



ACT Department of Justice and Community Safety

First Phase Review

of

Restorative Justice



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Executive Summary

Review Findings

Restorative justice is being introduced in two phases in the ACT. Phase 1 is currently in operation and is the subject of this review. Phase 1 applies only to young people who have committed less serious offences. Phase 2 will commence at a date to be fixed, and will apply to young and adult offenders and all types of offences.

The findings of the review of Phase 1 of the *Crimes (Restorative Justice) Act 2004* (the Act), show that restorative justice is proving to be a valuable addition to the criminal justice system. Restorative justice is a community response to crime and community satisfaction with the scheme is high. Most people relate to the principles espoused in restorative justice. It is, after all, not a new concept. Those most affected by a crime, together with others from their community, come together to talk about what happened, identify who has been affected and how they have been affected, and discuss ways to make amends for what has happened. Communities across many cultures have been responding to wrongdoing in similar ways for generations.

The criminal justice system gives careful attention to the rights and best interests of people who are responsible for committing criminal offences. The interests of people who are victims of crime are often ignored or are not given voice. Restorative justice allows victims to have a voice in the administration of justice while respecting the rights of those responsible for crime.

“Being able to confront them and put closure to it – it was something we couldn’t do before” – victim

The ACT restorative justice scheme has some important differences to many other restorative justice schemes. The objects of the Act speak to the needs of victims as being of primary importance. The Act is aimed at enhancing the rights of victims and empowering them to make decisions about how to repair the harm done by offences.

Victims are reporting high levels of satisfaction with restorative justice and are experiencing a decrease in levels of anger, fear and anxiety following their participation in a restorative justice conference.

Meeting the needs of victims should not be interpreted as necessarily impinging upon the rights of those responsible for criminal offences. In the restorative justice processes run to date, nearly all victims have voiced a desire to understand what has happened to them and to move on from what has happened. In doing so, they have expressed a willingness to help those responsible for harming them to also move on in a positive way. Victims are showing that they are prepared to work at overcoming the personal and financial harm that has been done to them and they are expressing this sentiment in conferences with their offenders. However, they seek justice.

“Great to be able to go face to face with them to explain what they have put us through” – victim

Victims are demonstrating that they want those responsible for causing them harm to:

- accept responsibility for what they did and not try to minimise or excuse their actions;
- express some genuine remorse for what they did; and
- agree to do something that will help them to change their destructive behaviour.

More often than not, victims are asking those responsible for crime to do something for themselves as part of their restorative justice agreement, whether that be a program that interests the person responsible for the crime or a commitment from them to attend counselling.

While the objects of the Act speak to the needs of victims, the indicators in the Act, against which restorative justice is reviewed, protects the rights and interests of people who are responsible for offences. Restorative justice processes must be balanced and must pay due respect to the rights and needs of victims and offenders if the community is to gain any benefit from its application.

Young people who were responsible for offences are showing significant resilience by participating in restorative justice conferences. It is not easy for young people to face their victims and to speak for themselves about what happened and to listen to how they have affected others.

“I felt that we could both clear our heads. I was sincere about my apology” – young person

Victims and other participants at conferences are affirming young people who participate in conferences. People generally respect those that have the courage to face up to their mistakes. Young people are using the restorative justice process to not only repair the harm they have caused to their victims, but also to repair the harm they have caused to the relationships that are most important to them – those that love and support them and want what is best for them. The harm they have done to their own loved ones is most often expressed as a loss of trust in them. Parents of young people who have committed offences often express a sense of failure as parents. Young people take the first step to regain that trust by accepting responsibility for their actions, facing their victim and saying sorry and agreeing to amend their way of life so that they don't repeat their mistakes.

Supporters of victims and young people responsible for offences are reporting high levels of satisfaction with restorative justice and afterwards say they would participate in another conference. They play a crucial role in the restorative justice process. Family and friends are encouraged to participate during the assessment and conference stages of restorative justice. They often play a role in monitoring compliance with agreements formed at conferences.

Young people's supporters report similar levels of satisfaction with the process and afterwards say that they would participate in another conference. They are reporting that they are being given the opportunity in conferences to articulate the harm they have suffered as a result of the young person's behaviour.

“By including supporters, restorative conferences allow people to be held responsible in the context of a community of care” – Sherman 1991

Young people are demonstrating their integrity by complying with their restorative justice agreements with their victims. These agreements are voluntary. The ACT scheme has a 98% compliance rate for agreements. This high compliance rate reflects the fact that the agreements being reached at restorative justice conferences are reasonable, achievable and are considered fair by all parties.

“I was willing to do anything to put it right, what I did” – young person

Summary Of Key Findings

Victims

92% of victims said they were given enough information on what would happen during the process

100% said they were able to say what they wanted to say

93% thought the process was fair

99% thought the process was fair for the young person

92% said they were treated with respect during the process

93% said the process took account of what they said in deciding an outcome agreement

92% were pleased or very pleased with the outcome

88% agreed or strongly agreed that they were satisfied with the outcome

98% said the agreement was very fair or somewhat fair

Young People Responsible for Offences

98% of young people responsible for offences said they were able to say what they wanted to say

98% said they were treated with respect during the process

99% thought the process was fair or somewhat fair

98% said they thought the agreement was fair or somewhat fair

98% said they would attend a process again

97% said they would recommend it to someone else

98% have complied with their restorative justice agreement

Others

93% of all participants said they thought the process significantly respected their rights

95% of supporters were pleased with the outcome

95% of all participants said they would participate in another restorative justice process

96% of all participants would recommend it to someone else

Introduction

In 2001 the Labor Government forecast its intention to expand restorative justice options for the criminal justice system. A Restorative Justice Sub-committee was established as part of the Government's sentencing review process, to develop a model of restorative justice for the ACT community. After two years of extensive consultation with government agencies and community services, the Sub-committee produced an Issues Paper that set out an innovative model of restorative justice. The model was to be underpinned by legislation and on 31 January 2005 the *Crimes (Restorative Justice) Act 2004*, commenced operation.

Section 75 of the Act requires the Minister responsible for restorative justice to begin a review of the operation of restorative justice no later than 18 months after the Act commenced, and to present a report on the review to the Legislative Assembly within three months after the day the review is started. The review of phase one commenced on 31 July 2006. The information presented in this report refers to the work conducted by the Restorative Justice Unit between 31 January 2005 and 31 July 2006.

The Restorative Justice Unit collected relevant data from the date it commenced operating in preparation for the review. While much of the data in this report was analysed by the Restorative Justice Unit, Dr Nathan Harris, from the Australian National University (ANU), provided independent expert advice, particularly in relation to the analysis on recidivism.

Terms Of Reference

Section 75 of the Act requires the review to include an evaluation of restorative justice against the following indicators:

- victim satisfaction and opportunities for meaningful participation by victims;
- rehabilitation of offenders who have taken part in restorative justice, including any reduction in recidivism;
- community satisfaction;
- reintegration of victims and offenders into the community;
- respect for the rights of everyone directly involved in restorative justice, and the rights of others in the community; and,
- recognition of fairness of process and outcome by victims and offenders.

Background

Restorative Justice

*“Crimes harm people and relationships. Justice requires that harm be repaired as much as possible. Restorative justice is not done because it is deserved, but because it is needed” –
McCold & Wachtel*

Restorative justice, in the form of diversionary conferencing, is familiar to many people in the ACT from the early 1990s. The Australian Federal Police (ACT Policing) had commenced juvenile

diversionary conferencing on 1 January 1994, adopting the NSW Police model that originated in Wagga Wagga in 1991¹.

ACT Policing's contribution to restorative justice became internationally recognised due to its involvement with the Reintegrative Shaming Experiment (RISE) project, conducted by ANU academics Professor John Braithwaite, Dr Heather Strang and, from the University of Pennsylvania, Professor Lawrence Sherman. RISE was an independent evaluation of the effectiveness of diversionary conferencing for victims and offenders. It began in July 1995, when the ANU and later, the University of Maryland in the USA, collected data in partnership with ACT Policing.

RISE involved a scientifically rigorous evaluation framework called a 'randomised controlled trial'. Over 1,400 cases were referred to either court or a restorative justice conference. The final evaluation numbers from ACT Policing comprised 900 drink-driving cases, over 470 juvenile property cases and 110 juvenile violence cases.

A report published in November 2000² indicated that diversionary conferencing reduced repeat offending for violent crime by 38% compared to those who attended court for the same offence type.³ This statistically significant result has attracted national and international interest in the use of restorative justice as a way of dealing with crime. The RISE project further indicates some success in reducing re-offending among juvenile shoplifters.

RISE showed conclusively that restorative justice can work, and can even reduce crime by violent offenders, though much more research is needed before it is known whether restorative justice is effective in all offence categories. It is important to note, however, that restorative justice is as much about meeting the needs of victims as it is about addressing offending behaviour. The RISE study found very clear evidence that diversionary conferences resulted in better outcomes for most victims of crime. Interviews showed that victims who had attended a conference were more likely to feel satisfied with the event on a range of indicators than those victims whose offenders went to court, and were much less likely to experience fear and anger towards offenders after the experience (Strang, 2002).

Crimes (Restorative Justice) Act 2004

The *Crimes (Restorative Justice) Act 2004* (the Act), allows for restorative justice to occur at every stage of the criminal justice process in both the juvenile and adult jurisdictions. Participation in restorative justice is voluntary. Victims and offenders have the right not to participate and may withdraw their consent at any time, up to and including a restorative justice conference.

The Act is constructed so that restorative justice 'augments' the criminal justice system without replacing criminal justice⁴. In this sense, restorative justice processes in the ACT may run parallel with the existing criminal justice processes. An offender may accept responsibility for an offence without affecting his or her capacity to plead not guilty to the offence at a later court hearing.

¹ In 1990, as adviser on juvenile justice to the New South Wales Police Service, John McDonald travelled to New Zealand to study the impact of New Zealand's *Children, Young Persons and their Families Act, 1989*. Following the visit, he co-authored a paper entitled *Can It Be Done Another Way?* It suggested alterations to NSW juvenile justice system. In particular, it suggested that the Family Group Conference process could be used by police for dealing with a large proportion of cases involving young offenders. NSW Police endorsed the proposal and circulated it widely to relevant agencies and individuals. It reached Terry O'Connell, at that time, head of police at Wagga Wagga. Terry O'Connell invited John McDonald to Wagga Wagga in July 1991 to meet with police and with members of the community to discuss the introduction of restorative processes. Following this meeting, the widely recognised and accepted "Wagga Wagga" model of police juvenile diversionary conferencing was established.

² Recidivism Patterns in the Canberra Reintegrative Shaming Experiments.

³ An analysis of 110 violent offenders who were either prosecuted in court or mandated to attend a conference showed that the group sent to court committed 38 more crimes per 100 offenders per year than the group attending conferences. This translates to a 61% higher rate of crime for violent offenders sent to court.

⁴ Clause 6, *Crimes (Restorative Justice) Bill 2004*, Explanatory Statement

Even if the offender pleads, or is found guilty, the court is not compelled to take account of what happens in any conference that may be held.

The Act emphasises the importance of the need for restorative justice to have a constructive impact upon people who commit crimes, while the objects of the Act are to enhance the rights of people who are victims of crime and to ensure that their interests are given high priority in the administration of restorative justice. The objects are:

- a) to enhance the rights of victims of offences by providing restorative justice as a way of empowering victims to make decisions about how to repair the harm done by offences;
- b) to set up a system of restorative justice that brings together victims, offenders and their personal supporters in a carefully managed, safe environment;
- c) to ensure that the interests of victims of offences are given high priority in the administration of restorative justice under this Act;
- d) to enable access to restorative justice at every stage of the criminal justice process without substituting for the criminal justice system or changing their normal process of criminal justice; and,
- e) to enable agencies that have a role in the criminal justice system to refer offences for restorative justice.

Restorative Justice Unit

The Restorative Justice Unit (RJU) is part of the Department of Justice and Community Safety (JACS) and has been in operation since 31 January 2005. The RJU comprises of a manager, an administrator and two convenors employed by JACS. Two members of ACT Policing are seconded to the RJU and convene matters that are referred by ACT Policing. An Indigenous Liaison Officer from ACT Policing also assists the RJU to liaise with the Aboriginal and Torres Strait Islander people and to conduct restorative justice processes when required.

Phased Introduction

The Act is being implemented in two phases. The first phase focuses specifically on young people aged between 10 and 18 years who are responsible for less serious offences. Family violence, sexual assault and indictable only offences are excluded from the first phase.

The second phase will commence at a date to be fixed and expands the scheme to include:

- adult offenders; and
- serious offences, family violence and sexual assault offences.

Serious offences (including interpersonal violence committed by adults) are to be precluded from pre-court conferencing in the ACT. The consideration of restorative justice options for these types of offences will commence only after the charge has reached court with a plea or finding of guilt.

Eligibility

'The threshold test is that offenders must accept responsibility for the commission of the offence' – Recommendation 10, Issues Paper

Criminal justice agencies, including ACT Policing, Director of Public Prosecutions (DPP) and the ACT Children’s Court, refer offences to restorative justice and are known as referring entities. They determine the eligibility of the offence, the victim and the young person responsible for the offence prior to referral. The eligibility criteria are simple and objective to accommodate the widest number of cases.

Offence eligibility in phase one is linked to the seriousness of the crime. In phase two it is linked to the stage of the criminal justice process at which it is referred – pre-court, during court, post-court. For an eligible offence to be referred to restorative justice there must be an eligible victim (the term “victim” is defined by the *Victims of Crime Act 1994*) and an eligible offender.

Victim eligibility is determined by age (at least 10 years of age) and their capacity to agree to take part in restorative justice. Offender eligibility is determined by four factors. They are that the offender:

- accepts responsibility for the offence;
- was at least 10 years of age at the time of the offence;
- is capable of agreeing to take part in restorative justice; and
- agrees to take part in restorative justice.

Referring entities do not lose their discretion to continue to prosecute a matter if they choose to refer it to restorative justice. In the ACT, both can run concurrently. Agencies are beginning to appreciate the benefits of restorative justice and to recognise that it is possible to uphold the values of the traditional system while exploring alternative responses to crime.

Suitability

The RJU is responsible for assessing victims, offenders and their supporters to determine whether they are suitable to participate in restorative justice. The RJU is also responsible for conducting restorative justice conferences and monitoring any agreements reached.

When considering the suitability of matters, the Act stipulates that a number of general and personal factors must be taken into account. These include:

- each participant’s personal characteristics;
- each participant’s motivation for taking part in restorative justice;
- the impact of the offence as perceived by each participant;
- the nature of the offence, including the level of harm caused and any violence involved;
- the appropriateness of restorative justice at the current stage of the criminal justice process;
- any potential power imbalances between the people who are to take part in restorative justice; and
- the physical and psychological safety of anyone who is to take part in restorative justice.

The RJU has developed a rigorous preparation process and suitability assessment to be performed with each potential participant. The assessment and preparation process often takes more than one meeting with each participant prior to a conference being called. The assessment process seeks to:

- explain restorative justice and inform the participant of any implications that their participation may have on the management of criminal prosecutions;
- discuss the participant's perception of the offence, the impact it has had on them and explore what they think needs to happen to make things better;
- determine their suitability to participate in a restorative justice conference; and
- obtain informed consent from each suitable person to participate in a restorative justice conference.

The process is voluntary for all participants, from point of referral up to and including the conference itself. Consent may be withdrawn at any time.

Restorative Justice Conferences

'For a conference to be considered a success, an agreement is needed'
– Recommendation 26, Issues Paper

Restorative justice has been criticised as a soft option, relevant only to first-time offenders and useful only as a diversionary tool, mainly for young offenders. Such a view ignores the benefits that can accrue for victims and their families. It also ignores the dynamics that can occur in restorative justice conferences. Indeed, empirical evidence suggests that conferences may actually have greater impact in those cases where the offence type is more serious (Sherman, Strang & Woods, 2000).

When run well, restorative justice processes can be very powerful and alter the way that people subsequently behave. They are also very challenging for offenders as there is nowhere to hide in a restorative justice conference - offenders face the people they have harmed, their victims, the victim's family and their own family. From police caution through to post-sentence, restorative justice, in both its direct (face-to-face) and indirect forms, is available to people in the ACT who have been part of a criminal incident. It takes those individuals directly affected by crime and with their consultation and permission, works out a way for them to talk to each other about what happened, who was affected and what can be done to make things better.

In face-to-face conferences participants meet at a time and location agreeable to them i.e. at the RJU, a school, a community centre or a police station. Conferences usually take about two hours. The convenor seats the participants in a circle, introduces everyone and explains each person's relationship to the process.

The convenor then takes the group through a three-stage process.

1. What happened?

The offender is asked to talk about what led to the offence and what happened during and after the offence. At the end of this stage they will be asked who they think has been affected and how.

2. How were people affected?

Starting with the victim, the convenor asks everyone else to talk about how they have been affected, including how they felt when the incident happened and how they feel now.

The offender finds out how people were harmed by what happened. It is very common for them to find out some things about the offence that they didn't know.

3. How can we make things better?

Again starting with the victim, the convenor asks everyone what they think needs to happen to make things better. The group discusses various options among themselves. The discussion focuses on what specific activities or commitments the offender can make to repair any damage or harm resulting from the offence. The discussion also focuses on specific activities or commitments the offender can make to prevent any future offending.

The group then decides on what is a fair and just outcome. They then share some refreshments while the convenor writes out the agreement. The victim and the offender sign the agreement and each leave with a copy. After the conference, the convenor must give a report about the outcome of the conference to the referring entity. The report must include:

- details of the conference and when it ended;
- whether the conference resulted in an agreement; and,
- if the conference resulted in an agreement, a copy of that agreement.

Agreements and Monitoring

Irrespective of whether the parties exchange information directly or indirectly, agreements may take many forms, but they always include measures that intend to repair the harm caused by the offence. Such measures might include:

- an apology;
- a work plan to be carried out for the benefit of any victim or the community;
- a work plan to address the offending behaviour;
- financial reparation; and/or,
- anything else that would help repair the harm caused by the offence.

Agreements cannot require the offender to be detained or humiliated in any way and must be fair and achievable. The RJU, and the referring entity for the offence, may do anything reasonable to check whether an agreement is being complied with. It is possible for agreements to be encompassed in Court or Parole Orders, effectively giving certain referring agencies the power to enforce agreements.

Progress To Date

Statistics

The RJU convened its first conference on 19 April 2005. As at 31 July 2006, the RJU had received 183 referrals, comprising 515 offences, 325 people who were victims of crime and 247 young people who were responsible for committing offences.

These referrals resulted in 104 conferences being conducted. Excluding the 14 cases that were under assessment at 31 July 2006, 62% of cases that were referred to restorative justice proceeded to conference.

On average the RJU receives 10 referrals per month but referral rates have varied from month to month as per Figure 1.

Figure 1 – Referrals Received Per Month

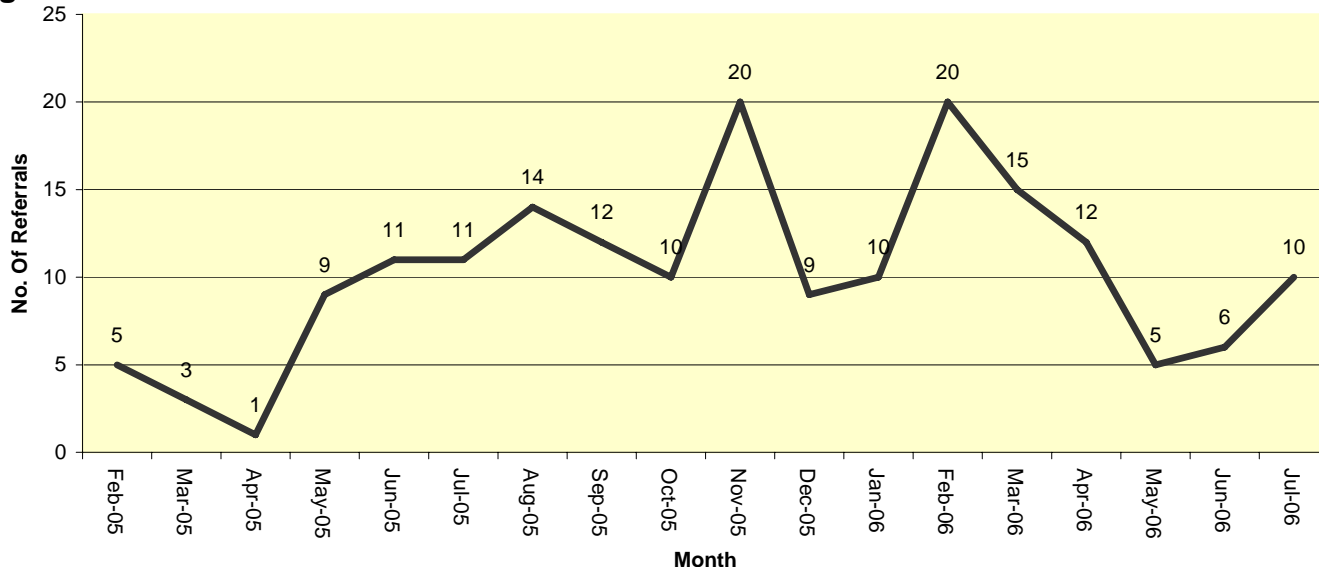
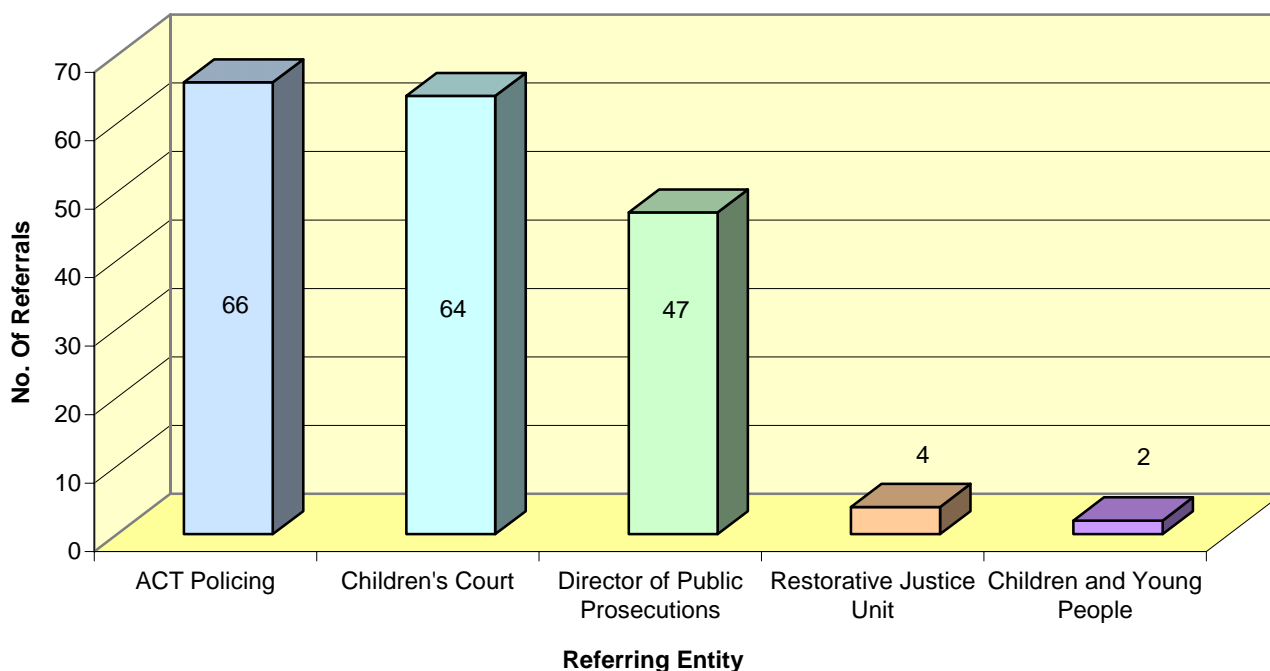


Figure 2 illustrates the number of referrals made by referring entities. Please note that ‘Children and Young People’ refers to the Office of Children, Youth and Family Support (OCYFS). The OCYFS was recognised as a post-sentence referring entity on 22 December 2005. Prior to that, the RJU, which has the capacity to refer matters itself, referred cases post-sentence on behalf of the OCYFS.

Figure 2 – Referrals By Referring Entities



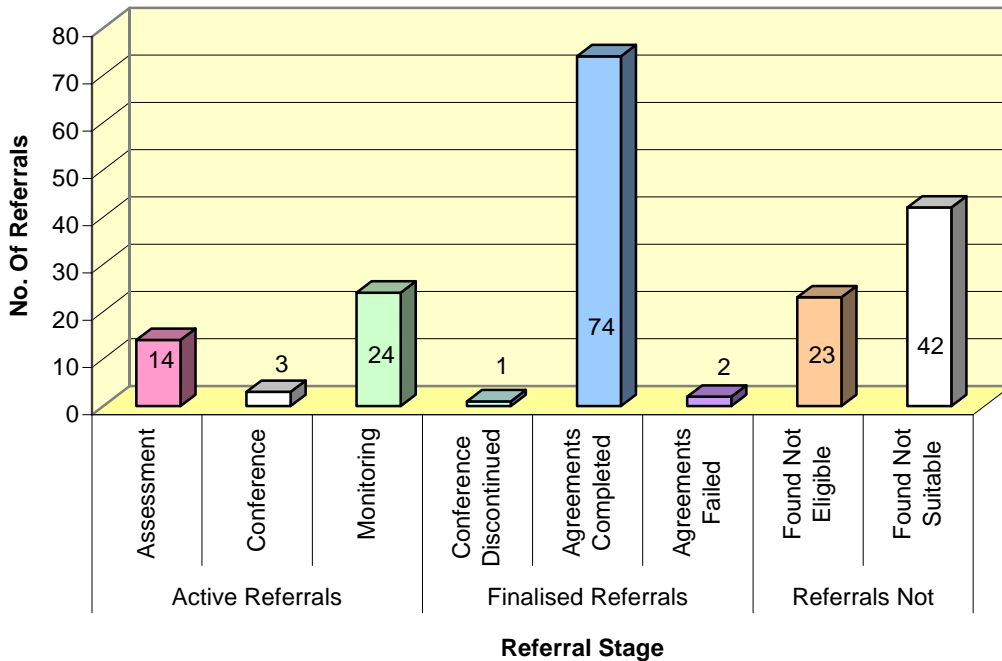
Referrals are classified into three main groups:

- active referrals – undergoing suitability assessment, at the conference stage or post-conference stage with agreements being monitored;

- finalised referrals – referrals where conferences have been discontinued, agreements have failed and agreements have been completed; and
- referrals not accepted – referrals that have been found not eligible or not suitable.

The status of all referrals is illustrated in Figure 3. Of total referrals received at 31 July 2006, 22% were active, 42% had been finalised and 36% had not been accepted.

Figure 3 – Referral Status



Of the 23 referrals that were found not eligible:

- one had no victim as defined under the *Victims of Crime Act 1994*;
- 17 had no eligible offender, either because the young person did not agree to participate or did not accept responsibility for the offence; and,
- five had no eligible offence, either because the referral was withdrawn by the referring entity or the offence was considered ineligible to be referred during phase one of the Act.

Of the 42 referrals that were found not suitable:

- 27 had no suitable victim because the victim could not be contacted/located or they did not consent to participate;
- 14 had no suitable offender because the young person absconded or was unable to be contacted or did not consent to participate; and,
- one was found not suitable under the general considerations of the Act.

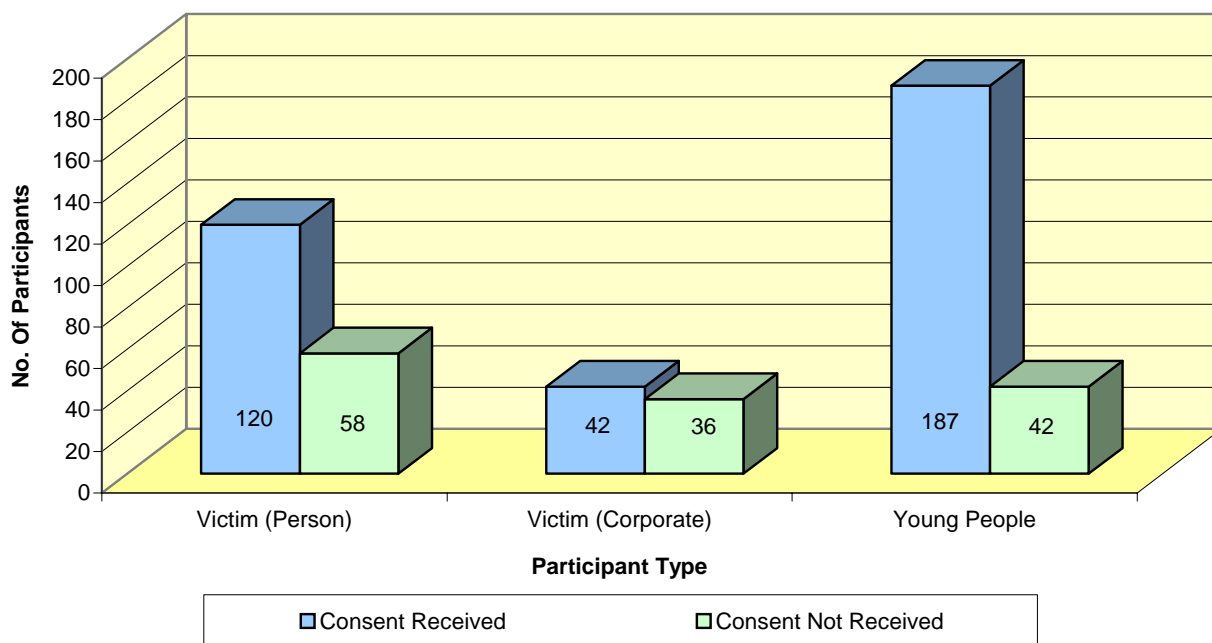
Once it is established that an offence is eligible for restorative justice, the young person responsible for the offence is approached, in the company of a parent or guardian whenever possible, about participating in a restorative justice process. Should they consent, a suitability assessment is conducted. Should the young person be found suitable, the victim is approached and offered the opportunity to participate. If they consent, they are assessed for suitability.

The process follows this order to protect victims from unnecessarily considering whether or not they participate in a process.

Figure 4 shows that of the 229 young people approached about participating in restorative justice, 82% agreed to participate. Their victims are divided into two broad types – personal victims (those who have been personally harmed by the offence) and corporate victims (representatives of large organisations who do not identify as suffering personal harm as a result of the offence). There is an appreciable difference between consent rates for personal and corporate victims. Of the 178 personal victims approached, 67% agreed to participate in restorative justice. Of the 78 corporate victims approached, 54% agreed to participate.

Of the total 256 victims that were offered the opportunity to participate, 162, or 63%, agreed. This participation rate compares favourably with other restorative justice schemes. A study in Bethlehem USA by Paul McCold and Benjamin Wachtel (1998)⁵ had a victim participation rate of 67% and a large New Zealand study by Maxwell et al (2003) showed that a participation rate of approximately 50%⁶. The RISE study had a victim participation rate of approximately 90%. Some possible reasons why RISE had such a high participation rate are that they were all diversionary conferences and would proceed whether a victim did or did not participate. All were run by police convenors and the invitation to victims did not seek consent but simply asked victims when it would be convenient to schedule the conference (see Strang et al 2006).

Figure 4 – Victim and Young People Consent Rates



A major factor why corporate victims do not agree to participate in conferences is that many say they are not personally affected by the crime. Most corporate victims who declined to participate were victims of theft where the goods that were stolen were recovered at the time the young person was apprehended. Consequently, there appears to be less motivation, or perceived benefit, for corporate victims to participate in restorative justice. Another main reason for their decision not to participate is that they did not want to invest their time in a process.

The reasons for victims and young people not consenting to participate in restorative justice are identified in Table 1. Two main reasons why personal victims declined to participate were:

⁵ McCold, P & Wachtel, B., Restorative Policing Experiment: The Bethlehem Pennsylvania Police Family Group Conferencing Project, p32

⁶ Maxwell, G., Kingi, V, Robertson, J., .Morris, A., & Cunningham, C. (2004). Achieving Effective Outcomes in Youth Justice. Wellington: Ministry of Social Development.

- 20% stated ‘they do not want to have contact with the offender’; and
- 17% stated ‘they want to move on and put the matter behind them’.

Of the young people who declined to participate:

- 38% were unable to be contacted;
- 17% disputed the statement of facts; and
- 10% did not accept responsibility for the offence.

Table 1 – Reasons For No Consent

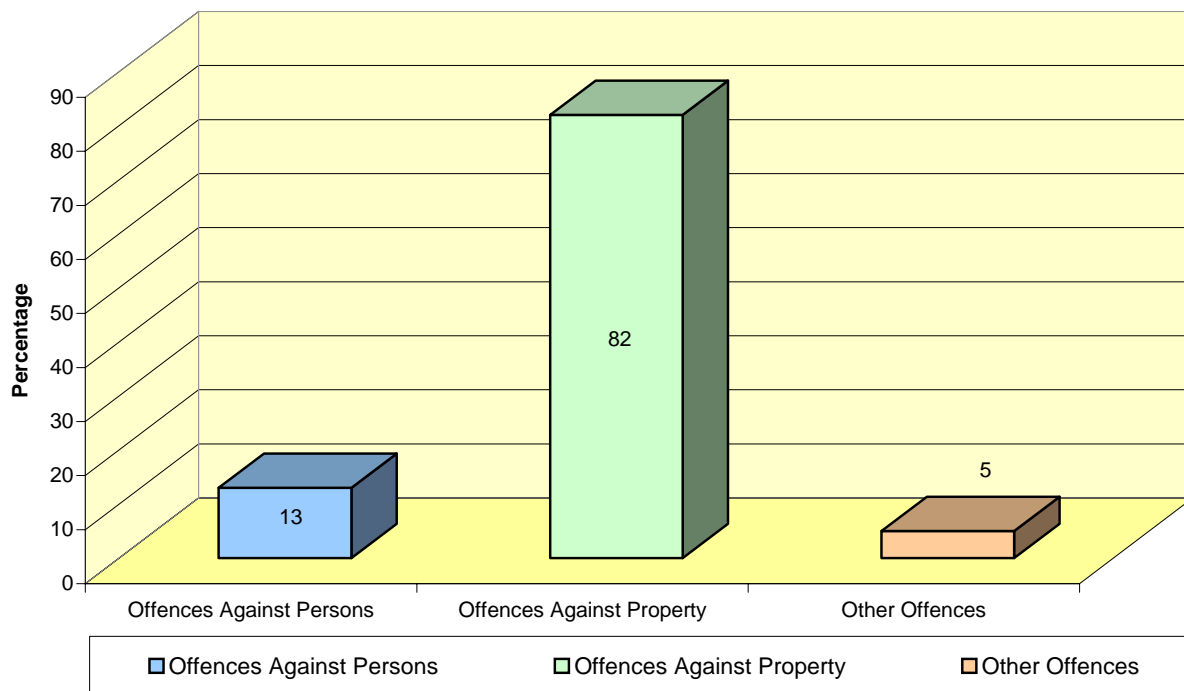
	Victim (Personal)	Victim (Corporate)	Young People
Does not want to participate	18	13	9
Has not been affected/harmed by offence	2	8	0
Wants to move on and put matter behind them	10	0	0
Does not want to have contact	12	2	3
Afraid of having contact	1	0	0
Not prepared to give up work commitments	1	7	0
Unable to be located	0	1	8
Unable to be contacted	9	1	8
Does not accept responsibility	0	0	4
Disputes statement of facts	0	0	7
Other	5	4	3

The types of offences referred to restorative justice have been classified into three categories:

- offences against person (such as common assault and assault occasioning actual bodily harm);
- offences against property (such as minor theft, burglary and damage property); and
- other offences (such as public mischief).

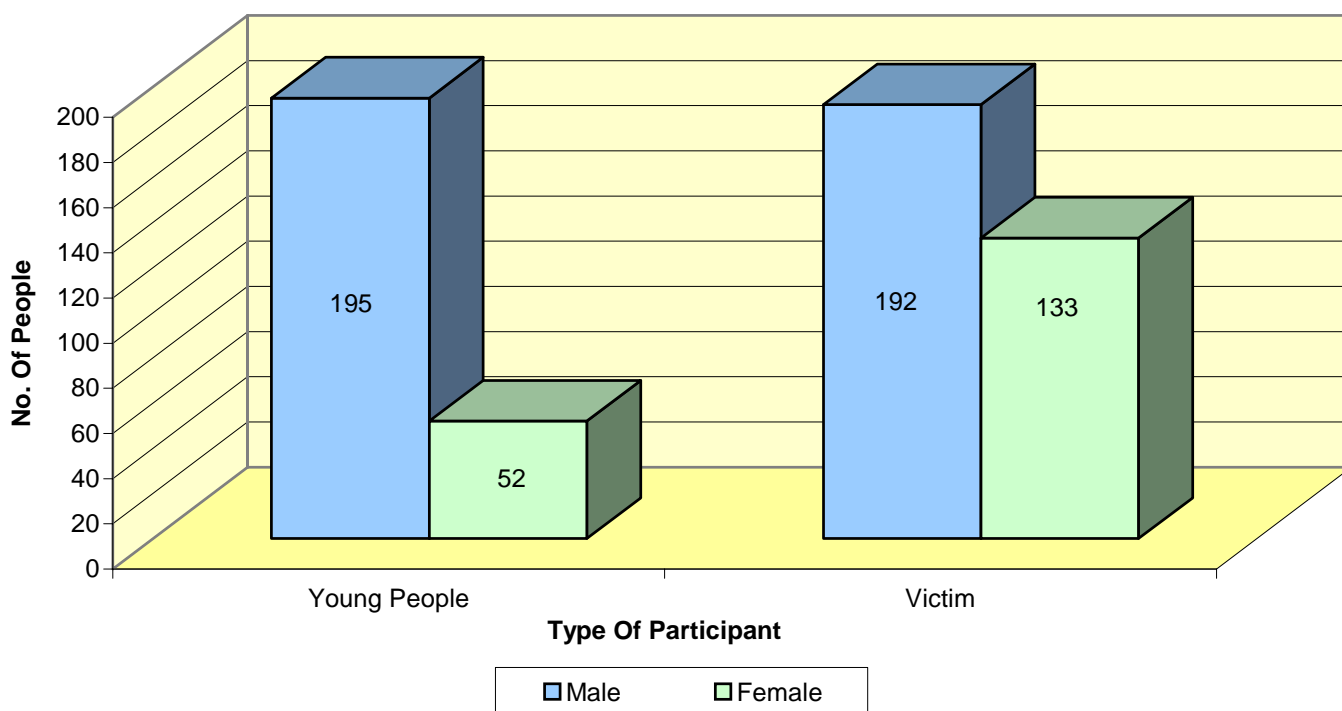
Offence types that were referred have varied from minor theft to culpable driving causing death. Figure 5 illustrates that of the 515 offences referred, 82% were property related offences.

Figure 5 – Types Of Offences Referred



The gender breakdown of victims and young people is illustrated in Figure 6. Of total victims referred, 59% were male and 41% female. Of total young people responsible for offences that were referred, 79% were male and 21% were female. These figures are in line with the gender breakdown that had previously been found in the RISE experiments where between 59 and 68% of victims were male and between 77 and 85% of offenders were male (Strang, 2002). The Australian Institute of Criminology reported in 2003-04, that 23% of all juvenile offenders were female⁷.

Figure 6 – Gender Breakdown Of Victims And Young People



⁷ Australian Crime: Facts and Figures 2005
Crimes (Restorative Justice) Act 2004

The average age of a young person at the time of the referred offence is 15 years, with 85% of them being aged between 14 and 18 years (see Figure 7).

ACT Policing referred two adult offenders, aged 18 and 19 years at the time of the offence. These two offenders had several young people as co-offenders and it was decided it would be beneficial for both the victims and offenders if the adult co-offenders were given the opportunity to participate in a restorative justice process.

The Australian Institute of Criminology reports, “persons aged between 15 to 19 years are most likely to be processed by police for the commission of a crime”. It also states, “in 2003-04 the offending rate for persons aged 15 to 19 years was four times the offending rate for the remainder of the population”⁸.

Figure 7 – Age Of Young People At Time Of Offence

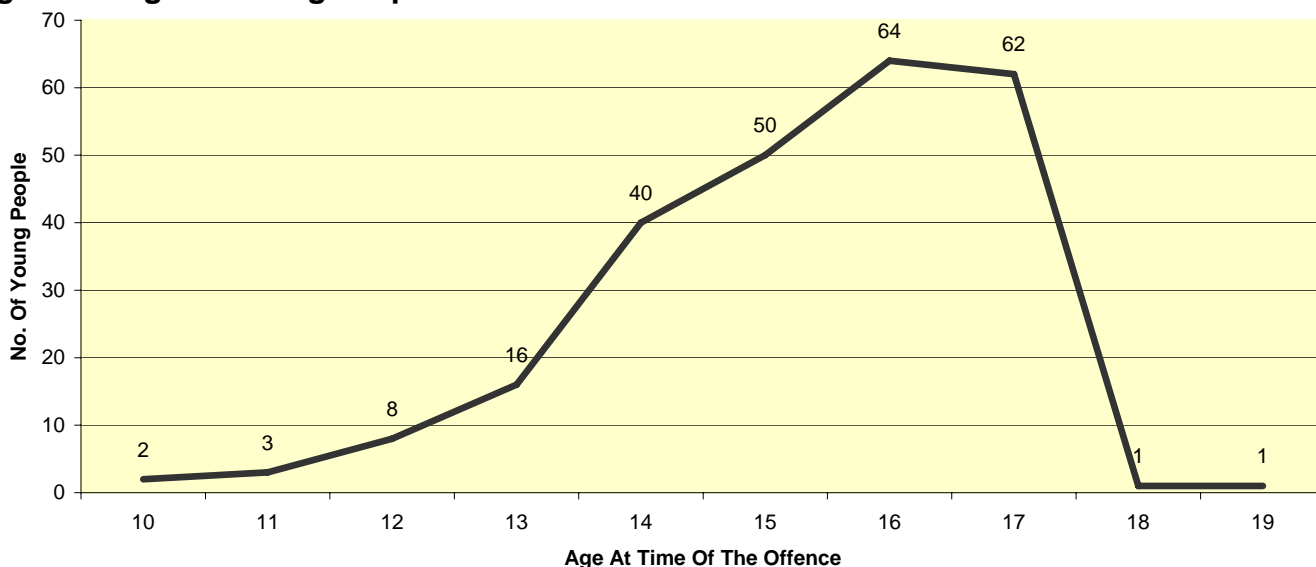
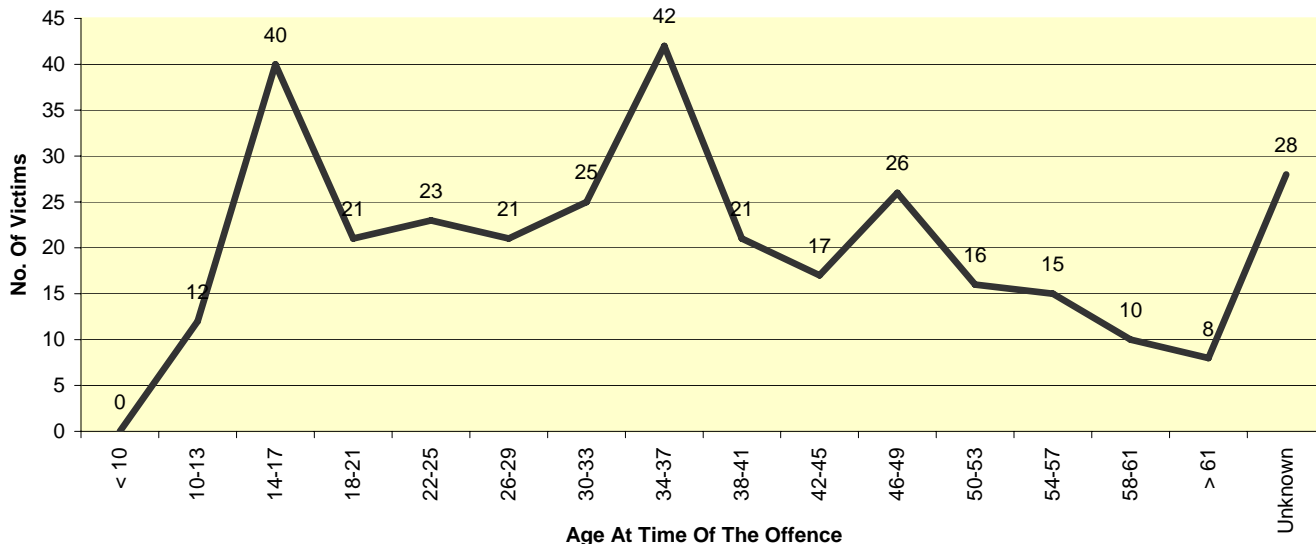


Figure 8 illustrates the age breakdown of victims. There were two main age groups of victims. The first group is aged between 14 and 17 years, the same age group as the young people who committed the offences. This trend reflects existing evidence that young people often commit offences against other young people. The second main age group is aged between 34 and 37 years of age. Further analysis is required to ascertain why this group is so highly represented. What can be seen is that age is no barrier to victims being given the opportunity to participate in restorative justice⁹

⁸ Australian Crime: Facts and Figures 2005

⁹ The 28 victims whose age has not been identified represents those who are currently undergoing assessment and some who declined to participate in restorative justice.

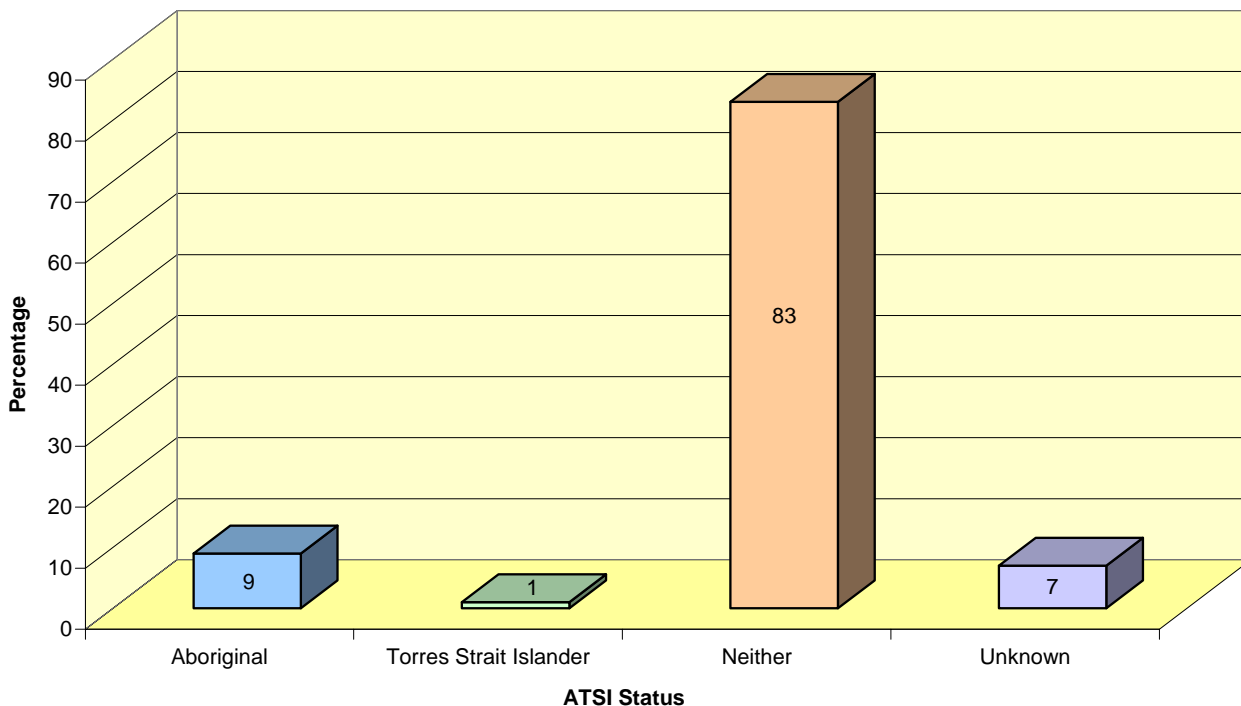
Figure 8 – Age Of Victims At Time Of Offence



The RJU records victims and young people referred to restorative justice who identify as Aboriginal and Torres Strait Islander. These young people represent 10% of total young people referred (see Figure 9). Very few victims identified as being Aboriginal or Torres Strait Islander (see Figure 10).¹⁰

The RJU promotes the referral of young Indigenous people to restorative justice and seeks to strengthen links with the ACT Indigenous community.

Figure 9 – ATSI Status Of Young People Responsible For Offences



¹⁰ The large number of victims whose Aboriginality is unknown is due to the fact that victims are not assessed by the RJU if the young person responsible for the offence is not eligible or not suitable to participate, hence no personal data is collected on these individuals.

Figure 10 – ATSI Status Of Victims

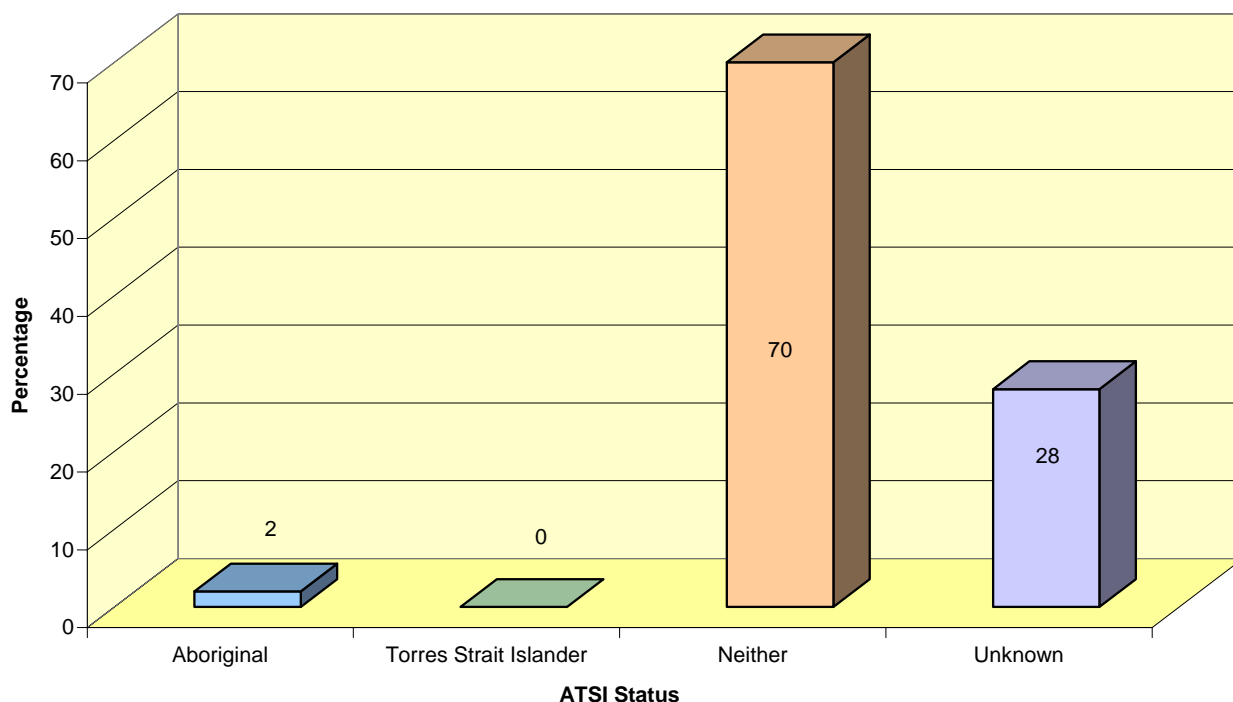


Table 2 details the type and number of people who have participated in a conference. For example, 78 conferences had one victim present and one conference had more than five victims present.

The RJU has implemented an observer program that was aimed at allowing representatives from referring entities to observe conferences to promote the concept of restorative justice. Participants decide whether or not to allow observers access to their conferences. To date, 62 observers have attended conferences.

Table 2 – Participation Rates At Conference

	No. of clients per conference						
	0	1	2	3	4	5	> 5
Victim	0	78	22	1	2	0	1
Victim’s Supporter	64	24	10	4	1	0	1
Young People	0	81	9	9	2	2	1
Young People’s Supporter	19	29	22	8	12	6	8
Other Participants *	53	26	15	8	0	2	0

In the ACT a restorative justice conference may take any form. For example, victims may exchange information indirectly with their offender by written statements or tape recordings. They may also meet their offender face-to-face. Victims in the ACT have demonstrated their preference for meeting face-to-face with the person responsible for harming them, with 80% choosing a face-to-face encounter and 20% choosing an indirect means of communication.

Following is a breakdown by participation type.

- 140 victims (113 adult victims, 25 young victims and 2 victim substitutes).
- 66 victim supporters (28 parents or guardians of young victims and 38 general supporters).
- 150 offenders (2 adult offenders and 148 young people).

- 230 supporters of young people (149 parents or guardians and 81 general supporters).
- 28 invited participants (20 police informants and 8 other participants).

The final stage of a conference focuses on constructing an agreement. The agreement identifies specific tasks that the young person commits to undertake that will go some way to repair the harm suffered by the victim. It can also include commitments by the young person to address their offending behaviour. The most common types of tasks in agreements include:

- letters of apology;
- financial reparation;
- volunteer work for the victim or the community; and/or
- participation in rehabilitation programs.

The RJU recognises the importance of monitoring and reporting on the compliance of restorative justice agreements. Non-compliance with agreements can greatly impact on a victim’s satisfaction with restorative justice. Following conferences, convenors remain in scheduled contact with young people and their supporters to motivate and assist them to comply with their agreements. Young people have complied with 112 individual agreements while only two individual agreements have not been complied with. The ACT scheme can report an agreement compliance rate of 98%, which compares favourably with many other national and international models of restorative justice.

Table 3 shows how victims, the community and young people have benefited from restorative justice agreements. Further analysis of Table 3 is discussed under the reintegration indicator section of this report.

Table 3 – Completed Tasks On Agreements

Financial reparation to victims	\$12,326.00
Financial reparation to community	\$120.00
Work plans for victims	154 hours
Work plans for community	289 hours
Plans to address offending behaviour	927 hours

Data was also collected to measure the amount of time it takes to process a referral to restorative justice. Time assessments were conducted on every fifth referral received from the Children’s Court, DPP and OCYFS and every case that was referred by ACT Policing. The average time spent on each case is 10 hours and 16 minutes. Less time is spent on cases found not eligible and more time is spent on those that go through to conference.

A breakdown of the average time spent on referrals is shown in Table 4. The time recorded against ‘Referrals Completed’ includes time spent monitoring agreements until completion.

Table 4 – Average Time Spent On Referrals

Referrals Found Not Eligible	1 hour
Referrals Found Not Suitable	6 hours 56 minutes
Referrals Completed	14 hours 9 minutes

The amount of time spent on one case depends upon a range of factors, including the number of victims and offenders involved and the seriousness of the offences. For example, one referral

included 22 offences, which were committed by five young people against five victims. In general, the greater the harm that has been suffered, the longer the preparation and assessment time. The most serious conference convened by the RJU, an offence of culpable driving causing death, is not included in Table 4 because the agreement has not been completed. That case has taken approximately 100 convenor hours and the agreement is still being monitored.

Consultation with Key Stakeholders

Restorative Justice Reference Group

As part of the implementation of the Act, a Reference Group was established. It is made up of senior representatives from each referring entity under the Act and other key community stakeholders including the Victims of Crime Co-ordinator, Aboriginal Justice Centre, the Legal Aid Office (ACT) and the Youth Coalition of the ACT. The Domestic Violence Crisis Service has recently joined as a member.

The Reference Group's role is to monitor, guide and optimise the implementation and initial practice of the RJU. Its duties are to:

- provide comment on the expanded system's implementation from a sectoral and agency-specific perspective;
- articulate sectoral and agency interests in the implementation process; and
- enable a reporting back function between the RJU and agencies with respect to practice and other issues as relevant in order to maximise service quality.

The Reference Group meets bi-monthly and has been instrumental in assisting the RJU to establish the scheme.

ACT Children's Court

The ACT Children's Court strongly supports restorative justice and is a main source of referrals. On-going meetings are occurring with the court and registry staff to ensure the scheme is operating efficiently and in the best interests of young people.

The RJU assists the Children's Court to meet certain requirements under the Act before an offence is referred to restorative justice. Section 25 of the Act requires that a referring entity must ensure that reasonable steps are taken to explain certain things to young people and their victims, prior to referring a matter to restorative justice. Section 25 specifies what information must be explained. The court meets these requirements for young people being considered for referral at the time of their court appearance. However, the court is unable to meet these requirements for victims without adjourning a matter because the court does not receive victim identification details in prosecution briefs. The RJU assists the court by contacting the victim during the adjournment and ensuring that the necessary information is provided. Once a victim receives that information, the court is then free to refer an offence to restorative justice.

To facilitate referrals, RJU staff attends court regularly to assist the court and to provide advice and information about restorative justice to young people and defence solicitors.

ACT Policing

ACT Policing has been an integral agency in the establishment and operation of the RJU. In addition to being a main referring entity, ACT Policing has committed significant resources to

manage cases that are referred to restorative justice by ACT Policing. A working party has been formed with the RJU to develop procedures and to identify and resolve operational issues.

The RJU conducts on-going training for ACT Police officers. Over 20 training sessions have been conducted for police patrol groups and presentations have been given to recruit classes at the Police College.

The Police and Citizens Youth Club (PCYC) also works in partnership with the RJU. It provides supervision and guidance to young people who undertake programs at the PCYC as part of their agreement.

Aboriginal Justice Centre

The RJU continues to work closely with those responsible for the establishment of the ACT Aboriginal Justice Centre to foster positive relationships with the Indigenous community and to disseminate information about restorative justice. The Aboriginal Justice Centre is a member of the RJU's Reference Group.

Legal Aid Office (ACT)

The Legal Aid Office (ACT) has assisted the RJU to develop a solicitor's information sheet that explains restorative justice and draws attention to the statutory requirements of the scheme and the immunity provisions provided for in the Act. The Legal Aid Office has also assisted the RJU to conduct training sessions with solicitors. It provides free legal advice to young people who are referred to restorative justice and funds legal advice for victims who have been referred to the scheme. The Legal Aid Office is a member of the Reference Group and provides expert advice to the RJU in that forum.

Office of Children, Youth and Family Support

Caseworkers from the OCYFS and RJU convenors liaise regularly on the management of young people to ensure that the best interests of young people remains a priority throughout their restorative justice experience. Caseworkers attend suitability interviews and conferences wherever possible, especially with those young people who are under care and protection orders. At times, prior to conferences, the OCYFS is consulted about the possible agreement that the young person may be asked to consider, to ensure that the agreement will not conflict with the young person's case plan. Caseworkers from the OCYFS assist the RJU to motivate young people to comply with their agreements.

Office of the Director of Public Prosecutions

The DPP is a strong supporter of restorative justice. The RJU and the DPP consult regularly about referrals to restorative justice, the content of restorative justice reports and the management of cases through to prosecution and sentencing. The Director of Public Prosecutions is a member of the Reference Group and provides expert advice and guidance to the RJU.

The RJU assists the DPP to meet the requirements of section 25 of the Act before a referral is made to restorative justice. The DPP notifies the RJU when it is considering referring an offence. The RJU contacts the young person responsible, discusses the potential referral and explains the information required to be explained under section 25 of the Act. Similarly, the RJU identifies and contacts the victim of the offence and ensures that the same information is provided to them. The RJU notifies the DPP when this is complete and the DPP is then free to refer the matter.

Victims of Crime Co-ordinator

The Victims of Crime Co-ordinator (VoCC) is a member of the Reference Group and provides expert advice on victim issues. The VoCC is regularly consulted and has assisted the RJU to develop its procedures.

Youth Coalition Of The ACT

The RJU and the Youth Coalition of the ACT have worked collaboratively to promote restorative justice and to improve information sharing processes and outcomes for young people.

In particular, the Youth Coalition assisted the RJU by reviewing the content and presentation of its information pamphlets. As part of this process, the Youth Coalition conducted focus groups with young people to identify their needs and expectations of restorative justice and to have those views reflected in the information pamphlets and brochures.

The RJU has drafted its information pamphlets according to the recommendations made by the Youth Coalition, including an illustrated brochure that depicts restorative justice in language and images that appeal to young people.

Indicators

An evaluation against the indicators in section 75 of the Act (see Terms of Reference) follows. A primary strategy used to report against these indicators was to survey conference participants by telephone interviews following their conference. Initially, staff of the RJU (other than the convenor responsible for the conference being surveyed) conducted questionnaires with participants. Volunteers from ACT Policing later adopted this task to assist the RJU manage its workload and to ensure greater transparency in the process. At least three attempts were made to contact participants before the opportunity to complete the questionnaire was withdrawn.

Four separate questionnaires were administered from 1st June 2005 to 30th June 2006, depending upon participant type; victim, victim supporter, young person responsible for an offence and young person supporter. A total of 298 questionnaires were completed, nearly half of all conference participants, which represents a 78% response rate.

The questionnaires were constructed to elicit specific responses from each participant type. Some questions were common to all participants. Attempts were made to contact every victim, every young person and one supporter of each who participated in a conference and each person was invited to respond to the questionnaires. Table 5 provides a breakdown of the response rates to these questionnaires.

Table 5 – Questionnaire Response Rates

	Victim	Victim Supporter	Young People	Young Peoples' Supporters
Collected	100	23	88	87
Not Asked	6	5	4	2
Refused	1	0	1	0
Unable To Complete	1	0	0	0
Unable To Contact	10	5	28	20
TOTAL	118	33	121	109
RESPONSE RATE	85%	70%	73%	80%

Victim Satisfaction And Opportunities For Meaningful Participation By Victims Indicator

*“Impressed with how it went and the response from the young offender.
Very, very worthwhile, glad to be included” - victim*

Figures 11 to 15 report against victim satisfaction and opportunities for meaningful participation gathered from the victim questionnaire. Figure 11 reports victims’ responses to the question of whether they were pleased with the outcome of their conference, with 92% saying they were pleased or very pleased.

Figure 11 – Victim – You Were Pleased With The Outcome?

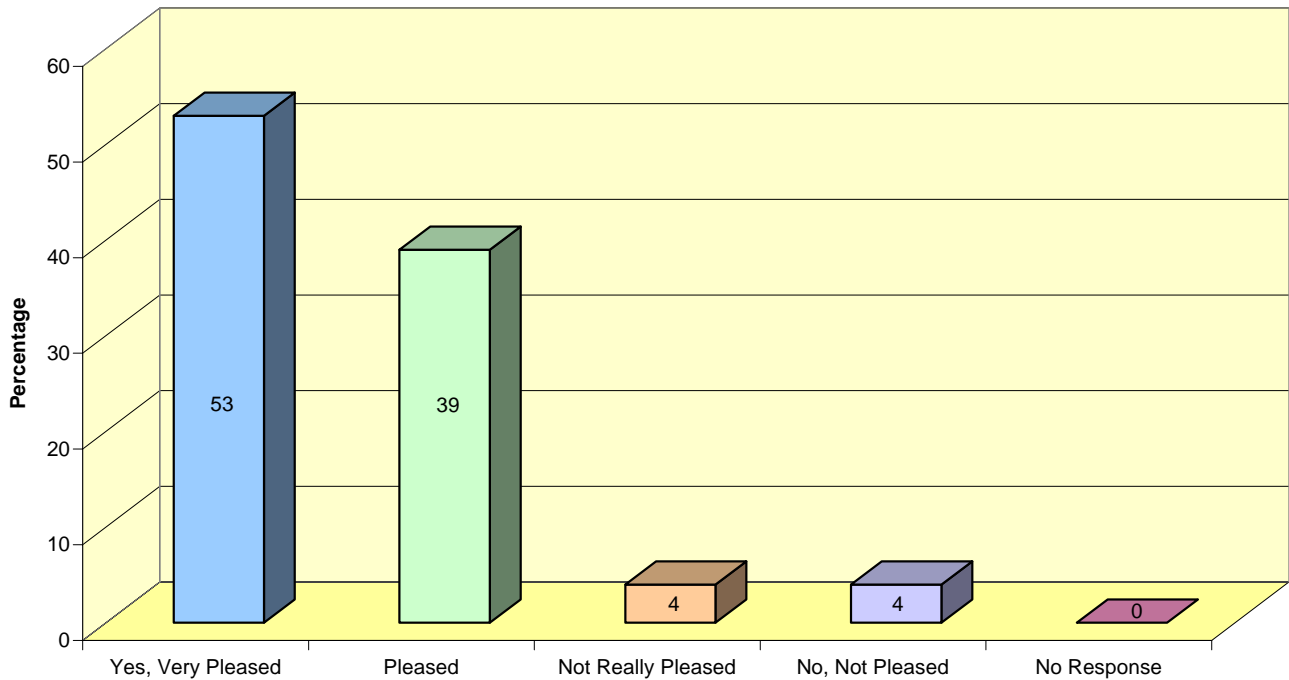


Figure 12 reports victims’ responses to the question of whether they were satisfied with the outcome of their conference. Victims were asked whether they were satisfied immediately following the conference and whether they were still satisfied at the time the questionnaire was administered. There was some variation in the amount of time that had passed between conferences and the administration of the questionnaires due to the availability of victims and the limited capacity of the RJU to administer the questionnaires. The slight decline in victim satisfaction with their conference experience over time is typical of many victims’ experiences with restorative justice both nationally and internationally.

Figure 12 – Victim – You Are Satisfied With The Outcome?

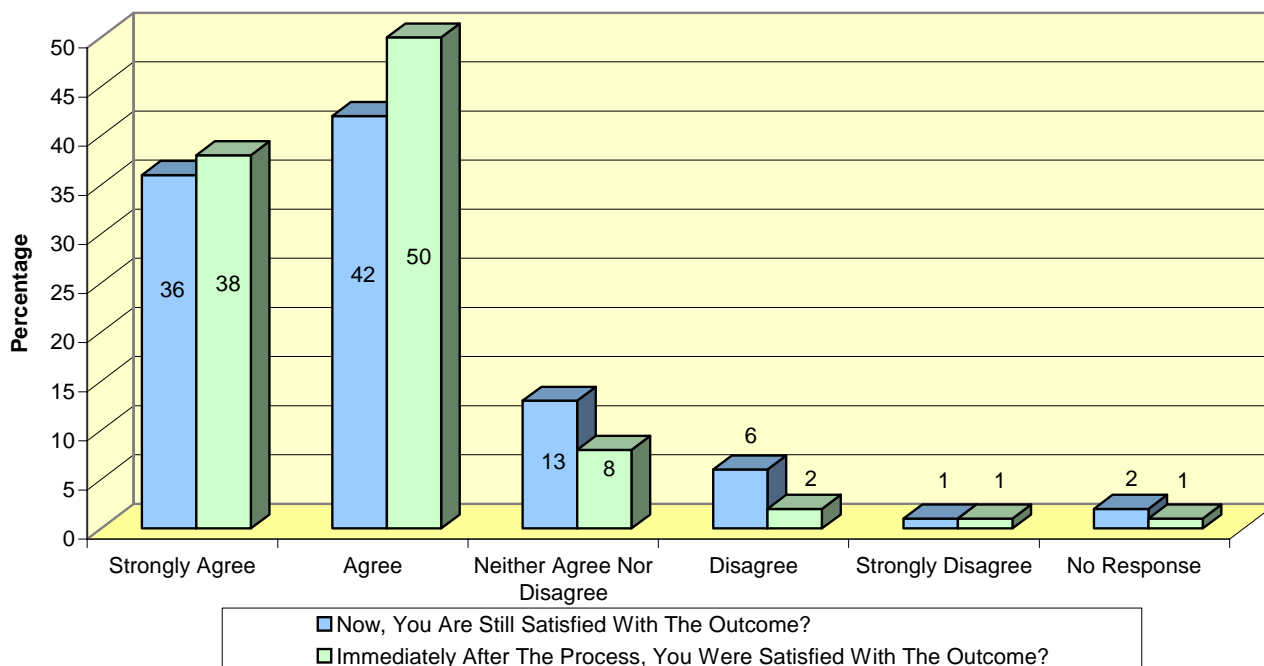


Figure 13 reports that all victims were satisfied that they were given enough information on what would happen during the process.

Figure 13 – Victim – You Were Given Enough Information On What Would Happen During The Process?

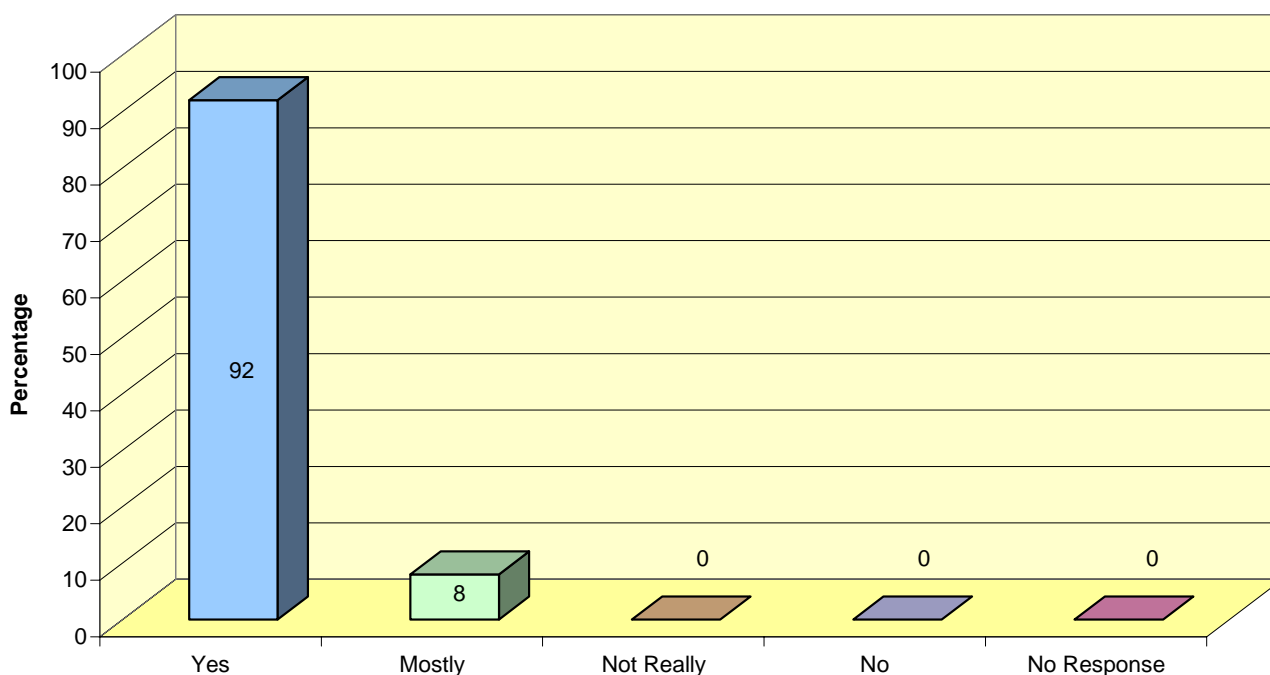


Figure 14 reports that all victims said that they were able to say what they wanted to say at their conference.

Figure 14 – Victim – You Were Able To Say What You Wanted To Say?

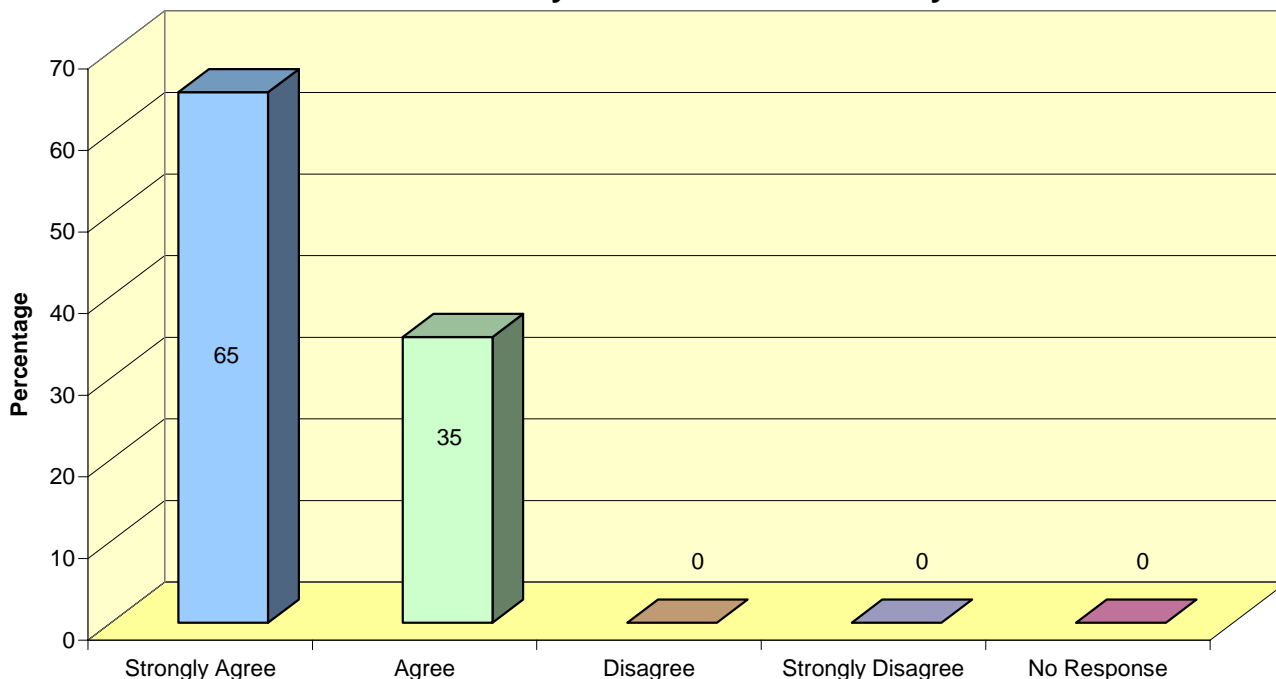
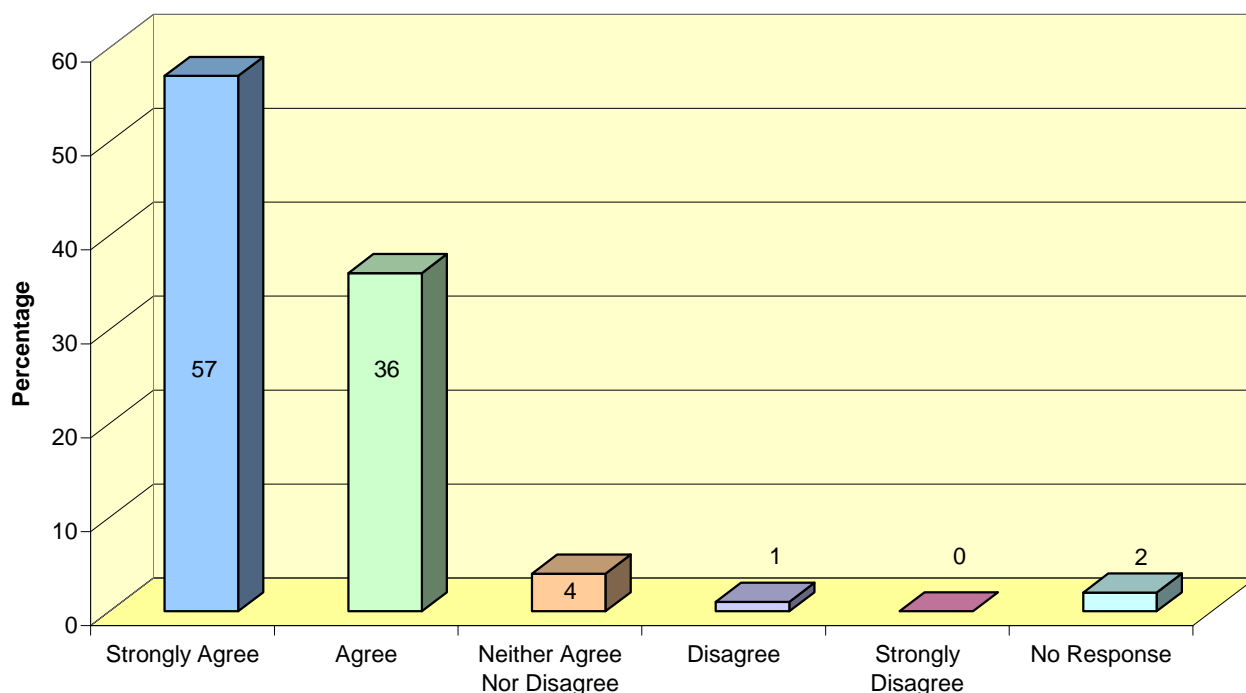


Figure 15 shows that 93% of victims thought that the process took account of what they said in deciding the content of the outcome agreement.

Figure 15 – The Process Took Account Of What You Said In Deciding What Should Be Done?



In addition to the questionnaires, the RJU engaged in a range of activities that inform this indicator, including:

- reviewing who should be identified as a victim for all cases referred to the RJU;
- explaining the nature and purpose of restorative justice to victims at assessment stage;
- conducting suitability assessments in accordance with the Act;
- providing victims with information about the offence and the range of responses open to the criminal justice system to allow victims to make informed choices about participation;

- encouraging victims to select support people; and,
- allowing victims to choose the form of conference – direct (face-to-face) or indirect – to maximise their safety and confidence in the process.

Suitability assessments with the victim and the offender can lead to additional people being identified as being directly affected by the offence. Attempts are made to contact those individuals and ask if they would like to participate in a restorative justice process.

Recognition Of Fairness Of Process And Outcome By Victims And Offenders Indicator

“The conference went really well. It was difficult and emotional for everyone. I’m convinced the system (restorative justice) works. It made me feel a lot worse (for what I did), getting to know the victim”. – young person

Young people and victims were asked whether they thought their restorative justice experience was fair. Nearly all young people, 99%, said that they thought the process was fair and 93% of victims said that they thought the process was fair.

Figure 16 – How Fair Did You Think The Process Was For You?

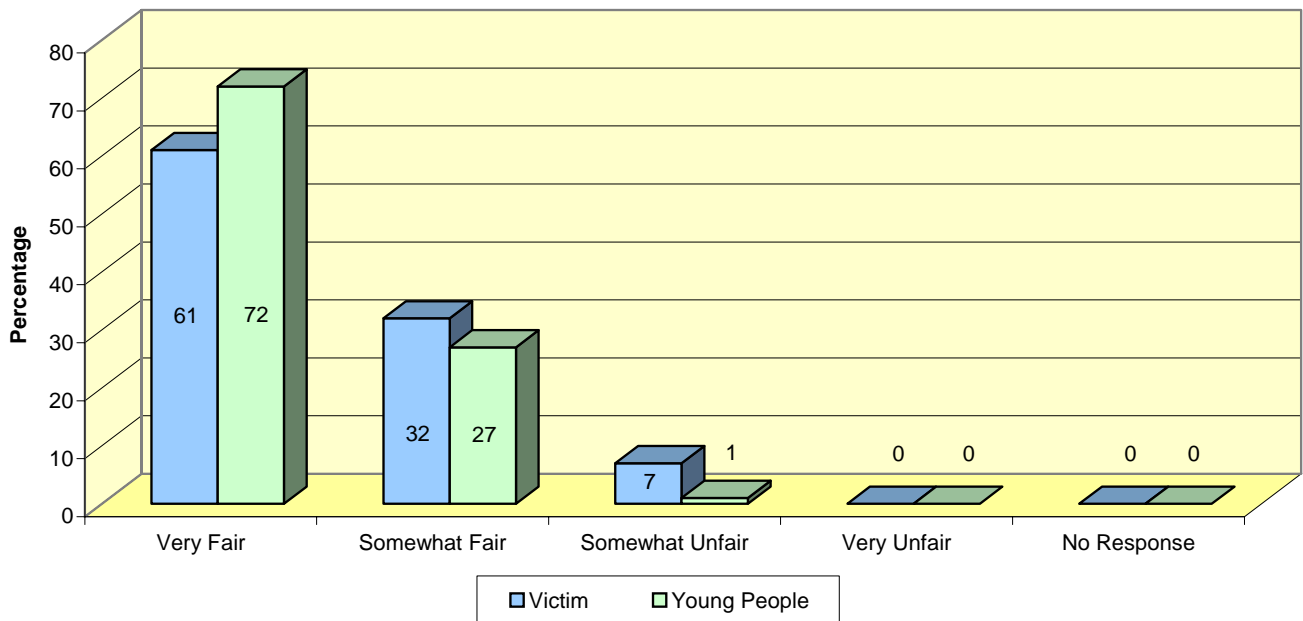


Figure 17 shows that 92% of victims and 98% of young people said that they thought they were treated with respect during their conference.

Figure 17 – You Feel You Were Treated With Respect During The Process?

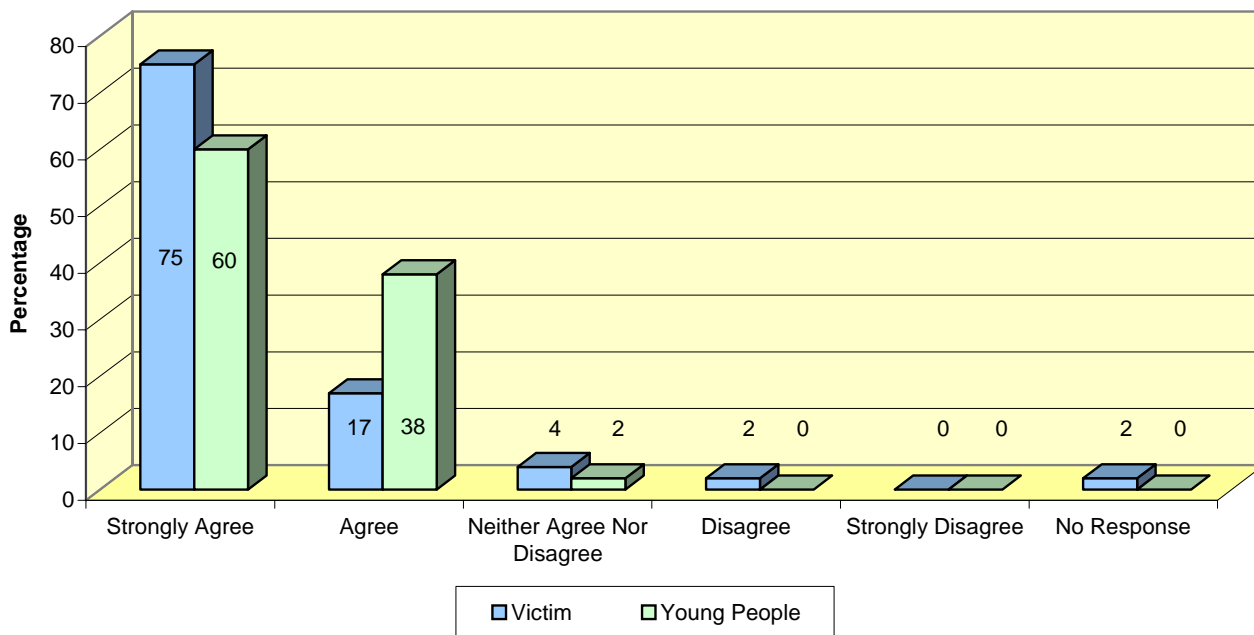


Figure 18 reports that of the 88 young people, 66 young people or 98% thought their agreement was fair.

Figure 18 – How Fair Did You Think The Agreement Was?

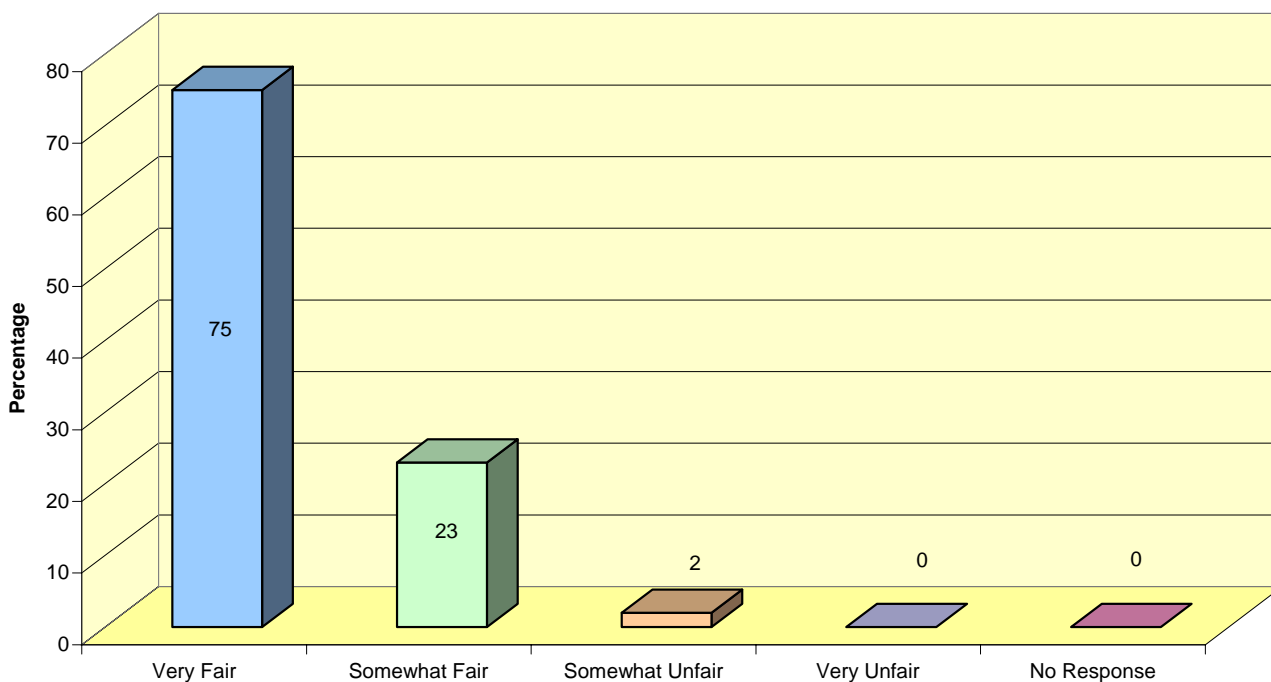


Figure 19 reports that nearly all victims (99%), victim supporters (96%) and young people’s supporters (98%) thought the restorative justice process was fair to the young person. Overall, 98% of all participants thought the agreement was fair for the young person.

Figure 19 – How Fair Did You Think The Process Was To The Young Person?

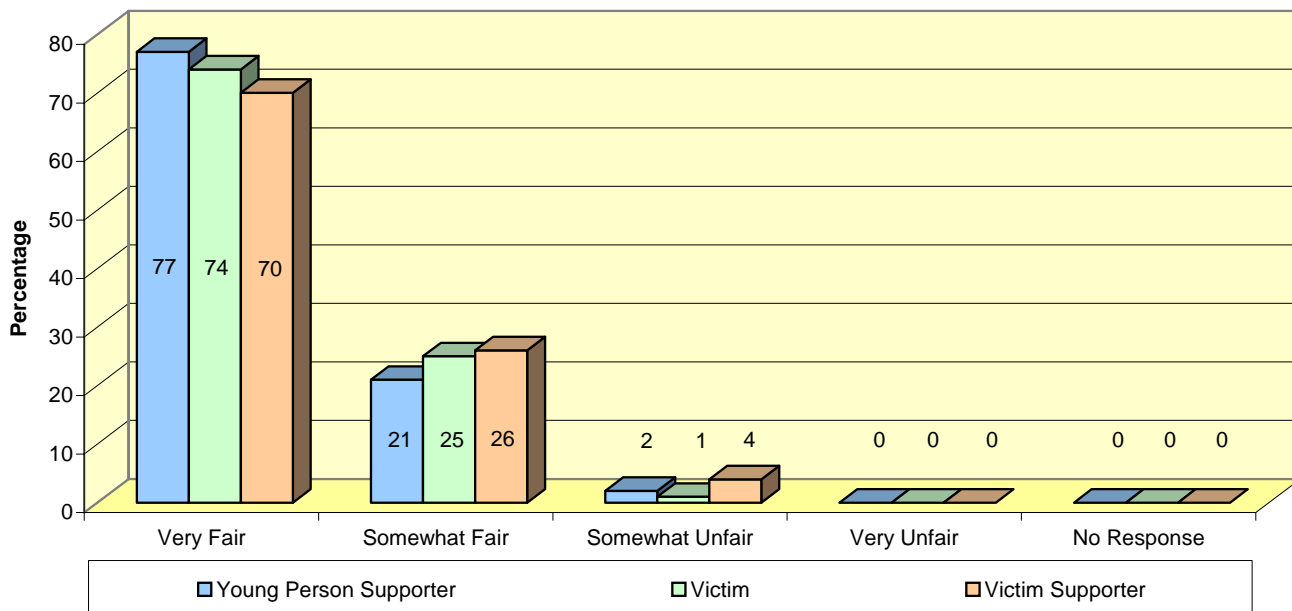
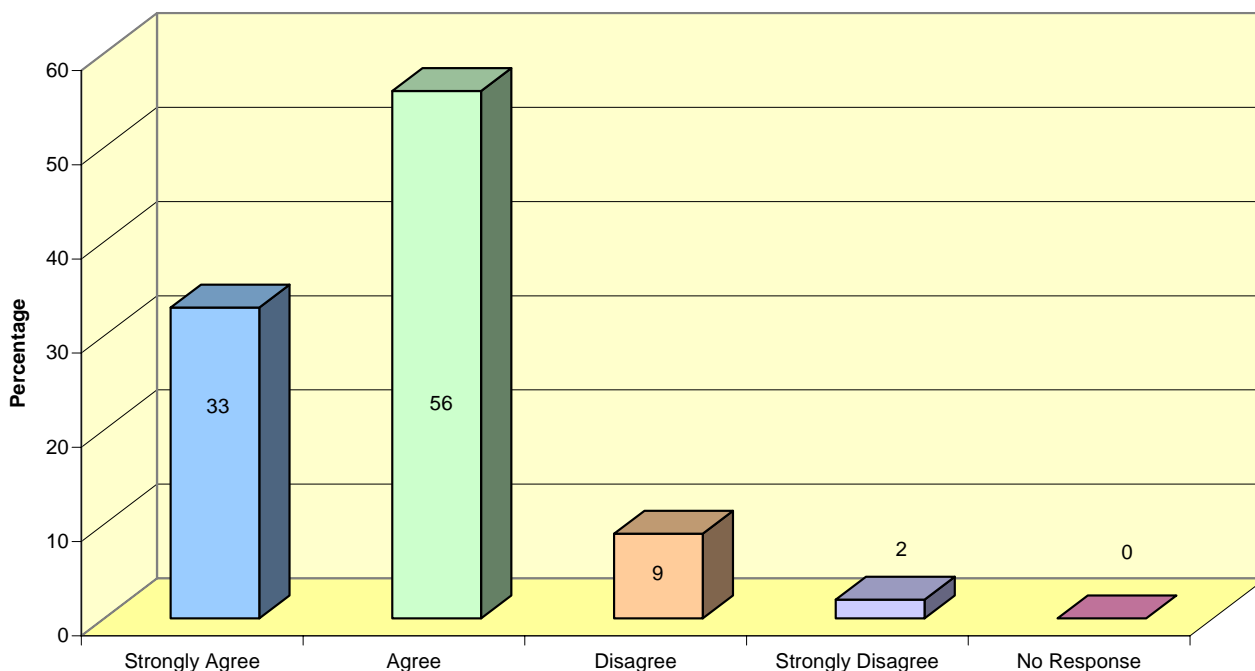


Figure 20 reports on whether young people who were responsible for offences thought the process took account of what they had said during a conference when the content of the outcome agreement was discussed.

Figure 20 – Young People- The Process Took Account Of What You Said In Deciding What Should Be Done?



Respect For The Rights Of Everyone Directly Involved In Restorative Justice, And The Rights Of Others In The Community Indicator

“I was a little surprised to be so involved but on reflection (I) think it is a good thing”.
 – victim’s supporter

“Ample time for everyone to speak and we were given equal opportunity to speak”.
 – supporter of young person

The Crimes (Restorative Justice) Bill 2004 was introduced into the Legislative Assembly in August 2004. It was amongst the first few bills to be assessed for human rights consistency prior to introduction into the Legislative Assembly, following the commencement of the *Human Rights Act 2004* (HRA) in July 2004. In accordance with section 37 of the HRA, the Attorney General issued a compatibility statement saying that, in his opinion, the bill as presented to the Legislative Assembly was consistent with the HRA.

The rights of young people who decline to participate in restorative justice were considered when the *Crimes (Restorative Justice) Act 2004* was drafted. In particular, consequential amendments to the *Crimes Act 1900* obliges the court not to draw adverse inferences from the fact that a young person has chosen not to participate, or has ceased participation, in restorative justice in sentencing. The HRA also requires that a young person is entitled to all the fair trial rights which apply to an adult, as well as to additional special protection because of his/her status as a minor. Further, if a young person does accept responsibility for an offence in order to participate in restorative justice, a court, in determining the sentence to be imposed on a person, shall have regard to that fact, whether or not a restorative justice process was undertaken. For example, should a young person agree to participate in restorative justice, but is prevented from doing so because their victim declines to participate, a court is obliged to take into account the fact that the young person agreed to participate.

Participants' privacy rights were also considered when the Act was drafted. Provisions in the Act protect the privacy of participants and also protect the integrity of the restorative justice process. Information that is disclosed to convenors by potential participants is regarded as being protected information and cannot be disclosed other than in the exercise of a function of the Act i.e. to facilitate a restorative justice process. The Act also ensures that the young person is informed of his/her right to obtain independent legal advice both before and after a restorative justice conference.

The Act protects the rights of young people when entering restorative justice agreements. Any agreement must not require the young person, or anyone else, to do anything that would:

- be unlawful;
- require the detention of a young person;
- be degrading or humiliating;
- cause distress to the young person or anyone else.

Restorative justice complements the human rights of young people who are responsible for committing offences, in accordance with the UN Basic Principles on Restorative Justice (2002). In many cases that have been referred to the RJU, young people are being given the opportunity to be spared a criminal conviction by participating in restorative justice. In doing so, they are being given opportunities to be educated about their offending behaviour by those that care most about them, and they are taking up opportunities to repair the harm they have done to others.

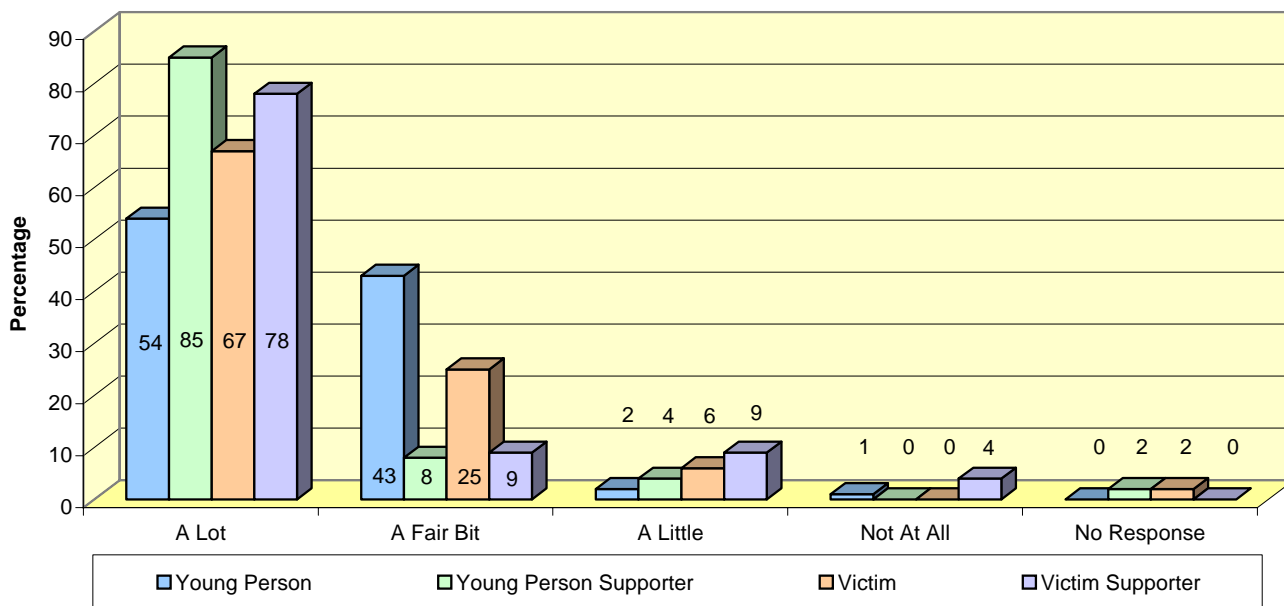
Restorative justice enhances victims rights and acts in accordance with the UN Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power (1985). Responses to the RJU's survey questionnaires demonstrate that victims are being treated with respect for their dignity and are being given access to mechanisms of justice to prompt redress for the harm that they have suffered and to facilitate restitution for that harm. Victims now have the opportunity to obtain redress through formal processes that are expeditious, fair, inexpensive and accessible. Victims are informed of their rights in seeking redress and are offered free legal advice from independent sources to confirm the extent of their rights. Restorative processes are allowing the views and concerns of victims to be presented and considered by the accused.

The RJU takes measures to minimize inconvenience to victims in the assessment and conference stage by conducting home visits, allowing victims to choose the type of contact they prefer and holding conferences at times and locations that are suitable to victims¹¹.

Three questions in the survey questionnaires were constructed to identify whether participants thought their rights had been respected during a restorative justice process. Victims, their supporters, young people and their supporters were asked whether:

- the process respected their rights;
- they felt pressured to participate; and,
- they were able to say what they wanted to say (see Figures 21 to 23).

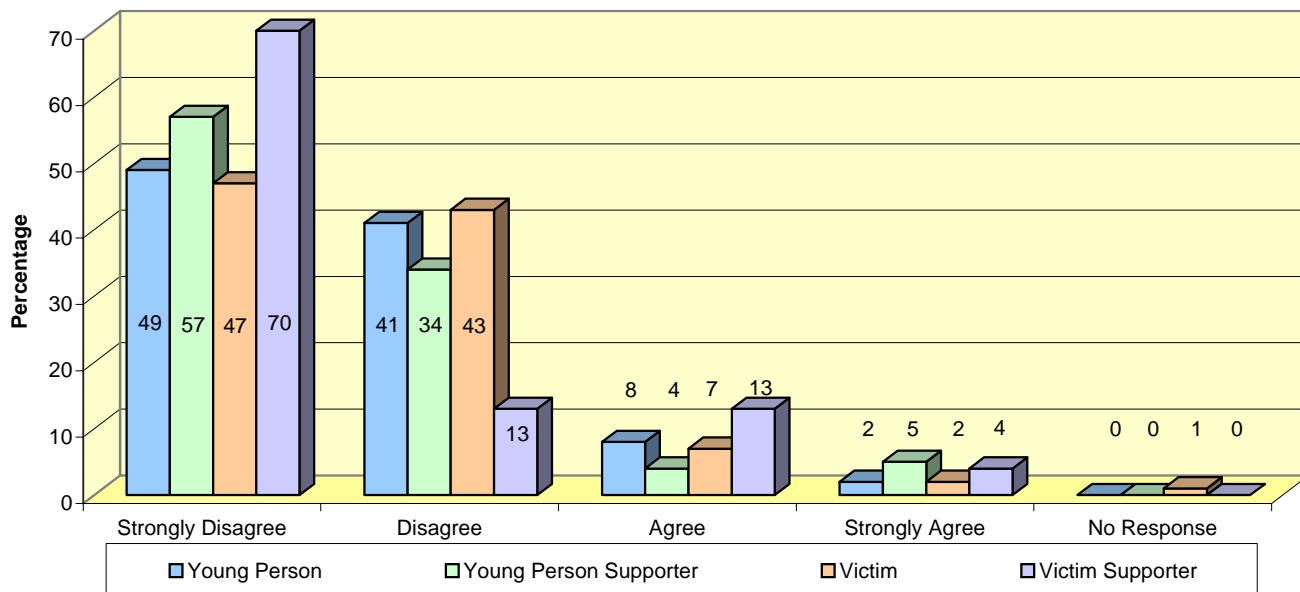
Figure 21 – How Much Did You Feel The Process Respected Your Rights?



Over 97% of young people and 92% of victims reported that they felt their rights were respected ‘a fair bit’ or ‘a lot’.

¹¹ Taken from the Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power, approved by the UN General Assembly, 29 November 1985 (resolution 40/34) on the recommendation of the Seventh Congress *Crimes (Restorative Justice) Act 2004*

Figure 22 – You Felt Pressured To Participate In The Process?



Approximately 90% of participants said that they did not feel pressured to participate in restorative justice. Victims cited many reasons for wanting to participate. Some more common reasons included:

- to let the young person know how they felt and what impact the crime had on them and their families;
- to understand why the young person did what they did;
- to provide an opportunity for the young person to turn their life around; and
- to hold the young person accountable for what they did.

When asked to elaborate on why they had participated, victims consistently expressed concern for the welfare of the young person who had harmed them. Victims stated:

- *“I believed that I would get the chance to tell the offender how I felt and I could learn more about him and why he did it”.*
- *“Because we were very aware of the young person and to us it was important to do everything we could to help him turn from life of crime to avoid further depredations on other community members. We considered restorative justice had real potential benefit for the young person”.*
- *“I thought the outcome would be better for everyone concerned. I wanted the opportunity to meet the boys and their parents. Legal advice indicated that not much would happen if they just went to Court, given their minimal criminal record”.*
- *“I thought that while the young offender would also have to go to Court he would be better off with restorative justice for accountability reasons”.*
- *“I wanted to get something back for all that I had lost”.*

Young people gave a variety of reasons for participating. Some common reasons were:

- to apologise to victims;
- to fix things with victims; and
- to demonstrate to the court that they have taken responsibility for the offence.

Young people said they participated because:

- “I felt it was a more responsible way to fix things.”
- “I wanted to sort it out. I made a really big mistake and I wanted to deal with it.”
- “it was an easy way to sort the problems out. I felt that if I didn't participate, the problems could have ended up worse.”
- “to show my concern for the victim. I wanted to show remorse for my actions.”

A number of young people said that by participating it would help with their court case. Others said they participated “more or less to avoid having to go to court.” These reasons are quite acceptable. Young people are not excluded from participating because they believe they will avoid a criminal record by doing so. It is in their best interests to allow them to participate for those reasons.

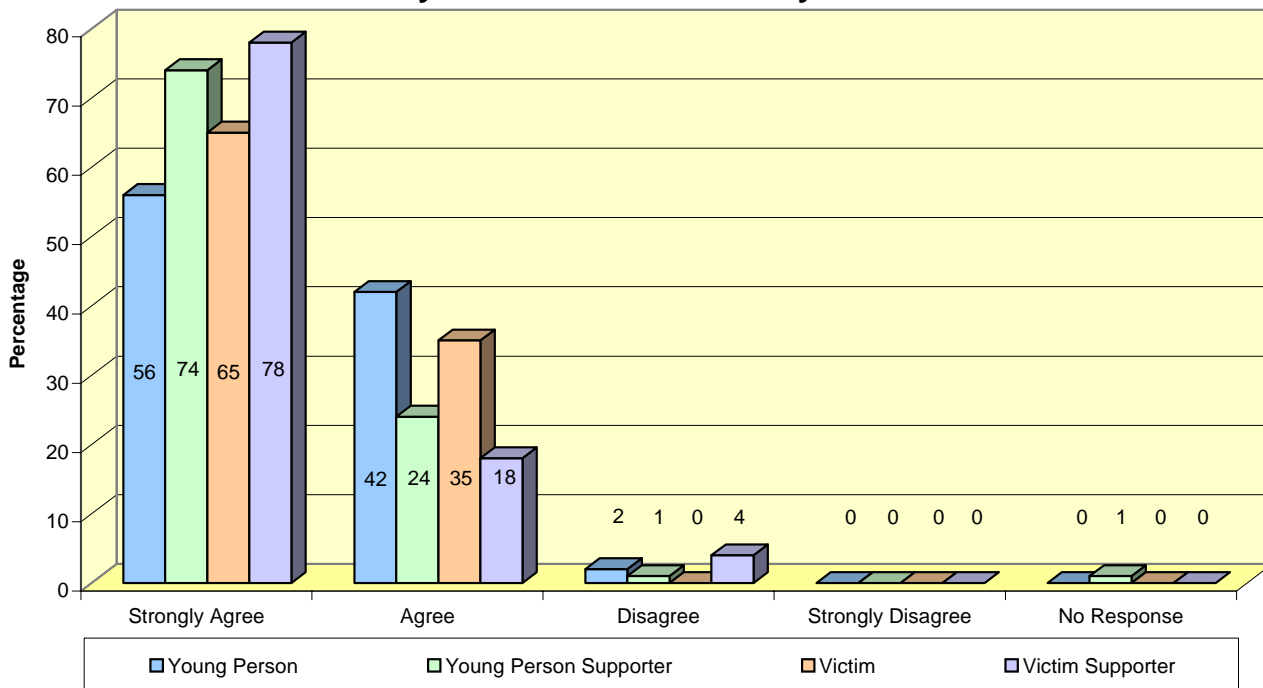
There were some participants who said that they felt pressured to participate in restorative justice, although all but three of these said that they would participate in restorative justice again if given the opportunity and all but two said they would recommend it to someone else.

There were nine young people who said they felt pressured to participate. Two said they felt pressured to participate because if they didn't they may be charged with the offence and have to go to court. Two felt obliged to participate because the court had referred their case to restorative justice and it was in their interest to participate. Two said that they felt pressured from parents to participate. Three did not give a reason for why they felt pressured.

There were nine victims who said they felt pressured to participate. One said that they needed to participate because they had on-going contact with the young offenders and they thought this would be a good way to defuse their relationship with the young person. One said he participated because his mother wanted him to. Three said they felt the convenor encouraged them to participate. One said they had to do it because they had lost a lot of money and time because of the offence. One said that he felt he had to do it because it was a police referral. Two did not give a reason for why they felt pressured.

The rights of participants were also measured by asking them if they had exercised their right to say what they wanted to say at their conferences. All the victims, and nearly every other participant, said that they were able to say what they had wanted to say.

Figure 23 – You Were Able To Say What You Wanted To Say?



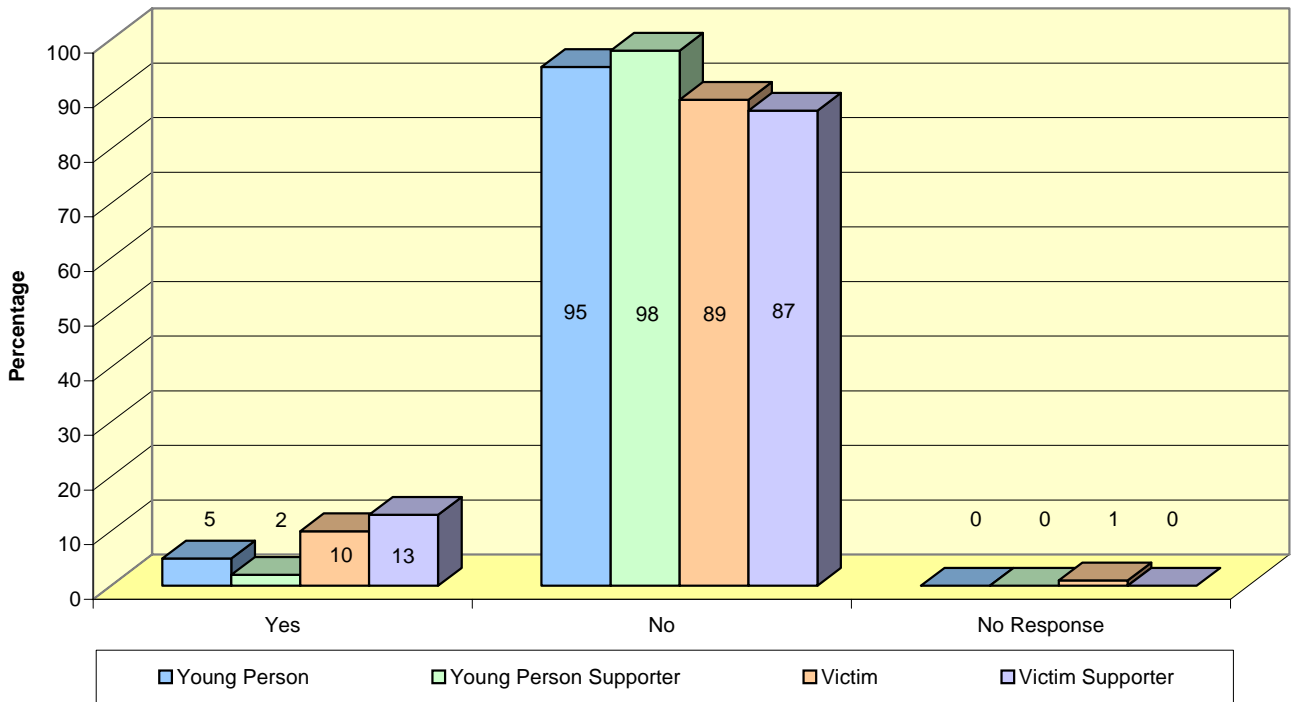
Community Satisfaction Indicator

*“I was very positively surprised. It was more formal than I thought which gave me security”
– victim’s supporter*

“We are extremely grateful that we had a chance to do this” – supporter of young person

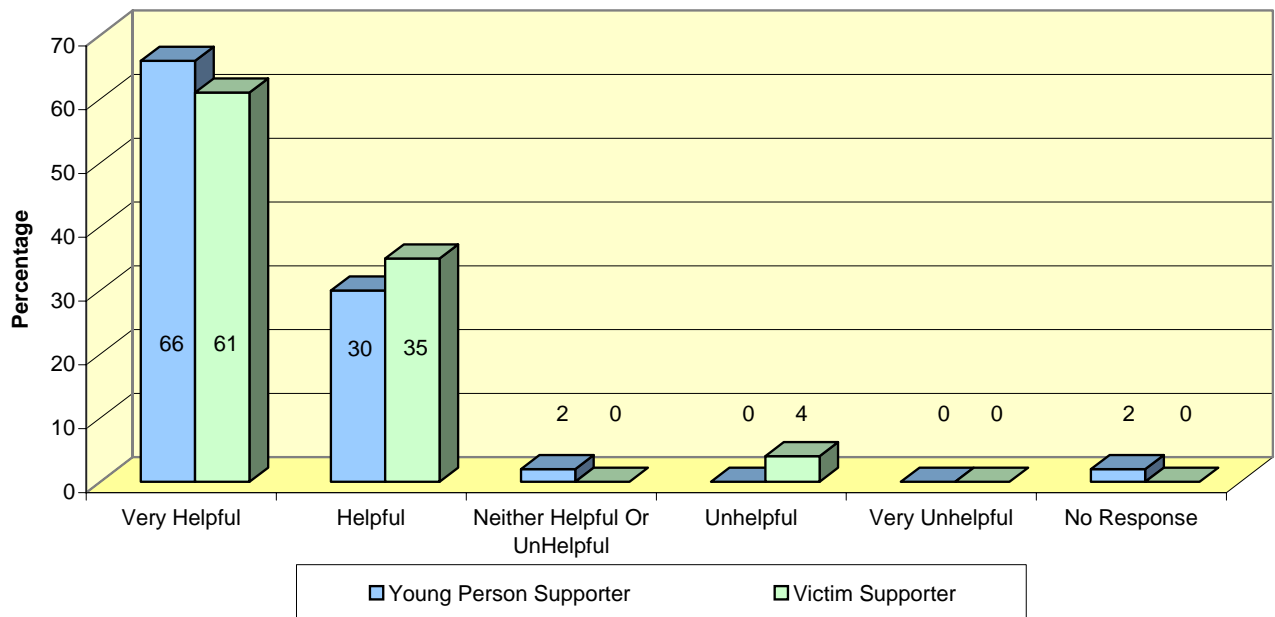
Conference participants were surveyed to identify their level of satisfaction with the process. Figure 24 reports for all participant types as to whether there were any negative consequences for them following their conference. Overall, 92% of participants said that there were no negative consequences for them. Some victims and victim supporters said that a negative consequence for them was that the process was very time consuming. This was particularly so when groups young people who had offended together, had participated in a conference with their supporters. The more participants in a conference, the longer a conference can take to prepare and run. The RJU is attempting to refine its processes in larger cases to address this concern.

Figure 24 – Have There Been Any Negative Consequences For You As A Result Of Agreeing To Take Part In The Process?



A significant majority of victim supporters (96%) and young people supporters (96%) found the process helpful.

Figure 25 – How Helpful Did You Find The Process?



98% of young people’s supporters and 96% of victim supporters thought the process was fair.

Figure 26 – How Fair Did You Think The Process Was?

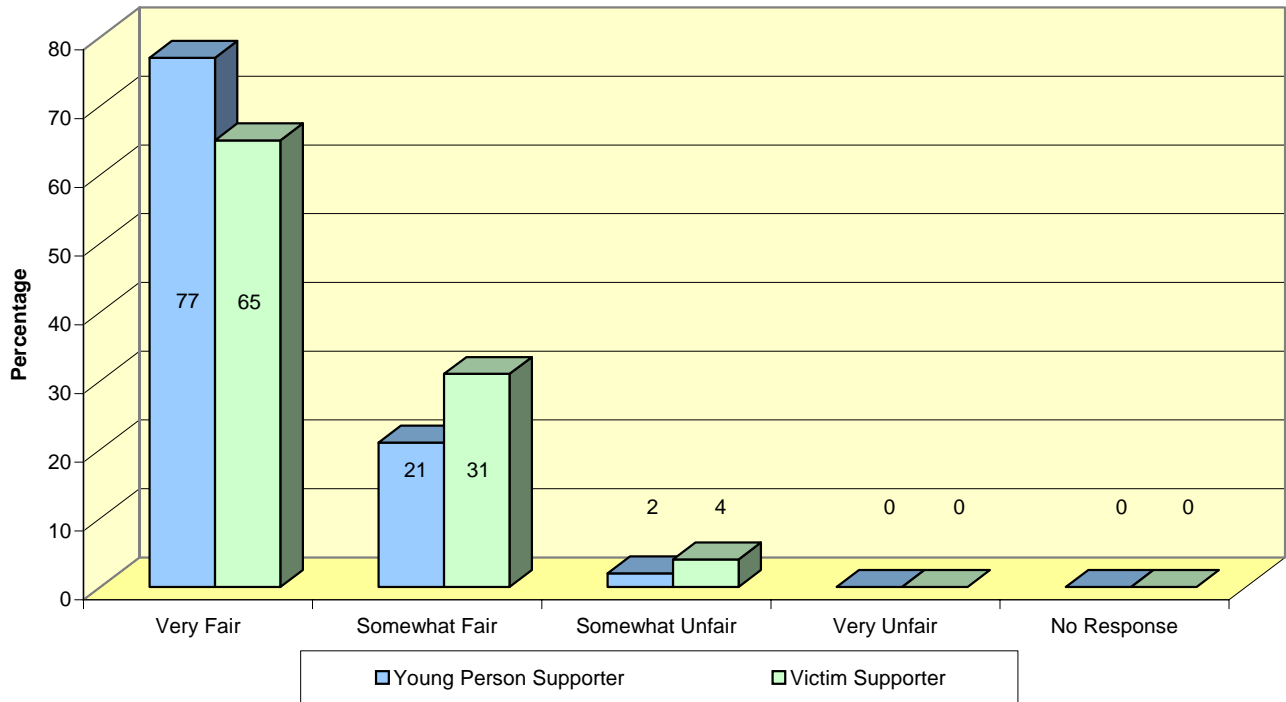
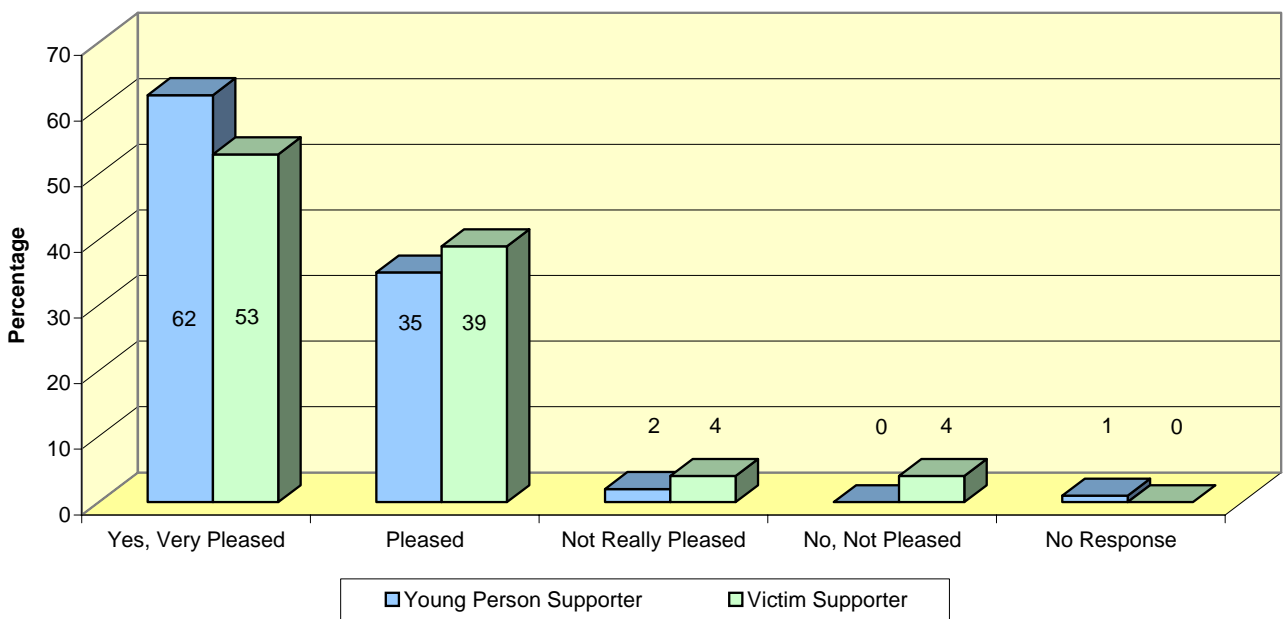
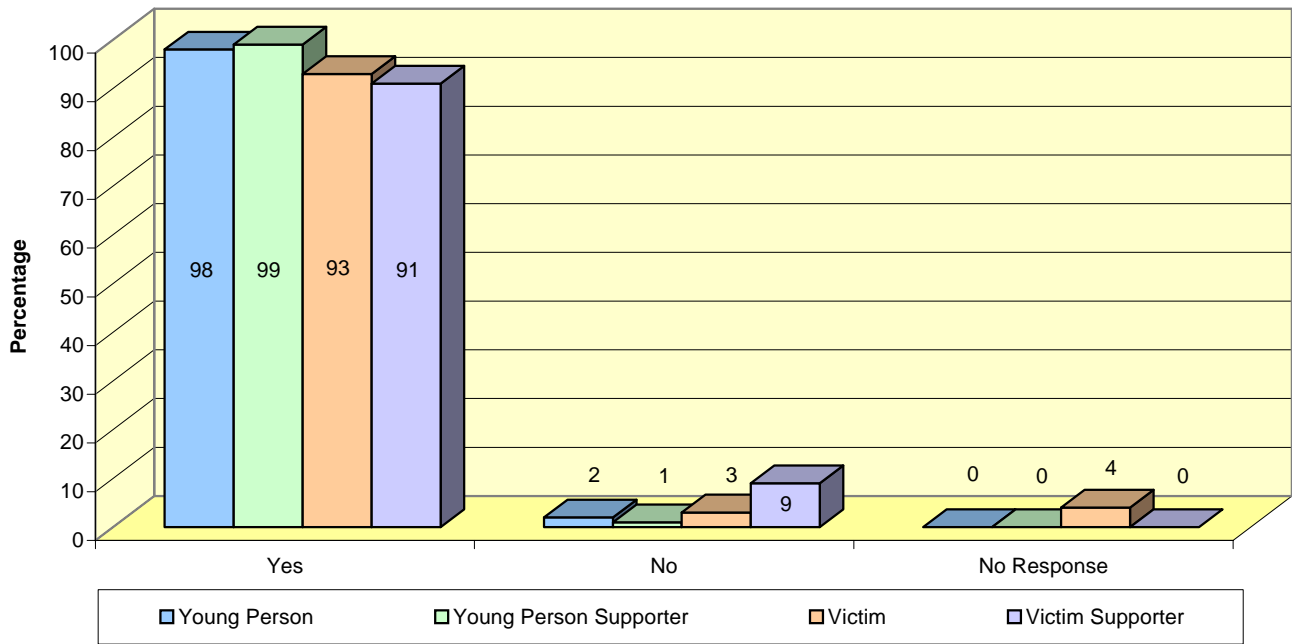


Figure 27 – You Were Pleased With The Outcome?



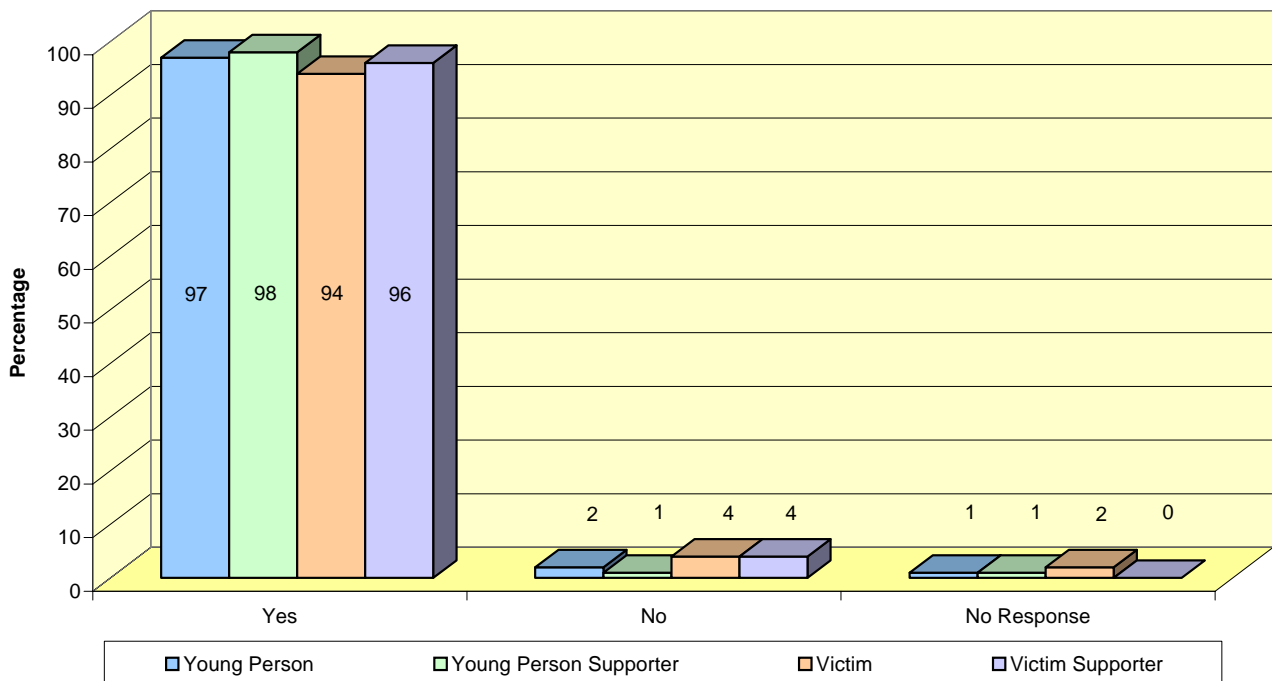
An important indicator for community satisfaction was whether participants would participate in another restorative justice process in any role. An overwhelming number of all participant types said that they would, with 95% of all participants said they would participate in a process again.

Figure 28 – Would You Participate In A Process Again?



Overall, 96% of all participant types said that they would recommend restorative justice to other people (Figure 29).

Figure 29 – Would You Recommend It To Someone Else?



Reintegration Of Victims And Offenders Into The Community Indicator

“Feel a lot safer” – victim

“...gives me a lot of power” – victim

“Given that I knew the victim I feel better having done this (restorative justice) than avoiding her by going to court. – young person

There are differences in opinion amongst sociologists and restorative justice academics and practitioners as to what constitutes a reasonable measure of reintegration for victims and offenders. Despite the many interpretations of reintegration, there are specific factors that speak to reintegration into community of both victim and offender.

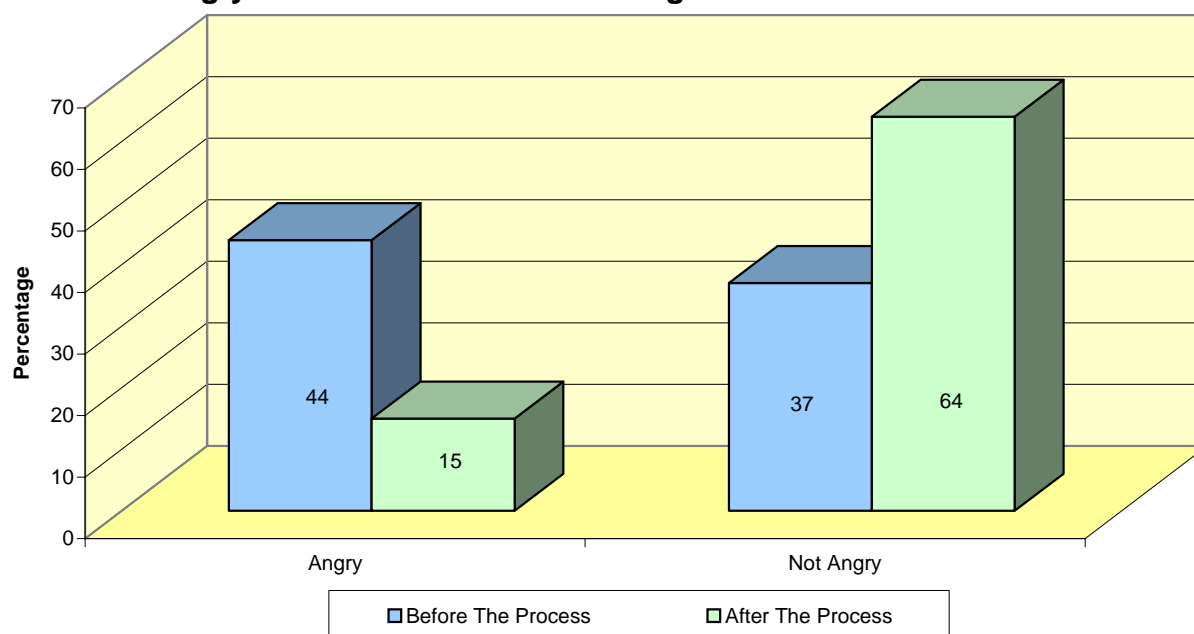
Victims have needs that arise due to the commission of an offence against them. Until these needs are addressed, or at least formally acknowledged, victims are often unable to move on from the offence. Restorative justice provides victims with a forum where their needs can at least begin to be acknowledged and addressed. The effectiveness of the restorative justice process in meeting victim needs is one element that enables victims to become reintegrated.

For the purposes of this review, reintegration of victims is measured by the extent that they have been able to resume their lives after an incident of crime. To determine this and to understand whether people identified less as a victim following their restorative justice experience; the RJU asked victims to self report against their levels of anger, fear and anxiety before and after conferences. Victims were also asked whether they were pleased with the outcome immediately after the conference and at the time of the survey. In addition, victims were asked to respond to questions about their level of sympathy toward the young person before and after a conference.

Figure 30 shows that victims’ level of anger with the person responsible for harming them decreased after they participated in a restorative justice conference, with 44% of victims saying they were angry with the young person before a restorative justice conference and this decreasing to 15% after a restorative justice process.

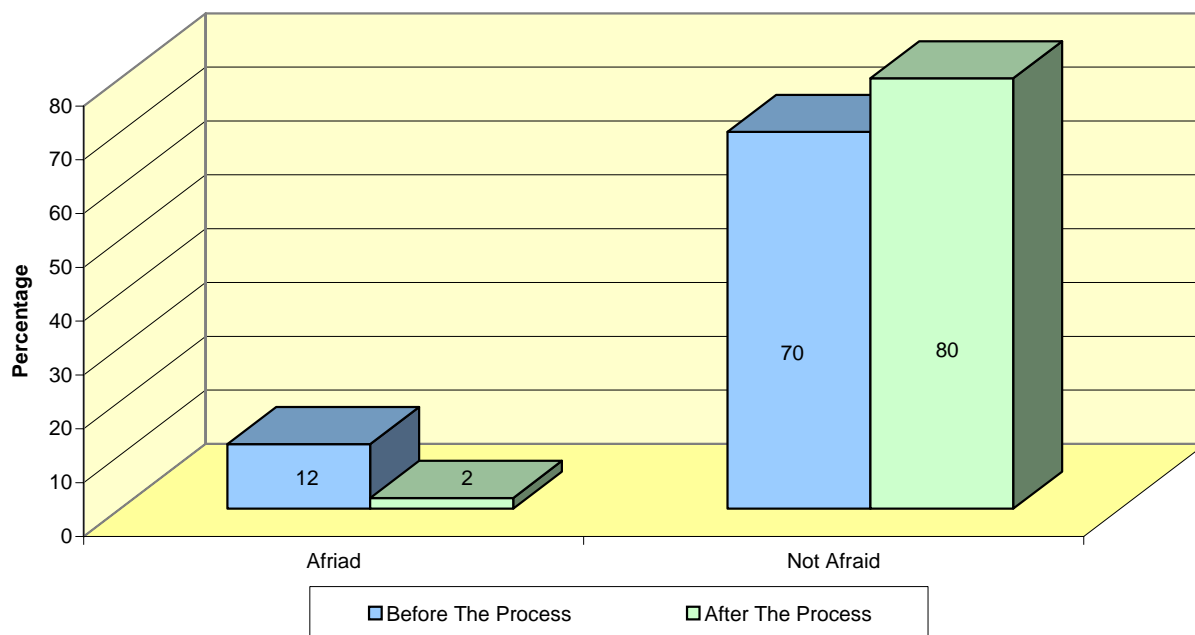
Corporate victims were not asked this question to avoid distorting the responses as they reported they had not been personally affected by the crime. Corporate victims made up 19% of the sample before a restorative justice conference and 21% of the sample after a conference.

Figure 30 – How Angry Did You Feel With The Young Person?



Victims’ level of fear decreased after a conference. Figure 31 shows that 12% of victims were afraid of the young person responsible for causing them harm before a conference and this decreased to 2% after a restorative justice process. Corporate victims were not asked this question to avoid distorting the responses. Corporate victims made up 18% of the sample before and after a restorative justice conference.

Figure 31 – Were You Afraid Of The Young Person?



Victims' level of anxiety decreased after their conference. Figure 32 shows that 29% of victims were anxious about the offence happening again before a conference and this decreased to 13% after their conference.

Of the 13% of victims that were anxious about the offence happening again after a restorative justice conference, many of them stated that they thought the offence would happen again but not be committed by the same young person.

Corporate victims were not asked this question to avoid distorting the responses. Corporate victims made up 18% of the sample before a restorative justice conference and 17% of the sample after a conference.

Figure 32 – How Anxious Were You About The Offence Happening Again?

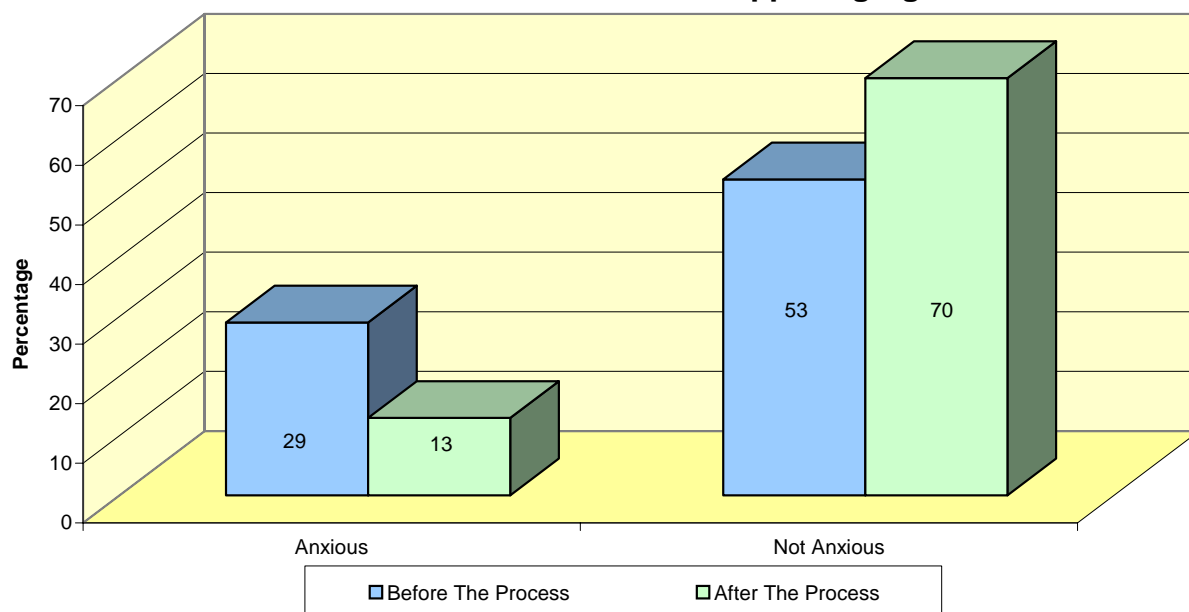
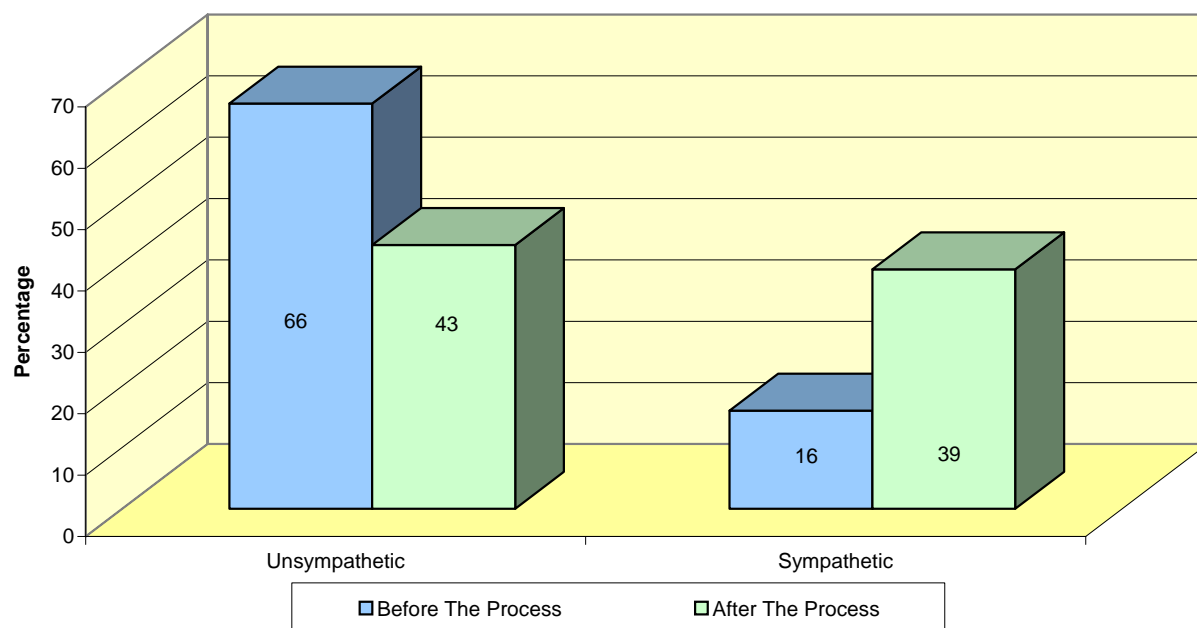


Figure 33 shows that 66% of victims did not feel sympathetic towards the young person before a restorative justice conference and this decreased to 43% after a restorative justice process.

Corporate victims were not asked this question to avoid distorting the responses. Corporate victims made up 18% before and after a restorative justice conference.

Figure 33 – How Sympathetic Did You Feel Towards The Young Person?



Victims experience a shift in attitude toward the people who have harmed them due to their restorative justice experience. After their conference, victims were asked how they would feel about having contact with the young person i.e. if they were to meet them by accident in the community. Approximately 78% reported that they would have no difficulty meeting the young person again, with many expressing positive feelings toward the young person.

“Even on the day of the conference I was feeling intimidated but I shook hands and said goodbye after the conference. I would smile and say hello if I met him again. No issues” – victim

“No problem. I’d be happy to meet him again” – victim

“We feel good. We know now who she and we have changed our attitude toward her” – victim

“The conference helped. That was good” – victim

The reintegration of young people into the community following their conference may be identified by their pattern and type of offending behaviour. This is analysed in the recidivism indicator section of this report. It may also be identified by the commitment that young people display to compliance with their restorative justice agreements and by the types of tasks they agree to in these agreements.

At 31 July 2006, young people had successfully completed 110 agreements. Only two agreements had failed to be complied with. This high compliance rate is an indicator that young people are demonstrating they are genuine when given the opportunity to repair the harm they have caused others. Of the 149 individual agreements, including the 35 agreements still being monitored, a total of 327 tasks were agreed to by young people to help repair the harm to victims and address young people’s offending behaviour. The following is a break down of the 327 tasks.

- 91 apologies either verbally or in writing;

- 66 plans to address offending behaviour;
- 31 work plans to be carried out for the direct benefit of the victim;
- 26 work plans to be carried out for the benefit of the community;
- 55 tasks of financial reparation to be paid to the victim or community; and
- 58 miscellaneous tasks e.g. commitments to be of good behaviour for 6 months.

Young people completed 927 hours of tasks that were aimed at addressing their offending behaviour, which assists them to become re-integrated into the community. These tasks included residential drug rehabilitation, alcohol and drug counselling, anger management courses, vocational programs and sport and recreation programs. Young people also accepted work experience opportunities as a direct result of their conferences.

Victims are demonstrating that they want young people to identify with their community and express that notion by asking young people to perform volunteer work as part of agreements. Young people completed nearly 300 hours of volunteer work as a result, allowing them to experience community involvement.

After their conference, young people were asked how they would feel about meeting their victim again. Approximately 76% reported they would have no difficulty, indicating that the conference has allowed them to resolve what they did. Many expressed some relief in having participated in a conference with their victim and would feel better about meeting their victim again than if they had not participated.

“I don’t really know him but it would be easier having been through the RJ process” –young person

“Good. I feel good about it” –young person

*“I feel a lot better. I was scared at first, then thought that it was good when I met her”
– young person*

“I feel that it was better to communicate with him face-to-face. Happy he was there to tell me what I did. Got no problems with him” – young person

Young people are demonstrating that they appreciate the opportunity to publicly express their sorrow for what they have done and apologise to their victims, thereby fostering their reintegration into the community. Victims respond positively to expressions of remorse. Not all young people apologise and not all victims accept an apology, however, a significant majority of young people apologise and a significant majority of victims accept their apology. At the point of apology, conferences shift from exploring the hurt that has been done in the past to reconciling what has happened and focusing on the future and what should be done to repair the harm.

”Makes me feel worse about what I did. The victim was dismissive of me to start with. I think she respects me now (since I did what I said I would do in my agreement with her). I think I dug myself out of a massive hole with her and my family” – young person

*“I feel pretty bad about what happened but (feel) good to be able to apologise to the victim”
– young person*

“Even more sorry. They were very nice people” –young person

Rehabilitation Of Offenders Who Have Taken Part In Restorative Justice, Including Any Reduction In Recidivism Indicator

“ The change in the young person is remarkable. Much more responsible” – victim

“The conference was outstanding, not just for my son (young person), but for our family unit. It has assisted us to move on. My son loves going to the restaurant (the place the offence took place) and wants to continue to help out (at the restaurant) once the agreement is completed”.
– supporter of young person.

Recidivism is one factor that can indicate the degree to which an offender is rehabilitated. Discussion of recidivism data from the first phase of the Act must be prefaced by several cautions due to the limitations in the data that is available at this time. The RJU has been operating for only 18 months and a rigorous analysis of recidivism data would require a much longer time of operation that would allow a larger number of cases and longer follow up period. It is argued by most criminologists that a follow up period of at least 12 months is necessary to establish reliable estimates of recidivism and that even longer periods are desirable.

While the sample of cases that have been analysed in this section are small, and the length of time over which they have been studied is very short, it is worth acknowledging that the results are encouraging, suggesting that that restorative justice may be positively changing the behaviour of young people in the criminal justice.

An analysis of young people responsible for offences who had participated in conferences was conducted to identify rates of arrest, frequency of arrests and rates of conviction for a period prior to their conference and for a period after their conference. The longest period that could be identified either side of a conference to measure recidivism was six months. Noting that the RJU convened its first conference in April 2005, there were only 70 individuals who had at least three months in which they might have re-offended since their conference and only 40 individuals who had a period of six months in which they might have offended since their conference. In both cases these sample sizes are far below optimum numbers for this kind of analysis.

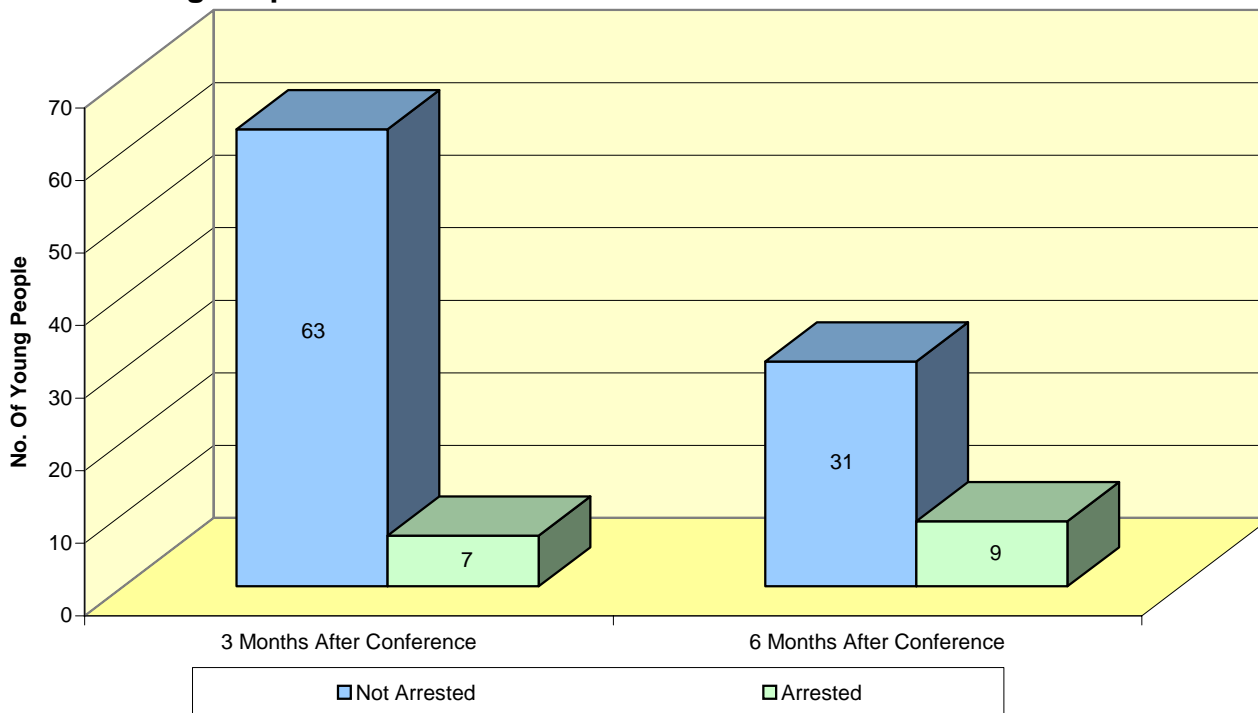
To conduct an analysis that provides information regarding the comparative effectiveness of conferencing it would also be necessary to have a comparison group who had not participated in restorative justice, and for which cases had preferably been randomly assigned. That exercise is beyond the scope of this review. No comparison group is available for the data presented in this report, so it is impossible to determine whether rehabilitation would have been greater or worse had these individuals been treated in another way. The best data available on recidivism rates following restorative justice conferences in the ACT is provided by the RISE project, but this must also be treated with some caution as the results reported for the RISE project are based on preliminary data (Sherman, Strang & Woods, 2000)¹².

Despite limitations the recidivism data that is available is presented below.

Figure 34 shows the number of young people who had, or had not been, arrested within a three and six-month period following their conference.

¹² Sherman, L. W., Strang, H., & Woods, D. J. (2000). Recidivism Patterns in the Canberra Reintegrative Shaming Experiments (RISE). Canberra: Australian National University.

Figure 34 – Young People Arrested Since Conference



Of the 70¹³ young people for whom three-months recidivism data was available, seven had been arrested for new offences within three months. Amongst those 70 young people, there were 62 arrests in the three months prior to conferences (an average rate of 89 arrests per 100 young people) and 25 arrests in the three months after conferences (an average rate of 36 arrests per 100 young people).

Of the 40 young people for whom six-months recidivism data was available, nine had been arrested for new offences within six months. Amongst those 40 young people, there were 92 arrests in the six months prior to conferences (an average rate of 230 arrests per 100 young people) and 39 arrests in the six months after conferences (an average rate of 98 arrests per 100 young people). These rates are highly skewed. Three young people account for 67% of the arrests in the six months after conferences and their removal from the statistics reduces the average rate of arrest to 35 arrests per 100 young people in the six months after conferences.

In percentages, 10% of young people who had participated in a conference were arrested within a three-month period after their conference and this increased to 22.5% of young people arrested within a six-month period after their conference.

While it is difficult to determine the significance of these rates, they are not indicative of a particularly high rate of recidivism, and are comparable with the rate of arrests found in The Indianapolis Juvenile Restorative Justice Experiment (McGarrell, Olivares, Crawford & Kroovand, 2000). This experiment did have a comparison group, of whom 33.9% were arrested in the following six months compared to 20.4% percent of those who had attended a restorative justice conference.

ACT Policing was the referring agency for 45 of the 70 individuals for whom three-months recidivism data was available and 25 of the 40 for whom six-months recidivism data was available. In the three months following their conference, only one of the 45 had been arrested. In the six months following their conference, only two of the 25 had been arrested. No young person

¹³ It should be noted that 4 individuals in the recidivism analyses had spent some time in remand in the period prior to their conference and 5 had spend some time in remand in the period after their conference.

referred to restorative justice by ACT Policing had been convicted¹⁴ for new offences in the six months following their conference.

The DPP was the referring agency for nine of the 70 individuals for whom three-months recidivism data was available and two of the 40 for whom six-months recidivism data was available. In the six months following their conference, none had been arrested or convicted for new offences.

The Children’s Court was the referring agency for 16 of the 70 individuals for whom three-months recidivism data was available and 13 of the 40 for whom six-months recidivism data was available. In the three months following their conference, six of the 16 had been arrested for new offences. In the six months following their conference, seven of the 13 had been arrested for new offences. Five of the 16 had been convicted for new offences within three months after their conference; however, no additional young people were convicted of new offences within six months after their conference.

These results also indicate that the Act is operating according to the way it was designed to operate. More serious offences (and by implication, more serious patterns of offending behaviour) are not being referred until those offences have been prosecuted and reach court.

Figure 35 – Young People Convicted Since Conference

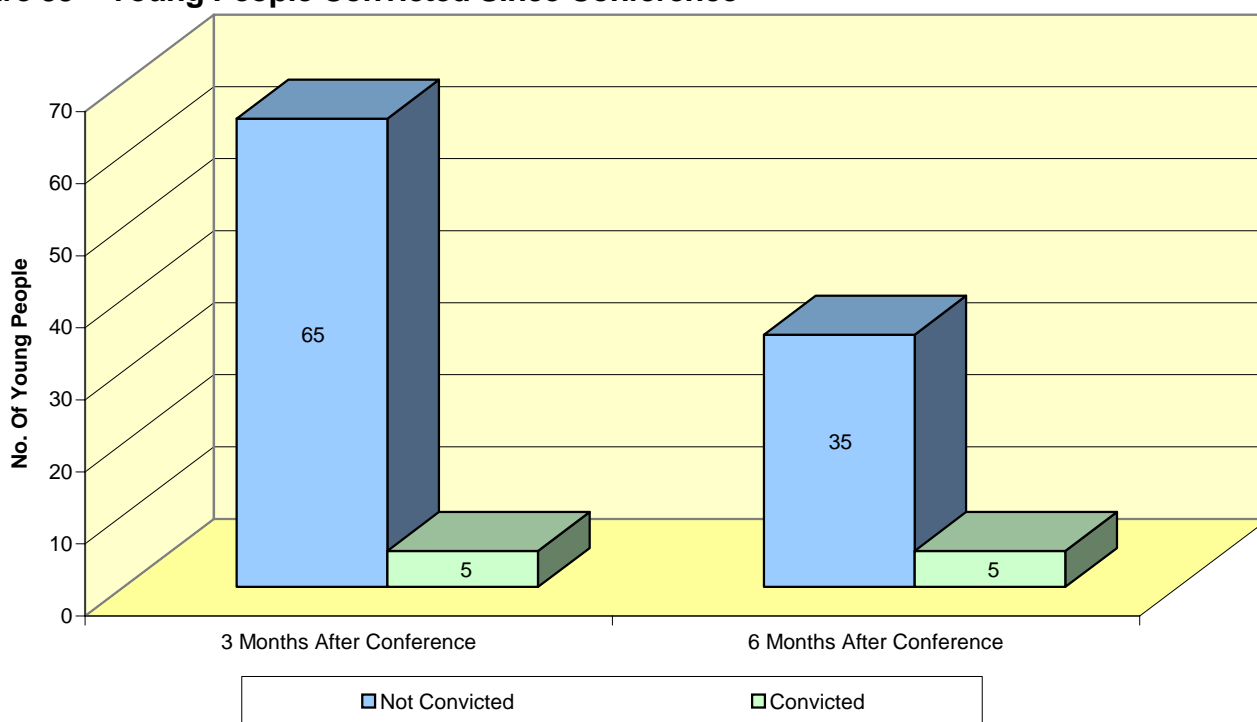


Figure 35 shows the number of young people who had or had not been convicted within a three or six-month period following their conference for offences committed after their conference. Figure 35 shows that of the 70 young people for whom three-months recidivism data was available, only five of them had been convicted of offences committed after their conference. The total number of convictions three months prior to conferences was 10 convictions (an average rate of 14 convictions per 100 young people) and the total number of convictions three months after conferences was 14 convictions (an average rate of 20 convictions per 100 young people).

Of the 40 young people who had a six-month period after their conference to re-offend, no further individuals were convicted. The five young people who were convicted after the three-month period are the same five people convicted after the six-month period. The total number of convictions six months prior to conferences was 28 convictions (an average rate of 70 convictions per 100 young

¹⁴ The term ‘convicted’ in this report, means those who plead guilty or are found guilty of an offence and those who accept responsibility for an offence in order to participate in restorative justice
Crimes (Restorative Justice) Act 2004

people) and the total number of convictions six months after conferences was 19 convictions (an average rate of 48 convictions per 100 young people).

Again, the figure for six months is highly skewed. One young person alone accounts for nine of the convictions and another accounts for five convictions in the six months after conferences. With only five young people convicted during the six months after conferences it is impossible to make conclusions on the basis of this data, but is worth noting that the data is consistent with research that shows that relatively few offenders commit a large proportion of offences.\

The rehabilitative aspects of outcome agreements also gives some indication as to how the process of restorative justice has provided young people with opportunities to be rehabilitated. Victims have consistently demonstrated that they want young people to undertake some type of program that assists young people to address their offending behaviour and become reintegrated into the community. Young people have completed 927 hours of tasks that have been identified as being directly beneficial to them. The types of tasks included in this count include attendance at residential rehabilitation programs, drug and alcohol counselling, anger management courses conducted by Relationships Australia and sport and recreation programs run by the Police and Citizens Youth Club.

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