

# Trends & issues

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**Foreword** | *This preliminary paper provides an overview of the legislative and policy context of restorative justice measures for juveniles in each Australian state and territory, highlighting the diverse characteristics of current restorative practices. Further, it provides an indication of the numbers and characteristics of juveniles who are referred by police to restorative justice measures and the offence types for which they are most commonly referred. A number of key points about the application of restorative justice measures to juveniles in Australia's jurisdictions are highlighted, including that juveniles were referred to conferences primarily for property crimes and that Indigenous juveniles comprised higher proportions of those sent to court than to conferencing. This paper argues that more detailed data on the offending histories, offence types and offence seriousness of juveniles referred by police to restorative justice processes would enable a more finely-grained analysis of restorative justice for juveniles in Australia.*

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## Police-referred restorative justice for juveniles in Australia

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During the 1990s, restorative justice became firmly established as a new approach for responding to juvenile crime. Restorative justice measures are most commonly used to divert juvenile offenders from the formal criminal justice system, although they also exist in a variety of other contexts across Australia's jurisdictions, such as in circle sentencing and victim-offender mediation programs for adult offenders (Daly & Proietti-Scifoni 2009). Although there are many definitions of restorative justice, the following definition by Marshall (1996: 37) has gained widespread acceptance: '[restorative justice is] a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future'. While the rationale for restorative justice programs varies among Australian jurisdictions, in general, restorative justice measures seek to repair the harm caused by crime, to actively involve offenders, victims and communities in the criminal justice process and to provide a constructive intervention for juvenile offending.

This paper provides an overview of the legislative and policy context of restorative justice practices for juveniles in each Australian state and territory. It also outlines recent data that indicate the numbers and characteristics of juveniles referred to restorative justice programs by police and the offences for which they are referred, where these data are available. This paper is exploratory in nature and aims to identify future research issues relating to restorative justice for juveniles in Australia.

### Data on restorative justice for juveniles

The data presented in this paper have been taken from a variety of sources. Most jurisdictions publish police and/or court data on juveniles and restorative justice. In addition to these publicly available data, ACT Policing, the NSW Bureau of Crime Statistics and Research (BOCSAR) and the NT Police recently provided data to the Australian Institute of Criminology (AIC) for an ongoing research study on juveniles' contact with the criminal justice system in Australia (see Richards 2009).

Data on juveniles' participation in restorative justice measures in New South Wales and the Northern Territory have been taken from these datasets. It should be noted that:

- This paper does not include data from Tasmania as this material is not publicly available and was not able to be provided to the AIC.
- Data on juvenile conferencing in Victoria are also limited, as restorative justice for juveniles in Victoria exists in a different context from the other jurisdictions, in that only the court can refer a juvenile to a restorative process.

Due to the varied legislative and policy contexts in which restorative justice is applied across Australia, comparisons among jurisdictions are contentious. A range of other factors limit comparisons among jurisdictions:

- The data outlined in this paper relate to the most recent period for which these were made available publicly or to the AIC. These time periods vary considerably, from 2005 in Western Australia and South Australia, to 2008–09 in the Australian Capital Territory.
- Data are collected in different ways across jurisdictions. Some count the number of juveniles referred to a conference, while others count the number of offences for which juveniles were referred to a conference, or the number of conferences themselves.
- In all jurisdictions except Queensland, a juvenile is defined as a person aged 10 to 17 years inclusive. In Queensland, a juvenile is defined as a person aged 10 to 16 years inclusive. Young people aged 18 years can be involved in conferences as juveniles if they committed the offence(s) prior to turning 18.

Further, it is important to recognise that data from the different jurisdictions relate variously to conference referrals *made*, conference referrals *accepted* and conferences *held*. The number of referrals made will not equate exactly with referrals accepted and, in turn, the number of referrals accepted will not equate exactly with the number of conferences held. A number of factors influence this:

- In most jurisdictions, juveniles can decline to participate in restorative practices and in some jurisdictions, other parties, such as the juvenile's parents or the victim, can 'veto' the occurrence of a conference.
- Referrals in relation to co-offenders may result in only one conference being held. That is, all offenders may participate in a conference together.
- Multiple referrals in relation to one juvenile may result in only one conference being held.
- The juvenile, or another party who must attend a conference in order for it to proceed, may not attend the conference.

## Restorative justice legislation

Each state and territory jurisdiction in Australia has a legislated restorative justice program for juveniles currently in operation, although these vary in purpose, operation and scope. Table 1 shows the relevant legislation for each jurisdiction.

### New South Wales

Youth justice conferences in New South Wales were conducted by police officers in an unlegislated capacity between 1991 and 1994, and were formally piloted in 1995 (Strang 2001). Following the enactment of the *Young Offenders Act 1997*, conferencing was implemented across the state in 1998 and is now administered by the NSW Department of Juvenile Justice.

According to the Act, youth justice conferences aim to involve the community, address the needs of victims (including through providing restitution), facilitate juveniles' acceptance of responsibility for unlawful behaviour and address juveniles' needs.

A conference can only take place in New South Wales if the juvenile admits the offence and consents to a conference being held.

### Australian Capital Territory

Conferencing in the Australian Capital Territory was also originally operated by police in an unlegislated capacity from 1994 (Strang 2001). In January 2005, comprehensive legislation was introduced that governs restorative justice practices for both juveniles and adults in the Australian Capital Territory. Currently, only juveniles may be referred to restorative justice; adults will become eligible to be referred at a date to be decided.

The *Crimes (Restorative Justice) Act 2004* allows for juveniles to be referred by the police, during the court process, or post-sentence. The Act seeks to meet the needs of victims and offenders by providing a safe environment in which they can participate in repairing the harm caused by crime.

The Act stipulates that an offender is deemed eligible for restorative justice if they 'accept responsibility for the commission of the offence' (s 20) and agree to take part in a restorative justice process. In determining

whether participants (victims, parents of child victims and/or offenders) are suitable for a restorative justice conference, the following must be taken into consideration:

- personal characteristics;
- motivation for taking part; and
- perceived impact of the offence.

Offenders' contrition or remorse for the offence is also considered in assessments of offenders' suitability.

### Victoria

Restorative justice was first implemented in Victoria in 1995 and operated in an unlegislated capacity for a number of years. The program was operated by a non-government organisation and was limited in its geographical application (Keating & Barrow 2006). Restorative justice in Victoria is currently overseen by the Department of Human Services and is operated 'on the ground' by a number of community-based organisations.

In Victoria, unlike all other jurisdictions, restorative conferencing is a diversion program used by the courts; police are unable to refer juveniles to restorative conferences. Under Victoria's *Children, Youth and Families Act 2005*, conferences aim to prevent juvenile recidivism by enhancing juveniles' understanding of the effects of their offending behaviour on victims and the community.

Under the program, juveniles can be diverted from receiving a community-based youth justice order, or from receiving a more severe disposition than they may have received had they not participated in a conference. The court must take a juvenile's participation in a group conference into consideration during sentencing. To avoid net-widening, the program does not target offences that may be dealt with by police diversion strategies, such as cautioning.

In 2006, the *Courts Legislation (Neighbourhood Justice Centre) Act 2006* established the Neighbourhood Justice Court in Victoria. The Children's Court (criminal division) will sit at the Neighbourhood Justice Centre and the existing juvenile conferencing program will operate from the court. The Neighbourhood Justice Court includes a broad focus on restorative justice in its operation.

**Table 1** Legislated restorative justice programs for juveniles in Australia

	Legislation	Excluded offences	Parties who must attend	Parties who may attend
NSW	<i>Young Offenders Act 1997</i>	Offences resulting in the death of any person; Any offence under the <i>Crimes (Domestic and Personal Violence) Act 2007</i> ; A range of offences under the <i>Drug Misuse and Trafficking Act 1985</i> ; and Most sexual offences	Not stipulated by the Act	The following parties are entitled to attend: <ul style="list-style-type: none"> <li>the child;</li> <li>conference convenor;</li> <li>a person responsible for the child;</li> <li>members of the child's family;</li> <li>an adult chosen by the child;</li> <li>the victim or victim representative;</li> <li>victim support person(s);</li> <li>the investigating official;</li> <li>a specialist youth officer; and</li> <li>a legal representative for the child.</li> </ul> at the convenor's discretion, and in appropriate situations, the following parties may also be invited: <ul style="list-style-type: none"> <li>a respected member of the community;</li> <li>an interpreter;</li> <li>a representative of the child's school;</li> <li>a skilled disability worker, social worker or other health professional;</li> <li>the child's supervising officer; and</li> <li>any other person requested by the child's family</li> </ul>
ACT	<i>Crimes (Restorative Justice) Act 2004</i>	Property offences that attract a term of imprisonment of more than 14 years; Offences against the person that attract a term of imprisonment of more than 10 years. Domestic violence offences. Sexual assault offences	The victim or the victim's parent, or a substitute for the victim or the victim's parent; and the child	<ul style="list-style-type: none"> <li>the relevant police officer;</li> <li>a parent of the victim;</li> <li>a parent of the child;</li> <li>a family member of the victim;</li> <li>a family member of the child;</li> <li>a family member of the victim's parent;</li> <li>support persons for the child, the victim and/or the parent of the victim; and</li> <li>other parties deemed relevant by the convenor</li> </ul>
Vic	<i>Children, Youth and Families Act 2005</i> <i>Courts Legislation (Neighbourhood Justice Centre) Act 2006</i>	Not stipulated by the Act, although the Court can only refer juveniles upon whom it is considering imposing a sentence of probation or a youth supervision order	The child; The child's legal practitioner; The police informant or another member of the police force; and The conference convenor	<ul style="list-style-type: none"> <li>members of the child's family;</li> <li>other persons significant to the child;</li> <li>the victim or a victim representative; and</li> <li>other persons permitted by the convenor</li> </ul>
Qld	<i>Youth Justice Act 1992</i>	Not stipulated by the Act, although the referring police officer must consider the nature of the offence	Not stipulated by the Act	The following parties are entitled to attend: <ul style="list-style-type: none"> <li>the conference convenor;</li> <li>the child;</li> <li>the child's parent;</li> <li>the victim;</li> <li>a representative of the referring agency (police or court);</li> <li>a support person, lawyer and/or family member of the victim at the victim's request;</li> <li>a lawyer, adult family member or another adult at the child's request; and</li> <li>any other person deemed relevant by the convenor (including a respected member of the aboriginal community where relevant)</li> </ul>
WA	<i>Young Offenders Act 1994</i>	Homicide offences; Most sexual offences; and A wide range of other offences, including drug offences, arson, and offences against justice procedures, outlined in Schedules 1 and 2 of the Act	Not stipulated by the Act	Juveniles justice teams may be comprised of: <ul style="list-style-type: none"> <li>a co-ordinator;</li> <li>a member of the police force appointed by the co-ordinator;</li> <li>an appropriate member of an approved aboriginal community (if appropriate);</li> <li>a representative of the minister responsible for administering the school education act (1999);</li> <li>a representative of an ethnic or other minority group (if appropriate); and</li> <li>other persons appointed by the co-ordinator.</li> </ul> participants cannot be represented by a legal practitioner

**Table 1 continued**

	Legislation	Excluded offences	Parties who must attend	Parties who may attend
SA	<i>Young Offenders Act 1993</i>	The Act applies only to 'minor' offences	The conference co-ordinator; The youth; and A representative of the Commissioner of Police	The following parties must be invited to attend: <ul style="list-style-type: none"> <li>the youth's guardian(s);</li> <li>relatives or other persons who have a close association with the youth;</li> <li>the victim;</li> <li>a victim support person;</li> <li>the victim's guardian(s) if the victim is a youth; and</li> <li>other persons deemed relevant by the co-ordinator</li> </ul>
Tas	<i>Youth Justice Act 1997</i>	Prescribed offences under s 3 of the Act, including murder; attempted murder; manslaughter; aggravated sexual assault; rape; and armed robbery	The conference facilitator; The youth; and A police officer or representative of the Commissioner of Police	The following parties must be invited to attend: <ul style="list-style-type: none"> <li>the youth;</li> <li>the guardians/relatives of the youth;</li> <li>other persons who have a close association with the youth;</li> <li>an aboriginal elder (if relevant);</li> <li>the victim;</li> <li>support persons for the victim and the youth; and</li> <li>other appropriate persons</li> </ul>
NT	<i>Youth Justice Act</i>	Serious offences (any offence prescribed by regulation)	Not stipulated by the Act	Not stipulated by the Act

## Queensland

Conferencing for juveniles in Queensland was introduced in 1996, following amendments to the then *Juvenile Justice Act 1992* (now the *Youth Justice Act 1992*) and was initially implemented in a small number of localities by community organisations (Strang 2001). The program now operates across the state. According to the Act, conferencing aims to assist juveniles, their parents, victims and the community by facilitating their participation in a process that encourages juveniles to accept responsibility for their behaviour, allows victims to receive restitution, encourages family and community decision-making, reduces costs and prevents recidivism.

## Western Australia

Following a pilot scheme in Fremantle and Perth, juvenile justice teams were formally established across Western Australia with the implementation of the *Young Offenders Act 1994* in 1995 (Strang 2001). According to the Act, juvenile justice teams aim to prevent recidivism by avoiding juveniles' exposure to negative influences, provide a forum in which families can positively influence young offenders, provide a response that is proportionate to the seriousness of juveniles' offending and can be delivered within a timeframe appropriate for young people and enhance juveniles' understanding of their offending behaviour and its consequences.

All potential participants must consent to having the offence dealt with via a juvenile justice team. If the juvenile, the juvenile's parent/guardian, or the victim does not consent to having the matter dealt with by a team, or does not agree with the outcomes stipulated by a team, the matter is to be sent back to the referral source.

## South Australia

Conferencing for juveniles in South Australia was introduced across the state under the *Young Offenders Act 1993*. This Act deals with 'minor offences' committed by juveniles and determines whether an offence is minor according to:

- the limited extent of the harm caused;
- the character and antecedents of the alleged offender;
- the improbability of the youth reoffending; and
- where relevant, the attitude of the youth's parents or guardians.

Although the Act does not describe the purpose of conferencing, its general principles are that interventions with juveniles should emphasise restitution to victims, strengthen family relationships and avoid impairing juveniles' sense of cultural, racial or ethnic identity and/or their education or employment.

Both the youth for whom the conference has been convened, and the Commissioner of Police, have the right to 'veto' decisions made at family conferences.

## Tasmania

Youth justice conferences were conducted by police in Tasmania in an unlegislated capacity until the introduction of the *Youth Justice Act 1997*. Although this legislation does not describe the purpose of community conferences for juveniles, the Department of Health and Human Services Tasmania (2008) states that conferences aim to assist juveniles to accept responsibility for, and repair harm caused by, their offending behaviour; assist victims by facilitating their participation in decision-making; improve community confidence in the criminal justice system; and provide the young person with support to develop pro-social behaviours and to avoid recidivism.

Under the Act, a juvenile must agree to the convening of a community conference and must sign an undertaking to attend the conference. The juvenile, the relevant police officer and the victim (if present at the conference) must agree on the outcome of a community conference.

## Northern Territory

A police-run conferencing program for juveniles was trialled in Alice Springs and Yuendumu during 1995–96 (Strang 2001). A pre-court diversion scheme was established across the Northern Territory in 2000, which introduced police-led conferences for selected offences (Cunningham 2007).

In 2008, the *Youth Justice Act* came into force in the Northern Territory. Although the



Act does not explicitly state the purpose of conferencing for juveniles, conferences appear to have been introduced within the context of diversion and exist as part of the Northern Territory's range of diversionary options for juveniles.

Under this Act, police must divert juveniles via warnings, conferences or other diversionary measures, unless:

- the offence for which the juvenile has been apprehended is 'serious';
- the youth has been diverted twice before; or
- the youth has a history of previous diversions or convictions that make him/her unsuitable for diversion.

In addition, both the youth and a responsible adult, such as the youth's guardians, must consent to the diversion.

The Court can also divert juveniles to conferencing under the new Act if a juvenile has been found guilty of an offence. These pre-sentence conferences may include victims of the offence, community representatives, members of the youth's family and/or any other parties the Court considers appropriate.

## How many juveniles are referred by police to restorative justice?

This section summarises the available data on the numbers of juveniles who are referred by police to restorative justice measures in each of Australia's jurisdictions and the proportion of all police contact with juveniles that results in a referral to a restorative conference.

### New South Wales

Data provided to the AIC by BOCSAR indicate that NSW police referred 2,198 juvenile persons of interest to a youth justice conference during the 2007–08 financial year. This represents three percent of all juvenile persons of interest apprehended by NSW police during this period. During this period, the NSW Department of Juvenile Justice (2008) accepted 1,725 referrals for youth justice conferences, which resulted in 1,185 conferences being facilitated.

The variation in the number of juveniles referred to youth justice conferencing by the police and the number of conferences facilitated by the Department of Juvenile

Justice may be the result of different counting methods used by these agencies. In addition, as outlined above, in some cases, multiple juvenile offenders may be referred separately to conferences, but may participate in conferences simultaneously. It is also important to note that, as outlined above, in most jurisdictions, referrals are accepted by both the police and the Children's Court.

### Australian Capital Territory

In 2008–09, police in the Australian Capital Territory referred 67 juveniles to a diversionary conference. This represents two percent of all juvenile alleged offenders dealt with by the police during this period.

Of all the juvenile matters referred to restorative justice during this time, 31 percent were referred by police.

### Queensland

The Queensland Police Service (2007) reports that 2,258 referrals were made by police and courts to community conferences in Queensland during the 2006–07 financial year, representing six percent of all juveniles apprehended by police during this period. The Queensland Department of Communities (2008) reports that during this time, 2,038 young people were dealt with via youth justice conferencing.

### Western Australia

The WA Department of Corrective Services (2007) reports that 2,560 'cases' were completed by juvenile justice teams during the 2006–07 financial year. More detailed data on juvenile justice teams in Western Australia provided by Loh et al. (2007) show that for the 2005 calendar year, 1,544 referrals involving 1,327 distinct juveniles were made by WA police to juvenile justice teams. The proportion of juveniles apprehended by police in Western Australia who are referred to a conference is unknown.

### South Australia

In South Australia, the Office of Crime Statistics and Research (OCSAR 2006) reports that 1,169 conferences involving 1,266 distinct juveniles were held during 2005. SA Police (2007) report that 17 percent of juveniles apprehended by police were diverted via a conference during the 2006–07 financial year.

### Northern Territory

According to Cunningham's (2007) study, there were 917 juveniles aged 16 years or younger diverted by police to a conference during the five year period from August 2000–August 2005. More recent data provided to the AIC by NT Police show that 306 juveniles—25 percent of those apprehended by police—were diverted via a conference during 2008.

## Which juveniles are referred by police to restorative conferences?

A variety of concerns about the capacity of restorative justice to be accessible and effectively applied to certain groups of juveniles, such as Indigenous juveniles, have been raised since its inception (see Morris 2002). This section summarises the most recent available data on the demographic characteristics of juveniles who were referred by police to restorative justice measures in Australia's jurisdictions.

### New South Wales

In New South Wales, 85 percent of juvenile persons of interest who were referred by police to a youth justice conference were male; the remaining 15 percent were female. Nineteen percent of juvenile persons of interest were Indigenous; the remaining 81 percent were non-Indigenous. Ten to 14 year olds comprised 32 percent of all juvenile persons of interest transferred to a conference and 15 to 17 year olds comprised the remaining 68 percent.

### Australian Capital Territory

During 2008–09, 76 percent of juveniles referred by police to restorative justice conferences were male; 24 percent were female. During this time, seven percent of juveniles referred identified as Indigenous. Nine percent were aged between 10 and 13 years; the remaining 91 percent were aged 14 to 17 years.

### Queensland

Indigenous juveniles were transferred by Queensland police to a community conference in relation to 22 percent of alleged offences during 2006–07. Non-Indigenous juveniles were transferred to a conference in relation to the remaining 78 percent of alleged offences. Queensland

police do not publish data on outcomes for apprehended juveniles by sex or age.

## Western Australia

During 2005, 74 percent of distinct juveniles referred to juvenile justice teams by police were male; 21 percent were female (5% did not have their gender recorded). Thirty-three percent of juveniles referred by police were Indigenous, 67 percent were non-Indigenous and less than one percent were of unknown Indigenous status. Forty-three percent of juveniles referred by police were aged 10 to 14 years and the remainder were aged 15 to 17 years.

## South Australia

Seventy-six percent of conferencing cases involved male juveniles in South Australia during 2005; the remaining 24 percent involved female juveniles. Twenty-two percent of conferencing cases involved juveniles of 'Aboriginal appearance' and 78 percent juveniles of 'non-Aboriginal appearance'. (In South Australia, police record offenders' Indigenous status based a subjective assessment of their appearance). Forty-five percent of cases involved juveniles aged 10 to 14 years and the remainder involved juveniles aged 15 to 17 years.

## Northern Territory

In the Northern Territory during 2008, 76 percent of juveniles who were referred to a conference were male and 24 percent were female. Indigenous juveniles comprised 73 percent of juveniles who were sent to a conference; non-Indigenous juveniles comprised 27 percent. Forty-one percent of juveniles were aged 10 to 14 years, 54 percent 15 to 17 years and the remaining six percent 18 years.

## Key findings about demographics

The above data indicate that the majority of juveniles referred to restorative justice measures by police, in the jurisdictions for which data are available, were male. This is to be expected, as males comprise the majority of young people who come into contact with the criminal justice system. Yet similar proportions of male and female juveniles who came into contact with the police were referred to restorative conferencing in jurisdictions for which these data are available. In New South Wales, four percent of male and two percent of female juvenile persons of interest were referred to a youth justice conference by the police. In South Australia, this was the case for 17 percent of female and 16 percent of male juveniles who came into contact with the police (OCSAR 2006) and in the Northern Territory, for 25 percent of male and 26 percent of female juveniles who had contact with the police as alleged offenders. This is a somewhat unexpected finding, as young males typically have more serious offending profiles than young females (Richards 2009). As such, it might be expected that a higher proportion of female juveniles would be diverted from the criminal justice system via less intensive criminal justice responses such as warnings and cautions and more males than females to be referred to restorative justice measures.

The data also indicate that although older juveniles (aged 15 to 17 years) comprised the majority of juveniles referred to conferences by the police in all jurisdictions for which these data are available, a substantial proportion of juveniles referred to conferences were aged 10 to 14 years (ranging from 32% in New South Wales to 45% in South Australia). This is somewhat unexpected, as older juveniles comprise most of those who come into contact with

the criminal justice system and it might be expected that younger juveniles would be expected that younger juveniles would be diverted via warnings or cautions. Although these data relate to varied periods of time and must be interpreted cautiously, this might suggest that conferences are utilised disproportionately for younger juveniles, aged 10 to 14 years.

Although Indigenous juveniles are over-represented among offenders in all jurisdictions, the proportion of conferences that involve Indigenous juveniles (including both juveniles who self-identified as Indigenous and juveniles deemed of 'Aboriginal appearance' by a police officer, depending on the jurisdiction) varies substantially among jurisdictions (see Table 2). It is important to note when considering these differences, that they are influenced by jurisdictions' varied demographic, legislative and policy contexts (see Richards 2009).

As Table 2 shows, Indigenous juveniles formed higher proportions of juveniles transferred to court than to a conference in all jurisdictions for which data are currently available. Conversely, non-Indigenous juveniles formed higher proportions of those transferred to a conference than to court. All other factors being equal, one might expect similar proportions of Indigenous and non-Indigenous juveniles to be transferred to a conference. This could suggest that in some jurisdictions, Indigenous juveniles are not being diverted via restorative measures to the same extent as their non-Indigenous counterparts. Recent research conducted in New South Wales, South Australia and Western Australia (Snowball 2008a, 2008b) and Queensland (Allard et al. 2010) found that Indigenous young people were less likely than non-Indigenous young people to be diverted, even after controlling for the effects of age, sex, offence type and offending history, thereby supporting this

**Table 2** Alleged juvenile offenders referred by police to a conference or to court in selected jurisdictions, by Indigenous status (%)

	Conference					Court				
	NSW	ACT	WA	SA	NT	NSW	ACT	WA	SA	NT
Indigenous <sup>a</sup>	19	8	33	22	74	31	15	41	23	79
Non-Indigenous	81	93	67	78	26	69	85	46	76	21
Total	100	100	100	100	100	100	100	87 <sup>b</sup>	100	100

a: Indigenous juveniles either self-identify as Indigenous or are deemed to be of 'Aboriginal appearance' by a police officer, depending on the jurisdiction

b: Information about the Indigenous status of 13 percent of juveniles was unable to be obtained

Source: AIC Juveniles' contact with the criminal justice system Monitoring Program [computer file]; Loh et al. 2007; OCSAR 2006

view. Reduced access to restorative justice measures in Indigenous communities may partly explain this discrepancy.

## Which offence types are dealt with via restorative measures?

Since the emergence of restorative justice for juveniles in Australia's jurisdictions, tensions have existed as to the types of offences that restorative practices should be applied to. Although restorative practices have sometimes been considered inappropriate for serious offences, concerns about net-widening (ie the potential for conferencing to inadvertently draw increased numbers of juveniles into the criminal justice system) have conversely resulted in their being thought inappropriate in relation to trivial offences. It is worth noting here that the Reintegrative Shaming Experiments, which took place in the Australian Capital Territory in the mid-1990s, found that restorative conferencing was more effective when applied to more serious crimes, such as youth violence, rather than minor youth property crimes (Sherman & Strang 2000).

In some jurisdictions, there are limitations on the number of times a juvenile may receive a warning or caution from the police before being referred to a restorative conference. This can impact on the types of offences in relation to which juveniles participate in restorative conferences.

Overall, the offences for which juveniles can be sent to a conference vary among jurisdictions, although as outlined above, serious offences such as homicide and sexual assault are usually excluded. This section outlines the available data on the offence types for which juveniles are referred by police to restorative justice conferencing.

### New South Wales

In New South Wales, 31 percent of juvenile persons of interest who were referred by police to a youth justice conference were apprehended in relation to malicious damage to property offences. This was followed by non-domestic violence-related assault (9%), break and enter non-dwelling, steal from retail store and disorderly conduct (all 7%).

### Australian Capital Territory

Eighty-five percent of juveniles who were referred by police to a restorative conference

in the Australian Capital Territory during 2008–09 were referred in relation to offences against property. A further nine percent were referred in relation to offences against the person and the remaining six percent in relation to 'other' offences. The most common offences for which juveniles were referred to a restorative justice conference by police were theft (other than motor vehicle theft, bicycle theft or shop stealing; 24%), and property damage other than arson (also 24%), followed by shop stealing (10%).

### Queensland

In Queensland, other theft (excluding unlawful entry) was the most common offence for which juveniles were referred by police to a community conference (25%), followed by other property damage (22%) and unlawful entry (17%; Queensland Police 2007).

### Western Australia

The most common offences for which juveniles were referred by the courts to juvenile justice teams in Western Australia were theft offences (44%), good order offences (17%), traffic/vehicle offences (14%), offences against the person (11%), damage offences (6%) and drug offences (5%; Loh et al. 2007). A breakdown of offence types in relation to which police refer juveniles to juvenile justice teams in Western Australia is currently unavailable.

### South Australia

The highest proportion of referrals to a family conference in South Australia during 2005 were in relation to larceny and receiving offences (27%), offences against good order (21%), criminal trespass (16%) and offences against the person (excluding sexual offences; 15%). Although in South Australia juveniles can be referred to a family conference for sexual offences, this was the case for only one percent of referrals (OCSAR 2006). It is important to note that these figures relate to all conferences held, not only those referred by police.

### Northern Territory

Unlawful entry (building; 30%), other offences against the person (19%) and against property (steal) offences (16%) were the most common offences for which juveniles were referred by police to victim/

offender or family conferences in the Northern Territory during 2008.

The above data suggest that in jurisdictions where the relevant data are available, conferencing for juveniles is used primarily in relation to offences against property. As each jurisdiction defines and measures offences differently, however, it is necessary to exercise caution in interpreting these data.

## Conclusion

This research study has identified a number of key points about police-referred restorative justice measures for juveniles in Australia. During the most recent periods for which data are currently available:

- The proportion of all juveniles who were referred by police to restorative conferences varied substantially by jurisdiction.
- Juveniles were referred to conferences primarily for property crimes.
- Similar proportions of male and female juveniles who came into contact with the police were referred to restorative justice measures, suggesting that restorative measures may be having a net-widening impact on female juveniles.
- Substantial proportions of juveniles referred by police to restorative justice measures were aged 10 to 14 years, suggesting that conferences may be disproportionately used for younger juveniles.
- Although Indigenous juveniles comprised varied proportions of those referred by police to restorative justice, they consistently comprised higher proportions of juveniles sent to court than conferencing. This could suggest that Indigenous young people are not being diverted via restorative measures to the same extent as their non-Indigenous counterparts.

There are a range of factors that may influence police decisions about whether to refer a particular juvenile to a restorative conference, including offending history and offence type. Although it is difficult to draw firm conclusions based on the limited available data, it may also be the case that restorative justice measures are used to respond to juveniles who may—in the absence of restorative options—have been given a warning or caution.



This study has therefore highlighted that more detailed data on offending history, offence type and offence seriousness would enable a more finely-grained analysis of restorative justice for juveniles in Australia. Specifically, these data may provide a more detailed insight into whether restorative justice has resulted in net-widening for juveniles; and enable more detailed analysis of why more Indigenous juveniles are referred to court than to conferencing.

Although the data outlined in this paper provide only the beginnings of a picture of the use of restorative justice measures for juveniles in Australia, they nonetheless raise some important questions about police-referred restorative justice for juveniles in Australia, which future research in this area might address. These include:

- What proportion of referrals to conferences comes from the police?
- In addition to the factors outlined above, what factors affect whether a referral results in a conference taking place?
- What proportion of juveniles decline to participate in a conference? What factors influence this? What are the consequences?
- In jurisdictions in which juveniles' parents can decline participation in a conference on their behalf, what proportion of parents does so? What factors influence this? What are the consequences?
- What is the level of compliance with outcome agreements from conferences?
- To what extent does a juvenile's perceived attitude towards the offence and/or towards restorative conferencing impact on police referrals?

In a broader sense, this preliminary analysis of the available data on restorative justice measures for juveniles in Australia has highlighted the need to revisit the intention of restorative justice measures and to further

research whether this intention is being reached in practice.

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