

**THE SALVATION ARMY BRAYTON YOUTH AND
FAMILY SERVICES- YOUTH JUSTICE GROUP
CONFERENCING PROGRAM (YJGCP)**

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Question 3: Restorative justice program service provision

- (a) We would agree with the assessment that YJGCP is a restorative provider
- (b) Restorative justice service gap in YJGCP is;
- ♦ The post-conference follow-up of young people and victim(s), particularly around the coordination, implementation and completion of the outcome plan.
 - ♦ Informing the victim(s) of the outcome at court for the young person,
 - ♦ Informing victim/s of the completion of the outcome plan.

Question 4: Data collection for restorative justice programs

- (a) There is certainly a great need to expand the methods of data collection for the YJGCP. Assessing the victim and offender satisfaction within the process, and also to assess the procedural fairness of the program. It would also be beneficial to undertake data collection post-conference with the young offender in regards to recidivism rates, though this would require a more longitudinal method of data collection and evaluation.
- (b) As previously mentioned the type of data to be collected would relate to the victim and offender satisfaction within the conferencing process, this would assist in determining whether victims are more or less satisfied with their involvement in the criminal justice process. Additionally data collection regarding sentencing and post-conference recidivism, particularly for YJGCP as it is a diversionary program, it would be beneficial to ascertain whether the process is firstly diverting them from further penetrating the criminal justice system and secondly to gather information about the seriousness and frequency of re-offending. Quality data also provides evidence to develop, review and refine practices within programs, which in turn enables programs to continually maintain credibility and consistency in their service delivery. Evidently data should

provide a profile of the demographics of users, type of offences, and conference outcomes of restorative justice programs. Ideally in the YJGCP it would be beneficial that individual programs provide the Department of Human Services with data quarterly, this would then be analysed, evaluated and distributed on a quarterly basis to all programs across the state. This would be useful as all programs would be able to draw comparisons with each other.

- (c) Currently YJGCP organisations are required to provide the Department of Human Services (DHS) with quarterly reports with key performance measures, these include the following areas: quantity, process, timelines, outcomes, and the number of indigenous young people. It is our opinion that in the YJGCP, each individual organisation should be collecting more comprehensive data from their program, and providing the data to DHS to analyse and evaluate.

Question 20: Access to justice for victims

The YJGCP increases victim(s) access to justice in that it provides the opportunity for the victim to have their say and talk directly to the offender and others present about the impact of the crime committed against them. They also have the opportunity to contribute directly to the young persons outcome plan. Where the victim is present at the conference the young person has the opportunity to apologise to the victim, which in our programs experience has been a consistent theme. Where the victim cannot attend the conference the young person will write a letter of apology or apologise in person to the victim post-conference. In our practice we always endeavour to contact the victim and inform them about the process and what will be happening. The victim is provided with information about the Program and is informed as to how they can be involved. If they choose not to attend the conference they are informed of other ways of having victim input enabling them to relay to the convenor how they have been impacted, to write a victim impact statement, to send someone to represent them, or use a formal victim agency representative.

The pre-conference and conference phases provide for the victim to be engaged with the program, however, post-conference the victim is not followed up, which possibly decreases some of their satisfaction with the overall process.

The absence of a formal “outcome follow up process” has the potential to tarnish a successful conference in that should the young offender not complete the agreed task, the victim would rightfully feel that the process was for nothing, potentially leading to an increase in victim dissatisfaction.

Balancing the needs of the victim and offender in restorative programs are limited by the legislation in terms of repairing the harm specifically to the victims, eg; volunteer work, restitution.

Question 21: Net-widening

The program objectives need to be clearly articulated to all relevant stakeholders throughout the process from the referral stage through to sentencing. When referring, Magistrates should clearly articulate the rationale for referring the program, and likewise when sentencing. Consistency and the rationale for the sentencing option handed down should be explained to all present, in particular the young person. There is some concern over double jeopardy for young people where they have actively participated in the conference and return to court for sentencing and are given a supervisory order.

Question 22: Offender participation rates

There is a potential risk in attempting to increase or force offender participation. (YJGCP) Restorative justice is a voluntary program based on the premise of restoring harm, taking responsibility and balancing the needs of both victim(s) and offenders. Where an active effort is made to increase offenders participation it can lack credibility, as offenders may not assume genuine responsibility or demonstrate remorse and victim empathy. Where these crucial ingredients are missing or lacking there is concern that the victim could be re-victimised by an offender who is not actively engaging or understanding their role in the process. Furthermore issues concerning the offender’s motivation to attend the conference as well as their ability to follow through with any commitment that they make at that time may be jeopardised.

Our experience indicates that, when the referring body is well informed of the program criteria and accurate information is imparted to the offender there is less chance that the offender will decline participation in the conference.

Question 23: Offences to which restorative justice processes apply

- (a) Recidivism Patterns in the Canberra Reintegrative Shaming Experiments (RISE) Youth Violence experiment indicates that those offenders assigned to conference subsequently offended at substantially lower level- 38 fewer offences per year per 100 offenders, p.18. There is scope for the expansion of offences for the YJGCP to include serious violent offences. However pursuing this would require the further training and adequate resources for conveners.
- (b) This depends upon the offender, what offences they have committed, the timeframes of committing the offences, their level of victim empathy and remorse, and whether they are taking responsibility for their offending.

Question 25: Referral to restorative justice programs

It may be appropriate to refer at all three stages provided that the offender meets the eligibility criteria for the specific program. The Young Adults Restorative Justice Pilot At The Neighbourhood Justice Centre- Draft Proposal outlines three referral pathways including diversionary, deferral of sentencing and post-sentencing referrals. It is our opinion that each of these options has merit and would be appropriate avenues for consideration in expanding the referral options to restorative justice programs.

Question 26: Mandatory referral to restorative justice programs

- (a) We believe this would be less than ideal as offenders must accept their role in the offence; they need to be aware that restorative processes are problem-solving approaches that require their active engagement and participation. Therefore when being assessed offenders should demonstrate some level of cooperation, responsibility, awareness and voluntariness about their offending behaviour.
- (b) Below we have identified issues related to mandatory referral to restorative justice programs:
- ◆ Re-victimisation of victim(s)
 - ◆ Offender may take no responsibility for their offending
 - ◆ Offender unwilling to commit to outcome plan and may not take it seriously
 - ◆ Offender does not demonstrate any victim empathy or remorse

- ♦ Credibility of program is compromised
- ♦ Decreased level of satisfaction with alternative to traditional criminal justice processes

Question 27: Impact of participation or non-participation in restorative justice programs

There should not be sanctions imposed if an offender does not want to participate in a conference.

If an offender does actively participate in a conference then the court should take this into consideration when sentencing. In the Victorian Youth Justice Group Conferencing the *Children, Youth & Families Act 2006* section 362 (3) states that 'if a child has participated in a group conference and has agreed to the group conference outcome plan, the Court must impose a sentence less severe than it would have imposed had the child not participated in a group conference'. It is important to note that the young person needs to have actively participated and agreed and actioned their outcome plan, the Court will receive a report following the conference which details what took place at the conference and includes the outcome plan.

Question 28: Sharing information about what works in terms of restorative justice

- (a) The standardisation of restorative justice programs would provide better delivery of services to consumers, so that across the state consumers know what to expect. Additionally for restorative justice practitioners it would provide consistency in program delivery and the clarification of the role and expectations of practitioners.
- (b) There are a myriad of evaluation papers on different restorative programs that have operated in Australia however there appears to be no formal national body which could coordinate and integrate programs and practitioners. A common understanding of the issues confronted by Conveners/Practitioners across the program base would assist in developing consistency across all programs, and would form the basis for ongoing discussion. State/ nation-wide newsletter, which has as part of its agenda to allow opportunities for questions, answers and information sharing across all programs.

Question 34: Measuring the outcomes of restorative justice processes

(a) In our opinion the outcomes of restorative justice programs are listed below.

- ◆ Increased offender/victim satisfaction with restorative programs than with traditional criminal justice processes.
- ◆ Opportunity for victim(s) to be involved in the criminal justice process, whereby they are able to talk about what happened, how they have been impacted and can contribute to what they would like to see happen in the future
- ◆ Restores the harm caused by offending
- ◆ Offender takes responsibility for their offending
- ◆ Reduces seriousness and frequency of re-offending
- ◆ Divert young people from further penetrating the criminal justice system
- ◆ Reintegration of offender into the community
- ◆ Engagement of family and/or significant others of the offender in the decision making process

(b) There are several options for measuring outcomes, for example victim/offender evaluation questionnaires to assess their satisfaction with program and procedural fairness, such questionnaires would also be tailored for other conference participants such as police and victim representatives. Where possible it would be beneficial to conduct more in-depth semi-structured interviews with conference participants post-conference.

Another avenue of exploration would be around recidivism rates for offenders who have participated in restorative justice programs. This would need to be a longitudinal study over at least a five-year period. Data collection of sentencing after an offender has participated in a restorative based program.

(c) Establish a centralised body that evaluates and distributes data across specific programs such as the YJGCP and more broadly across all restorative justice service providers. For example the Department of Human Services Youth Services Branch could oversee the evaluation and delivery of more comprehensive data from each service provider that

would then be distributed quarterly to service providers and possibly more broadly across other programs, eg. SAAP NDCA.

The development of specific roles for such as resource officers or research officers who primary role would be to conduct more in-depth evaluations of restorative justice programs over a longer period of time, and regularly collect, analysis, evaluate and distribute data across all restorative justice providers.

- (d) An infrastructure that provides pre-conference, conference and post-conference service delivery. Refer to YJGCP Program Guidelines 2007 available at www.dhs.vic.gov.au/youthjustice, link 'Group Conferencing'.

Question 40: Data collection on marginalised groups' access to restorative justice programs

- (a) As noted in the discussion paper there is very limited data available on the extent to which marginalised groups are accessing restorative justice programs. However the limited data collected from our program indicates that the percentage of marginalised groups participating in Group Conferencing is very low. Once again the program is quite new and therefore data is difficult to obtain and evaluate.

Question 41: Advantages and disadvantages of restorative justice process for marginalised individuals and communities

- (a) The convenor would ensure that consideration is given to the cultural needs of the client. This would be facilitated to ensure that there is adequate representation of the indigenous community as directed by the client, and an indigenous elder within the client's community with respect to facilitating the conference process would guide the convenor. Ultimately the conference participants will drive this.
- (b) Yes in our opinion it would be extremely beneficial to develop restorative processes specific to indigenous communities.

Question 65: Regulation of restorative justice

- (a) AS per the Discussion Paper sections 7.8.2 and 7.8.3 the principles outlined in these sections highlight an ideal with respect to the manner in which the programs should be regulated across the board. However it is important that each program have the ability to maintain an individual flavour with respect to the delivery of the service.

- (b) Mandatory accreditation of convenors including annual accreditation and skills training, minimum qualification, training in conflict resolution, meditation and victim empathy training. Appropriate interpersonal communication skills

- (c) As above (b)

- (d) This is an area that does require some attention, our experience would indicate that at times there seems to be a hesitancy on part of the judicial members to adhere to the requirements of referral to the YJGCP. Our suggestion in response to this issue is that there be a formal process of educating judicial members and those they consult with. This would then lead to be better outcomes with regard to consistency in referring

Additional Questions

1. At which stages of the criminal process should conferencing occur (including pre-charge or caution, pre-sentence, post-sentence, parole)?
 - ♦ The *Juvenile Justice Act* 1992 (Qld) provides the basic framework for Youth Justice Conferencing, specifically referral pathways including police referring directly to the program. Please see sections 22-24, 30-41 and 161-166.