detention subject to the juvenile being prepared to participate [admitting to the offence]..." (Department of Correctional Services, 2001). Given the eligibility limitations for court referred conferencing, only a small number of conferences are convened annually (less than 20 per annum) (Department of Correctional Services, 2001).

In addition to referrals from court, the NT Police have operated a pre-court diversion conferencing scheme since August 2000, partial funding for which has been provided by the Australian Attorney-General's Department (\$5 million annually over four years).<sup>25</sup> The NT Police convene pre-court diversionary conferences for non-serious young offenders. In the period July 1, 2000 through June 30, 2004, approximately 70 young offenders per annum were offered a diversionary victim-offender conference (Police Fire and Emergency Services, 2004, p. 54). However, there was a decline in the

number of young offenders offered a victim-offender conference during the most recent reporting period. This was due to an expansion of the types of offenses excluded from diversionary options, as well as an increase in the use of verbal warnings (Police Fire and Emergency Services, 2004). In addition to a small study of police diversionary conferencing in 1997 (Fry, 1997), Wilczynski et al. (2004) recently conducted a more thorough evaluation of restorative justice conferencing in NT.

Fry (1997) evaluated 34 “Wagga” model conferences convened in Alice Springs and Yuendumu during 1995-1996. Admitted offenders who otherwise would have been dealt with in court (excluding sex offenders, violent offenders, and domestic violence offenders) could be referred to conference where the victim agreed to a conference. The study found that all offenders complied with outcome agreements and most victims were satisfied with the conference in approximately three quarters of the cases. The evaluation recommended that conferencing be expanded throughout the Territory (Strang, 2001).

In the more recent study of the NT Police pre-court diversion conferencing scheme, which commenced in August 2000, Wilczynski et al. (2004) gathered operational data from NT police for the first three years of the scheme. In addition, they gathered juvenile court statistics for the 12 months preceding and three years following commencement of the conferencing scheme. Key findings include high levels of satisfaction with juvenile diversion registered among victims, as well as a substantial impact on re-offending. After 12 months following initial apprehension, approximately 29% of offenders diverted to a family conference or victim-offender conference re-offending, compared to 57% of young offenders who went to court (Table C12).<sup>26</sup> After 24 months, only 38% of young offenders diverted to family conference and only 37% diverted to a victim-offender conference were reapprehended, compared to 61% who went to court (Wilczynski, Wallace, Nicholson, & Rintoul, 2004).

### *Victoria*

Victoria is the only Australian jurisdiction without enabling legislation for restorative justice conferences, although legislation is currently being drafted. In 1995, Anglicare Victoria commenced a group conferencing program initially funded by a philanthropic trust and targeting more serious offenders at risk of further penetrating the justice system. A small number (fewer than 50 per year) of cases were referred from the Children’s Court for group conference. Conferencing operations were overseen by a multi-agency steering committee, consisting of members from the Children’s Court, the Department of Human Services, the Victorian Police, Legal Aid, and the Department of Justice. From 1998 through 2001, funding for group conferencing came from the Department of Justice. Following this period, responsibility for group conferencing shifted to the Department of Human Services, and shortly afterwards, group conferencing was expanded to all of metropolitan Melbourne, as well as two rural areas (Gippsland and Hume regions) (Community Care Division, 2004).

Some indicative results on the effectiveness of conferencing in Victoria were obtained from an evaluation of the group conferencing scheme initially administered by Anglicare Victoria (1995-1997). The study found that generally offenders and

victims had positive experiences. Victims reported that the program had been “helpful and healing” and young offenders felt that group conferencing had made a beneficial impact on them (Markiewicz, 1997, p. vii). A more extensive evaluation group conferencing in Victoria is currently underway.

### **The Pacific Islands**

Within the Pacific, many of the cultures report the widespread use of extended family and village processes of meeting to resolve disputes and heal conflict. One example is the ifoga of Samoa. However, in other Polynesian islands, little of this history and current practice has been documented. In this section of the article we have therefore presented a case study from Western Samoa drawn primarily from a chapter by Consedine (Consedine, 1995, pp. 120-131). More information is available on Melanesia but the material in the second part of this section draws largely on Dinnen’s able summary (Dinnen, 2003, pp. 1-34).<sup>27</sup> (See also Dinnen’s (2006) more recent work on restorative justice developments in the Southwest Pacific states of Papua New Guinea, Solomon Islands, Vanuatu and Fiji).

#### *Western Samoa – a Polynesian example*

Traditional culture in Western Samoa revolved around the key resources of land and sea. Social structures reflected the complexities of travelling between islands and communities. Title to land was vested, not in individuals or tribes, but in families. Unlike the situation in Melanesia, there was a clear power structure in both the family and the tribe. Within each family and village there is a complex set of titles that indicate the lineage and key roles of the matai, elders who are heads of their families.

The matai of the village make up the fono, the council of matai, who are responsible for all major decisions including judicial decisions through a process of negotiation, debate, and compromise. It was the fono that made the laws of village and decided how breaches should be punished; by exile, beatings, or other punishments such as sitting in the sun for long periods. Today the fono operate under the 1990 Village Fono Act and remain responsible for maintaining order and customs although now responses to offending usually consist of fines that can be paid with money, food, or fine mats.

This potentially harsh system of dealing with offenders also had a more restorative side. Although banishment and beatings were traditionally a common response to the disobedience of individuals and war (the ultimate way of responding to the infractions against village authority by other villages), there was also a system for making peace, revoking banishments and reconciling differences. The offending party could offer compensation (ifoga). Ifoga literally means to bow down, an act that signals humbling and apology. The individual offenders and the families would sit outside the home of a victim with their mats over their heads in a display of reconciliation. They would continue sitting until the victims came out. There would then be a process of negotiation that would usually end in the acceptance of compensation, forgiveness, and reconciliation.

In cases of disputes between villages, the highest chiefs would go to the offended village, bow down, present gifts including fine mats, and effectively put themselves at the mercy of the others. The loss of face that this involved was keenly felt by both parties. A village might even choose to flee leaving its possessions to be destroyed rather than apologize in this way. However, the reconciliation that would follow would allow both parties to continue to coexist with mutual respect.

The introduction of a Western system of justice has led to conflict with the system of fono decision-making and the settlement of disputes through ifoga. The differences lie not only in the source of authority and the nature of punishments but also in the different roles given to the group and the individual. Ownership and responsibility traditionally lies with the group in Samoa but in the Western legal system the individual is paramount. There has been intense debate over the many cases where the two systems demand very different outcomes and the consequences of these for both the collective and the individuals.

Over recent years, the courts have taken into account any restorative role played by ifoga. For example, in the case of the Police vs. Gali and Tuli,<sup>28</sup> in the Supreme Court at Apia in 1999, Justice Wilson passed sentence on two men who pleaded guilty to manslaughter. The victim accused the two defendants of eating his cane sugar. Stones were thrown, the victim was punched and kicked and died. The judgment details a number of relevant factors in deciding upon the sentence including:

I do give each of you credit for your plea of guilty, for the remorse you have shown (by means of ifoga and otherwise) and for the co-operation you have shown to the prosecuting authorities. The starting point by way of sentence is 5 years imprisonment. I give each of you a discount of 1/3 off the sentence that would otherwise be appropriate for these facts.

Currently the debate in Samoa continues and the options for formalizing restorative practice within the justice system are being considered.

### *Melanesia*<sup>29</sup>

In Melanesia there are many and varied informal traditional structures for managing conflict and delivering justice. Dinnen (2003, pp. 8-9; see also 2006) makes some general observations about these. The first point is that most were located in small societies lacking a central single authority figure or decision-making body (very different therefore from the situation in Western Samoa described above). Power was widely diffused, although mostly confined to adult males, rather than located in a single authority. The mechanisms for handling disputes were almost universally directly embedded in everyday life and conflicts were defined and addressed within an elaborate complex of kinship, status, and social relations.

Notions of reciprocity and equivalence were crucial to redressing wrongs and most approaches typically entailed a strong element of bargaining and compromise. Inter-group conflict resolution was the outcome of protracted negotiation and re-negotiation as circumstances changed. Any particular settlement reflected the current distribution of power. The powerful interpreted *kastom* (customary rules, practices) to their advantage and the interpretation of *kastom* changed with shifts in the balance of power.

Settlements took the form of ornate peace and reconciliation ceremonies involving the payment of compensation or the exchange of gifts. Compensation was a major component of peacemaking among groups. The main purpose of settlement was the restoration of stable relationships. Solutions were likely to be restorative when the parties were bound together through kinship or other forms of social or economic relationships. Punitive and retributive approaches were more likely for the most serious breaches of social norms or in situations where there was no morally binding relationships between the parties, as in the case of traditional enemies. Cycles of warfare and peacemaking characterized relationships between many groups. Asymmetrical encounters where men were killed or dispersed and women captured and land occupied existed alongside relationships determined by long-term conceptions of balance.

As in Western Samoa, the impact of colonial administrations has been to introduce unitary court systems and the separation of administrative and judicial powers and structures that is characteristic of the Western world with written laws, formal courts, police forces, and prisons. In some cases, as in Samoa, there has been some attempt to integrate local systems of *kastom* with the new structures. There are many tensions arising from these co-existing differences in expectations. And dissatisfaction with the processes and outcomes of Western justice led to the re-emergence of older patterns including, for example, tribal fighting in Papua New Guinea (PNG), the establishment of Island Courts based on *kastom* in Vanuatu. Customary law was later recognized as a source of law in the Fijian Constitution that was in force between 1990 and 1998. Informal methods of dispute resolution within local communities continue in many areas. Indeed, the informal justice system remains the most accessible and commonly used system for most of the people in PNG, Solomon Islands, and Vanuatu where 85% of the population live in rural areas. Nevertheless, *kastom* is no longer always effective in the face of lessening social cohesion and increased contact with westernization of values and social and economic relationships.

There is a tension between human rights in societies that have often concentrated power in the hands of a few and failed to recognize the equal rights of women, children, and men. "Women accused of adultery have been imprisoned while their male accomplices have gone unpunished. Likewise children have reportedly been locked up for minor offences" (p. 18). On the other hand, Western justice is not without its critics: Dinnen quotes a recommendation from a National Summit on Juvenile Justice in Vanuatu which asked for custom courts and custom laws to deal with young people when they commit offenses because of: mistreatment by the police; lengthy delays and high costs in the court process; shame and stigma attached to the formal process; and the failure of the court process 'to fix problems and restore peace to communities' (p. 21).

The chapters in the book by Dinnen (2003) traverse a wide variety of perspectives and stories of "good" and "bad" justice processes as well as chapters reflecting on the wider issues facing Melanesian societies. They describe a wide variety of responses to crime, to transgressions against social norms and *kastom*, and to major internal conflicts throughout the region. The magnitude of the difficulties in providing for justice seems enormous but this gulf between practice and ideals itself provides the impetus for a variety of innovative proposals and a determination to seek new solutions.

More recently within Melanesia there has been increasing discussion of different approaches to crime and conflict. The conference in Vanuatu in 2000 (Dinnen, 2003) reported on both formal and informal approaches to conflict resolution. The debate focused not only on crime and conflicts within communities but also on the wider effects of the broader processes of social and economic change in the region and the larger internal conflicts that have occurred in Bougainville, Papua New Guinea, Fiji, and the Solomon Islands over recent years. The results of the conference indicated the diversity of the groups and the strategies that were emerging for responding to the crime, lawlessness, and conflicts occurring at all levels throughout the area. Restorative justice, with its emphasis on inclusion of all stakeholders and the repair of harm, was seen as a useful framework for thinking about both formal and informal justice practices and developing linkages between them.

More recently there have been new restorative justice initiatives in PNG where the adoption of restorative justice as a 'core rationale' for the long-term future of the law and justice sector had already been part of the National Law and Justice Policy endorsed in 2000. A number of restorative strategies have now been introduced by the justice agencies. The most significant of these is in the area of juvenile justice where a Juvenile Court Restorative Justice Program draws from existing restorative practices in PNG, as well as from similar programs in New Zealand, Australia, and South Africa. Under the program, community-based mediation involving community panels will be developed as an alternative way of dealing with juveniles.

Such a development seems to be consistent with the conclusions drawn by Dinnen from the Vanuatu conference favouring neither the return to custom law nor a more universal adoption of a Western process.

Kastom can be oppressive and discriminatory, justice as it can be respectful and empowering ... the way forward is neither a singular reliance on kastom or Western justice but a creative integration of the best of both. Strengthening the capacity of the formal justice system requires that priority be given to improving relations with the wider society it exists to serve. Community participation in justice processes, as entailed in restorative approaches, is a necessary part of building the social foundations whose absence is a significant contributor to the current weakness of state processes. Another attraction of restorative initiatives is the prospect they hold of more direct engagement with the underlying causes of conflict, including the structural conditions that contribute to crime. An important source of the weakness of formal justice lies in its inability to address the wider issues of social justice. The potential to engage with social justice issues provides another way of building the legitimacy and effectiveness of justice and conflict resolution practices (pp. 31-32).

## **Conclusion**

The foregoing summary of conferencing developments in New Zealand and Australia demonstrate that these two jurisdictions have firmly embraced restorative justice in responding primarily to youth crime and to some extent adult crime. New Zealand has the longest experience with family group conferencing for young offenders, and restorative justice practice there has largely influenced developments in Australia. That both New Zealand and all but one Australian jurisdiction have established statutory

frameworks for restorative justice conferencing highlights the innovative approach these countries have taken to juvenile justice. Furthermore, New Zealand has also amended key legislation facilitating the use of restorative practices with adult offenders and most district courts now have the option of referring offenders to at least one program providing such services. Growing developments in the Pacific Islands also are encouraging and show that restorative justice has reparative potential in parts of the world where there is substantial social conflict.

Outcomes of these developments have now been evaluated in most jurisdictions. The research shows clearly that it is possible to incorporate restorative justice processes at the pre-sentence phase in both the juvenile and adult justice systems. The results of using restorative practices are to provide processes that are seen as fair and just by all participants, are capable of involving victims and responding to them to a greater extent than courts, can make the offenders accountable and provide options for ongoing support to offenders that can assist in their reintegration into society. Furthermore, when there is a greater use of diversionary and community sanctions, the processes used can result in savings to the system. However, if needed services likely to prevent re-offending are provided, the cost savings may be more marginal initially but later show the crime reduction effect of service provision.

Much has been written about the different models of conferencing. There has tended to be an emphasis on comparing first Wagga Wagga and New Zealand, and later police-led scripted conferencing and New Zealand. Other analysts have seen other distinctions between practice in Australia and New Zealand. However, the materials reported here show that there are considerable practice variations within both countries. There are several different types of arrangements with respect to how the management of conferences are arranged, the way the model is described, the theoretical models that are seen as underpinning practice, and the practice rules and standards adopted for facilitators. None of the research examined here was able to demonstrate that any of these factors are major in affecting outcomes—although there are undoubtedly critical differences in conference practice related to outcomes. These differences probably reside both in the practice of individual facilitators and the behavior of the participants in the conference rather than any general effects of the type of model adopted or the standards of practice that are promulgated. Certainly the conferences that result in remorse and restorative outcomes, respect and support for participants, and responses to needs in relation to healing and reintegration appear to be the most effective in achieving restorative goals. Having said that, it is also true to say that the Australasian experience has led to an increasing preference for emphasising preparation, empowerment and participation, trained specialist facilitators, and the use of conferencing for the more serious rather than minor offenses. Further, comparisons between the New Zealand youth justice system and other uses of conferencing suggest that the mainstreaming and mandating of restorative justice is more effective than simply providing restorative conferencing as an option.

On the other hand, restorative practice may not always prevent further offending. Results are variable. Some studies suggest that there may be differences depending on the characteristics of the offender and the nature of the offending while others suggest

that the most important factors may be the quality of the restorative process and the support and services provided afterwards as a result of the conference process.

Nevertheless, restorative process in a traditional justice environment can achieve the goals set out in restorative theory of fairness, responsiveness, participation, accountability, forgiveness, and healing and reintegration. Furthermore, at least within New Zealand and Australia, the use of a restorative approach is an effective alternative to the use of the harsh and punitive responses that are so often damaging to all who are directly involved and to the health of the wider society.

The picture in the wider area of the South Pacific is very different. In the islands of Melanesia and Polynesia, customary practices survive alongside the introduction of modern Western justice systems. However, the customary practices display both restorative and highly punitive elements. The demands of *ifoga* and of *kastom* can be harsh compared to that of the diversionary restorative practices that have emerged in Australia and New Zealand. Nevertheless, both *ifoga* and *kastom* are examples of how customary practice can moderate the impact of the traditional Western justice system in ways that allow consideration of both compensation for victims and an emphasis on forgiveness and can lead to restoring the balance of relationships within the wider community. These examples suggest that neither the modern justice systems of the West nor the traditional community models of indigenous tribal societies yet reflect the goals and values of the 21st-century proponents of restorative justice.

## Notes

- [1] The New Zealand system of youth justice is described in many books of readings on restorative justice including: McLrea, 1993; chapter 7 of (Lo, Maxwell, & Wong, 2005); chapters 2, 5 and 6 of (Hudson, Morris, Maxwell, & Galaway, 1996); chapters 4 and 14 of Morris and Maxwell, 2001; and Morris and Maxwell, 1993. It is also described in somewhat greater detail in the research reports referred to in the subsequent sections of this part of the article.
- [2] Throughout the remainder of this article the phrase 'young people' is used to refer to children and young people. In New Zealand this includes all those at least 12 years and under the age of 17 years.
- [3] Detailed descriptions of the operation of family group conferences in the youth justice system and the results of research can be found in the key research reports (Maxwell, Kingi, Robertson, Morris, & Cunningham, 2004a, 2004b; Maxwell & Morris, 1993, 1999). Data set out in this section derive from these studies.
- [4] The exact proportion of cases dealt with in various ways has varied from time to time and Police District to Police District. These data derive from a sample of 1,794 cases and is probably the most reliable collected to date as the official computer records of how offenders are dealt with are incomplete and often inaccurate.
- [5] However, in these cases too, a family group conference may be arranged to inform the sentencing judge of the views of family and victims.
- [6] Normally this will be a Youth Aid officer: one of a specially trained group of officers responsible for issues related to youth offending.
- [7] The total sums involved were less than \$50 in 63% of cases and between \$50 and \$100 in another 18%.
- [8] In 83% of cases the number of hours was less than 30.
- [9] Reoffending was defined as having been recorded in police files as committing an offense of sufficient seriousness for a charge to be laid in the Youth Court, although the case may have

- been dealt with by a referral for a FGC, or where a charge had actually been laid in either the Youth Court or an adult court. Minor traffic offenses were excluded.
- [10] The Community Accountability Programme ceased operation during its first year but it has since been resurrected. It was a victim-offender conferencing programme situated in Rotorua, a city in the middle of the North Island in which a significant proportion of Maori live. In this programme, decisions are made by victims and offenders themselves (and their communities of care) with the aid of paid facilitators and not by panel members. This programme aims to provide greater satisfaction to victims as well as making offenders more accountable. Thus it gives victims considerable control over the meeting format and only deals with cases where victims provide input.
- [11] Since these early beginnings, a number of Community Panel Diversion Schemes have been funded by the Crime Prevention Unit (now within the Ministry of Justice though previously within the Office of the Prime Minister). Mainly, these are modeled on Project Turnaround in that they involve the offender and victim meeting with a community panel, but some have incorporated additional developments. By mid 2004, there were, in total, 18 programs supported and administered by the Crime Prevention Unit (under the title 'Community Managed Restorative Justice Programmes') and it is estimated that these programs will deliver about 900 conferences in 2004
- [12] This programme is based on Maori *tikanga* customary practice and values)
- [13] This section is derived from a article prepared by Morris and Maxwell (2004) for a seminar in Brasilia.
- [14] Ideally, the facilitators are matched in some ways-for example, with respect to sex and ethnicity - to the offender and or victim.
- [15] Parts of this section are drawn from Daly and Hayes (2001). Additional information comes from various Departmental annual reports and conversations we have had with personnel currently responsible for managing conferencing schemes in several Australian jurisdictions. We especially thank Jenny Barga (Director, Youth Justice Conferencing, New South Wales) for her comments and suggestions on a previous draft of this article. We also thank the following individuals for providing valuable feedback on specific jurisdictional features: Craig Jenkins and Martin McMillan (Queensland), John Hinchey and Heather Strang (Australian Capital Territory), Helen Jessup (Tasmania), Grant Thomas (South Australia), Superintendent Ian Lea (Northern Territory), Ennio Cicchini and Gary Cusack (Western Australia).
- [16] It is important to note that while family conferencing is a legal process in response to offending, it nevertheless is far less formal and structured than the court process. The family conference process, while following a general standardized format, can be tailored to meet the needs of participants. For example, in highly emotional encounters, the process may be stopped briefly to allow participants time to leave the room to regain composure. Formal youth court processes, albeit probably less emotional, likely cannot sustain such interruptions under continual pressure to clear the lists.
- [17] While several Australian jurisdictions trialed versions of police-run conferencing schemes (e.g., Queensland, Northern Territory, New South Wales and the Australian Federal Territory), the police have never had responsibility for managing conferencing in SA (Daly & Hayes, 2001, 2002).
- [18] Restorativeness in SAJJ was defined as "...the degree to which offenders and victims recognized the other and were affected by the other...the degree to which there was positive movement between the offender and victim..." (Daly, 2002).
- [19] Re-offending was defined as any new official incident. These included official cautions, referrals to family conference or the youth court.
- [20] See Chan et al. 2004 for a detailed analysis of the system impacts of implementation of the NSW *Young Offenders Act 1997* (Chan, Luke, & Clancey, 2004).
- [21] No comparative data were obtained for victims in court. See (Hayes, 2005) for discussion on methodological issues associated with RISE and other field experimental studies of restorative justice conferencing.

- [22] While the *Young Offenders Act 1994* places limits on the types of offenses eligible for referral to the teams, the teams nevertheless deal with other offenders whose behavior is potentially more serious (e.g., burglary and motor vehicle theft) but have no history of prior offending or no established pattern of offending (Gary Cusack, WA Juvenile Justice Teams, personal communication, April 2005).
- [23] A key difference, however, is that other professionals may be involved in WA conferences (e.g., Aboriginal community representatives or school officials). Hence, the notion of “teams”.
- [24] Annual referral figures are not available, but Daly and Hayes (2001) estimated that WA conferences about 1,400 young offenders per year.
- [25] The funding period concluded in mid-2004. While the future funding arrangements for police-run pre-court diversion remain unclear, the NT Police plan to continue offering young offenders diversionary options (Superintendent Ian Lea, NT Police Juvenile Diversion Unit, personal communication, April 2005).
- [26] Offenders were not randomly assigned to conference or court. Therefore, the authors of the report note that re-offending rates likely are higher for the court group because their offending was typically more serious and they were more likely to have had a record of prior detected offending.
- [27] See also Dinnen’s more recent work on restorative justice developments in the Southwest Pacific states of Papua New Guinea, Solomon Islands, Vanuatu and Fiji (Dinnen, 2005).
- [28] Police and Feiloiamauso Utueli Gali and Vala Tuli in the Supreme Court Samoa, 29 September 1999.
- [29] This section is drawn from Dinnen’s introduction to his edited book, *A Kind of Mending*, 2003. In our summary, we have consulted him and he has also supplied additional information on recent developments in Papua New Guinea.

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## **Legislation**

### **New Zealand**

*Children, Young Persons and Their Families Act 1989*

*Sentencing Act 2002*

*Victims' Rights Act 2002*

### **Australia**

*Young Offenders Act 1993 (South Australia)*

*Young Offenders Act 1997 (New South Wales)*

*Juvenile Justice Act 1992 (Queensland)*

*Youth Justice Act 1997 (Tasmania)*

*Young Offenders Act 1994 (Western Australia)*

*Crime (Restorative Justice) Act 2004 (Australian Capital Territory)*

### **Pacific Islands**

*Village Fono Act 1990*