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Adult Restorative Justice Conferencing in Queensland: Research on Best Practice and Expansion

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TEQSA Provider ID: PRV12002 (Australian University)
CRICOS Provider Code: 00120C

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Working Paper

DOI 10.25911/GZJC-AR57

ISBN 978-0-6451416-1-0

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Suggested citation:
Rossner, M., Eales, S., Bartels, L., Gelb, K., Taylor, H., and Ruddy, R. (2024)
Adult Restorative Justice Conferencing In Queensland: Research on Best Practice and Expansion. Queensland Department of Attorney General and Justice.

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Adult Restorative Justice Conferencing in Queensland: Research on Best Practice and Expansion

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Abstract

This report considers the expansion of Adult Restorative Justice Conferencing (ARJC) in Queensland. It presents the findings of a review of best practice and scholarly research. It also presents the findings of consultations with restorative justice staff and other relevant stakeholders and service providers across Queensland, including those who support vulnerable participants, such as Aboriginal and Torres Strait Islander people and victim-survivors of family and sexual violence. We also validate two previously published reports: a 2019 evidence analysis of restorative justice conferencing and a 2020 report on options for ARJC expansion.

Acknowledgments

The authors thank all those who gave generously of their time and expertise to this report. In particular, we thank Anna Temple, Rec 90 Implementation Manager, Adult Restorative Justice Conferencing (ARJC), for her assistance in facilitating the research. We are very grateful to all the stakeholders who participated in interviews and shared their time and insights about this topic.

Acronyms

AARJ	Australian Association of Restorative Justice
ACT	Australian Capital Territory
ADR	Alternative dispute resolution
AIC	Australian Institute of Criminology
AOD	Alcohol and other drugs
ARJC	Adult Restorative Justice Conferencing
ARJP	Aurukun Restorative Justice Project
BRISSC	Brisbane Rape and Incest Survivors' Support Centre
ARO	Alternative Reporting Option
CASA	Centre Against Sexual Assault
CALD	Culturally and linguistically diverse
CIJ	Centre for Innovative Justice
CJS	Criminal justice system
DFV	Domestic and family violence
DJAG	Department of Justice and Attorney-General
DPP	Director Public Prosecutions
DRB	Dispute Resolution Branch
DRCA	Dispute Resolution Centres Act 1990
EFRJ	European Forum for Restorative Justice
FNQ	Far North Queensland
IPDFV	Intimate partner domestic and family violence
Jdn	Jurisdiction
KPI	Key performance indicator
LGBTQIA+	Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual, plus
NSW	New South Wales
NT	Northern Territory
NZ	New Zealand
Qld	Queensland
RAILS	Refugee and Immigration Legal Service
RJ	Restorative justice
RJU	Restorative Justice Unit
SA	Sexual abuse
SARO	Sexual Assault Reporting Option
SCAG	Standing Committee of Attorneys-General
SEQ	South East Queensland
SV	Sexual violence
Tas	Tasmania
UNODC	United Nations Office on Drugs and Crime
Vic	Victoria
VOC	Victim-offender conferencing
WA	Western Australia
WWILD	Working With People With Intellectual and Learning Disabilities
YP	Young people

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Executive Summary

1. Introduction

Restorative justice (RJ) seeks to address the needs of both the person harmed and person responsible, by repairing harm and fostering positive outcomes for victims, offenders, and communities. For adults in Queensland, this can include Adult Restorative Justice Conferencing (ARJC).

The Dispute Resolution Board (DRB) at the Department of Justice and Attorney-General (DJAG) engaged POLIS: The ANU Centre for Social Policy Research, Australian National University (ANU), to conduct research regarding the expansion of ARJC, in accordance with recommendations outlined in the Women's Safety and Justice Taskforce's *Hear Her Voice* Report Two. The aim of the research was to explore critical frameworks, elements and knowledge that should be considered when developing a long-term plan for effective and sustainable expansion of ARJC.

This report presents the findings of a review of best practice and scholarly research. We also present the findings of our consultations with DRB staff and other relevant stakeholders and service providers, including those who support vulnerable participants, such as Aboriginal and Torres Strait Islander people and victim-survivors of family and sexual violence. We then validate two previously published reports: a 2019 evidence analysis of RJ conferencing and a 2020 report on options for ARJC expansion.

2. Mapping Adult Restorative Justice in Queensland

In Queensland, the ARJC employs approximately 15 staff, located in Brisbane, the Gold Coast, Cairns, Townsville, Mackay, and Rockhampton. This includes senior and high-risk convenors, who support staff in sensitive cases, involving sexual and domestic violence, children, and mental health issues.

There are also community-based services that undertake RJ for adults in Queensland, such as the Mornington Island and Aurukun Restorative Justice Projects that serve First Nations communities. These initiatives emphasise community engagement and cultural sensitivity in addressing conflicts and promoting resolution. Our interviews also revealed other instances where the ARJC supports community-based services, such as the Family Peace Building program, which seeks to support culturally and linguistically diverse (CALD) families, to prevent and address family violence, and Restorative Practice at the Prince Charles Hospital, which works with ARJC, to deliver training and support to implement a restorative approach in workplace settings.

The recent emergence of RJ practices within private legal firms raises questions about equity and access to RJ services, with some respondents expressing concerns over the privatisation of RJ and the potential inequities this may create.

3. Underlying Philosophies of Best Practice

This chapter outlined a number of global RJ principles and standards of best practice. The European Forum for Restorative Justice specifies the values of respect for human dignity, fostering solidarity and responsibility, ensuring justice and accountability, and uncovering truth through dialogue. Principles and standards for RJ include restoration and reparation, voluntariness, inclusion, active participation, commitment to agreements, and confidentiality.

These principles outline a restorative process that is victim-centric and encourages voluntary and informed participation, with a focus on safety, privacy, and accountability. Key to this is the importance of trained facilitators, who can manage the process effectively.

4. Elements of Effective Service Delivery

The RJ process can occur at various stages in the criminal justice system or operate independently. In all instances, service delivery requires significant preparation for conducting suitable assessments, preparing participants, and ensuring effective facilitation.

ARJC can take place at any point within the criminal justice system, including as a pre-charge diversion, post-charge and pre-conviction, post-conviction and pre-sentence, or post-sentence. Different timings are likely to have different impacts on the benefits, risks, uptake, service delivery, and outcomes of the RJ process.

Stakeholder views suggest that RJ should be available at all justice system stages, as well as outside the system. They also highlighted challenges in referral processes that often stem from limited awareness and understanding of RJ among potential referrers.

The evidence suggests that legislation or statutory direction is the largest driver for referrals and may be necessary to ensure consistent referrals to ARJC. While RJ conferencing in the youth context is supported by legislation across all Australian states and territories, adult RJ is not generally underpinned by legislation. A notable exception to this is the Australian Capital Territory, with the *Crimes (Restorative Justice) Act 2004*. While legislation can increase the use and effectiveness of RJ conferencing, it must be designed to retain the individualised justice mechanism of RJ and prevent issues like co-option, net-widening or becoming a perceived ‘soft option’ for sentencing. The Women’s Safety and Justice Taskforce recommended a victim-centric legislative framework for adult RJ in Queensland.

Specialist and comprehensive training for restorative practitioners is vital. In Australia, there are various RJ training programs, although there is a recognised need for more specialised training, especially for high-risk cases. The literature also emphasises the need for facilitators from diverse backgrounds, including Indigenous and CALD facilitators and those with lived experience.

Finally, monitoring and evaluation are critical to sustaining effective and efficient practice, requiring robust data management, to inform ongoing improvements and allow evaluation of outcomes.

5. Specialised Service Delivery in Cases Involving Domestic, Family, and Sexual Violence

Recent shifts in academic scholarship and RJ practice reflect the development of approaches that prioritise the unique needs of victim-survivors of sexual and family violence, emphasising safety, careful delivery, and the potential for healing and accountability. The stakeholders interviewed recognised several benefits of RJ over traditional justice responses in cases of sexual and family violence. Nonetheless, there are concerns about its safety and effectiveness in addressing power imbalances and ensuring meaningful accountability. To address these concerns, specialised training, including in trauma-informed practice, is recommended. Forthcoming reforms to defamation law are likely to alleviate concerns that defamation claims may deter victim-survivors from reporting sexual violence in the first place.

6. Specialised Service Delivery in Regional/Remote, First Nations, and CALD Communities

Expanding RJ throughout Queensland poses challenges, due to the vast geographic distances and a general lack of awareness about RJ practices among police and legal professionals. Many stakeholders emphasised a preference for RJ convenors who are embedded within Indigenous and regional/remote communities. Many stakeholders felt that the success of RJ in these communities is predicated on the active engagement of respected community members, including First Nations Elders and local Community Justice Groups, with a commitment to building genuine relationships. First Nations-led collaboration and co-design was considered crucial to guide RJ implementation and success, and stakeholders advocated for programs tailored to the unique needs of each community.

A lack of research into the use of RJ within CALD communities in Australia is noted. Despite this, RJ holds promise to bridge cultural gaps and provide platforms for expression and dialogue. Challenges in CALD communities often involve navigating cultural differences and societal pressures, particularly in the context of family and sexual violence. For effective integration of RJ in CALD communities, stakeholders called for processes co-designed with, and led by, respected leaders within communities, ensuring respect and cultural sensitivity.

7. Specialised Service Delivery for Other Vulnerable Groups

This chapter considers people with disabilities, people from LGBTQIA+ communities, and women who offend.

RJ is proposed as an inclusive and equitable option, specifically benefitting people with disabilities. However, the verbal-intensive nature of RJ may disadvantage those with communication difficulties, calling for adjustments to the process and careful facilitation. Trust-building and rapport were identified as crucial, along with flexibility and sensitivity, to meet participants' needs, while adhering to RJ principles.

Limited research exists on RJ in the LGBTQIA+ community, and stakeholders in this study did not comment on ways to support this community. However, some research suggests RJ could assist in addressing hate crime, promoting understanding and healing, and offer spaces for fostering inclusivity and combating underlying prejudice.

A report prepared by the DRB with 63 incarcerated women and nine correctional staff discussed ARJC expansion, including the need for resourcing, timing for women on remand, and the need for a culturally appropriate approach. Senior management, incarcerated women, and stakeholders from organisations that support incarcerated women generally supported ARJC, recognising its potential positive impact on women's mental health and well-being, noting that resourcing is critical for this to be achieved.

8. Validation of Previous Reports

The analysis provided by Wood et al. (2019) offers valuable insights into the effectiveness and applicability of RJ conferencing, particularly in the context of expanding its use within the criminal justice system. It underscores the importance of legislative support, knowledge dissemination, stakeholder engagement for maximising referrals, uptake, and the accessibility of RJ services. While acknowledging some advancements in RJ application, particularly in cases of DFV and SV, Wood et al.'s findings continue to be relevant and should be considered in the context of expanding ARJC.

Nous (2020) proposed four foundational recommendations for enhancing ARJC in Queensland, namely: (1) focusing on optimising current systems; (2) increasing awareness among stakeholders; (3) expanding eligibility criteria; and (4) legislating pathways and protected admissions. Our findings align with Recommendation 1, though detailed data on this was outside the scope of our report. Our findings also align with Recommendations 2-4.

Nous identified six strategic changes to enhance ARJC's impact, namely: (1) increasing pre-charge diversion; (2) boosting pre-sentence and (3) post-sentence referrals; (4) integrating ARJC into community-based orders; (5) extending regional coverage; and (6) offering full statewide coverage. Of these, Nous concluded that Option 1 would present the highest likelihood of reducing demand pressure and costs. However, stakeholders in our study expressed favourable views of RJ's application throughout the criminal justice system, suggesting broader acceptance and support beyond diversionary purposes. Additionally, Nous suggested future options for ARJC, such as tailored models for Aboriginal and Torres Strait Islander peoples and matters involving domestic, family and sexual violence, along with outsourcing delivery to Community Justice Groups. These recommendations align with various aspects of our findings.

Recommendations

We recommend that:

Recommendation 1: The ARJC articulate its key aims as a guide to program monitoring and evaluation. Establishing where RJ can be most impactful in ensuring therapeutic outcomes for persons harmed and persons responsible should be a key concern.

Recommendation 2: There be comprehensive training and engagement about RJ, its role, value and utility among criminal justice professionals, service providers and other external agencies that function as key referrers and supporters.

Recommendation 3: Police and prosecutors be provided with education about RJ as part of their induction training, to promote the benefits of RJ, as well as dispelling misperceptions that RJ is only for the benefit of the perpetrator.

Recommendation 4: The ARJC work collaboratively with the police and other criminal justice and relevant agencies, to educate and raise awareness of RJ, particularly at an early stage. Training could also involve individuals who have experienced the process firsthand (e.g. persons harmed and persons responsible), to fully explore RJ's value and benefit and ensure that everyone is working towards delivery of the same goals.

Recommendation 5: Resourcing and training be provided for local staff in remote/regional areas and Indigenous communities to provide targeted trauma-informed and culturally-appropriate support to persons harmed and responsible for harm.

Recommendation 6: The ARJC adopt a co-design model of face-to-face RJ with local Indigenous communities. The implementation of RJ programs would need to be supported through the provision of outreach and support services.

Recommendation 7: The ARJC adopt a co-design model of face-to-face RJ with affected CALD communities. The implementation of RJ programs would need to be supported through the provision of outreach and support services.

Recommendation 8: Facilitators with considerable experience in RJ be engaged to work on complex and sensitive cases.

Recommendation 9: Processes are developed for regular and top-up specialised training that is victim-centric, trauma-informed and culturally appropriate. This model of specialised training should be developed in conjunction with support agencies (such as sexual, family and domestic

violence services) and designed in such a way that it creates a fully embedded, rather ‘bolt-on’, model of capacity building.

Recommendation 10: The ARJC consider employing staff members with lived experience and from diverse segments of society.

Recommendation 11: Training be accompanied by ongoing support and supervision with regard to skill development.

Recommendation 12: The ARJC develop robust processes for the ongoing collection of administrative and program data to ensure quality monitoring and evaluation.

Recommendation 13: The ARJC develop a plan and procedure for ongoing monitoring and evaluation.

1. Introduction

Restorative justice (RJ) is a well-evidenced approach to addressing crime that can support victim-survivors, improve confidence in the justice system and in some instances reduce reoffending (Sherman & Strang 2011, Wood et al. 2019, Rossner 2023). RJ encompasses a variety of practices to address harm, violence, or rule-breaking in a community. These practices seek accountability, healing, respect, and reparation. They seek to prioritise the needs of people who both have experienced harm and caused harm in a holistic manner.

There is some debate over how best to define RJ. For instance, there is debate over whether it is best understood as a specific practice or as a value that underpins a practice. At various times different emphasis is placed on the procedural elements or on the outcomes that may be involved. For the purposes of this review, and in keeping with the large body of research and practice across Australia, we rely on the following definition from Daly:

Restorative justice is a contemporary justice mechanism to address crime, disputes, and bounded community conflict. The mechanism is a meeting (or several meetings) of affected individuals, facilitated by one or more impartial people. Meetings can take place at all phases of the criminal process, pre-arrest, diversion from court, pre-sentence, and post-sentence, as well as for offending or conflicts not reported to the police. Specific practices will vary, depending on context, but are guided by rules and procedures that align with what is appropriate in the context of the crime, dispute, or bounded conflict (2016: 14).

While this practice arguably has similarities with a variety of global Indigenous legal traditions, in Australia over the past 30 years it has largely evolved to be an integrated practice within state criminal justice systems. In some cases, this is underpinned by legislation. In most cases, RJ practices seek to repair harm in response to particular criminal acts. However, it is worth noting that RJ practices may also seek more transformative outcomes for victims, people responsible for harm, and communities, by fostering systemic change in terms of the nature of the relationship between the individual and the state.

This report will focus on RJ conferencing. This model involves bringing together responsible persons, persons harmed, and others impacted by crime, to discuss what happened, how everybody has been affected, and how to repair the harm and move forward. It provides a platform for people who have experienced harm to express their feelings, ask questions, and have a say in how harm is repaired. Persons responsible get a chance to understand the impact of their actions and work towards reintegration into their community. Conferences are used as a diversion from traditional criminal justice processes, or pre- or post-sentencing. A trained convenor will facilitate an agreement about repairing harm and moving forward.

The benefit of conferencing is that it can offer a direct, personal form of communication between people, which can lead to a deeper understanding of the impact of the crime. It can facilitate accountability and healing (Wood et al. 2019, Rossner 2023). There is some evidence that it can reduce reoffending (Wood et al. 2019, Price & McKillop 2022, Rossner 2023), though there is also significant debate whether this is an appropriate goal of RJ (Robinson & Shapland 2008, Joudo Larsen 2014, Wood et al. 2019).

A challenge of conferencing is that it requires a high level of commitment and preparation from both parties, which can be time-consuming. It depends on the willingness and readiness of all parties to participate openly and constructively. Without proper facilitation, the process has the potential to retraumatise victims or fail to achieve meaningful accountability.

The Queensland Dispute Resolution Branch (DRB) is seeking evidence-based research on options for the expansion of Adult Restorative Justice Conferencing (ARJC) in Queensland. This is a welcome development and in keeping with global best practice.

Methods of data collection

For this study, we conducted a cross-jurisdictional literature review of RJ adult conferencing services, documenting existing research and knowledge, to analyse both descriptive and evaluative accounts that have appeared in the recent literature. We examined both scholarly papers and grey literature. Our intent was to identify strengths and weaknesses of certain RJ approaches in Australia, and more widely, uncovering what works well and what does not, based on available evidence.

The literature review was augmented by empirical research, in the form of interviews with DRB staff, who have relevant experience in ARJC; stakeholders, including those located in remote and regional areas; representatives from culturally diverse backgrounds; and service providers, who support Aboriginal and Torres Strait Islander victim-survivors and offenders. We sought to learn what the various organisations and stakeholders think about how best to expand access to RJ, particularly for vulnerable groups whose justice needs are not currently being met. The relevant aspects of this research were approved by the Australian National University Human Research Ethics Committee (Protocol H/2023/1405).

Our consultations built on earlier survey and qualitative research undertaken by the DRB, in which stakeholders, including women in prison, were asked about their experiences of ARJC; their views on expansion; elements that might affect service delivery; and factors that should be considered in the planning of future expansion. We have included relevant comments from these consultations.

We approached (via email) individuals who had indicated in these previous consultations that they would like to discuss RJ conferencing further. A Participation Information Sheet was provided at this stage.

In total, we approached 20 stakeholders and eight DRB staff and conducted interviews with 17 individuals (some individual interviews and some in a focus group format of between two and three people). Each interview took approximately one hour and was conducted online (on Teams) by members of the research team. Verbal consent was obtained at the start of each consultation, both to secure permission to participate in the research and for a recording of the interview to take place. The interviews were recorded via Teams, stored in digital file format and transcribed manually by an external professional transcriber, as per the ethics approval. All participants were anonymised and identifiable information redacted.

Research questions that guided this research were:

- What values and principles underpin best practice in RJ?
- What is best practice in RJ service delivery, including approaches to service delivery, the role of legislation, training and personnel, and specialised services for marginalised or diverse groups, including victim-survivors of domestic and family violence (DFV) and sexual violence (SV), Aboriginal and Torres Strait Islander and other culturally and linguistically diverse (CALD) people, people in regional and remote areas, people with disability, people from LGBTQIA+ communities, and women who offend?
- What are the barriers to effective implementation and practice?
- What are the options for expansion?
- What are strategies for ongoing monitoring and evaluation?

Structure of this report

In what follows, we outline the research and debate around best practice in RJ and report on stakeholder views around expansion. This includes a mapping of practices and discussion of values and principles. We then examine elements of service delivery, including the location of RJ services, referral pathways, the role of legislation, training, and the craft of RJ conferencing, including specialised service delivery for victim-survivors of DFV and SV, Aboriginal and Torres Strait Islander and other culturally and linguistically diverse people, people in regional and remote areas, people with disability, people from LGBTQIA+ communities, and women who offend.

In 2019, the DRB commissioned a thorough evidence analysis, conducted by Wood et al. (2019). That document provides a comprehensive examination of many of the areas under review here and we refer to it throughout this report, in addition to other relevant evidence where available. In 2020, the DRB commissioned Nous to produce an updated ARJC conferencing model, which also drew heavily on Wood et al. (2019). We will also draw on relevant sections of the Nous (2020) analysis. We will then offer a validation of these reports, including an assessment of whether they remain accurate in the current context.

2. Mapping Adult Restorative Justice in Queensland

Summary of Key Points

This chapter outlines the development and evolution of RJ practices in Queensland, focusing on how the scope of RJ has shifted to managing more serious cases. We discuss:

- the mapping of practice within the ARJC, highlighting the roles of high-risk convenors in supporting staff and managing cases involving serious offences or vulnerable participants;
- community-based RJ initiatives, particularly within First Nations communities, emphasising the importance of community engagement and tailored approaches;
- other examples of community-based practices; and
- the emergence of RJ services offered by private law firms, raising questions about equity and access to RJ services.

Brief history of ARJC

As set out in the Nous (2020) report, the DRB launched a pilot initiative called the 'Crime Reparation Project' in 1992, to address post-sentence referrals for both adults and young people who offend. By 1997, the project bifurcated its focus: juvenile justice practices evolved into RJ Conferencing within the Department of Youth Justice, while the adult segment transformed into 'Justice Mediation', based in Brisbane and Cairns.

In 2007, the program received additional funding aimed at broadening the scope of adult RJ services. Since then, the ARJC framework, largely unchanged in its principles and methodologies since its expansion, has gradually shifted its focus. It initially catered to a broad spectrum of minor legal issues, mostly in the Magistrates Court. Over time, however, it has moved to dealing with more serious cases, including those that would normally be resolved in the District Court. Since 2017, the term 'ARJC' has been used, to represent these services more appropriately.

Mapping of practice

In Queensland ARJC sits within the DRB. Currently, in addition to the ARJC Manager, there are the following staff positions:

- Brisbane (1 senior convenor, 3 convenors, 1 intake officer)
- Gold Coast (1 high-risk convenor, 2 convenors, 1 intake officer)
- Cairns (1 senior convenor, 1 convenor)
- Townsville (1 convenor)
- Mackay (1 convenor)
- Rockhampton (1 convenor)
- Flexible location: (1 First Nations identified convenor)

Some positions are shared roles, including the high-risk convenor role. There are also one senior convenor and two convenors, who are not allocated to a particular location. Based on our

stakeholder discussions, convenors appear to be in regular contact and consult with and support each other. When appropriate they also develop collaborative relationships with specialised support services.

One stakeholder spoke about how safety was enhanced through collaboratively working with colleagues and relevant external support agencies, when working on a case of sexual harm during COVID:

we did a lot of work together in just trying to scaffold safety of the person who was going to be on the other end of a phone [during COVID] when we're talking to them about quite sensitive matters, to ensure that they had access to different supports. [...] I think it's just working together and really having a very open relationship where we were very keen to learn from each other and work collaboratively and recognise that we both had quite different skill sets and how we wanted to manage things and that really it was about - particularly when we're dealing with sensitive referrals - really ensuring that the needs of that person harmed¹ were really scaffolded as a priority at the beginning.

High-risk and senior convenors

Senior convenors have significant experience and support and mentor staff. The High-risk convenor role is a new one, to ensure support and safety in high-risk cases. This may include:

- Sexual offending or an offence of a sexual nature (such as sexual assault, rape, recording in breach of privacy etc)
- Domestic violence (intimate partner, between family members etc)
- Cases involving a child victim
- Where a participant has high mental health needs (such as high anxiety, autism spectrum disorder, a personality disorder etc)

These cases are considered high-risk, because the impacts are serious and/or there is a risk of re-victimisation, the stakes are high and the person responsible may be facing significant punishment. In addition, for family violence matters involving children, the participants may still be in a relationship and there is potential for future violence/harm. High-risk convenors support staff and may co-convene in high-risk cases.

It was generally seen as positive that the DRB has a high-risk approach now; this allows consistency in good practice around sexual harm and high risk, in terms of restorative approaches. This is also reflected in the types of matters that progress, which are now more serious than previously. As one team member put it:

Six years ago, we wouldn't have taken [domestic violence], there's sexual violence we wouldn't necessarily have taken, whereas now I would say...[more] of our files have been what we would class as high-risk, so sexual violence, domestic violence, child complainants, those types of files. [Previously] it was the common assaults, assault

¹ A note on terminology: throughout the report we use the terms victim-survivor, or person harmed, and person responsible. Alternative terms, such as victim, perpetrator, defendant, offender, may be found in the report in places where we have included a citation from another source or a direct quote. This is keeping with current practice that sets out to use respectful person-centred language to describe individuals based on their experiences and identities rather than solely on the harm they have experienced or been responsible for.

occasioning bodily harm, you'd get the occasional grievous bodily harm and a very occasional rape file, whereas now they seem to ... the assault occasioning bodily harms have sort of dropped off, and we're definitely getting those higher harm type charges.

Another stakeholder welcomed the implementation of the high-risk team:

I know that they've now got their high-risk team, which I was really, really pleased to hear as well, in terms of thinking about where we are in Queensland and how to have a bit more of that consistency of really good practice around sexual harm and high risk, in terms of restorative approaches.

First Nations community-based practices

There are at least two RJ programs that are delivered by and for First Nations Communities: Aurukun and Mornington Island. We briefly describe them below. These programs have both undergone evaluation (Venables 2009, 2012, Brunton 2014, Limerick 2016, 2017; see also Price et al. 2024). While we will refer to some elements of these evaluations, similar to Wood et al. (2019: 77), we suggest that these reports need to be considered in detail in order to draw comprehensive conclusions about service delivery in First Nations communities.

The Mornington Island Restorative Justice Project was developed in 2008 by the DRB with significant community consultation, culminating in a transition to community management. A key element of this program was the focus on establishing credibility and working relationships with the community, a remote Indigenous community. This involved engaging cultural advisors and interacting with a large number of family representatives and residents (Venables 2009). Evaluation of the program suggested that, while it experienced limited referrals, the ensuing conferences helped to achieve significant resolution and settlement, noting that Elders played a positive and impactful role (Venables 2012). Later evaluation and scholarship concluded that this was an effective community development model, with significant community support (Brunton 2014, Brigg et al. 2018).

Building on these findings, the Aurukun Restorative Justice Project was launched in 2013. Hoping to leverage the experience at Mornington Island, this involved a much quicker consultation period (Limerick 2016, Price et al. 2024). Subsequent evaluation showed support for the program among stakeholders and a perception that it was able to help address community conflict (Limerick 2017). However, there was a much lower resolution rate, compared to the Mornington Island program (Price et al. 2024). Taken together, this research underscores the importance of community engagement and the challenge of applying lessons from one context directly to another, without considering local needs.

Section 6.2 considers the implications of these evaluations, in terms of supporting Aboriginal and Torres Strait Islander participants in Queensland, including the potential expansion of programs of this nature to other communities.

Other community-based practices

Our interviews revealed other instances where the ARJC helps to support community or other restorative practices.² Two examples include the Family Peace Building program from the

² Restorative practice is a broader concept than restorative justice, and may not involve a direct meeting in response to a particular harm.

Refugee and Immigration Legal Service (RAILS) (nd) and Restorative Practice at the Secure Mental Health Rehabilitation Unit at the Prince Charles Hospital (Queensland Government nd). In both instances, the ARJC has offered training and ongoing support in the development and implementation of these programs.

The Family Peace Building program seeks to support CALD families to prevent and address family violence. To design this program, community leaders, cultural support workers, violence prevention experts, and DRB and RAILS staff engaged in a thorough community consultation. As one stakeholder explained:

More than 200 people were in the community conversation in 2017/18. In that time, we have heard the story from 27 ethnic community groups, from Africa, South East Asia and the Middle East, and it's really deep, very run by the community, supervised by professionals who have the skills to listen and put those together....And we also asked what they need to be done. Family peace building comes from that. They want us to work with the community, they want the community, church leaders, pastors to be trained, educated. ...That's where they belong, and they want that place to be safe for them.

Another stakeholder told us:

Our family peace building program is based on cultural strengths, and looking at cultural humility and cultural intelligence, and looking to see where we can share together, because you know the system is broken in many ways, overwhelmed in many ways, and you know, many people haven't got much trust in it.

The Peace Building Program works closely with community leaders to run workshops, primarily for men, on relationship dynamics, cultural strengths, and violence prevention. It is an example of the importance of community support and participation, particularly in CALD communities.

Restorative Practice at the Prince Charles Hospital works with ARJC to deliver training and support to build capacity to implement a restorative approach in a workplace setting. This can range in practice from the use of restorative principles in managing staff, to more formal restorative conferences to address an incident of harm, either with staff or with people under the care of the mental health team. This is designed to address instances of harm where the police may not be involved, with the input of a victim services team.

While formal conferences are less common than the everyday use of restorative practices, input from one stakeholder working in this area suggested a collaboration, where ARJC professionals support the mental health team to deliver conferences, was an effective approach, noting:

I found that working with the DRB was really about exploring what supports and what are the needs of those persons harmed...I very much advocate for a dual facilitation model, generally within a restorative approach – is if one or other of us are going to focus a bit more on tending to the needs of the person harmed and one of us might focus a bit more in tending to the needs of the person who's caused harm...So, I think it's just working together and really having a very open relationship where we were very keen to learn from each other and work collaboratively and recognise that we both had quite different skill-sets and how we wanted to manage things and that really it was about – particularly when we're dealing with sensitive referrals. Really ensuring that the needs of that person harmed were really scaffolded as a priority at the beginning.

While a comprehensive mapping of all RJ programs that sit outside the ARJC is beyond the scope of this research, these examples provide evidence of successful collaboration and suggest that both community-based and health-led approaches to RJ are possible and can offer

a meaningful way to address and prevent harm.

Private legal practice

RJ is also being offered by private law firms. In these cases, privately-retained solicitors are seeking referrals for their client to take part in RJ, usually at the pre-sentencing stage.

For instance, one stakeholder told us:

We deal with a lot of victims who are injured, who suffer greatly, [and] you then have the issue of a well-heeled defendant being able to pay for private mediation and to offer all sorts of incentives that are attractive. And so, you then get that philosophical argument about when and where, and then that's the process issue. That comes down to an exercise of discretion. And why does this person get it, where this person doesn't, and gets back to that whole equal justice point.

Our interviews revealed that this practice is taking place, but we do not have further information on who these practitioners are and the training they receive.

3. Underlying Philosophies of Best Practice

Summary of Key Points

This chapter examines best practice principles and guidelines designed to maximise quality processes and outcomes of RJ. It considers:

- the core values of RJ;
- RJ principles, with corresponding standards that provide guidance on how to effectively implement these principles; and
- the importance of adequate training for RJ.

A variety of best practice principles and guidelines to maximise quality processes and outcomes have been produced, including by the Restorative Justice Council (2011), European Forum for Restorative Justice (ERFJ) (2016) and New Zealand Ministry of Justice (2017) (for a summary, see Wood et al. 2019). These all have significant overlap. According to the Australian Association of Restorative Justice (AARJ nd), the foundational principles of RJ are, in essence, to:

1. cause no further harm;
2. work with those involved; and
3. set relations right.

More detail can be found in the *Manual on Restorative Justice Values and Standards for Practice*, compiled by the European Forum for Restorative Justice (EFRJ) (2021). The EFRJ distinguishes between values, principles, and standards for RJ, although these do not differ significantly from the principles articulated by AARJ.

Values

Values, which are to be understood as concepts denoting a quality of importance, worth, or benefit, include:

1. **Respect for human dignity:** the underlying philosophy of RJ recognises each human being as valuable and worthy of being respected. Restorative processes are accordingly to be designed to ensure that participants feel safe, respected, and empowered, with a feeling of ownership of the process and able to speak freely. Restorative processes also acknowledge and appreciate the capabilities and strengths that each person brings to the process and allow these to flourish.
2. **Solidarity and responsibility for others:** people are independent, interconnected, and diverse, and the quality of those relationships is crucial to the wellbeing and social cohesion of individuals. The aim is to reconnect participants and find ways that they can fulfil their corresponding obligations for the wellbeing of others and allow them to assume their personal responsibilities.

3. **Justice and accountability:** the focus of RJ is on harms which are unjust or wrong. The goal ought to be to alleviate suffering and reduce the likelihood of further harm. For this to be effective, the restorative process should be fair and, to the greatest extent possible, without being dominated by any of the parties. Justice also refers to accountability and the notion of contributing to the 'substance' of justice, as perceived and experienced by the parties.
4. **Truth through dialogue:** a central value for participants in restorative processes, especially for victims, who often need to understand what happened, is obtaining truth through dialogue. Victims often have many questions to ask the person who caused harm and their need is often to hear the truth about what and why things happened. RJ recognises that there is no such thing as 'one truth', but that the narratives of each person contain a form of truth, which may be partial, but add to the whole integrative truth. Through storytelling and questioning, more information about the truth surfaces. Participants need to understand the importance of telling the truth and being sincere in both their intentions and the commitments they make throughout the process (ERFJ 2021: 14).

Principles and standards

Principles are a set of propositions or beliefs governing practice. They provide guidance on how to act in accordance with one's values. They relate to **standards**, a level of quality or attainment used as a measure or model to specify what people can reasonably expect from RJ and that can be used to evaluate performance.

The following are key principles of RJ (excerpted/condensed from EFRJ 2021):

1. **Restoration and reparation:** The restorative process should provide a meaningful experience of justice, endeavouring to restore what has been lost, damaged or violated through the harm and addressing what has caused the harm. Standards here include:
 - Those harmed can ask questions, describe how they experienced the harm and request actions to repair the harm.
 - Those responsible for harm are enabled or adequately supported to account for their actions.
 - The impact of the harm will be fully addressed, including the social ripple effect beyond those directly impacted.
 - The needs of each participant will be addressed both through the process and the outcome(s).
 - Consideration will be given to how to prevent further similar harm.
 - Actions that will address the actual or potential harm emerge from the process of dialogue and are ideally agreed upon by all participants, in a voluntary manner.
 - Actions will support the reintegration of all parties involved and restore dignity for the victim.

- The agreed actions are specific, measurable, relevant to the issues raised by the parties involved and time-bound for review and completion.
2. **Voluntariness:** Participants should be able to freely choose to participate in RJ. Standards include:
- The restorative process proceeds after a perpetrator admits responsibility for his or her part in the criminal offence or harmful act.
 - Participants understand their rights, the nature of the (legal) process and expectations of participants, and the possible negative consequences of both participation and non-participation.
 - Involvement and participation in the process is voluntary and based on informed consent.
 - Participants understand that informed consent can be withdrawn at any time throughout the process.
 - Refusal to participate in the restorative process or withdrawal of informed consent cannot disadvantage any participant in any criminal procedure that may follow.
 - Participants arrive at any agreement voluntarily.
3. **Inclusion:** The participants should be offered a process designed for the diversity of their needs, cultures and capabilities. Standards include:
- Care is taken to identify who should participate in the process and agreed criteria are followed for any decisions about excluding potential participants.
 - Victims and perpetrators are given an opportunity to invite supporters (family members, friends, or other people important to them).
 - The role of supporters is always clearly defined in the process, so that issues of power (im)balance are addressed.
 - Victims and perpetrators have an opportunity to involve or consult a lawyer. Legal professionals' role in the process, however, is always clearly defined and agreed upon by all parties.
 - Victims and perpetrators are invited to participate in a restorative process on the basis of their own needs and interests and never simply to serve the needs and interests of others. For perpetrators, admitting responsibility is sometimes connected with duties, which do not always meet their needs and interests, but are required for a good process and outcome of the RJ process.

- Where appropriate, representatives of the affected communities and relevant professionals are invited to participate. Their role and involvement in the process is clearly defined and agreed upon by all parties.
 - The RJ practitioner inquires into how cultural factors may have an impact on the inclusion of some people and adapts the restorative process appropriately.
 - Great care is taken in engaging and inviting the individuals to participate, by recognising and managing language, domestic or capability barriers, so that RJ is accessible to all. An assessment of risks and concerns is conducted with each participant.
 - The practitioner has understood any risks and taken steps to protect the safety of all participants (e.g., through a risk mitigation plan).
 - Decisions about unsuitability of cases because of perceived risk to victims should not be taken without consulting the victim.
- 4. Participation:** The participants should be facilitated to engage actively in respectful, fair, and safe dialogue addressing the harm, without fear of domination. Research supports the argument that restorative processes are most genuine and satisfying when parties can meet directly. However, the use of other methods, such as shuttle mediation, online or remote encounters, and letters are integral and valuable options within a restorative process and participants may choose these freely. In this respect, the mode and nature of participation for parties in RJ processes is dynamic and unique to each case. Standards include:
- Each participant is fully prepared to participate in the process in their own way.
 - Where appropriate to the process, a victim and a perpetrator can choose to bring supporters to the process.
 - The process takes place in an environment that is accessible, safe, private, and confidential for all parties involved, and at a convenient time for all parties.
 - The process accommodates any special needs, taking into account the participants' age, gender, verbal and physical abilities, and cultural and language sensitivities.
 - The focus of the meeting is on the actual or potential harm and its prevention or repair and not on the individuals.
 - The participants are encouraged to speak freely and honestly about their feelings and their accounts of the harm, its causes and consequences.
 - Each participant is encouraged to freely ask their questions and enter into dialogue with others.
 - Steps are taken to ensure each person is heard and understood.

- No participants are able to dominate the dialogue or intimidate others.
- Supporting persons or professionals cannot act on behalf of the parties and exert undue influence on the outcomes of the process or the conditions of the prospective agreement.

5. Commitment: If the participants choose to come to an agreement, individuals should be supported and held accountable for their commitments. Standards include:

- Commitments are perceived as sincere, especially by victims.
- Commitments agreed upon during the process are always measured against the principle of proportionality.
- Commitment is regarded as a growing feature in the course of the process and requires ongoing motivational support from the facilitator.
- Those who have made commitments to act are supported and held accountable for keeping their commitments.
- Commitments made during a process will always pass the test of ‘reality checking’ and, at the same time, take into account the management of expectations of all parties involved.
- Achievement in completing agreements is recognised and celebrated.

6. Confidentiality: Parties should consent to the confidentiality of the restorative process and be aware of any exceptions to confidentiality. Standards include:

- Potential participants are informed of what the RJ process entails.
- From the beginning, potential participants are informed that participants in the process are bound by the principle of confidentiality. The facilitator accurately explains what this principle entails and addresses any questions and/or concerns participants might have.
- Any regulations limiting confidentiality are fully explained to the participants. These regulations may apply to the safeguarding of children and vulnerable adults, indicators that an individual is considering self-harm or suicide, and disclosures of serious criminal offences not known by the authorities.
- The parties must give consent, if an approved person wishes to observe the restorative process (e.g., a politician, judge, prosecutor, journalist, or researcher) and

give their explicit permission to disclose any detail of the process.

- Any issue concerning confidentiality raised throughout the RJ process is immediately addressed by the facilitator.
- The final agreement should include a clause addressing confidentiality, which should serve as a reminder to all parties. If parties wish to disclose information on the mediation, this should be with the agreement of all parties and clearly stated in the agreement.
- Confidentiality must be kept by the facilitators. It should be guaranteed that facilitators may not disclose any information to third parties, including lawyers, authorities, the court or family members, except if it is explicitly agreed upon by all parties involved.

The EFRJ (2021) provides a full list of elements that can increase or challenge the likelihood of these standards being met. Core to the achievement of these principles and standards is **adequate training**. Facilitators and practitioners of RJ should be well-trained to manage the process effectively. This includes being equipped to handle sensitive discussions, ensuring a safe environment for all participants, and guiding the process towards constructive outcomes. See Chapter 4 for more on training.

In what follows, we will further discuss how these principles and standards may affect service delivery.

4. Elements of Effective Service Delivery

Summary of Key Points

This chapter examines RJ service delivery and factors that impact its effectiveness, including:

- the position of RJ inside and outside the CJS, stakeholder views suggest that RJ should be available at all stages, inside and outside the system;
- challenges in referral processes that often stem from limited awareness and understanding of RJ among potential referrers;
- the role of legislation or statutory direction as the largest driver for referrals;
- best practice in the preparation and delivery of RJ conferencing;
- the need for comprehensive and specialist staffing and training; and
- the need for robust data collection and management to support ongoing monitoring and evaluation.

RJ conferencing can take place at any point in the criminal justice process or can sit completely outside the legal system. In all instances, service delivery involves significant preparation to assess suitability, adequately prepare participants, facilitate effective encounters, and ensure proper follow-up and support. Drawing on the principles and standards summarised above, the evidence presented in Wood et al. (2019) and other relevant literature, and data from our interviews, we summarise the key elements of service delivery.

Nous (2020: 8) summarised the current ARJC service delivery model, as set out below. This is consistent with other practices within Australia and globally.

Table 1. ARJC Service Delivery Model (Nous 2020)

Referral	An eligible referral from a funded area is received from a victim or a justice agency such as police, prosecutor, the Court or corrective services.
Intake	Face-to-face interviews are conducted with parties to further assess the suitability of the situation for a restorative justice process.
Assessment	Ensuring the file meets ARJC suitability criteria and will not result in any further harm.
Conference	A Convenor brings together the victim and the offender as well as their family or supports to discuss the incident, who has been impacted and how, as well as what needs to occur to repair the harm that has been caused.
Agreement	Parties can enter into an agreement about how to repair the harm. Outcomes may include: written apologies; compensation; restitution; counselling or programs for the defendant; donations to charity.
Monitoring & Closure	While agreements are not legally binding under the <i>Dispute Resolution Centres Act 1990</i> , to ensure compliance they can be monitored for up to six months. Where compliance is not achieved the matter is returned to the referrer. On completion of the agreement a notice is provided to the referrer so the outcome can be taken into account in the criminal justice system.

Location of RJ services

RJ within the criminal justice system

Currently, ARJC can take place at any point in the criminal justice system (CJS), including as a pre-charge diversion, post-charge and pre-conviction, post-conviction and pre-sentence, or post-sentence. Different positioning will likely have different impacts on the benefits, risks, uptake, service delivery, and outcomes. Potential outcomes for each stage of referral were identified by Nous (2020: 10) and summarised in the following table.

Table 2. Potential outcomes of ARJC at each phase of the criminal justice system (Nous 2020)

Phase of the CJS	Explanation	Key outcomes
Pre-charge stage	The matter is referred to ARJC by the police as a diversion.	Diversion of low-level offenders to reduce pressures on relevant agencies (police, prosecution and courts) and reduce the harm to offenders caused by contact with the CJS.
Post-charge pre-conviction stage	The matter is referred to ARJC as an alternative to prosecution, most commonly by the prosecutor or one of the involved parties.	Diversion of low-level offenders to reduce pressures on relevant agencies (police, prosecution and courts) and reduce the harm to offenders caused by further contact with the CJS.
Post-conviction pre-sentence stage	The matter is referred to ARJC by a judge or one of the involved parties as a part of the sentencing process. The outcomes of the conference can assist the court in determining an appropriate sentence.	A sentence that considers an offender's willingness to take accountability, pay restitution and undertake rehabilitation.
Post-sentence stage	The matter is referred by relevant parties where victims and offenders desire reconciliation, compensation or some form of future contact.	Offenders and victims achieve restorative outcomes that the CJS was not able to provide. Through this process offenders are able to better prepare for reintegration.

At the **pre-charge** and **pre-conviction** stages, the goal is to offer a less stigmatising, more participatory and more effective response to crime. These programs tend to focus on less serious offences. Victims may not be directly involved, or the case may not involve a direct victim. RJ in these cases may be cost effective and time saving (Wood et al. 2019) and improve police-community relations (United Nations Office on Drugs and Crime (UNODC) 2020, see also Weitekamp et al. 2003). The main issue at this stage relates to the challenge of referrals to the program and public support for the approach (UNODC 2020).

At the **pre-sentence** stage, the court or a lawyer may refer a case. Courts may be able to defer sentencing to allow for a conference, and the outcomes of a conference may inform the sentence. These cases are often more serious in nature. There is a significant body of evidence that conferencing at this stage can have positive outcomes for persons responsible and persons harmed (see eg Angel et al. 2014, Sherman et al. 2015, Rossner 2023).

At the **post-sentence** stage, cases may be referred by correctional services, the victim, or the person responsible. Conferences may take place within the prison, on release from prison, or while someone is subject to a community-based sentence. These programs can help support rehabilitation and reintegration, and there is evidence that they can help victims heal (UNODC 2020; see also Gustafson 2005, Carrington et al. 2015, Brennan & Johnstone 2019). The main challenges include difficulties accessing prisons and prisoners, the risk that offender

rehabilitation will trump victim healing, and a lack of understanding by prison staff and detainees (UNODC 2020).

In pre- and post-sentence cases, offences tend to be more serious and the impact on the victim greater. As such, these conferences involve significant preparation and may take longer to organise than diversionary cases. They are less likely to reduce demand pressure on the system or reduce incarceration (Wood 2015, Wood et al. 2019). However, there is a consistent and growing body of evidence that suggests that RJ is most effective in helping victims and reducing reoffending when it is for more serious cases (Rossner 2023). Wood et al (2019: 8-9), when discussing suitable offence types for RJ, noted that cases have better outcomes in the following circumstances:

- Offence types that 1) involve harms by individual actor(s) against other individual(s) that, 2) are serious enough to cause significant emotional distress, psychological harm, or financial loss tend to result in better outcomes and more effective use of RJ. Examples include property damage and vandalism, theft, physical assault, and so on.
- When used for offences where there is no identifiable 'personal' victim, RJ conferences may not be taken as seriously by offenders, and may be seen as a waste of time and resources for victims. Examples include public disorder or nuisance crimes, petty theft or shoplifting from corporate or chain stores, drink driving, minor drug offences, and so on.
- Research has found that victim's agreement to participate differs between property and personal offences, with victims of property crime less likely to participate as time goes on, and victims of personal offences more likely to participate as time goes on.
- In terms of adult offenders, where it was once conventional wisdom that RJ was more suitable for less serious offences or first-time offenders, more recent rigorous empirical research has demonstrated that RJ may be more effective for adult offenders with more serious offence types.

All of these characteristics are more likely to be found at the pre-sentence and post-sentencing stage. Notably, NSW operates a post-sentence RJ program for serious crime (Corrective Services NSW nd). Research on this process found that it supports the justice needs of victims and helps address the rehabilitative needs of persons responsible (Bolitho 2015, Bolitho & Bruce 2017).

In 2020, Nous examined RJ service delivery at each stage of the justice system against the principles of:

1. victim outcomes (as a threshold);
2. reduction of demand pressure;
3. minimising CJS costs;
4. increasing reach; and
5. protection of community safety.

They concluded that the best way to maximise the impact of ARJC on the Queensland CJS was by expanding RJ at the pre-charge stage, particularly through a partnership with the police. The key outcome identified was the savings achieved by diverting people alleged to have committed low-level offences from the full investigative and courts processes (Nous 2020).

Whilst we recognise that expanding RJ at the pre-charge stage is likely to result in higher RJ case flow, reduced costs, and reduced demand pressure, we suggest that it is important to consider where RJ is likely to be most effective, in terms of facilitating victim participation and healing, and improving outcomes for persons responsible. Lanni (2021) has made a similar point: the type of expansion that will decrease demand pressure may come at the cost of some key features of the process, including the participation of the direct victim. Our concerns here are consistent with the views of respondents in this research, who indicated that RJ is likely to have most benefit for victims when it is further downstream, ie post-conviction or post-sentence.

RJ outside the criminal justice system

Currently, most RJ innovation outside the CJS involves a victim-centred approach to addressing gendered and sexual violence. This is because of the well-documented justice gap that these victim-survivors face (Temkin & Krahé 2008). Recent literature has explained the reasons why victim-survivors may choose not to report incidents of violence to the police and/or not take the criminal justice path. For example, Keenan and Zinsstag pointed out that:

Some survivors do not want to go through the often retraumatising process of reporting to the police, especially when they know the attrition rate [while] others are looking for alternative forms of redress and for their abusers to take responsibility for the hurt they caused (2022: 82).

Victim-survivors face several concerns, including fear of not being believed, fear of retaliation from the person responsible for the harm or their community, concerns about privacy and confidentiality, and worries about the legal process and the potential for re-traumatisation. Allied to this is the concern, discussed by Wood et al. (2019), that the primary source of referrals for RJ conferencing stems from legislative or statutory avenues, a trend that is evident across all Australian states and territories. As a recent report by the Centre for Innovative Justice (CIJ) and KPMG (2023) has also noted, many victim-survivors have found that a conventional pathway through the criminal justice process proved impossible for them (due to well-founded fears of retraumatisation), which risks them falling outside of both the legal justice system and its allied RJ processes. To address this issue, Recommendation 13 of that report called for the introduction of a *victim-survivor led* RJ service, to deliver restorative approaches in sexual offence matters that would sit alongside traditional legal processes (2023: 114). The report also suggested that RJ processes within this service could include, but should not be limited to, conferences or other forms of dialogue between the victim-survivor and:

- the perpetrator, supported by specialist practitioners for each party, a convenor, and substantial periods of phased preparation;
- their family members or community, to seek greater support and articulate the individual and collective impacts of the offence; and
- an organisation or institution (with which the sexual offending was related), to explore and acknowledge any damaging impacts of the organisational response and identify measures to improve organisational responses in the future (2023: 114).

Organisations that sit outside the CJS that support women who have not reported the violence to the police include, for example, the Brisbane Rape and Incest Survivor's Support Centre (BRISCC). BRISCC provides a safe space for women (including transgender and cisgender women) survivors of sexual violence, where they can receive phone support, individual counselling, advocacy, community education and training. Girls and women with intellectual or learning disabilities over the age of 12 who are the victims of sexual violence can also receive counselling and other forms of support from Working With People With Intellectual and Learning Disabilities (WWILD) (nd), a community organisation based in Woolloowin, Queensland.

Victim-survivors can receive confidential information about the help available to them and what their options are.

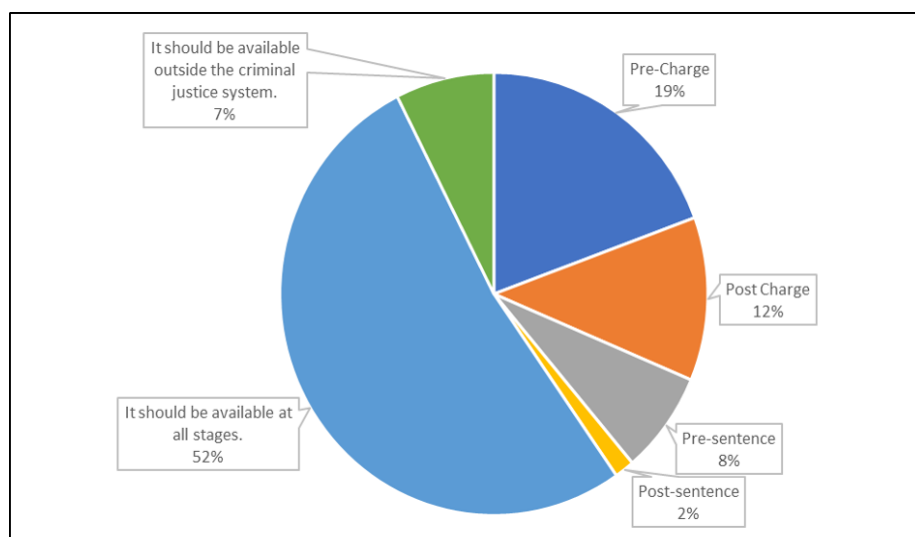
It is important to recognise that Queensland also has what is known as Alternative Reporting Options (ARO), whereby a victim-survivor of sexual violence can report full details of their assault to the police, whilst remaining anonymous. Participation is voluntary, and the incident must have occurred in Queensland. This option allows victim-survivors to provide information that may be used to solve reported offences of a similar nature. Similarly, NSW also provides the Sexual Assault Reporting Option (SARO), where victim-survivors can report violence through a community portal and in which information is both received and treated confidentially. Recent research found that victim-survivors are positive about having an alternative reporting option available (Heydon et al. 2023).

These are examples of support services for victim-survivors who do not want to go to the police. However, it is also worth noting the growing use of community-based RJ programs that sit outside the justice system, particularly in cases of DFV and SV. Open Circle (RMIT University nd) in Victoria and Transforming Justice Australia (nd) in New South Wales (NSW) take referrals from the community where there may have been no formal contact with the CJS. In New Zealand, Project Restore (nd) will also take community referrals. This is consistent with the global movement to offer victim-survivors a path to justice that works for them, independent of their contact with the CJS (Keenan & Zinsstag 2022).

Stakeholder views on location of services

The research team was provided with the results of an online questionnaire run by staff from the DRB, which gathered stakeholder views (n=71) in relation to expansion options (Queensland Government 2024a). In response to the question of where the focus of ARJC should be, just over half (52%) of all stakeholders said that it should be available at all stages of the criminal justice process, while 7% believed it should be available outside of the criminal justice system. See Figure 1 below.

Figure 1. Stakeholder views on ARJC's place in the criminal justice system



Some stakeholders interviewed for this report saw a place for RJ services both inside *and* outside of the mainstream system, as the following comments illustrate:

I think if you want bread and butter turnover then definitely within the criminal justice system, but I think for that specialised stuff, like the DV, the rapes, then there's

definitely a more therapeutic, holistic opportunity to do more of that type of work that sits outside of. ... that's what they do in the UK [and] Canada. But there's two spaces, very different defined spaces that we could very much fit into either. It depends if you want the quality of service or you want the numbers.

I automatically would think within the correctional system. Mainly because there would be two concerns, not only for me, but I think for some of the community, and even some of the victim-survivors, that if it was outside of corrections and as a diversionary philosophy it may be seen that these perpetrators are doing it specifically to get away from the consequences of their crime, not because they want to have that restorative justice for the victim-survivor. And I think that would potentially be a ...negative connotation to restorative justice. So, on the whole, I would say keep it with, or put it into, the correctional system, as part of the consequences of the behaviour of these individuals.

For two stakeholders, there was value in having it outside the justice system:

this is something that could be managed and led at a community level, without it being through the criminal justice system long term. I would like to think that there's ways in which people can seek justice and reparation through their own relationships, through supported pathways that actually don't require them having to go through police and then courts.

Another stakeholder had:

just assumed it would be within the criminal justice system, that it would be run by the Department of Justice, and that's where the convenors would come from, because I assumed it would run similar to the youth model. And that if they're diverted, they go back to court or something for a potentially a custodial situation or whatever the other possibilities are....[but] in theory, yes, I think anybody could run that conference, and I think there's social workers that out there that could do the convening and would understand all the risks and plan well and be victim-centric and all of that. If it was run in the community, I'm wondering how victim-survivors might see it. They might still not understand that it's part of the accountability process completely, but maybe we have to broaden our understanding of what our accountability means. So that would be a lot more about what you are saying about does the community know about or understand what restorative justice is? So, there'd be a lot of work to be done around that, I think, educating the broader community.

These comments show both the potential for a broader conceptualisation of RJ and the challenges that might arise if the current model were radically reformed. Ensuring accountability is a core component of RJ and moving outside the justice system runs the risk of diluting this. On the other hand, it opens up the potential for a much more expansive understanding of what RJ could look like, as one respondent articulated:

I think about the skill set and development of DRB and ARJC ... so much of the work, as well, that's outside of charges. All of that hurt and harm in that preventative space, how to involve ourselves in that, and thinking about really being well-versed as well, and collaborative with the actual victim supports out there....And I think the way we look at it, some of the work out at the Mint House as well, over in Oxford,³ they're showing that

³ See The Mint House (nd). *About Us* <https://www.minthouseoxford.co.uk/restorative-practice>.

you want restorative in a sense to be really understood in that relational basic approach that people can pick it up and use it in any setting. That at its most basic level, it's about collaboration and allowing the voice of those most directly impacted have a say in what needs to happen going forward, but recognising that that's not easy when there's power imbalance. And there's legislation and all those other things. So, I love that idea. I really support that in terms of having those non-criminal justice potentials to really expand that civil and community [approach]....I think that's really the way it should be done, just a little community centre-led skilled facilitation to recognise that it's all about managing groups, but also managing families... individual relationships, and just having that sort of skill set that people can go to [to] promote accountability.

Referrals

Barriers and challenges with referrals

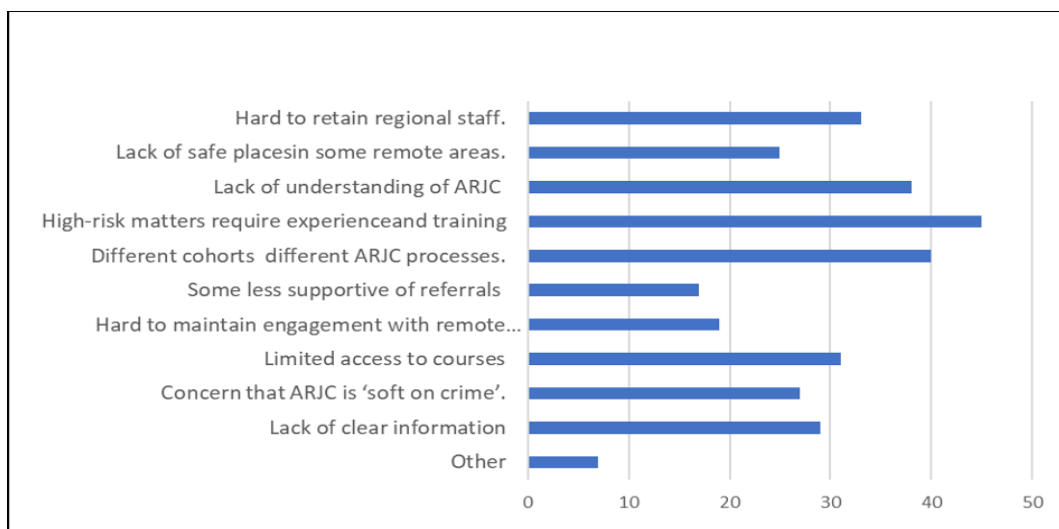
A large body of research has identified that one of the main barriers in the referral process is 'lack of sufficient knowledge regarding RJ within referral agencies such as the police or the courts' (Wood, 2019: 44). Criminal justice actors, including law enforcement, prosecutors, judges, and defence attorneys, can lack awareness or understanding of RJ, leading to a reduction in numbers of referrals.

Wood et al. (2019: 45) summarised the following barriers that prevent consistent referrals:

- lack of sufficient knowledge regarding RJ from referral agencies, such as the police or the courts. They note here that some research suggests education and 'relationship-building' with referral agencies will have a positive impact on referrals (Shapland et al 2004: 49);
- agency 'gatekeepers', who may be unwilling to refer cases for reasons of professional dominion or ideological opposition to RJ; and
- lack of information sharing or availability between agencies and, in turn, to RJ participants.

The DRB online questionnaire asked stakeholders what they considered to be the biggest challenges to expansion of ARJC (Queensland Government 2024a). A total of 38 respondents considered a key challenge to be a lack of understanding of ARJC by stakeholders and/or referrers and 17 respondents believed that some agencies and regions across Queensland are less supportive of referring cases for ARJC. See Figure 2 below.

Figure 2. Stakeholder perceptions of challenges to expansion of ARJC



Stakeholders described a positive relationship between DRB and potential referrers. Several stakeholders felt that the referral process from *within* the CJS to the DRB is generally effective, with referrals flowing from both the police and Office of the Director of Public Prosecutions (DPP). One stakeholder suggested that, as 70-80% of referrals are found to be suitable, the referral pathway is working well. However, it was also noted that, although it is possible to get referrals from other agencies (such as CASA), this does not happen often.

Nonetheless, many of the above barriers were mentioned in our interviews. For example, the issue of gatekeepers resonated with one of our stakeholders who stated that, 'another challenge with referrals is the 'gatekeepers'. In some areas the number of referrals is very dependent on how the police view RJ, [which] raises issues about equity'. This was echoed by another interviewee who stated that 'there are barriers relating to "culture", with prosecutors in Brisbane [and] police prosecutors only referring when defence solicitors ask them to'.

Notably, there was a perceived lack of awareness about the availability and nature of adult RJ in Queensland. This includes:

- a lack of knowledge or understanding about RJ, what it is, for whom it might be viable/valuable and how it currently works;
- a lack of understanding even in the police, who at times are unable to describe to people what the DRB does and how it operates;
- a perception among police that RJ is soft on crime, although this changing with training;
- a lack of responsiveness among police when services call about accessing RJ; and
- a lack of awareness that this is available for adults, even among those who work in related contexts (eg, youth, family violence).

The lack of understanding and responsiveness among police (referred to above) was a view confirmed in consultation with a stakeholder who expressed that 'many police prosecutors are not supportive at all'. This concern was raised by another DRB respondent who thought that police considered RJ an 'easy option'. She stated:

ARJC needs to work closely with police - in pre-charge space. [...] canvassing RJ should be part of the normal process for sergeants at an early stage [there is a] need to change culture and perceptions of police, who see RJ as an easy option of defendant. We need to change our narrative and vocab about the defendant's experience in RJ, so police can

see it in a different way. Currently, it is not seen as the punitive option police are seeking - we need to change that lens.

The following quotes further illustrate some of the misperceptions and misunderstandings that may still exist about what RJ is – and is not:

the police are ... not totally understanding what we do and what our process involves, and not being able to have the narrative to be able to speak to the parties about what the process is. So, we do get some referrals where the parties have been told, for example, 'this will be a way of you getting some compensation' or 'this will be a way of you getting your money back or getting the damage repaired'. So, the narrative that's given to the parties is not actually the essence of what ARJC is actually about. It doesn't speak to that sort of restorative component around the process. It's just seen as a transactional sort of – oh, well, yeah, if you do this you've got a good chance, whereas if you go to court you've not. ... if the main referrer is the police [and] they don't know enough about [the] process to be able to sell it and give a true picture... that's the disconnect. Because people won't take it, sometimes will say oh, well, you get to sit down with the offender and you can chat about what's happened.

It definitely needs more knowledge out there.... the other service providers I deal with, they either - oh yeah, I've heard of RJ, but I don't know, what is that, or ...it sounds too confusing. So no, it needs to be out there, it needs to be promoted more and challenge some of the myths that are out there, which are the fact that, oh, they just put these two people together and it can be really bad, that the perpetrator gets to say what they want, which is not what happens.

To counter this issue, one interviewee suggested that a 'PR push' was required, in order 'to explain and "resell" RJ to police, corrections, magistrates. They suggested that this 'could involve people hearing from defendants and victims, and seeing how the process actually works'.

There was a call for training, education and awareness-raising among police, prosecutors, defence lawyers, magistrates and service providers and other external agencies that could function as referring sources. As one stakeholder noted:

There's so many places that we could be getting referrals from and that kind of links back to that education piece ... there's certainly a lot of interest around [RJ] ... But even magistrates as well, just the lack of awareness and information in that space as well, so even if we just looked at Corrections and coming direct from the courts as well...something that could be so beneficial, and have such a reach in to so many different areas is just not known. And so significantly under-utilised by Community Justice Groups [and] Corrections.

The issue of awareness and understanding was consistently raised in our consultations with one respondent noting that both potential referrers and potential participants didn't fully understand what RJ meant. One interviewee suggested that a good approach to alleviate this issue was to identify 'the best people to work with in communities to promote RJ referrals.' This echoes the UNODC Handbook for Restorative Justice Programmes, which suggests 'a communication strategy' with the aim of promoting RJ to both criminal justice professionals and the community in order to address this. It also suggests '[identifying] individuals in key positions in the justice system who are amenable to adopting participatory and restorative approaches and championing them' (2020: 95).

Another stakeholder had been working in integrated service responses for eight years, and said that ‘the fact that I didn’t know that we were doing this says to me that it’s not operating within the integrated service response’.

It was suggested that resources are required to inform people what RJ is, what the DRB does, how the process works and, where relevant, how to prepare people to participate in the process. This could include the development of a fact sheet that police can distribute.

One stakeholder also mentioned the fact that the ‘ARJC and Police are currently undertaking a pilot to re-introduce Police Complainants’ and viewed this as a ‘positive step to getting police on board with ARJC referrals [...] alongside assisting officers to understand that use of ARJC can decrease police workload’.

The RJ process can be misused

Other issues included concerns around the suitability and quality of referrals. In some cases, basic information was missing, meaning that DRB staff were unable to make contact with people who had been referred. There are also issues with timing, as the DRB sometimes receives files that are up to two years old. This can arise because of the wait lists of other support agencies and their accessibility (e.g., if the outcome is for the person responsible to complete a counselling session, but there’s a wait list).

More concerningly, perhaps, it was raised in a focus group that some defendants and their lawyers may misuse the RJ process:

if you've got a very clever lawyer...who sees RJ as a way of you not getting the charge to stick, which means you can keep your blue card, you can keep your whatever....Some of the referrals – I suppose what I'm trying to say – lack integrity, in relation from the defendant’s perspective. They’re coming to it just to be able to get out of other – because obviously a charge is going to ruin their life in one aspect or another.

One respondent felt that ‘self-referred matters can be challenging’, because there is nothing holding the defendant accountable. By contrast, with a referred defendant, the view was that if it fails, ‘they know they’re going back to court, so they comply.’ Another was unsure about the reasons the DPP referred matters to RJ. They expressed concern that if the decision was based on a lack of evidence, this might impact the alleged offender’s willingness to take responsibility.

In terms of police referrals, one stakeholder noted that ‘some officers prefer to let police prosecutors decide if [cases] should be referred to ARJC’ and that ‘this may be a risk management strategy’, but that as ‘not referring potentially creates more work’ [...] officers could be encouraged or “given permission” to refer suitable matters as early as possible, rather than passing the decision onto others, who then refer anyway.

These comments need to be understood in the context of the figures cited above, that 70-80% of referrals do progress. However, they point to the need for robust data collection, timely processes and ensuring that matters really are suitable for RJ.

The role of legislation

Nous concluded that one way to boost performance and increase the effectiveness and efficiency of ARJC in Queensland was to ‘pursue legislative change to oblige referral bodies to consider ARJC and/or allow offenders to be referred on the basis of protected admissions’ (2020: 2). This recommendation relied on evidence presented by Wood et al. (2019), demonstrating that the largest driver for referrals comes from legislation or statutory direction. Programs that lack this structure struggle with consistent case flow (Rossner 2023).

Young people

The following legislation applies in relation to RJ conferences (variously defined) involving young people (YP). Western Australia has the least detailed legislative provisions, with no explicit reference to RJ or conferencing, with s 68 of the *Young Offenders Act 1994* (WA) providing merely that '[i]nstead of forthwith deciding whether it will refrain from itself imposing any punishment, the court may adjourn the proceedings until the punishment is carried out or the undertakings have been given or are fulfilled, as the case requires'. The most comprehensive is the ACT legislation. As this also covers RJ conferencing in relation to adults, it is discussed in more detail below.

Table 3. Australian state and territory legislation governing youth RJ conferencing

Jdn	Program name	Legislation
ACT	RJ conference	<i>Crimes (Restorative Justice) Act 2004</i> , esp Pt 8
NSW	YJ conference	<i>Young Offenders Act 1997</i> , Pt 5
NT	YJ conference	<i>Youth Justice Act 2005</i> , ss 39, 64, 64A
Qld	Conference	<i>Youth Justice Act 1992</i> , Pt 3, Div 2
SA	Family conference	<i>Young Offenders Act 1993</i> , Pt 3, Div 3
Tas	Community conference	<i>Youth Justice Act 1997</i> , Pt 2, Div 3
Vic	Group conference	<i>Children, Youth and Families Act 2005</i> , s 415
WA	Court conference	<i>Young Offenders Act 1994</i> , s 68; see also Children's Court of Western Australia Practice Direction 1 of 2023

Adults

As set out above, RJ conferences for YP are underpinned by legislation in every Australian state and territory. They are also used widely, albeit to a varying extent (Productivity Commission 2024: Table 17A.12). By contrast, there are only isolated examples of RJ conferencing available for adults (see eg Centre for Innovative Justice 2019, Loff et al. 2019, Government of Western Australia nd, Victorian Government nd), including post-sentence (Corrective Services NSW nd). This is rarely underpinned by legislation. The key exception is the ACT, whose model is described in detail below.

Queensland

The current legislative position in relation to RJ involving adults in Queensland is that processes led by the DRB are conducted under the *Dispute Resolution Centres Act 1990* (Qld) (DRCA). The DRCA covers issues such as dispute resolution centres, mediation and confidentiality. However, it makes no explicit reference to RJ.

As noted elsewhere in this report, Nous found that the effectiveness of ARJC had ‘been impacted **by the lack of a legislative basis**, difficulty in aligning supply of services with demand and the referral of matters which are potentially unsuitable for RJ’ (2020: 1, emphasis added). The report noted that ‘almost all aspects of restorative justice conferencing are governed by policy and procedure. Legislation was mooted in 2002 with broad consultation conducted and a legislative model proposed, however, this was not ultimately pursued’ (2020: 11). The authors considered that ‘[t]he evidence for using legislative change to increase RJ input is compelling’ (2020: 28). The report reviewed the benefits, risks and mitigations, before recommending:

Legislating pathways and protected admissions (FE4): Pursuing legislative change to oblige referral bodies to consider ARJC and/or allow offenders to be referred on the basis of protected admissions. Enabling legislation has been identified as a significant contributor to the success of RJ in other jurisdictions. Acknowledging the efforts involved, introducing this form of legislative base will almost certainly increase ARJC activity in Queensland (2020: 2).

In *Hear Her Voice – Report Two*, the Women’s Safety and Justice Taskforce (2021) recommended that:

91. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence co-design with people with lived experience, Aboriginal and Torres Strait Islander peoples and service and legal system stakeholders **a victim-centric legislative framework for adult restorative justice in Queensland**. The framework will:

- articulate overarching principles for the use of restorative justice in adult criminal cases, with particular principles and safeguards for its use in relation to sexual offences and domestic and family violence-related offences
- set out operational processes including a clear framework for referrals and suitability assessment processes
- set out how restorative justice interacts with the criminal justice system
- establish criteria and process to assess the qualifications, expertise and suitability of convenors and provide for their functions and powers
- consider the diverse needs of victim-survivors, including First Nations victims, and how best to structure the framework to meet individual needs
- provide adequate protections and safeguards for participants, underpinned by a gender-sensitive and trauma-informed approach.
- Legislation to establish an adult restorative justice program in Queensland will not commence until a sustainable and funded long-term plan for the expansion of adult restorative justice in Queensland has been developed (Recommendation 90).

The Queensland Government (2022) has indicated that it supports both Recommendations 90 and 91 in principle; the present research is being undertaken in support of Recommendation 90.

The Queensland Sentencing Advisory Council is currently also undertaking research in relation to sentencing in sexual violence matters. As part of this, it has prepared a consultation paper, with a call for submissions due to close on 22 April 2024. Relevantly, the *Consultation Paper: Issues and Questions* (Queensland Sentencing Advisory Council 2024b) asks:

If a new legislative restorative justice model for adults is introduced in Queensland, what types of sentencing guidance and options do you support being available? What other considerations might be important?

Australian Capital Territory (ACT)

The *Crimes (Restorative Justice) Act 2004* (ACT) (the ACT Act) is the only stand-alone legislation dedicated to RJ. Its objects, set out in s 6, are to:

- enhance victims' rights by providing RJ as a way of empowering victims;
- set up a system of RJ that brings together victims, offenders and their supporters in a safe environment;
- ensure that victims' interests are given high priority in the administration of RJ under the Act;
- enable access to RJ at every stage of the criminal justice process, without substituting for the criminal justice system or changing the normal process of criminal justice; and
- enable agencies that have a role in the criminal justice system to refer offences for RJ.

RJ is operated in the ACT by the Restorative Justice Unit (RJU), a branch of the ACT Justice and Community Safety Directorate. The ACT Act has operated in three phases:

- Phase 1, from 2005 until 2016, made RJ available only to received YP.
- Phase 2 commenced in 2016. From that time, the RJU could deal with certain categories of offence committed by *adults*.
- Phase 3, which commenced in 2018, allows the RJU to deal with all offences, including family violence and sexual offences.

When introducing the legislation for Phase 3, the Minister for Justice stated:

The ACT has a long and proud history as an innovative national leader in the use of restorative justice practices. We are the only Australian jurisdiction to have enacted legislation which specifically relates to the operation of a restorative justice scheme. The ACT scheme currently allows for referrals to be made for offences involving young offenders and adult offenders for both serious and less serious offences.

Our scheme will further expand later this year when phase 3 is commenced by ministerial declaration, which will allow referrals to be made for family violence and sexual offences. Following the commencement of phase 3, all eligible victims of crime and all eligible offenders in the ACT will be able to access restorative justice (Rattenbury 2018: 3504).

For less serious offences other than DFV and SV (ss 14(1), (3)), the ACT Act is available to adults if they accept responsibility for the offence (s 19(i)(b)(i)(A)).

For *serious offences*, the ACT Act only applies (ie, RJ is only available), where the person has pleaded guilty or been found guilty (see s 15). A *serious offence* is one that carries a maximum penalty of more than 14 years, if the offence relates to money or other property or, in any other case, more than 10 years (s 12). However, this provision does not apply to family or sexual violence cases (s 15(3)).

In *less serious offences* (ie, carrying a prison term of 10 years or less) involving *DFV and SV*, RJ can take place in the absence of a charge (ss 16(1), (2)). For *serious* DFV and SV offences, however, it can only take place if there has been a guilty plea or finding (s 16(3)).

The ACT Act defines eligible victims (s 17), parents (s 18) and offenders (s 19), as well as key concepts, such as RJ (Part 3). Part 6 articulates the referral process, Part 7 establishes the process for the suitability for RJ, and Part 8 covers RJ conferences and agreements. Parts 9 and 10 deal with administrative and miscellaneous issues.

To be eligible for RJ, an adult ‘offender’ must accept responsibility for committing the offence and agree to take part (s 19(1)); however, this does not preclude them pleading not guilty (s 20). The entities that can refer a person for RJ include the police, Victims of Crime Commissioner, Director of Public Prosecutions, Magistrates Court, Supreme Court, corrective services and Sentence Administration Board (the ACT parole board) (s 22).

Under the *Crimes (Sentencing) Act 2005* (ACT), a court must consider, when deciding how a person should be sentenced (if at all), whether they have accepted responsibility for the offence under the ACT Act (s 33(1)(y)). However, a court may not increase the severity of the sentence because the person chose not to take part, or continue to take part, in RJ (s 34(1)(h)). Restorative justice can also be ordered at the time of sentence (s 13).

The ACT Act and its operation have been the subject of several reviews. An internal review of Phase 1 (ie, its application to young people) found that it was a ‘valuable addition to the justice system’ (ACT Department of Justice and Community Safety nd: 4). An outcome evaluation of Phase 1 by the Australian National University and Australian Institute of Criminology (AIC) (Broadhurst et al. 2018) found that 98% of victims, YP and support people who participated in conferences between 2005 and 2016 were satisfied with the process. In addition, YP who took part in RJ conferences were less likely to reoffend, or reoffend as often, than those who had not gone through this process.

A recent evaluation of Phase 3, also conducted by the AIC (Lawler et al. 2023), was generally positive, with stakeholders indicating that there was a need for such a scheme, especially in the context of family violence matters. However, the evaluation indicated a number of areas for improvement, including some legislative barriers to its effective operation. Specifically, the authors noted that the Phase 3 eligibility criteria require that those

responsible charged with serious DFV or sexual violence plead guilty or are found guilty. In practice, this means that ACT Policing, who are responsible for a significant proportion of overall referrals to Phase Three, have been unable to refer serious sexual violence (and serious DFV) matters to the Scheme. However, the stakeholder interviews noted that serious sexual violence matters were also unlikely to be referred during later stages of the criminal justice process (e.g., sentencing) because of the high levels of attrition associated with these cases...

Low referrals for sexual violence matters pre- and post-sentence may similarly reflect the low levels of guilty pleas (2023: 46-47; quotes and references omitted).

Other jurisdictions

Forum sentencing was an RJ program for adults previously available in **NSW** under regulation (see *Criminal Procedure Regulation 2010* (NSW), Pt 7; *Criminal Procedure Act 1986* (NSW), s 347). However, this option has now been removed (see now *Criminal Procedure Regulation 2017* (NSW), NSW Government nd), following research indicating that it was no more effective at reducing reoffending than standard sentencing (Jones 2009, Poynton 2013).

In **Victoria**, a matter can be deferred under section 83A of the *Sentencing Act 1991*, so it can be referred to an RJ conference, although there is no practical infrastructure to support this. The Centre for Innovative Justice (2019: Recommendation 3) and Victorian Law Reform Commission (2021: Recommendation 28) have recommended that the Government establish a legislative basis for RJ, in relation to adult offending. The Victorian Law Reform Commission also recommended that the new scheme should be available:

- where a person is harmed but does not wish to report the harm or to pursue a criminal prosecution;
- where harm is reported, but there are insufficient grounds to file charges;

- where charges were filed, but the prosecution discontinues the prosecution;
- after a guilty plea or conviction and before sentencing;
- after a guilty plea or conviction and in connection with an application for restitution or compensation orders; and
- at any time after sentencing (2021: Recommendations 29-31).

For completeness, it should also be noted that RJ for adults in **New Zealand** is governed by four separate Acts:

- Corrections Act 2004 (NZ);
- Parole Act 2002 (NZ);
- Sentencing Act 2002 (NZ); and
- Victims' Rights Act 2002 (NZ) (for discussion of this model, see Pfander 2020, Victorian Law Reform Commission 2021: Queensland Sentencing Advisory Council 2024a: 202-203).

According to one stakeholder,

if we're serious about it, as it being a legitimate alternative to prosecuting, then there needs to be a legislative basis for it, for the police to be able to act. You just can't rely on the, the good person clause, which is effectively what we do here. We go on the basis that we have a public interest discretion and therefore it's individualised here, but what is the protection necessarily for us, with respect to that? There is none. And where's the incentive?... And can I say that if you have some legislation, it doesn't look like a soft option. So, whenever there's a law and order debate, there are arguments around, well, what's restorative justice achieving? They're not convicted of anything, blah, blah, blah. And so, if you've got a framework and an outcome and legislative authority for it, it doesn't become a soft option. It's one of the options. And that's when lawyers and judicial officers start looking at it.

One of the focus group participants:

actually came from New Zealand, where it's legislated there. So, before every sentencing, RJ is canvassed. So, everything is remanded out for six weeks for RJ to be canvassed to the parties. So, it looks very, very different there. ... It would be great if we got it, got to be working in that, it'd be more of a legislated thing.

This exchange between a participant and interviewer also reveals strong support for a legislative model. When asked whether RJ should be legislated, they responded,

Yes, particularly if the result changes the trajectory of convictions or the case agreement stuff that happens between in a criminal setting. And I think it also provides some rigour to things like records and stuff for repeat offenders.

It should be noted, however, that there is the potential that legislation can undermine the strength of RJ as a flexible and individualised justice mechanism, as well as leading to net-widening, abuse, and co-option (Zernova 2007, Bolivar 2015, Gavrielides 2016, Suzuki & Wood 2017, Rossner 2023).

Two stakeholders commented on this, as follows:

FGP1: what would your sense be, if it was heavily formalised and legislated, which would also provide, as you say, some of the safety and protection, and would it provide a more formal and recognised alternative to other sort of existing pathways? [But] if that went too far down a road that it actually kind of ended up leaving communities behind, how

hard would it be to peel something like that back? I'm trying to think about the way that it – because the foundations of it are really who sets it up for... But then what's the danger of trying things less formally, and maybe things not working and so everyone going oh, so RJ doesn't work here.

FGP2: If you make legislative change, obviously it's hard to peel back, but you can make it flexible....

As noted by Gavrielides (85), RJ:

is not delivered at national and abstract levels. It is a concept that takes meaning and gains significance only when it has addressed the needs and the imbalances that have been distorted at the individual level.

In considering this tension, Rossner concluded that:

A balance needs to be struck between institutionalization [i.e. legislation] and innovation to ensure continued support and resourcing for restorative justice while at the same time allowing for flexibility and creativity in service delivery to meet the actual needs of offenders, victims, and community members (2023: 741).

Training and qualification

Throughout the RJ literature and stakeholder interviews, the primacy of quality training for facilitators is emphasised, with enhanced training for those working with victim-survivors of sensitive and complex cases. Given the number of RJ programs now in operation, it is surprising, as the authors of the *Handbook on Restorative Justice Programmes* (United Nations Office on Drugs and Crime) note, that 'relatively little attention has been given to the issue of accreditation or certification of facilitators and mediators' (UNODC 2020: 91).

Despite this, there are a number of RJ practice skills-based courses that offer the training in Australia, including survivor-led approaches, necessary to facilitate RJ processes in Australia effectively. In high-risk cases, there is a need for more, and more specialised training. This is considered in Chapters 5, 6, and 7.

The literature also identifies a need to recruit facilitators from different CALD backgrounds. Diverse facilitators are better equipped to understand the experiences, emotions, and needs of participants from differing demographic groups. The UNODC strongly advised that 'facilitators should be drawn from diverse segments of society, whether they are volunteers or professionals, [and] possess the awareness and skills necessary to effectively apply restorative justice in diverse cultural contexts' (2020: 58). Those with proficiency in various languages can enhance effective communication, whilst also providing intersectional perspectives that can benefit participants from both Indigenous communities and those with CALD backgrounds. Diverse facilitators are more likely to possess an understanding of local cultures and communities and be able to feed that information into the mediation process, in ways that enhance participants' sense that they are being truly witnessed and heard, as their authentic selves.

The training of Indigenous and non-Indigenous workers in RJ conferencing is viewed as a success story, including particularly the roll-out of cultural competency training for non-Indigenous individuals (see Faulkner 2008, Wood et al. 2019, UNODC 2020). The recruitment of facilitators and program administrators with strong RJ values who are 'able to avoid bias and discrimination in their interactions with offenders, victims, and members of the community from different cultural or ethnic backgrounds' (UNODC 2020: 58) is also considered to have been a significant recent achievement.

The craft of restorative justice

Intake/initial contact

Once a case is referred to an RJ service, trained practitioners are responsible for contacting parties, assessing suitability, preparing participants, effective facilitation, follow-up, and monitoring.

Before contacting potential participants, facilitators should familiarise themselves with any available and relevant information about the case and the characteristics of the participants, including any important mental health needs and language or cultural considerations.

Participants may be contacted through a letter or telephone call, followed up by a face-to-face meeting. There is ongoing debate about whether the person responsible or the victim should be contacted first (Wood et al. 2019). Facilitators should be clear in defining RJ, its aims, potential outcomes and benefits.

In keeping with best practice, in most cases, a face-to-face meeting should be the primary goal of restorative justice (EFRJ 2021). If parties are unwilling to proceed, then other options for dialogue should be offered (such as shuttle processes, remote, telephone, or letter exchange).

At every stage, care should be taken to act in accordance with the principles defined in Chapter 2 of this report.

Suitability assessments and preparation

Suitability is best understood as a dynamic concept. After an initial assessment, facilitators should engage in a process of continuing suitability assessment.

Currently, advice from the DRB indicates that the ARJC suitability criteria include:

- there will be no further harm by meeting;
- The process is voluntary – both the victim and the person responsible want to meet;
- the person who caused harm takes responsibility and displays accountability; and
- both parties agree about how harm will be repaired/addressed.

These criteria are in keeping with the values, principles, and standards outlined in Chapter 2. Consistent with the principles set out in the UNODC handbook (2020), aims could also include items more explicitly related to restoration and reparation, inclusion, participation commitment, and confidentiality (see Chapter 2).

The literature on best practice and the interview data emphasise that thorough preparation is key for success (see also Rossner 2013). Preparation should involve a series of meetings with persons responsible, victim-survivors, appropriate supporters and any relevant professional service providers. They will be asked to explore the harm and its causes, impacts, and consequences. They will also explore risks and mitigation strategies. As in the initial meetings, significant care is taken to ensure the best practice principles and standards are met (Wood et al. 2019, UNODC 2020).

Our interviews with practitioners seemed to indicate that the ARJC model for preparing participants is consistent with best practice. For instance, one convener told us:

We're always worried that [RJ] is going to do harm, it's going to traumatise and trigger and bring up stuff, and I think that's one of the risks, and people have to know that going into it. So that's what a lot of the prep work is around, I think. Helping people understand that might happen, and then resourcing them to deal with it if it does.

Stakeholders were generally positive about ARJC and identified a number of aspects that are currently working well. This includes a sense that RJ is well-aligned to community needs and interests and people are very receptive to it. It is provided as a flexible option, with participants able to join via phone, video link or Teams. Stakeholders recognised the pre-conference preparatory work that is undertaken, to identify what people actually want from the experience. There was also a sense that the RJ convenors are well prepared. According to a participant:

The preparation before the conference works well... that's really the main part, is that work that's done beforehand with those initial intakes and finding out what the outcomes that the complainant would be seeking, and having all of that well-prepared before going into the conference. I used to think that, 'oh, the conference is the big part of it,' but then I started working in it, and I was, like, 'oh no, actually I think that conference is actually really the smaller part of it'.

Another stakeholder also commented on the importance of allocating adequate time for preparation:

I think the prep, and I think the crucial thing is actually getting a real good handle on what the parties actually want. What is it they want to be able to say? What is it they want to be able to hear? And making sure that you can align those requirements and opportunities for both parties. And they are two questions that I always ask multiple times through my intakes, because that changes as well. And I think if we can get a real good handle on what that needs to be, what that space needs to be for the complainants to be able to say what they need, and what they need to hear from the defendant and vice versa, if we nail that, then you're going to have a really restorative process.

However, there was also recognition that there would need to be more resources to allow for critical preparation time for comprehensive intake processes, if service demand expands further. It was also noted that any expansion needs to be sustainable so sensible and appropriate resourcing is essential.

Complexity marking

Complexity marking stems from the broader concept of complexity theory, which focuses on understanding complex, interdependent, and interconnected systems (Rhodes et al. 2010, Byrne & Callaghan 2022). It has been used in project management and service delivery to recognise that projects may entail an interacting constellation of factors, uncertainties, and risks. Complexity marking provides a way to systematically examine the complexity of these factors as a whole, in order to ensure adequate resourcing, risk mitigation, training, support, and effective service delivery.

In RJ conferencing, complexity marking could involve assessing various factors that contribute to the complexity of a case. Drawing on best practice principles and standards, and input from stakeholders, such factors could be:

- the number of involved parties;
- the severity and nature of the offence;
- participants' emotional, psychological, and physical needs;
- relationship dynamics;
- cultural sensitivities;
- the social and economic context;
- the mental health of the individuals involved;
- risk assessment; and
- any other elements that may affect the process and outcome of the case.

This approach allows professionals to tailor their interventions more effectively, ensuring that the resources and strategies employed are appropriate for the specific needs and challenges of each case.

The careful identification of such factors can affect resource allocation, for instance facilitator expertise, co-facilitation, support services (for both participants and staff), and time. It can also have an impact on process design, for instance, by adopting certain safety measures, flexibility, or other supports. In addition, it will also affect ongoing training, supervision, and support.

The complexity of cases should also be considered as a part of ongoing monitoring and evaluation.

Conference facilitation

There are numerous approaches to RJ facilitation, but in general it involves a facilitated discussion between relevant parties that explicitly centres the voices of all the people who have been affected by an offence (Rossner 2023). RJ conferences involve a ritual structure, usually a circle, bounded by confidentiality and where the facilitator plays a non-interventionist role. Wood et al. (2019: 66-67) have collated best practice guidelines to summarise the key elements of an RJ conference in the below excerpt:

- **Introduction by the facilitator**, including the purpose of the meeting, guidelines for respectful talking and listening, general structure of the meeting, and any other necessary information.
- **Facts and impacts of the offence** (victim's story, offender's story, others). Each party must be given an opportunity to speak as needed without interruption, in order to fully explain what has happened, the consequences of harms caused, and so on.
- **Response to stories**. Each party should be given the opportunity to ask questions, or to respond to what has been said. This part of the conference is often less 'scripted', but may be where offenders offer apologies and/or demonstrate remorse, where victims respond to offenders' accounts of the facts or other information offered by the offender, or where one or both parties may offer other relevant information in regards to what they have heard or learned.
- **Outcomes** i.e. what does the victim want to happen, what can the offender offer and, when possible, what agreement can be reached? Outcomes/agreements must be driven and understood by all participants. They should not be coerced by facilitators, but parties may ask facilitators about outcome possibilities.
- **Physical and emotional safety needs**, to be reassessed and assured throughout the process. In practice, this means that practitioners should be:
 - continually monitoring participants' wellbeing (physical and emotional). They should be looking for signals that indicate potential harm and intervening immediately to protect participants when such harm is apparent; and
 - if ground rules are breached, appropriate action should be taken.
 - In addition, facilitators should treat all participants with **dignity and respect**, and act in a neutral manner, while not negating the harm caused by the offending. Facilitators should also communicate in ways that:
 - encourage participation;
 - acknowledge participants' situations and needs;
 - are pitched at levels appropriate to those involved; and
 - are free from discrimination and oppression (see also Resolution Institute, 2019: 20-21; European Forum for Restorative Justice, 2016: 16; Restorative Justice Council, 2011: 16-18; Ministry of Justice, 2017: 16).

Follow-up and compliance monitoring

Wood et al. (2019: 67) have also summarised the best practice around conference follow-up, noting that:

It is crucial that RJ facilitators or other staff monitor and follow up on the both the conference outcome (when reached), and also the well-being of participants post-conference. RJ agreements are often seen by victims as key to offender accountability and victim healing. More specifically, facilitators should:

- Assist and/or supervise offenders to complete the RJ agreement (or work closely with those who do).
- Assess whether offenders have completed the agreement and if they are facing challenges, provide them with support to finish.
- In cases where offenders are unable to complete the agreement, even though they have been supported to do so, sensitively inform victims and provide the opportunity for discussion.
- Where applicable, inform the conventional justice system re: offender inability to complete the agreement.
- Be available to participants for follow up, support, and referrals in terms of problems or issues that may arise as a result of the conference (See also Restorative Justice Council 2011, EFRJ 2016).

The UNODC handbook on RJ programs (2020: 63) further noted that:

The monitoring mechanism does not necessarily have to fall under the programme itself. The task may be assigned to another agency, such as the police or a probation office or an organization working with the offenders, to help them implement their rehabilitation plan (e.g., a drug treatment agency, a counselling service or a financial institution). In many low-income countries, reliance is placed upon the influence of societal self-regulation and on members of the community themselves to monitor compliance with the agreement of the parties.

Monitoring and evaluation

Ongoing program monitoring and evaluation is necessary to ensure effective and efficient practice. The UNODC handbook encourages program oversight, monitoring, and evaluation in order to 'better identify the conditions that support or limit programme effectiveness and to further develop evidence-based practices to guide the development and implementation of future new programs' (2020: 11; see also Council of Europe 2018: [66]). Monitoring and evaluation should be guided by the aims and principles of the specific program (Shapland 2022). Chapter 2 identifies globally recognised values, principles, and standards of RJ that could be used in developing program aims.

We were advised that DRB has KPIs in relation to timeliness, agreement rate, compliance rate and satisfaction rate. However, there was some concern raised by a stakeholder that there was a lack of clear indicators regarding how long is needed for different types of cases. Consideration of this element may provide greater clarity about what sort of data need to be collected, to inform future monitoring and evaluation practices.

Monitoring

Monitoring is a continuous process that tracks a program against its aims. It is primarily concerned with processes (United Nations Development Programme 2002). It requires a robust system of record-keeping and data management, including about referrals, eligibility, suitability, preparations, conferences, outcomes, and compliance. Data can then be used by program managers as a management tool. The UNODC handbook (2020: 104) recommends the following information as useful for ongoing monitoring:

- the number and types of cases referred to the restorative programme (including the nature of the offence committed);
- the sources of the referrals;
- the frequency with which offenders and victims agree to participate in the program;
- the reasons why victims or offenders decline to participate in the program;
- the length of time required for case preparation;
- the proportion of face-to-face meetings;
- the participation of each party;
- the time required to conduct the restorative process;
- the nature and contents of the outcome agreements reached through the process;
- the rate of successful completion of outcome agreements;
- the rate and type of reoffending among offenders who have participated in restorative processes;
- the number of volunteers and volunteer hours contributed to restorative processes;
- information on costs;
- the attributes (e.g., age, gender, ethnicity) of crime victims, offenders, community members who participate in restorative processes, and facilitators; and
- the perceptions of participants and their satisfaction with their experience of the process and its outcome.

All of this requires a robust data gathering and management system. If high-quality program data are kept and maintained for the purposes of monitoring, this makes evaluation easier and more effective.

Evaluation

Evaluation is a systematic and external assessment of the extent to which a program meets its aims. This is not a continuous process, but should happen periodically. It has a broader scope and can also include an evaluation of outcomes (United Nations Development Programme 2002; see also Gertler et al. 2016). To evaluate outcomes, it is also important for the program to have a clear articulation of success that reflects the program's aims. This could include the quality of participants' experiences, the extent of accountability, the level of community engagement, and agreement compliance. When conducting an evaluation, it is important to ensure that evaluation methods are culturally competent and appropriate for the communities served by the program.

The UNODC (2020) handbook identifies key considerations, when evaluating the effectiveness of RJ. This includes:

- obstacles to access research sites, data, and participants;
- the difficulty of securing adequate control groups of crime victims and offenders, who participated in the conventional criminal justice system and controlling for the fact that participation in the process is voluntary;
- the myriad of restorative programs and the variety of goals and objectives of these programs;

- the wide variability among restorative programs, in the nature and number of cases processed;
- the lack of adequate controls and comparability of the referral criteria, competence and training of facilitators, legislative and policy framework within which individual restorative programs operate, and various benchmarks that are used to assess outcomes;
- the variability in the indicators used to measure program success;
- variations in the time period used to assess recidivism among offenders who participate in restorative programs;
- the specific measures that are used by program evaluations to assess crime victim and offender 'satisfaction', the levels of 'fear' among crime victims and the expectations that offenders and victims had of the restorative process.
 - For instance, victim satisfaction indicators could include satisfaction with: (a) the way their case was handled; (b) the outcome of the case; (c) the facilitator; (d) the fairness of the process; and/or (e) the interactions with the offender;
- the manner in which any assessment of crime victim and offender experience with the restorative process is conducted;
- controlling for the wide variety of contexts, i.e., urban/rural; ethnically diverse/ethnically homogenised; highly troubled/highly integrated communities, in which restorative processes operate;
- controlling for the diversity in the types of training that program staff and facilitators receive;
- controlling for the variety of legislative and policy frameworks within which restorative processes operate;
- quantifying observations about processes that are highly subjective, personal and interactive;
- developing measures to assess the extent to which restorative processes enhance community, family and system capacities;
- developing measures to assess victim empowerment, offender remorse and rehabilitation;
- operationalising concepts such as community capacity, family capacity, system capacity, victim empowerment and community engagement; and
- developing measures to assess the cost-effectiveness of RJ initiatives, particularly, in contrast to the conventional criminal justice system.

Both monitoring and evaluation should combine both quantitative and qualitative methods, to obtain a comprehensive view of a program's process and impact.

A note on reoffending

Traditionally, reoffending has been an indicator of success in RJ. There is now a significant body of work that points out some of the methodological and theoretical challenges with recidivism measures (Wood 2016, Wood et al. 2019). Nonetheless, the best research suggests that RJ consistently does no worse than traditional criminal justice practices and, in some instances, will result in small but significant reductions in reoffending (Sherman et al. 2015, Rossner 2023).

In their report on the proposed conferencing model for Queensland, Nous (2020: 17) noted:

A critical reading of available research suggests that, while recidivism outcomes associated with RJ participation are certainly no worse than for traditional [criminal justice system] practices, evaluation of RJ programs do not always demonstrate statistically significant reductions in recidivism.

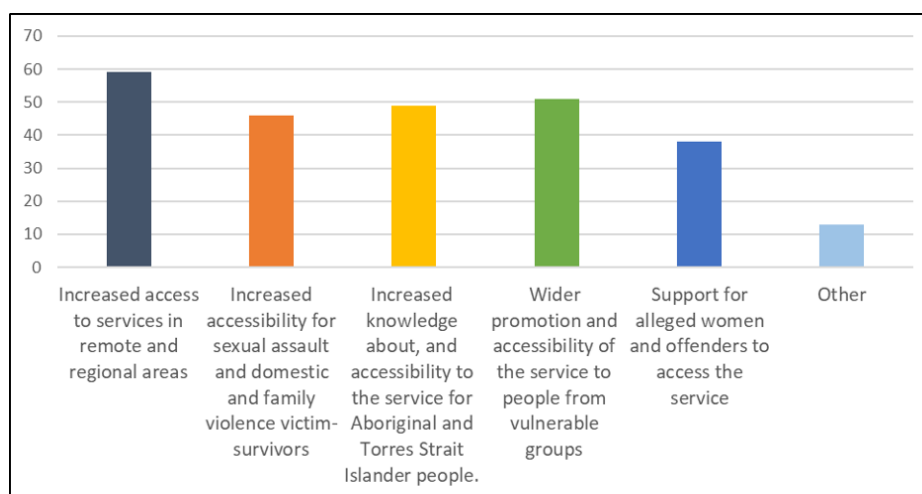
Given this, the proposed redesign of the ARJC model did not include recidivism outcomes as a relevant consideration. This is in keeping with practice elsewhere. For instance, in the ACT, the aims of the ACT RJ Unit do not include recidivism measures, but include a commitment to:

- enhance the rights and interests of victims;
- establish a system of RJ that brings together people harmed by crime in a safe environment;
- facilitate referrals to restorative justice from criminal justice agencies; and
- ensure access to RJ at every stage of the criminal justice process without substituting or interfering with established justice processes (see Lawler et al. 2023, drawing on *Crimes (Restorative Justice) Act* (ACT) s 6).

Considerations for expansion

As the ARCJ considers expanding, it will be important to identify and explore the particular needs of different groups, particularly for vulnerable groups. In the DRB survey (Queensland Government 2024a), stakeholders were asked to consider what elements would be valuable, if ARJC were to be expanded. As Figure 3 below reveals, a majority of stakeholders (n=59) believe there should be increased access to RJ services in remote and regional areas and more than half of stakeholders (n=51) agreed that there should be wider promotion and accessibility of RJ services for people from vulnerable groups.

Figure 3. Stakeholder views on key elements for expansion of ARJC



In the next two chapters, we consider each of these areas in turn.

5. Specialised Service Delivery in Cases of Domestic, Family and Sexual Violence

Summary of Key Points

This chapter examines RJ in cases of DFV and SV, with a focus on approaches that prioritise the specific needs of victim-survivors. It considers input from professional stakeholders working in these areas. Key findings include:

- a recognition of the potential benefit of RJ over traditional responses;
- concerns about its safety and effectiveness in addressing power imbalances and ensuring meaningful accountability;
- a discussion of how specialised training and service delivery, including in trauma-informed practices, can help address these concerns; and
- an examination of concerns that defamation claims that may deter victim-survivors from reporting sexual violence in the first place.

In the early years of RJ practice, there was significant debate over the use of RJ in cases of DFV and SV. However, in recent years there has been a shift both in the academic literature and the practice of RJ toward the development of a survivor-centred model that can meet the unique needs of victim-survivors in these cases (Rossner & Forsyth 2021, Keenan & Zinnstag 2022). While there continues to be limited evaluation in this space, there is a growing evidence base that, if delivered safely and carefully, RJ can support and offer a sense of justice and closure for victims and help aid persons responsible with accountability (Keenan & Zinnstag 2022, Jülich et al. 2024). Significant guidance has been developed in relation to this, including a practice guide for cases of RJ and sexual violence (Mercer et al. 2016) and practice standards for family violence cases (New Zealand Ministry of Justice nd). The main feature coming out of this literature is the need for specialised training and a flexible approach to service delivery to suit the specific risks and needs in each case.

To understand the views of stakeholders in the area of RJ and DFV and SV, Jeffries et al. (2021) interviewed traditional criminal justice actors, RJ facilitators, and DFV and SV service providers in Queensland. Participants noted several advantages or improvements offered by RJ compared to traditional justice responses for victims of DFV AND SV. These included RJ:

- providing a more feasible way for victims to have a say in the process;
- creating a less intimidating and safer environment for victims, which was more conducive to validating and empowering them;
- offering more opportunities for victims to express themselves; and
- providing a supportive environment for victims to confront the person who caused harm and hold them accountable.

Regarding offender accountability, RJ facilitators in this study highlighted that the RJ process allowed them to thoroughly assess offenders' readiness to take responsibility and their motives for participating before the conference. They also emphasised the importance of pre-conference preparation, especially when offenders denied or downplayed the harm caused (see also Jülich et al. 2024). During the conference, facilitators/convenors would refer offenders back to the accountability expectations agreed upon in pre-conference meetings.

Additionally, some interviewees viewed RJ as challenging and potentially changing broader societal misconceptions about DFV AND SV. This is because RJ gives victims a voice and validates them, thwarts victim-blaming, and challenges denials or attempts to downplay the harm caused (Jeffries et al. 2021: 24).

These reflections are echoed by several stakeholder groups who participated in the Victoria Law Reform Commission's inquiry into improving the justice system's response to sexual offences. For example, Sexual Assault Services Victoria pointed out that:

Often a [victim-survivor] may just want the perpetrator to understand the impacts of their behaviour, acknowledge the crime and/or offer an apology. They may not necessarily want the offender to serve jail time (cited in 2021: 193).

Similarly, the Victorian Aboriginal Legal Service noted the desire in some Aboriginal communities for a process 'where the offender is held to account, not with the result being a prison sentence, but rather ... an acknowledgement of the harm that the offender has caused the victim' (cited in 2021: 193).

While there is a growing acceptance and use of RJ in this space, concerns are still raised about the safety of this practice. The participants in Jeffries et al. (2021: 24) expressed concerns that:

- RJ might not address the power imbalances present in DFV AND SV, potentially allowing victimisation and harm to persist during and after the RJ process;
- victims might not be able to participate freely and effectively in the RJ process;
- RJ might not be effective in ensuring that perpetrators are held accountable in a way that is meaningful to victims;
- apologies within the RJ framework might be neither sincere nor safe;
- RJ might treat instances of DFV AND SV as isolated rather than part of a pattern of behaviour;
- there is a risk that RJ facilitators could unwittingly collude with perpetrators by overlooking or being unaware of ongoing manipulation and control;
- RJ facilitators might not have received foundational training in best practices for dealing with DFV AND SV;
- there might have been insufficient coordination of RJ practices with existing IPDFV and SV support services;
- greater flexibility is needed within the RJ process, especially regarding RJ conferences, to accommodate the needs of victims;
- issues related to cultural sensitivity of RJ processes might not have been considered, particularly the mistrust among Indigenous communities towards mainstream justice mechanisms; and
- there are potential community-wide impacts of applying RJ to DFV AND SV cases. These include fears that RJ might be seen as an easy way out for difficult-to-prosecute cases, perceived leniency towards perpetrators, exclusion of the broader society from the justice process, and the possibility of the state abdicating its responsibility in these matters.

These and other risks can be addressed with careful training, monitoring, and mentoring for RJ practitioners. the types of training and adaptations to service delivery are discussed below.

Specialised training

Recent literature has explicated the need for facilitators to have additional specialised training in sensitive and complex cases (see Keenan & Zinsstag 2017, Jeffries et al. 2021, Lamanuzzi 2023). The UNODC (2020) advised that facilitators who engage in restorative processes must have both advanced training in RJ processes and considerable practice experience before working on cases where serious harm has occurred. In addition, facilitators should be able to:

understand the traumatic impact of violence and the impact it has on the victim (and, in many cases, also the perpetrator and those who work with them); understand the grieving process; understand the research and theory on various serious crimes (e.g., the part played by power and control in sexual violence, intimate relationship violence, etc.); and be able to work collaboratively and under competent supervision (2020: 61).

Specialised training may cover topics such as facilitation skills, conflict resolution techniques, trauma-informed practice, cultural competency, legal knowledge and understanding of the principles and philosophy of RJ. Successful outcomes can be enhanced through the recruitment of facilitators who have the skills, training and experience to prevent situations that may revictimise or retraumatise victim-survivors. The United Kingdom Best Practice Guidelines advise that practitioners dealing with sensitive or complex cases must have knowledge of the ways in which ‘participants can cause further harm either during or outside the restorative process’ (Restorative Justice Council 2011: 22).

In cases of DFV and SV there is some research that highlights the benefits of having facilitators with lived experience. A qualitative, interview-based study exploring the justice system experiences of complainants in sexual offence matters in NSW (Centre for Innovative Justice and KPMG 2023) found that interview participants expressed a clear preference for those delivering RJ training to police, lawyers, court staff and judicial officers to be individuals with lived experience of such matters.

Mediators/facilitators with lived experience can also offer victims valuable insights and guidance on post-trauma recovery that are based on their own journey of self-reflection and healing. However, practitioners with lived experience face the risk of further traumatisation and would need to have sufficient support measures put in place to eliminate the risk of their further traumatisation (Centre for Innovative Justice 2023).

The need for regular and top-up training, particularly trauma-informed practice, was highlighted by several stakeholders. As one put it:

if that is done really well, and the facilitators are well trained in trauma-informed care, and how sexual violence is that much more traumatic for the individuals on a very personal level. If the individuals that are facilitating and running the process are well trained in that area, then it should be fine.

In discussions with stakeholders, it was also noted that training could be more beneficial if it were combined with supervision that included skills development. For instance, once stakeholder noted,

I think [supervision] is a necessity. And not management supervision, not how many cases have you got, that's important too, are you managing okay, checking in about your caseload. But supervision, in the sense of, if we're going to do all this training and doing

all this domestic violence training and sexual violence training, and then you want somebody who can sort of help support you to change the way that you convene... Otherwise why spend, 20 odd thousand dollars on training for staff just to tick a box to say well, we've done that training but staff can't absorb it all and it's too hard to sort of necessarily change the way you practise. If you had that ongoing sort of supervision, it would be a lot easier.

Issues to consider with expansion

Many stakeholders also saw real value in RJ for DFV and SV. One stakeholder who supports victim-survivors commented that women want RJ, even where there has been a conviction, because this would give them choice and a sense of control. This stakeholder said there was a 'misperception' about RJ in the sexual violence sector, that it is for the benefit of the perpetrator. However,

we understand that there's the potential of restoring not necessarily the relationship between one and two, but restoring trust in community and also giving back agency in integrity to the victim that they can't have through the process of criminal justice. So, when we when we hear restorative justice or restorative practice, we are thinking broad, bigger than just that binary, victim and perpetrator, we see community...What's broken is the trust in ... the societal responses to victims, so the more options you give them, it's slowly for them having a sense of 'I have a bit of control over this' and agency. Rather than there's nothing you can do, or this sense of abandonment that is a trauma itself....

Another stakeholder saw RJ as a

huge advantage... that with victim impact statements...you're really quite edited in what you can and can't say in those. And that's very frustrating for a lot of victim-survivors. But in the conference, there's no such limitation.

RJ conferencing was also seen as a way to ensure flexible and individualised justice:

the best version of restorative justice that can happen is one that's flexible enough for each woman's need, each community's need, and each person using violence. It has to be flexible because this is such a grey area. There's no black and white...

Several stakeholders recognised that RJ is already happening in the context of DFV and SV. As a result, there was support for DRB convenors to be trained in these issues (including coercive control). We also heard calls for a more collaborative approach with people with lived experience and/or experience working with victim-survivors of domestic violence:

What I see consistently happening is people go off and get a little bit of DV training and then, like, we're informed. No, no, no, no, no. It's a lifetime's work to be trauma-informed and responsive in this space....I think there's a lot of investment right now in DV training and I don't necessarily see it resulting in improved outcomes unless we change our policies and forms and processes....I think it comes back to the fact that I view it as different roles. I think you could do some basic awareness training for the mediators and the convenors of this type of process, but their expertise is mediating and convening. Their specialisation is in that. I think that when you then distil down the roles to support or risk assessment, or responding to the violence or helping to navigate that person's choice and autonomy in defining what harm reparation will mean for them, that's a different job. And that has to be a specialist. I don't think there's any version of training that will ever replicate what we do.

Another stakeholder stressed:

a trauma-informed and culturally safe approach is going to be much more than lip service and really having investment into bringing in partnerships where really those voices are in the models of training that occur, that are in the resources that are created and recognising that it is very individual to the persons involved.

Some were concerned about the use of RJ for different types of gender-based violence. They saw it as more applicable in violent crimes other than domestic/family and sexual offences or perhaps more applicable in one-off sexual offences than ongoing family violence. One aspect that was raised as a challenge in relation to sexual violence matter is where the person harmed does not want the matter to go to trial and so wants to participate in an RJ process, even if the person responsible isn't entirely suitable. There was commentary on the need for specialist services, if RJ is to be used for sexual offences. One stakeholder acknowledged that there was not much specialised training currently provided in this space, stating:

we're just, for lack of better terminology, winging it, at the moment. So, I guess the short answer is there's no kind of baseline, there's no foundational kind of training, there's no package, there's no pathway, there's absolutely nothing. So, I think if there was something that would provide a bit of an education pathway for people, this is step one, this is what you would do as an introduction, and then kind of move through it.

This is problematic, especially as several respondents expressed concern about power and control issues, in relation to RJ in this context. As one put it:

[Sexual and d]omestic violence is much more personal. That coercive control is something that really affects the inner core of an individual's personality and belief in self....So if that is done really well, and the facilitators are well trained in trauma-informed care, and how sexual violence is that much more traumatic for the individuals on a very personal level. If the individuals that are facilitating and running the process are well trained in that area, then it should be fine. ...[But] it could get really pear-shaped...The insidiousness of trauma when it's of a sexual nature.... the training I think needs to really highlight that for the facilitators of the programs, so they don't just fall into the trap of oh, it's similar to what we've done before. ...[but] it's far deeper, it's a psychological harm that can be lifelong. And the triggers can be very subtle.

For another stakeholder, issues around power and control can be managed through resources and preparation:

We're always worried that it's going to do harm, it's going to traumatise and trigger and bring up stuff, and I think that's one of the risks, and people have to know that going into it. So that's what a lot of the prep work is around, I think. Helping people understand that might happen, and then resourcing them to deal with it if it does. So that's the biggest single thing. The other thing is that the whole dynamic, managing the dynamic because you've got the power and control dynamic that is going to be in that room...I guess you really need specialist services where there's high levels of personal trauma. You need people who are nuanced and understand triggering, and you wouldn't want to have somebody go into a flashback right in the middle of a conference. And if they did, which is possible, you'd want to have somebody there who can handle it.

Again, carefully managed, RJ conferencing would appear to give victims agency and voice in a way that the mainstream process cannot. However, like those who were more sceptical about RJ being used in this context, one stakeholder indicated that one should not assume equal power in the process. She recognised that 'perpetrators can use a process like this to manipulate the system'. Accordingly, she called for 'specialist workers working with women, where we understand at a deep level the power and control that's used in relationships'.

She also expressed concern about the waitlists for domestic and sexual violence services, noting that 'you wouldn't want the mediation to fail, because we're not able to meet the needs of people. You want us to be ready, and ready and able to go'. Relatedly, she observed that 'there is not enough flexibility in resourcing in the sexual violence sector to be advocates for this process and there is an absolute lack of referral pathways for people that use violence to be able to do any harm reparation'. It follows therefore that the use and expansion of RJ in this context needs to be understood against the backdrop of broader services and responses to domestic and sexual violence.

A challenge in this context is how to promote accountability for sexual violence. As one respondent stated:

our three criteria [are] accountability, responsibility, remorse to a degree and recompense of some description.....We get challenged there too [in the SV space], because we get to ... where they're sort of taking a bit of accountability, but the person harmed is, like, I don't care. I don't want to go to trial. I just want them to do XYZ, and if they can do that, I really don't care if they're not like ticking off and agreeing that they've done every fact that I've said. So, in a DV space, we have men's behaviour change, ...[but] that does not exist for sexual violence...[or only] exists within corrections and in prisons. There is not sufficiently enough community-funded restoration or rehabilitation or behaviour change or any kind of a longer-term commitment to follow through one's change in the behaviour.

The stakeholder above suggested that:

the expansion needs to be phased. I wouldn't aim for the stars straight away...I'd be mapping out and looking for connections of what already exists that you can leverage, I'd then be putting some indicators in place about how you want to do an evaluation of what's safe, within what's already happening.

This would also enable time to both map what is currently available, in terms of community-based restorative options to respond to sexual violence and potentially expand and evaluate these models.

Specialised and flexible service delivery

Safety can be an issue in face-to-face conferences, as participants are in the same room, with the risk of intimidation and coercive control (Burns & Sinko 2023). The danger is that an RJ process may inadvertently provide an opportunity, through which unhealthy power dynamics, such as coercion, can continue to be acted out, which can be extremely damaging to the person harmed. Several stakeholders expressed concern about the risk of such unhealthy power dynamics being replicated in the RJ space. As one stakeholder pointed out: 'coercive control is something that really affects the inner core of an individual's personality and belief in self'. This is a key concern in the RJ space. As Lamanuzzi noted, one vital factor that inhibits the uptake and success of RJ programs is the 'power imbalances often associated with this kind of crime, which commonly arise from relational bounds between victims and offenders' (2023: 3). Jeffries et al. (2021: 3) have also warned that RJ may, in fact, 'provide a continued forum for the micro-dynamics of violent and abusive relationships, which may not even be recognised or perceived by conference'.

Feeling heard and validated is crucial for victim-survivors, as they navigate the aftermath of their experiences, particularly within the context of RJ processes. However, according to Lamanuzzi:

as serious as they are, these and other concerns can be safely mitigated by a scrupulous management of restorative encounters and by specialised training for facilitators. It is also essential to fully respect, at all stages, the free will of the parties, to carefully avoid any form of instrumentalisation of victims and offenders, and to provide real support for both of them (including therapeutic and financial resources), if needed, before and after the invitation to restorative encounters (2023: 16).

Stigmatisation and shame can result in secondary victimisation and/or retraumatisation for the victim-survivor. To reduce the risk of stigmatisation and shame, research and guidance also emphasises the need for the RJ process to be managed effectively, by taking proper precautions in advance, ensuring practitioners are realistic about what is possible and that all parties are clear about expectations (see Mercer et al. 2016; Keenan & Zinsstag 2022). The UK Guidelines state that ‘it is the duty of the practitioner to proceed with a case only if they are sure they can manage a safe process’ (Restorative Justice Council 2011: 22). Additionally, to ensure that situations do not occur that could retraumatise victim-survivors, the UNODC handbook advises that ‘facilitators must be trained in trauma-informed communication and interventions’ and, in some cases, also in the delivery of trauma-specific interventions ‘designed to address the consequences of trauma and to facilitate healing’ (2020: 59-60). They summarised the duties of the role of the facilitator as follows:

- prepare the meeting in advance by providing in-person preparation;
- conduct a collaborative assessment of the suitability of the process for the participants;
- assess and respond to the needs of participants;
- assess the risks that participants may be exposed to as a result of their decision to participate in the process;
- develop and implement a risk mitigation plan;
- exercise a nondirective and unobtrusive style of facilitation by neither pressuring nor pushing;
- facilitate a dialogue, by showing empathy, respect, patience, calm and understanding;
- treat all participants fairly;
- allow sufficient time for the process to evolve and succeed;
- provide follow-up contacts with offenders to ensure they comply with agreements and with victims to ensure their needs are met; and
- conform to restorative justice values and principles (2020: 58).

Equally, the person responsible for the harm may also experience stigmatisation and shaming throughout the RJ process, which runs the risk that the conferencing process may break down. However, research suggests that by promoting responsibility and accountability in the person responsible for the harm, the gap between their actions and what is right can be reduced, lessening this risk (Lamanuzzi 2023).

Trauma-informed practice

Increasingly, a trauma-informed lens is incorporated into effective service delivery of RJ (and other justice processes). Trauma-informed practice is based on an understanding of the prevalence and impact of trauma, in order to create environments that are more supportive and healing for those who have experienced trauma (Moore 2022). In RJ, this may apply to any participant.

Integrating a trauma-informed approach involves adapting the process to facilitate healing, rather than inadvertently exacerbating trauma. This may involve:

1. **Training for facilitators and staff:** All individuals involved in facilitating RJ processes should receive training on trauma, its effects, and how to engage with participants in a manner that acknowledges and respects their trauma experiences. This includes understanding common triggers and learning how to avoid re-traumatisation.
2. **Creating a safe environment:** Ensuring that the physical and emotional environment is safe for participants is crucial. This involves setting clear expectations, establishing ground rules that prioritise respect and confidentiality, and allowing participants to have control over their involvement in the process.
3. **Assessment and screening:** Early in the process, screen participants for trauma exposure and symptoms to tailor the RJ approach to their needs. This can help identify those who may require additional support and ensure the process is conducive to their healing.
4. **Support systems:** Offer access to support services for participants who are affected by trauma, including counselling or therapy. Providing or referring individuals to additional resources can help address the underlying trauma that may be related to the justice issue at hand.
5. **Empowering participants:** Empowerment is a key principle of both trauma-informed practice and RJ. This can be achieved by giving participants a voice in the process, respecting their choices, and acknowledging their strengths. Ensure that they have a significant role in decision-making processes and that their needs and boundaries are respected.
6. **Cultural sensitivity and competence:** Recognise and respect the cultural, historical, and gender issues that may influence participants' experiences of trauma and their engagement in the restorative justice process. This involves incorporating culturally relevant and respectful practices.
7. **Follow-up:** Recognise that the RJ process can be the beginning of a longer healing journey. Providing follow-up support and check-ins can help ensure that participants are continuing to cope and heal after the process concludes.

Addressing defamation issues

The emotional and financial burdens associated with defamation claims (or the fear thereof) may be a deterrent preventing women from reporting sexual violence to the police. Although false reporting of sexual violence can occur, research has shown that this is rare and what is far more concerning is the potential of victim-survivors not reporting offences due to fear of being sued. In recognition of this issue, the Standing Committee of Attorneys-General (SCAG), led by Victoria, undertook work to review and reform defamation laws. In September 2023, the Attorneys-General approved, by majority, reforms to extend the defence of absolute privilege, which provides a defence to defamation liability (SCAG 2023a, 2023b). This will 'protect victim-survivors from the threat of defamation when they report alleged criminal and unlawful conduct and misconduct to police and some other complaints-handling bodies' (Engage Victoria nd: np). According to Engage Victoria (nd: np), '[t]he reforms strike the right balance between protecting people who want to report alleged criminal and unlawful conduct and misconduct, and protecting alleged perpetrators from unjust reputational damage'. The jurisdictions that intend to implement these reforms are expected to have the changes commence on 1 July 2024 (SCAG 2023a).

6. Specialised Service Delivery in Regional/Remote, First Nations, and CALD Communities

Summary of Key Points

This chapter examines issues around expanding RJ practices in regional/remote, First Nations, and CALD communities. It considers input from professional stakeholders working in these areas. Key points include:

- calls for locally-based practitioners;
- the need for thorough and consistent community engagement and rapport-building to co-design RJ implementation and processes; and
- the need for culturally sensitive approaches in First Nations and CALD communities that are focused on each community's specific needs.

Expanding RJ into other parts of Queensland

Several stakeholders interviewed by the research team commented on the challenges with expanding to regional or remote areas, due to the geographic spread across Queensland. To date, there have not been any attempts to run conferences in the western part of Queensland and some stakeholders felt that police officers and lawyers would not know about RJ or understand what it is (which is already an issue even in Brisbane).

The following comments from two respondents also highlight the importance of having convenors based locally:

X: that is what people in community say: we don't want people flying up from Brisbane, telling us what to do, thinking government workers, that would be the worst thing that could happen. What community needs are people who are affiliated by land. ... if we're going to do that work, it needs to not be a specialised group that flies in and out from some Brisbane office because that is a recipe for disaster. If you take anything away, that's the one thing to take away from this, is that it's just not the way to do it.

Y: Yes, I agree. There's no connection there at that point, and my observation has been in community – because you already feel isolated and removed and not part of society to some degree. You need to feel that people are invested in your actual community and really, really care about it, understand it, but also not just understand it globally, but understand it culturally as well. So, it is quite specialised work, but I think there's so much potential to do some really great things in communities.

This view was echoed by another stakeholder, who worked with remote Indigenous groups in Northern Queensland and welcomed the concept of expansion for RJ conferencing but when discussing implementation called for 'better engagement through services that are in the community'. His view resonated with concerns about a 'fly-in, fly-out' model.

However, some respondents raised concerns around local community engagement and safety stating that:

the level of conflict has increased and security is needed. This may have impacts in regional/remote areas, how can we make it safe? [...] when assessing ongoing safety of DV and SA victims, we need to consider the safety during and post a conference. Can we consider the history of defendant, especially if there has been orders and breaches with other people. Can a client make an 'informed choice' if she does not have the history? We need clearer checks and balances.

In order to address this, these stakeholders suggested that there needed to be 'ongoing work to engage, to build trust and respect' and 'more resourcing, we need money for travel and phones, critical for safety'.

Preparation for a conference can take a year and the process also requires time in person to get to know people before going into the conference, to create rapport and safety. In some cases, there was a sense of ambivalence about how this would work:

I'd like to see those referrals coming from more the regional - like Toowoomba and all of those sorts of areas. To be honest... I do not know how that is going to happen. Ideally, I think it would be great to be able to have a rotating service that goes out and sort of supports those areas. I just know that we don't have a high rate of referrals coming into here, where people know about us and know about the service and what we've been doing and can see the benefits. ... I don't know how that could happen out there.

The transient nature of referrers was also identified as an impediment. One stakeholder made the point that referrals from more remote parts of the state are inconsistent, suggesting this was because:

Police and other stakeholders change frequently. Police say they don't refer as the population is transient. Attitudes to RJ are likely to play [a part] as police are not as exposed in Far Northern Queensland to rehabilitative options and may prefer to use more traditional approaches.

Another stakeholder felt that, as a matter of pragmatic reality, there are not currently enough people to run the conferences and do the lead-up work, including the assessment of the person responsible and preparation for the conference. In remote locations, there is also a lack of therapeutic services to work with people who have caused harm and experienced harm. She continued:

So, you've that makes me wonder how that would work in Far North Queensland or in more remote areas. People would potentially have to fly in and travel or do it remotely on a Teams situation or something like that. And I that's not going to have quite the same impact, but perhaps some of the prep could be done online, I guess. And then you might have to fly people into to actually - so the cost would be huge as well too.

Despite the challenges outlined above, many also saw opportunities with expanding to regional or remote areas, although there would need to be work undertaken to promote the service. Some members of a focus group suggested that it would be beneficial to have a local contact in smaller cities and towns. Members of this group also thought that:

A: expansion should consider more remote locations, to have that physical presence. And those can be offices - we have Mackay, for example, Rockhampton and Townsville, where we have one team member, but we still have that ability to be physically there, engage with those stakeholders, and really be able to raise our profile.

B: technology is great, but again I think sometimes in community it just really works best to be there, face-to-face. You do need to develop that rapport, you do need to even just be able to locate people...

C: I worked in Aurukun for some time and we would utilise the courthouse facilities there to be able to dial in and have conversations with prisoners or be able to host conversations. So yes, hubs around the state and/or the ability to link in to existing and workable infrastructure, places like courthouses are great because there's some safety and security and things like that, already existing and there....Yes, there's some barriers around resourcing, but I think there's still some really tangible options that could be considered that would increase our visibility and accessibility as well.

There is potential alignment with the Murri Court and Drug and Alcohol Court, as a means of ensuring accountability to the community and judiciary. As part of this, one stakeholder envisaged stronger connections between RJ and family violence services, such as men's behaviour change programs, and child safety services. She suggested a staged approach, including looking for connections with what already exists and can be leveraged. She also felt that this model should be supported through legislation.

As noted above, several stakeholders spoke about the importance of building rapport face-to-face. However, others suggested that online can work well, as it can be done from the safety of one's home, so long as there are clear guidelines in place (and assuming, of course, that the home is a safe place). It was also noted that even if face-to-face is best, the preparation could be undertaken online. Suggestions included linking in with existing infrastructure, such as courthouses, community hubs and community halls, which provide a confidential and comfortable space. One option that was raised was operating the DRB process in parallel with prisons (especially at low-risk prison farms), although the correctional system may see this as too complex.

According to one practitioner, there is significant interest in the regions and there are already practices in place that are community-led, similar to RJ. This stakeholder felt that these approaches would be very beneficial for communities in regional areas, where community-led approaches are best, especially where relationships are closer and different and there are not as many active services. He suggested that:

while the resources are guaranteed regionally, you can just have that modality of having practitioners coming, and in practice that would serve as training or skilling-up community-based organisations. It depends on the context, but long term I would think that it should be installed in community because they understand the context of community, they understand relationships and the ownership of the whole process is so important. ... community have their own knowledge, and have sometimes better knowledge about relationships and how they work.

Another stakeholder in this focus group felt that this would go some way toward 'restoring trust in communities'.

Expanding services for First Nations communities

While RJ has some similarities to various First Nations legal practices around the world (see eg Yazzie 1994, Chartrand & Horn 2018, Devere & Te Maihāroa 2021), the contemporary practice of RJ is not the same as Indigenous Justice, and may obstruct self-determination activities and silence Indigenous critiques of contemporary criminal justice (Blagg 2008, Blagg & Anthony 2019, Tauri 2022, 2023).

Price et al. (2024) recently reviewed RJ programs for First Nations people in Queensland and examined the development and implementation of RJ policy and practice. The study utilised various open-access public sources to provide a historical context for evaluating Queensland criminal justice reforms. RJ is often considered a suitable approach to addressing crime within First Nations communities. However, the existing programs, namely the Aurukun Restorative Justice Project and Mornington Island Restorative Justice Program (see discussion in Section 2.2), have seen limited application and utilisation, due to low referral rates, insufficient use for criminal matters, and an absence of post-conference follow-up. Compounding this, there has been a lack of evaluations, limited investment in welfare services, and failure to engage meaningfully with guidance about developing culturally safe and effective practice (Price et al. 2024: 11).

Despite implementing various criminal justice reform initiatives, the overrepresentation of First Nations people in the CJS remains. There must be an urgent and sustained commitment from governments to address underlying issues of systemic racism and improve key indicators of disadvantage that First Nations communities and people face (Little et al. 2018, Price et al. 2024).

The success of RJ programs relies on First Nations communities' active involvement and participation in their development and implementation. RJ projects like the Mornington Island Restorative Justice Program, which prioritises community consultation, are more likely to succeed and gain community support. In contrast, the ARJP faced significant challenges and needed more community consultation. RJ programs should be flexible and tailored to each community, ensuring active community participation and engagement in their development and delivery. Governments must avoid using a one-size-fits-all approach to RJ.

Price et al. (2024) also highlighted the need for more significant investment in welfare-related services for both victims and offenders, in order to address the systemic disadvantages experienced by First Nations peoples. More importantly, developing and enhancing RJ practice requires more First Nations-led and -engaged research. Such research is crucial for guiding the implementation of RJ and exploring how to achieve more successful processes and outcomes. First Nations participation is vital in this endeavour.

Input from our respondents is consistent with this research. One participant spoke about the value of having RJ for family violence matters for Indigenous people. He said the women in his Community Justice Group support this and it would 'help perpetrators to try to understand what they've done is wrong, how they've hurt their partner.'

Another participant also described RJ as something that would be welcomed by the Indigenous communities he worked with. He viewed it as something close to Indigenous culture because it is about, in his words, 'exchanging our ideas and feelings about what happened', 'learning from each other' and 'the sense of a community addressing an issue'. For these reasons he considered RJ as something that would be 'cathartic to Indigenous Australians'.

Linking with the earlier theme of the issues that can arise in rural and remote areas, there were different views on the merits of local organisations versus external facilitators. According to one practitioner,

I've spent ten years working in Aboriginal orgs... [and] either they want to do it within their community with their own people, so that could be about skilling up local Elders or responsible people to actually do some of that prep and that work. Or they want to not do it in their community and do it in an organisation that's not connected, to keep their privacy and confidentiality.

Another stakeholder also spoke about the fact that it is sometimes preferable to have someone from outside the community, as there will not be a sense of favouritism or bias. He therefore suggested that RJ conference staff could fly in monthly, as probation, court and youth justice conferencing staff do. As noted above, however, other stakeholders were wary of the 'fly in, fly out' approach. This therefore reinforces the need for flexibility and responding to the needs of local communities. Other comments also reinforce the points made above about the need for resourcing, training and awareness by police that they can refer to RJ.

Another point raised was the recognition of widespread lack of trust that may impact how Aboriginal and Torres Strait Islander people may view RJ services. As one stakeholder put it:

some of the things to consider from a restorative lens is that sometimes that challenge that people might have towards those in authority or perceived authority or defiance or hostility towards people who are trying to support a process, particularly if you're in an institution. And it's about having facilitators really understand that we don't want to have any unintended likelihood of triggering or causing more trauma or causing more harm and facilitating a really empowered participation space.

This demonstrates the need for both a trauma-informed lens and cultural lens for Aboriginal and Torres Strait Islander people. As this stakeholder noted:

It's a relational approach, so really focusing that relationships are being the front and centre of everything that we do, we want to have an understanding of that person and also thinking about cultural safety as well, as part of that. So, from a trauma-informed lens, I think, ... and thinking about institutional harm within a service and racism within a service, and how that might impact people's ability to connect with us, when we're talking about hurt and harm, who do we need to connect with to support and bridge some of that? And really thinking about safety and trust and choice and control and collaboration, when we're thinking about a trauma-informed lens...So, just underpinning a restorative approach with those principles, and recognising that seeing it isn't enough, and going back again, what we know from some of the literature, and we're thinking about restorative practice in an institutional setting and a justice setting, that for a number of Aboriginal and Torres Strait Islander families, that it's not always a voluntary choice to come and be part of a restorative meeting. And it's not always a culturally safe space to speak your truth.

This stakeholder also recognised the need for agency and that some Aboriginal and Torres Strait Islander people may prefer not to engage with local Indigenous services:

thinking about the fact that I might have a referral from someone who has felt harmed, who identifies as Aboriginal, and I don't want to make assumptions that the Aboriginal Torres Strait Islander Health Service are the best person to come and support them or their family are. It's about providing choice, and who do you want, and recognising that there can also be a significant amount of stigma for that person of having those other people come in.

She also commented on the fact that it may not always be culturally safe for an Aboriginal or Torres Strait Islander person to speak first in a meeting or have eye contact and 'it's about having the right supports in there and the right links to help someone tell their story'. Other issues this stakeholder raised included ensuring that language and sensory needs are supported (issues that may of course also apply to non-Indigenous participants as well).

Expanding services for CALD communities

Wood et al. (2019) did not find any research on RJ in CALD communities in Australia and our review is consistent with this. Research from Europe finds that recent immigrants face unique challenges, when faced with the prospect of restorative justice, including inadequate interpreters, cultural differences in linguistic and para-linguistic cues, and racism (Albrecht 2010, Camp et al., 2011). Nonetheless, RJ can also offer a space to address cultural differences, learn about the justice process, provide an opportunity for people to express themselves and a space for dialogue (Albrecht 2010, Camp et al. 2011). Recent research by Jeffries et al. (2021), exploring stakeholder views of RJ in gendered violence, emphasises the importance of a culturally sensitive approach in CALD communities (see also Richard 2014).

In our consultations, a range of issues arose in relation to the potential application of RJ in CALD communities. Some of these have already been discussed, in relation to the Family Peace Building Program (see Section 2.2.3).

The context in which most people discussed this was domestic violence and the comments above about gender-based violence (see Chapter 5) should therefore also be borne in mind. As one stakeholder put it:

I think women from a non-English speaking background, I think it's even harder, because often, one, they don't have the support, or they've lost the support from community. So, there's a lot of shame and guilt about applying for a [domestic violence order], or even saying that she had to leave, or he had to leave because there was domestic violence. I don't know how that would work.

According to one respondent, RJ might work with CALD groups that have a strong sense of community, but she also expressed reservations about:

that imbalance or power and control, especially for CALD women. We often think about the cultural aspect and things like that, but the reality is, it's a legal basis of [domestic violence], and the cultural aspect is a barrier sometimes for women to report. Often, they don't report, and there is little support for her, there's pressure from community, especially community leaders, and there's isolation. So, if she were to go down the pathway of restorative justice, it's probably further isolation for her.

She was also concerned that:

often community leaders are often men themselves, that have that lens about, well, this is our traditions, and this is what women... even though we're not in our country, we're in Australia, we're still following our traditions We are respectful of women's cultural background, but you also have to be able to say 'but you're living within a legal system that makes some of the things that you're going through or what your husband is subjecting to you, is illegal'. I've spoken with women and they've said, 'look, I've gone to my Imam or whoever, and he's come back and just said look - they brought the couple together and basically said it's a conflict, and then I go home and then my husband is humiliated, and so I copped further abuse. Rather than help, it's the opposite. ...we have women elders who also will hold that view of, 'this is our role, we put up with it, you'll get over it'. That's a problem because you're trying to be respectful of the tradition, and yet at the same time you want this woman to be safe.

In one focus group it was suggested that, if RJ approaches were adopted in CALD communities, they would need to be led by and co-designed with the relevant communities and adapted to each specific community's needs. As with Indigenous communities, there was a sense of

wariness of government and 'Western' services, which needs to be considered. Participants noted that community and faith leaders are often already mediators in their communities. There could therefore be scope for these leaders to play a role in the RJ space, supported by relevant services. However, these comments should be considered in the context of the reservations of stakeholders noted above. For these stakeholders:

[RJ] really seemed to reflect some of the things that people were saying through our family peace building experience and that communities were saying. ... And if you, if you do have community people, can, for example, community leaders be involved at different stages and even post the conferencing? So, to make it more of a – it's a real restorative, community restorative process, not necessarily just victim-focused, which it needs to be of course, and victim-centred, but also broader. It's an offender-focused and community-focused, and that wraps around...

They saw RJ as providing women in CALD communities with another option, noting that:

a lot of women don't report, because what they see is that their family will be torn apart and it's not them that's going to tear the family apart...It's another option, ...it allows for women to actually be able to name those things without the fear that this is necessarily going to leave to our family, breaking up, my husband going into gaol and potentially losing his visa. So, in some ways I feel like this is the sort of thing that has been really needed in this space, something that provides ...agility in the space.

Returning to some of the fundamental bases for RJ, two respondents spoke about how this could promote accountability for people who use violence 'but also they have a hope to become part of the community again', as well as, for the women

What they want is that they want their men to stop the violence, stop the crime, but they want them to be part of ...in the community. Because they will not go away. And then so much shared problems, some of them came from the war... I see it as a positive thing and I can see it will work. ... there's no one fit for all, because ...there's diverse journey even within the same community....But the one thing we know is a collective culture needs a collective response to stop violence.

Another stakeholder returned to her earlier point of ensuring that the model for CALD communities should sit alongside other models, such as the Drug and Alcohol Court and Murri Court:

Cultural and linguistic communities, particularly with strong religious connection to their view of that relationship at family, may want a version of accountability and justice that's very different. And I think that the siloed approach from the majority of our system to a criminal justice pathway that fails to meet victim-survivors' needs is not the way forward. So, there's absolutely a place, but it is not sitting off to the side. It's within. We've got drug and alcohol courts, we've got Court Link, we've got Murri courts, we've got HRTs, ... the list ... goes on of all of these little reform pilots we do that never shall meet. It's not ideal. ...And the infrastructure in the process and the systems already exist. So, it's also very, very resource efficient to be able to utilise those existing processes. So, when we talk about expansion, it should allow – if those connections happen, there's not a huge need to reinvest in designing a system. It's about uplifting the existing system to meet the same needs.

The key points arising from this discussion is the need for meaningful community involvement and leadership to help develop and implement a culturally appropriate and respectful process.

7. Specialised Service Delivery for Other Vulnerable Groups

Summary of Key Points

This chapter examines the challenges faced by vulnerable groups, including people with disabilities and LGBTQIA+ individuals. We consider evidence around best practice in these communities. We also review a recent DRB report that considers the views of incarcerated women on ARJC expansion. Findings include:

- evidence that the verbal-intensive nature of RJ may disadvantage those with communication difficulties, calling for adjustments to practice and careful facilitation
- evidence that RJ can help address hate-crime in the LGBTQIA+ community; and
- general support for RJ conferencing by incarcerated women and prison staff, noting the need to ensure appropriate resourcing, design, and safety.

People with disability

People with disabilities are vulnerable and often experience various forms of discrimination, due to intersecting factors concerning their ability, race, gender, sexuality, and economic status. In many cases, individuals with intellectual or psychosocial disabilities (including mental health illnesses) are often dehumanised and ostracised, due to the stigma surrounding their conditions (Edwards et al. 2015, Holness & Rule 2021). This reality becomes particularly challenging when we consider the multiple situations where a person with a disability could become engaged with the justice system, either as a victim, perpetrator or witness (Fitzsimmons 2016, Caxton Legal Centre Incorporated, 2024). Frequently, people with disabilities face multiple barriers that prevent access to fair and equal treatment in the CJS (Edwards et al. 2015, Fitzsimons 2016).

In Australia, the Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disabilities (2023) revealed that individuals with disabilities, particularly those of First Nations origin, are over-represented at all stages of the CJS. Although people with disabilities comprise 18% of the Australian population, they constitute 29% of the prison population. Even more alarming, Australian Centre for Disability Law estimated that 95% of First Nations people with criminal charges have cognitive impairments, intellectual disabilities, or mental illnesses (Walsh et al. 2023). It is essential to recognise that hidden and undiagnosed disabilities, particularly cognitive, psychosocial, and sensory impairments such as hearing loss, can go unnoticed, undetected, and unsupported (Walsh et al. 2023). Some undiagnosed disabilities prevalent in prison populations include Foetal Alcohol Spectrum Disorder, borderline intellectual disability, and acquired brain injury (Australian Human Rights Commission 2020, Bower et al. 2018).

RJ is an alternative non-punitive practice that has the potential to offer a more inclusive, equitable and accessible approach to justice, especially for people with disabilities. At the same time, RJ can potentially address complex cases post-crime.

As discussed elsewhere in this report, RJ encompasses a participatory and dialogue-heavy process involving victims, offenders, facilitators and other supporting parties. In RJ conferencing, participants are required to detail events, express their emotions and acknowledge the impact of offending on the victim and wider community. Willis (2020) proposed that such a communication style necessitates particular abilities and linguistic skills. RJ processes may favour participants with stronger verbal skills (see eg Hayes & Snow 2013), potentially causing a power imbalance and further marginalising people with disabilities and people from ethnic minorities. In this context, it is noteworthy that the role of RJ was not canvassed by the Royal Commission (2023).

A study conducted by Bolitho (2018) on RJ in prisons revealed that over one-fifth of the 74 cases under review (22%) involved a party with a disability. Among the parties where people had a disability, it was found that 94% were offenders, and 44% were victims. Notably, mental illness was common and present in all the documented cases (100%), with comorbidities present in 38% of the cases.

The study involved interviews with previous RJ facilitators, to capture their concerns when working with complex cases where the offender or victim had a disability. Facilitators were primarily concerned with an offender's capacity to engage with the program emotionally and verbally, as well as the potential to cause further harm to the victim (Bolitho 2018). To address such concerns, facilitators made necessary adjustments to the RJ process, partnering with psychologists, to negotiate behavioural contracts for offenders. Facilitators also adapted the pace and structure of conferences, to accommodate people with disabilities. This study emphasised the need to build trust and rapport with participants with disabilities. It also highlighted the importance of maintaining flexibility and sensitivity, to meet the needs of participants, while upholding RJ principles.

There was little consideration of this issue in our interviews, although one stakeholder spoke 'about people's window of tolerance, their ability to participate, their communication needs being potentially impacted by their mental health capacity'. Another stakeholder observed that people who are homeless or drug-addicted or mental health issues, continually getting them to front the court and being fined achieves very little. Where the ...some of the restorative justice, and then bringing in some services to assist them.

We suggest that future expansion of RJ incorporate consultation with people with lived experience of disability, ideally also involving those with lived experience of the justice system, as victims and/or perpetrators.

LGBTQIA+ communities

Historically, LGBTQIA+ people were systematically marginalised, targeted and categorised into a disfavoured class of people unvalued by society (Kohn 2001). In predominantly Western liberal democracies, the human rights of LGBTQIA+ people were often ignored and infringed upon (Kohn 2001; Richards & Dwyer 2014). In the context of criminal justice the literature states that gender- and sexually diverse- people are disproportionately targeted as offenders subjected to being over-policed and over-prosecuted (Kohn 2001; Knight & Wilson 2016; Mogul et al. 2011; Walters et al. 2020; Woods 2017). At the same time, LGBTQIA+ people are inadequately protected as victims of crime by being under-policed and under-protected as victims of crime

(Dario et al. 2020; Kohn 2001; Palmer 2017; Woods 2017). The literature criticises the CJS for failing to understand and address the unique needs of gender and sexually diverse people (Dario et al. 2020; Kohn 2001; Palmer 2017; Richards & Dwyer 2014; Woods 2017).

Studies have revealed that LGBTQIA+ people are more likely to experience bias and prejudice from law enforcement officers (Dario et al. 2020; Knight & Wilson 2016; Woods 2017). As a consequence, this bias can result in increasing mistrust and underreporting of crimes (particularly hate crimes) regarding gender and sexually diverse people (Girardi 2021; Knight & Wilson 2016; Palmer & Kutateladze 2021). In the context of LGBTQIA+ youths, the literature suggests that LGBTQIA+ youths experience harsher treatment compared to their non-LGBTQIA+ counterparts, including higher rates of incarceration and longer sentences (Hunt & Modie-Mills 2012; Knight & Wilson 2016; Richards & Dwyers 2014; Wilson et al. 2017).

A study conducted by Hunt and Modie-Mills (2012) revealed that higher rates of punishment concerning LGBTQIA+ youth populations did not necessarily mean higher rates of antisocial or criminal behaviour among LGBTQIA+ youths. This research finding suggests that the rise in criminal sentencing for gender and sexually diverse young people did not equate to an increase in criminal or antisocial behaviours among the LGBTQIA+ community. Rather, the increase in criminal-sanctioned punishment was due to ignorance and discrimination present in the CJS and the increased police scrutiny of LGBTQIA+ youths (Knight & Wilson 2016; Richards & Dwyers 2014), highlighting the systemic inequalities LGBTQIA+ people experience within the justice setting.

There is limited empirical research on how RJ can help support people in the LGBTQIA+ community. In the context of RJ and hate crime, Walters and Hoyle (2017) have explored how RJ can help foster understanding and accountability for perpetrators of violence towards LGBTQIA+ people. In addition, Laxminarayan's (2021) review of the LetsGoByTalking project based across Europe emphasises RJ principles in repairing harm and rebuilding relationships in addressing hate crimes directed towards LGBTQIA+ people. The project reviewed various RJ programs across Belgium, Bulgaria, Italy, The Netherlands, Poland, Spain and the United Kingdom (UK).

For example, the Hate Crime Project (HCP) at Southwark Mediation Centre, UK, aimed to resolve conflict at the community level where hate or prejudice was a primary concern. The HCP accepted referrals from various agencies (including police and housing associates) and utilised indirect and direct forms of community mediation. Participants from the HCP reported a decrease in their levels of fear and anxiety. Moreover, victims reported feeling heard and seen by their community and no longer felt marginalised.

Other research has explored how RJ can be used to support justice-involved LGBTQIA+ people (Hobiaca et al. 2024) and in the context of intimate partner violence in queer couples (Bermea & VanBergen 2022). More broadly, RJ can offer a space to promote intersectionality, inclusivity, and well-being among LGBTQIA+ people and to address underlying prejudices (Walters 2015, Kim 2021).

Women who offend

The research team was provided with a report prepared by the DRB (Queensland Government, 2024b), which presented the findings of consultation with 72 people in prison: 63 incarcerated women and nine correctional staff, from across all of Queensland's five women's correctional centres. The key information from that report is summarised here.

Table 4. Women's prison consultation: Issues around safety

Psychological support
<ul style="list-style-type: none"> • Adequate psychological support must be provided before, during and after the conference. • Mental health issues must be effectively managed • Support can be provided in many ways (eg, counsellors, peer support) • Support people should be available for both participants during the conference • The perpetrator should consider the possibility the victim-survivor will not accept their apology/express forgiveness beforehand
Informed consent
<p>Prospective participants need information about:</p> <ul style="list-style-type: none"> • What ARJC is, including ground rules, objectives, aims, the process and potential benefits • Who will be there and what is expected of the perpetrator in the conference
Thorough preparation
<ul style="list-style-type: none"> • All parties need to be ready to meet • Preparation is critical
Clear processes and boundaries during conference
<ul style="list-style-type: none"> • Boundaries to prevent a victim-survivor verbally attacking the perpetrator
Appropriate location for conferences
<ul style="list-style-type: none"> • Prison may be too daunting <i>or</i> safer • The location needs to be safe to ensure no aggression/retaliation • Exit doors should be available for both parties • There needs to be enough space, not crowded into a small interview room • Alternatives to meeting in same room should be provided, eg video, phone, or behind glass barrier
Protection from victimisation and revenge
<ul style="list-style-type: none"> • Concern victims might expose perpetrators (and their families) through (social) media or seek revenge after the conference • Conferences should not be recorded • There should be legislation to ensure consequences for breaking confidentiality
Protection from further charges
<ul style="list-style-type: none"> • Confidentiality required, to protect perpetrators from further charges

Table 5. Women's prison consultation: Issues around productivity and effectiveness

Before a conference
<ul style="list-style-type: none"> • Realistic screening for suitability/good preparation • Meetings with convenor beforehand to prepare • Education, eg anger management
During the conference
<ul style="list-style-type: none"> • Relaxed, neutral environment (can this be outside of prison?) • Perpetrator is willing to be accountable and is aware of consequences of actions • Neither party feels threatened • Both parties feel heard and equal time for both to speak • Accept/understand/acknowledge each other's perspectives • Apology given and accepted/ forgiveness/matter closed • Regular breaks/as needed • Good structure for conversation, not unstructured • Ability to be flexible with process • Clear outcomes, including giving back and lessons learned • Not recorded
After the conference
<ul style="list-style-type: none"> • A clear understanding of what happens, if the perpetrator does/doesn't comply with the agreement.
Culturally appropriate for First Nations people
<ul style="list-style-type: none"> • Cultural issues are critical for safety and success, including: • culturally appropriate and accessible promotional material • helping potential participants to understand of the 'healing' dynamic of ARJC • sufficient time for First Nations women to process/understand/ participate in the process • support, presence, and assistance from Elders • use of traditional language, when appropriate • consideration of the gender of the convenor • ARJC may also provide an opportunity for First Nations women to re-integrate into their community, through making amends.
Part of a larger suite of services
<ul style="list-style-type: none"> • Complementary education needed before, during and after conferences • Other wrap-around services should also be provided, including psychological and practical support
Trauma-informed and case-managed
<ul style="list-style-type: none"> • Need to understand trauma informed approach and involve case workers
Timing
<ul style="list-style-type: none"> • The different timeframes of people in prison needed to be considered in planning • More than one meeting may be appropriate, to allow time for both parties to process the content

- Important that conferences not rushed, to ensure people had time to process before, during and after

Table 6. Women's prison consultation: Issues around accessibility

Effective promotion of opportunity
<p>Several ways of alerting women to ARJC were identified:</p> <ul style="list-style-type: none"> • correctional agencies: prison induction, induction book, peer support, education in prison, signage, flyers around prison, sentence case workers, centre management, corrective services officers, probation and parole and watchhouses • other agencies: lawyers, child safety, counsellors, MARA Project, Murri Court, Elders, cultural and court liaison officers, youth advocacy services, AOD workers • other: posters, flyers, online, bail processes, people with lived experience, experience as advocates
Being told about ARJC at the right time
<ul style="list-style-type: none"> • As soon as possible and throughout interaction with criminal justice system • When being asked to repay Victim of Crime costs
It should be available at any time and everywhere
<ul style="list-style-type: none"> • Outside SEQ • Pre- and post-sentence • For extended period after crime e.g. years afterwards • In prison - as too much drug use outside to participate meaningfully • On remand, with ability to still access ARJC after leaving prison

Many of the issues the women raised align with the best principles outlined in Chapter 3 (eg, around informed consent and the need for comprehensive preparation) and other issues raised in this report (eg, concerns around confidentiality, culturally appropriate processes required for First Nations participants, and trauma-informed practices). However, other aspects are specific to the potential application of RJ in prison settings (eg, physical and emotional safety, timeframes). The women's suggestions for how to promote information about RJ are particularly instructive. Some questions were also raised, such as whether RJ could be available to mothers whose crime involved hurting their children or 'victim-less' crimes and how taking accountability aligns with admitting guilt before a court process concludes.

As noted elsewhere (Section 4.1), RJ is used in prison settings elsewhere in Australia, especially in NSW, and the lessons from there should be considered carefully in implementing RJ in prisons in Queensland. Many of the issues raised by the women in these consultations would likely also apply if men were to participate in RJ from prison.

The responses of senior management at each correctional centre generally aligned with the women's comments and indicated:

- general support for ARJC, with the view that this could make a significant positive difference to the women's mental health and well-being;
- resourcing would be a major issue, if ARJC were expanded, including the need for increased mental health support for participants before, during and after conferencing and increased workload for case managers/prison officers;
- timing in relation to women on remand (if they can begin the ARJC process while in remand and continue outside prison); and
- the need for a culturally appropriate approach for successful expansion.

Despite the challenges that inevitably arise from the potential use or expansion of ARJC in prison settings, the following quotes at the end of the report point to the women's enthusiasm for having this option available and the potential benefits that would flow for people responsible for crimes, victims and the broader community:

- 'How long before this is a reality?'
- 'I would love to say sorry'
- 'This is a great idea'
- 'I want to do this while I am clean in jail-because when I get out, I will be taking drugs and it won't work' Her friend laughs and suggests... 'If you do this in prison you might not have to take drugs when you get out!'
- 'If I have had this earlier, I would not have committed my other crimes'.

8. Validation of Previous Reports

Summary of Key Points

This chapter reviews key insights from reports by Wood et al. (2019) and Nous (2020) regarding RJ conferencing within the CJS. We find that:

- these reports do not differ substantially from the evidence presented in this report and support the ongoing need for stakeholder engagement, legislative support, and the accessibility of services for vulnerable groups; and
- while Nous (2020) recommended that emphasis be placed on expanding RJ conferencing at the pre-charge stage to reduce demand pressure and costs, stakeholders interviewed for this report consistently expressed favourable views of RJ's application throughout the criminal justice system, suggesting broader acceptance and support beyond diversionary purposes. This is also consistent with findings in Wood et al. (2019) regarding best practice.

Wood et al. report

In 2019, the DRB commissioned an 'Analysis of evidence relating to best-practice in the delivery of restorative justice conferencing with adult offenders and their victims' from Griffith University. This document (Wood et al. 2019) presented up-to-date information and analysis on several areas of knowledge related to the use of RJ conferencing. In what follows, we offer an assessment of the extent to which these findings remain accurate and a brief discussion of the extent to which they offer insight about how best to expand ARJC. For brevity, we do not explore each finding in depth.

1. What works and why for persons responsible and persons harmed in RJ conferencing

The analysis presented a range of evidence about the extent to which RJ provides persons harmed and persons responsible for the harm with a sense of procedural justice, restorativeness, accountability (for persons responsible), and closure and healing (for persons harmed). The authors also examined conference outcomes and reoffending. While there has been some new research published in these areas since 2019 (see, for instance, Fulham et al. 2023; Suzuki and Yan 2021), this review remains accurate. As the ARJC considers expanding, the research presented and analysed by Wood et al. continues to provide a useful reference point, including some measures for ongoing monitoring and evaluation.

2. The ability of RJ to reduce demand pressures in the criminal justice system

The authors concluded that there is little evidence that RJ conferencing can reduce demand pressure, but it is most likely to reduce pressure, when it is available at all stages of the criminal justice system, recognising that:

- RJ should only be used in cases where there is an identifiable victim who has expressed an interest in meeting with the person who caused harm;

- while the decision on where to locate RJ should be driven by a desire to reduce demand pressure, it is important that victims have a choice over what stage to participate; and
- RJ must follow best practice.

The research presented in the current study confirms all three of these points. We comment further on where RJ should be located in Section 4.1 and in our validation of the NOUS report below (see also Lanni 2021). We provide a globally recognised set of values, principles and standards for best practice in Chapter 3. As the ARJC seeks to expand, these points offer a useful guide.

3. Maximising referrals, uptake, delivery and accessibility of RJ services

Key findings include:

- how legislation drives referrals;
- lack of knowledge, gatekeeping and information sharing are a barrier to referrals;
- barriers to and strategies for client uptake;
- maximising external stakeholders' engagement for effective delivery; and
- suitable offence types and demographics for maximum impact.

Our findings align with the evidence presented by Wood et al. (see Chapter 4) and offer guidance for expansion.

4. Maximising best process and outcomes of RJ conferencing for primary stakeholders

The evidence review covers:

- best practice principles;
- the appropriate stage of the criminal justice system for best practice outcomes;
- meeting the needs of vulnerable groups, including Aboriginal and Torres Strait Islander people, people with disabilities, people from CALD backgrounds, and remote and regional locations; and
- best practice use for cases of DFV and SV.

Our review engaged substantially with each of these elements. While we offer both stakeholder input and some more up-to-date research in each of these areas, they do not differ substantially from the evidence presented by Wood et al. One exception is that, since 2019, there has been a growth of research and practice in relation to the use of RJ for DFV and SV. While there are ongoing debates about the use of RJ in this context, it is increasingly viewed as an appropriate response, as long as practitioners have appropriate training, it is a victim-survivor centred process, and any other potential risks are carefully managed. Please see Chapter 5 for a discussion on how these findings can help guide future expansion.

5. Maximising RJ impacts for the community

This analysis covers cost-effectiveness of RJ and the ability of RJ to reduce incarceration or duration of custodial placements. The current report does not engage with these issues, though a cursory examination of recent literature suggests that the conclusions regarding cost-effectiveness are still accurate. In terms of the ability of RJ to reduce incarceration, the authors rightly noted that there is very little empirical evidence that RJ can do this. However, an article by Zhang and Xia (2021) finds that the widespread implementation of RJ mediation in China for minor injury cases has led to a reduction in the use of prison. Nevertheless, as with the discussion around reducing demand pressure, there is a trade-off between expansion and the ability of RJ to provide meaningful outcomes for persons harmed and persons responsible for that harm.

6. Consideration of the broader role of alternative dispute resolution (ADR) in the criminal justice system

This is outside the scope of the current study and we cannot comment on Wood et al.'s observations, including any substantial change from the evidence presented there. However, we agree with the authors' assessment that RJ is substantially different from ADR in its functions, goals, and structures.

Nous report

As discussed elsewhere in this report, shortly after the Wood et al. report, the Queensland Government commissioned the Nous (2020) report, which drew on Wood et al.'s research and provided guidance on an updated and contemporary ARJC. Four 'foundational and enabling changes to boost performance of ARJC' were set out in that report (2020: 2). These are restated here, together with some observations, based on our findings.

1. **Optimising current systems and processes (FE1):** Ensuring the current ARJC model is operating and supported as effectively and efficiently as possible. This includes the use of process and system review to streamline the current ARJC process, starting at referral stage. It is anticipated these changes will aid referral and reduce administrative work required to support the process. They will also provide a foundation for further improvement.

Our findings align with this recommendation. Our project did not entail a process review of the DRB and we were therefore not provided with access to information that enables us to determine whether the current ARJC model is operating as effectively and efficiently as possible. Nevertheless, some of the interviewees' comments pointed to elements of good practice, as well as providing comments reinforcing the need for practice that is concordant with the best practice principles set out in Chapter 2 (eg, preparation time, respectful communication, shared understanding of and commitment to outcomes) and recognition of the resources required for this.

2. **Increasing awareness of ARJC to key stakeholders (FE2):** Including both victims/offenders and those within the CJS most likely to act as referral gatekeepers. In the absence of a legislative base, RJ referral rates in other locations have been linked to the understanding and support of referral bodies. It is recommended tailored education and awareness campaigns target these stakeholders, in particular police.

Our findings suggest that there is still work to be done in this regard, with many stakeholders commenting on the lack of awareness of RJ. Further education and awareness activities are required to ensure widespread knowledge about the availability of ARJC and what it entails. There was some support for a legislative basis for RJ, for similar reasons to those identified by Nous. Further consideration of this issue needs to reflect Recommendation 91 of the Women's Safety and Justice Taskforce and Government's position in response to this.

3. **Expanding eligibility criteria (FE3):** To allow for greater consideration of victim, offender and circumstantial suitability for ARJC referral. The current rules governing eligibility for ARJC are limiting ARJC's ability to impact on demand issues, and opportunities for victims and offenders to benefit from the process. Expanding these criteria should make ARJC more widely available while balancing public safety considerations against the benefits of ARJC participation.

This recommendation also needs to be understood in the context of subsequent developments, ie Recommendation 90, which gave rise to the present research. The findings in the present report point to both support for and concerns about the expansion of RJ, especially in the

context of gendered-based violence, in rural and remote regions, and among First Nations and CALD communities. On balance, however, there was a general view that the potential benefits are significant and risks can be mitigated and our findings therefore align with and reaffirm Nous' recommendation.

- 4. Legislating pathways and protected admissions (FE4):** Pursuing legislative change to oblige referral bodies to consider ARJC and/or allow offenders to be referred on the basis of protected admissions. Enabling legislation has been identified as a significant contributor to the success of RJ in other jurisdictions. Acknowledging the efforts involved, introducing this form of legislative base will almost certainly increase ARJC activity in Queensland.

As set out above, there is now a process underway to progress legislation for ARJC in Queensland. The experience in the ACT in particular, especially the research recently undertaken by the Australian Institute of Criminology on the implementation of the legislation, which led to RJ being expanded to domestic and sexual violence matters, should be taken into account in developing any future legislative model. Recent developments in relation to defamation reform are also relevant to any future legislative framework underpinning RJ.

Nous (2020: 31) also considered 'six opportunities were identified where significant changes could be made to the ARJC model to increase its impact on Queensland's [criminal justice system]'. These options were as follows:

Option SC1 – Increasing pre-charge diversion. This option outlines how referrals can be increased at the pre-charge stage, particularly through partnership with the police. A key outcome for this option is the savings achieved across the CJS by diverting low-level offenders rather than sending them through the full investigative and courts processes.

Option SC2 – Increasing pre-sentence referral. This option outlines how referrals can be increased at the post-conviction, pre-sentence stage, particularly through creating allowances for judges to order ARJC where they see fit and consider the outcomes of a conference in their sentencing decision.

Option SC3 – Increasing post-sentence referral. This option outlines how referrals can be increased at the post-sentence stage by engaging the Courts, QCS and the Parole Board to consider ARJC as a part of the parole process. If offenders can show they have taken responsibility for their actions and made restitution through the outcomes of their conference, parole can be approved and the length of their time served can be reduced, creating savings for the CJS. This process would also help offenders prepare for reintegration by making amends with their community and engaging in rehabilitative programs.

Option SC4 – Integration into community-based orders. This option outlines how referrals can be increased at the post-sentence stage through integration of ARJC into the CBO process and through engagement of the Courts and the Parole Board. It is proposed that the restorative outcomes achieved through participation in ARJC may result in increased compliance with the conditions of CBOs. A lower rate of CBO breach has cost-savings outcomes for the CJS and positive outcomes for the offender and the community more broadly.

Option SC5 – Extending targeted regional coverage to additional sites. This option involves increasing the impact of ARJC by establishing capacity to deliver in five additional locations that are likely to have demand for its services, with capacity to capture approximately 10 percent of suitable matters in each new area.

Option SC6 – Extending to full coverage across Queensland. This option involves increasing the impact of ARJC by making it the default justice approach for all suitable matters across

Queensland, necessitating a significant expansion in the scale of the current model and its workforce (2020: 31-32).

Nous considered that only SC1 met all of the five criteria it set for RJ (see 2020: 1 and Section 4.1 of this report) and undertook a cost-benefit analysis on SC1. This indicated that increasing pre-charge diversion would yield a benefit of \$2.20-3.71 for every \$1 invested. Accordingly, Nous recommended a pilot program. The other options were not costed.

As set out in this report, the stakeholders we engaged with spoke favourably about the use of RJ at various points in the justice system and not just as a diversionary option. In light of the growing acceptance of and indeed support for the use of RJ in an increasing broad range of matters, we consider that Nous' conclusions may have been too narrowly focused. As noted above, some of these recommendations have also since been overtaken by the recommendations of the Women's Safety and Justice Taskforce.

Finally, Nous made recommendations about future options for ARJC, as follows:

Use of ARJC with Aboriginal and Torres Strait Islander peoples (FO1): Through an ARJC model tailored for Aboriginal and Torres Strait Islander communities, or incorporating culturally-appropriate ARJC activities into the Murri Court intake processes where Aboriginal and Torres Strait Islander offenders or victims are involved;

Use of ARJC for matters involving Domestic and Family Violence (DFV) or Sexual Violence (FO2): Through a tailored model that responds to the needs for victim safety as well as the specific dynamics of this type of offending.

Offering participant-driven intake option (FO3): To promote proactive participant engagement drawing on behavioural economics 'nudge' principles and make ARJC intake processes less labour intensive.

Outsourcing of delivery (FO4): Through changing the ARJC delivery model to outsource delivery of services to community justice groups and other non-government organisations, with DJAG moving into a contract management role.

Introduction of conferencing without victims (FO5): By introducing an alternate stream of ARJC practice that can occur without the participation of the victim (2020: 4).

Much of the focus of the present research aligned with FO1 and FO2 (see Chapters 5 and 6 for discussion of the use of RJ in the context of First Nations people and DFV and SV matters). In relation to FO3, we are unable to comment on the specific application of nudge principles, as this was not a focus of the present research, but the best practice principles (see Chapter 3) and stakeholders generally called for the processes to be accessible. In respect of FO4, we did not ask specific questions about contract management, but there were several comments, in the context of First Nations and remote communities, about the common levels of mistrust of government agencies and the need to work with existing services. These therefore align with and reinforce Nous' observations. The development of a model of conferencing that does not involve the victim (FO5) was not a focus of the project and remains an area for future consideration.

9. Recommendations and Conclusion

This report provided an in-depth analysis of global best practice literature and Queensland stakeholder views on the expansion of ARJC. In what follows, we outline our recommendations arising out of the findings presented in this report.

Expanding RJ conferencing initiatives can lead to increased RJ case volume, decreased costs, and alleviate pressure on the service, but it is essential to establish the key objectives of the RJ conferencing process.

Recommendation 1: We recommend that the ARJC articulate its key aims as a guide to program monitoring and evaluation. Establishing where RJ can be most impactful in ensuring therapeutic outcomes for persons harmed and persons responsible should be a key concern.

Findings from the data consistently indicate that key actors in the Queensland criminal justice system lack knowledge and understanding about RJ and its value. Notably, interviewees expressed the view that RJ was perhaps considered to constitute a ‘soft option’, in comparison to more traditional pathways through the criminal justice system.

The views of stakeholders suggest that improved understanding about RJ, including its role, value and utility, among key stakeholders is vital to its uptake and success. There also needs to be improved understanding of RJ in the broader community, amongst potential participants.

Recommendation 2: We recommend that there be comprehensive training and engagement about RJ, its role, value and utility among criminal justice professionals, service providers and other external agencies that function as key referrers and supporters.

Recommendation 3: We recommend that police and prosecutors be provided with education about RJ as part of their induction training, to promote the benefits of RJ, as well as dispelling misperceptions that RJ is only for the benefit of the perpetrator.

Recommendation 4: We recommend that the ARJC work collaboratively with the police and other criminal justice and relevant agencies, to educate and raise awareness of RJ, particularly at an early stage. Training could also involve individuals who have experienced the process firsthand (e.g. persons harmed and persons responsible), to fully explore RJ’s value and benefit and ensure that everyone is working towards delivery of the same goals.

Although the responses from the interviewees were overwhelmingly supportive of RJ conferencing expansion throughout Queensland, the findings also indicated that due consideration should be given to engaging local Indigenous and CALD communities in the development of the service.

When considering how an RJ model might be expanded into Indigenous communities, engagement with respected community members (including Indigenous Elders) and local Community Justice Groups, with a commitment to building genuine relationships, should be prioritised. Additionally, outreach work with Indigenous communities to pinpoint obstacles to expansion, and developing mutually beneficial strategies for overcoming these, should also be considered.

Recommendation 5: We recommend that resourcing and training be provided for local staff in remote/regional areas and Indigenous communities to provide targeted trauma-informed and culturally-appropriate support to persons harmed and responsible for harm.

Recommendation 6: We recommend that the ARJC adopt a co-design model of face-to-face RJ with local Indigenous communities. The implementation of RJ programs would need to be supported through the provision of outreach and support services.

Recommendation 7: We recommend that the ARJC adopt a co-design model of face-to-face RJ with affected CALD communities. The implementation of RJ programs would need to be supported through the provision of outreach and support services.

Stakeholders commented on the need for specialist services if RJ is to be used for sexual offences, alongside the allied concern that there is not enough specialised training provided in this space. It was also noted that there is currently no foundational training and no obvious educational pathway for facilitators.

A range of options should be considered in the delivery of RJ programs, including:

Recommendation 8: We recommend that facilitators with considerable experience in RJ be engaged to work on complex and sensitive cases.

Recommendation 9: We recommend that processes are developed for regular and top-up specialised training that is victim-centric, trauma-informed and culturally appropriate. This model of specialised training should be developed in conjunction with support agencies (such as sexual, family and domestic violence services) and designed in such a way that it creates a fully embedded, rather 'bolt-on', model of capacity building.

Recommendation 10: We recommend that the ARJC consider employing staff members with lived experience and from diverse segments of society.

Recommendation 11: We recommend that training is accompanied by ongoing support and supervision with regard to skill development.

Finally, the ARJC needs consistent monitoring and evaluation to thrive. This is touched on in recommendation 1. Effective monitoring and evaluation also require the consistent collection of administration and program data.

Recommendation 12: We recommend that the ARJC develop robust processes for the ongoing collection of administrative and program data to ensure quality monitoring and evaluation.

Recommendation 13: We recommend that the ARJC develop a plan and procedure for ongoing monitoring and evaluation.

Overall, there is a high degree of support and enthusiasm for the expansion of ARJC, provided that expansion and service delivery is consistent with best practice principles and standards, and that the unique needs of vulnerable groups are addressed and supported.

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