



June 2023

Restorative Justice Conferencing in Queensland

A desktop comparison of interjurisdictional legislation and practice, synopsis of evaluations, and statistical picture of Restorative Justice Conferencing in Queensland.



Queensland
Family & Child
Commission



The Queensland Family and Child Commission acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Custodians across the lands, seas and skies where we walk, live and work.

We recognise Aboriginal and Torres Strait Islander people as two unique peoples, with their own rich and distinct cultures, strengths and knowledge. We celebrate the diversity of Aboriginal and Torres Strait Islander cultures across Queensland and pay our respects to Elders past, present and emerging.

We acknowledge the important role played by Aboriginal and Torres Strait Islander communities and recognise their right to self-determination, and the need for community-led approaches to support healing and strengthen resilience.



About the Queensland Family and Child Commission (QFCC) and this report.

The QFCC is a statutory body of the Queensland Government. Its purpose is to influence change that improves the safety and wellbeing of Queensland children and their families. Under the *Family and Child Commission Act 2014*, the QFCC has been charged by government to review and improve the systems that protect and safeguard Queensland children.



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1. An Introduction to Restorative Justice Conferencing in Queensland.

In Queensland, Restorative Justice Conferencing (RJC) is used to divert children from court. **Specifically, the Queensland Government states that RJC is being used to address and reduce the overrepresentation of First Nations children and young people in the youth justice system.**¹

A significant element of RJC is a legally binding agreement negotiated between the child or young person, the victim, the convenor, and other participants present in the conference.² The agreement outlines actions that will be taken by the child or young person to repair the harm caused by their offending, and to prevent future offending behaviour. Agreements may include:

- verbal or written apologies to the victim/s,
- a statement of intent for the child or young person to improve future behaviour,
- financial restitution paid to the victim/s,
- provision/production of an article (such as a sorry painting, poem, or song),

- voluntary work undertaken for the victim or the community,
- referral to counselling for the child or young person,
- participation in an educational program or activity, or a program or activity run by the Department of Youth Justice,
- participation in social or recreational activities, or
- a curfew imposed on the child or young person.^{3,4}

RJC requires children and young people to actively participate and take responsibility for their behaviour through acquiring an understanding of the effects of their offending on the victim/s.⁵

RJC for children and young people who have committed offences was first implemented state-wide in Queensland in 1998, after the success of multiple pilot programs.⁶ Since its initial implementation, RJC has seen many changes, including the removal of victim consent before referral in 2003, removal of court referrals in 2013,⁷ and subsequent reinstatement of court referrals in 2016, alongside an enhanced RJC model.⁸

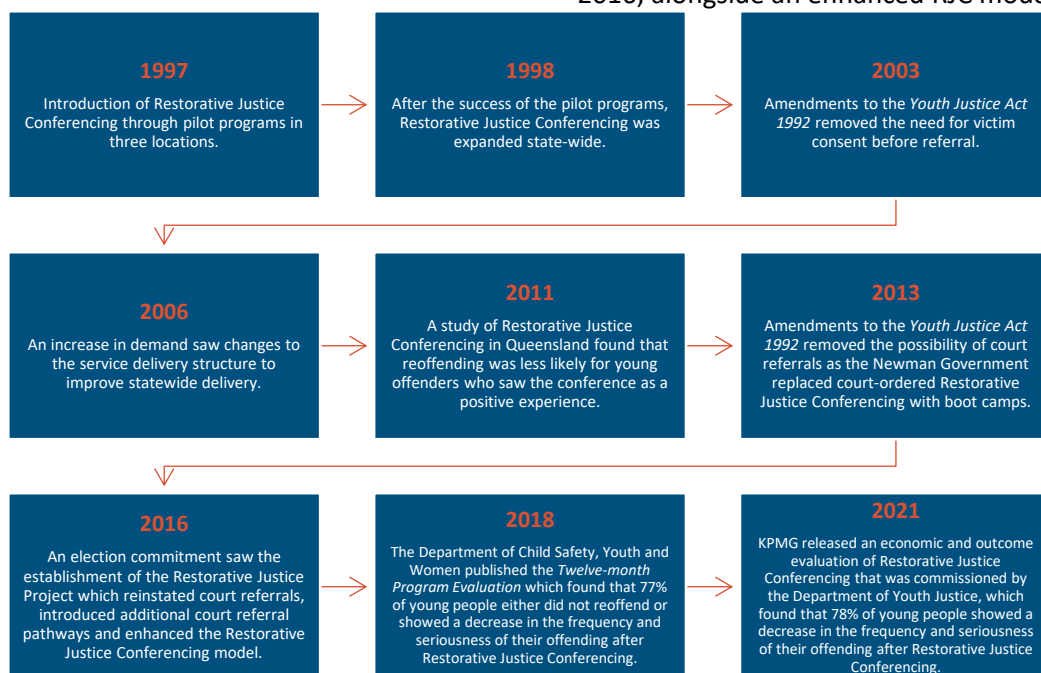


Figure 1 A timeline of Restorative Justice Conferencing in Queensland.^{9,10,11}

1.1. Restorative Justice Conference Referral Pathways

Police Referral Pathway:

Police referral:

When a child or young person admits to the commission of an offence, the police officer may consider referring the child or young person to RJC.

Court Referral Pathways:

Section 24A:

When a child or young person pleads guilty in court, the court may dismiss the charge and refer to RJC if satisfied that the child or young person should have been referred by police.

Diversion:

When a child or young person enters a plea of guilty for an offence, the court must consider referring to RJC instead of sentencing.

Restorative Justice Order:

When a child or young person is found guilty of an offence, the court may order that the child or young person participate in RJC as part of their sentence.

2. Interjurisdictional Legislation and Practice Comparison.

Included Elements:		QLD ¹	VIC ²	NSW ³	SA ⁴	WA ⁵	ACT ⁶	NT ⁷	TAS ⁸	NZ ⁹
Police referral		✓	✗	✓	✓	✓	✓	✓	✓	✓
Court referral		✓	✓	✓	✓	✓	✓	✓	✓	✓
Admission of guilt required		✓	✓	✓	✓	✓	— [*]	✓	✓	— [*]
Set timeframe for facilitating conference		✗	✓	✓	✗	✗	✗	✗	✓	✓
Run by Government organisation		✓	✗	✓	✓	✓	✓	✗	✓	✓
Process must consider necessity of therapeutic referral		— [#]	— [#]	✓	✗	✗	✗	— ^o	✗	✓
Must participate for conference to proceed:	Police	✗	✓	✗	✓	✓	✗	✗	✓	✓
	Victim	✓	✗	✗	✗	✗	✓	✗	✗	✗
	First Nations, Maori or other cultural support person (if applicable)	— [^]	✗	✓	✗	✓	✗	— ⁺	✓	✓
May participate:	Representative from school or education provider	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Legal representative for child or young person	✓	✓	✓	✓	✗	✗	✓	✓	✓

Process can include therapeutic referral. QLD – Outcome can include remedial actions or educational programs. VIC – Outcome can include assistance and support with education and employment, or counselling.

[^] If the child or young person is an Aboriginal or Torres Strait Islander person, convenor must *consider* inviting an Aboriginal or Torres Strait Islander representative.

^{*} Child or young person does not deny the offence/charge.

^o Youth Justice Conferencing can occur as part of the Back on Track program, which includes assistance with housing, health, education, and employment. Youth Justice Conferencing that is not facilitated through this program does not contain these elements.

⁺ Support for Aboriginal and/or Torres Strait Islander children and young people is not specifically legislated, but the Back on Track program is delivered by non-Government organisations, including two community-led organisations.

2.1. Queensland.

Legislation and Policy

Queensland's Youth Justice Conferencing for children and young people is legislated in Part 3 of the *Youth Justice Act 1992* (QLD). Restorative Justice Conferencing in Queensland is considered a diversionary process, with the aim of diverting children and young people away from the Court.

Children and young people in Queensland are referred to Restorative Justice Conferencing by Police officers or the Court. Police can refer a child or young person to Conferencing only if the child admits to committing the offence, is willing to comply with the process, a caution is considered inappropriate and a proceeding for the offence would be appropriate if the referral were not made. Referring officers must also consider the nature of the offence, the harm suffered by anyone due to the offence, and whether the convening of a restorative justice process would best serve the interests of the community and the child or young person. Court referral to Conferencing may occur if the child or young person admits to committing the offence at court. Children and young people may also be referred by the Court if it considers the offence should have been referred by Police, or if a restorative justice order is made.

Restorative Justice Conferencing convenors are employed by the Department of Children, Youth Justice and Multicultural Affairs. The convenor must inform the child or young person of the right to obtain legal advice and have reasonable information on how to do so. In preparation for the Conference, if the convenor cannot contact the child or young person, the child or young person does not attend pre-Conference interviews, the victim does not wish to participate, the child denies admitting the offence, the convenor believes an appropriate agreement is unlikely to be made or the convenor believes the referral is unsuitable for Conferencing, the referral may be returned to referring entity.

Further, for the Conference to be convened, the child and convenor must attend, and there must be a degree of victim participation. This may include

attendance of the victim or their representative, pre-recorded communication, or attendance of a representative of an organisation that advocates for victims of crime. A relevant Police officer, the parent or other members of the child or young person's family, the legal representatives of the child or young person and the victim/s, other adults requested by the child or young person or the victim/s, and other people approved by the convenor for training purposes are also entitled to attend the Conference. It is also a requirement that the convenor considers inviting a respected person of the Aboriginal or Torres Strait Island community or a representative of a community justice group if the child or young person is an Aboriginal and/or Torres Strait Islander person from an Aboriginal and/or Torres Strait Islander community.

If a child or young person does not make an agreement, the referral is returned to the referring entity. If this is the Police, discretion must be used to determine whether to take no further action, administer a caution, refer for another Conferencing process or start a proceeding against the child or young person. If a pre-sentence referral is returned to the Court, the matter will be brought back before the Court for sentencing. If the referral was made as part of a Restorative Justice Order, non-compliance with the process and agreement would be a contravention of the order.¹²

Procedures and Practice

Part 5.6 of the Queensland Police Service's *Operational Procedures Manual*¹³ and Chapter 7, Chapter 11.7 and Chapter 11.13.4 of the Department of Justice and Attorney-General's *Youth Justice Benchmark*¹⁴ set out procedures regarding Restorative Justice Conferencing.

It is a requirement for the Court to consider referring children and young people to Conferencing for offences in which they plead guilty. If the Court does not consider referring a child or young person, it is an error in the sentencing discretion. Further, if a child or young person is found guilty of an offence, the Court must again consider referring to a restorative justice process or placing a Restorative Justice Order.

Conference agreements must consist of the child or young person's admission to the offence, as well as how the agreement will be monitored. The agreement may also contain provisions that have the child make financial payment, complete voluntary work, give apology to the victim either in person, through a letter or with a painting, attend a diversion program, or provisions setting out the child or young person's future conduct while still a child. Attendance of diversion programs included in the agreement may include remedial actions, activities intended to strengthen the child or young person's relationships with family and community, and educational programs. When the child or young person completes the obligations within the agreement, the Department of Youth Justice must notify the Police or Court who referred the child or young person to Restorative Justice Conferencing.

Twelve-month Program Evaluation

In 2015-16, the Queensland Government established the Restorative Justice Project, in which court referrals were reinstated, and the restorative justice model was enhanced to:

- better target specific cohorts such as First Nations children and young people, older children and young people and serious offenders,
- reintroduce court referral pathways and introduce Restorative Justice Orders, and
- improve the cultural relevance of Restorative Justice Conferencing for First Nations children and young people.¹⁵

At the twelve-month mark of the Restorative Justice Project, the former Department of Child Safety, Youth and Women commissioned a program evaluation to assess whether RJC under the enhanced model was on track towards achieving its intended outcomes.¹⁶

Some of the intended outcomes of the enhanced restorative justice model were:

- increased diversion of children and young people from court processes at the earliest opportunity,
- reduced cost to the criminal justice system,
- reduced overrepresentation of First Nations children and young people in the criminal justice system,
- reduced reoffending, and
- diversion of children and young people into early intervention and support services that address the causes of offending.¹⁷

KPMG Outcome and Economic Evaluation

In 2021, an economic and outcome evaluation of RJC completed by KPMG was released under the *Right to Information Act 2009*. This evaluation was commissioned by the former Department of Youth Justice, and analysed data from 2015-16 to 2017-18.¹⁸

This evaluation examined whether RJC achieved intended outcomes and if it is appropriate and culturally responsive in meeting the needs of children and young people aged 10-12 years and First Nations children and young people. Additionally, the evaluation considered the effectiveness of reinstated court referrals and alternative court referral pathways, and the cost-effectiveness of RJC compared to traditional pathways for addressing offending.¹⁹

2.2. Victoria.

Legislation and Policy

In Victoria, restorative justice conferencing for children and young people is legislated in Section 415 of the *Children, Youth and Families Act 2005* (VIC) and is referred to as Group Conferencing.

In contrast to Queensland, Victorian children and young people can only be referred to Group Conferencing by the Children's Courts. Children and young people can be referred to Conferencing for offences that were committed less than twelve months prior to finding of guilt if the offences warrant a supervised sentence and are not homicide, manslaughter, or sex offences. Like Queensland, the child or young person must consent and accept their role in the offence. The Court must also assess suitability for Conferencing, including identifying and considering any health or other issues that might restrict the child or young person's ability to engage.

In Victoria, Group Conferencing convenors are appointed by approved non-government services. Before beginning Conference preparation, the services must ensure that the child or young person understands what the process involves, including that they must meet with the convenor on several occasions in preparation for the Conference, that they will be speaking in detail about the offence(s), that a report about their involvement in the Conference will be provided to the Court, and that if they participate and agree to an outcome plan, that the Court must impose a less severe sentence than if they didn't participate.

Unlike Queensland, the victim is not required to participate in the Group Conference, but the relevant informant or police officer is required to attend, as well as the child or young person and their legal practitioner. Members of the child or young person's family and other requested adults may also attend. Victoria's legislation does not specifically require the invitation of Aboriginal or Torres Strait Islander support people for Aboriginal and/or Torres Strait Islander children.

Following the Group Conference, the convenor prepares a report for the Court, including the outcome plan agreed to by the child or young person. Upon hearing that the child or young person has participated in a Group Conference and agreed to an outcome plan, the Court must impose a less severe sentence than would have been imposed had the child or young person not participated.²⁰

Procedures and Practice

Although run by non-government services, Group Conferencing is funded by the Department of Justice and Community Safety (DJCS). DJCS suggest that outcome plans can include assistance and support for the child or young person in areas such as education, skill development, employment, and counselling, as well as ways of dealing with the harm caused by the offence such as apology, payment for damage or donation.²¹ Upon the Court's acceptance of an outcome plan, it is the responsibility of the convenor from the non-government service to work with the identified community representative and the child or young person to coordinate the implementation of the plan and support the child or young person to complete their obligations as part of the plan.²²

2.3. New South Wales.

Legislation and Policy

Restorative justice conferencing for children and young people in New South Wales is legislated in the *Young Offenders Act 1997* (NSW). In New South Wales, restorative justice conferencing is called Youth Justice Conferencing and is administered by Youth Justice New South Wales (YJNSW).

Referral to Youth Justice Conferencing in New South Wales is like Queensland, with police, Courts, and the Director of Public Prosecutions able to refer a child or young person to Conferencing. Children and young people are entitled to have their offences dealt with through Youth Justice Conferencing if the police officer determines that a caution is inappropriate. This does not apply if the offence was a graffiti offence, resulted in death, domestic violence related or was a particular traffic or drug offence. Before referring an offence to Youth Justice Conferencing,

the seriousness of the offence, the degree of violence involved, the harm caused to the victim/s, and the child or young person's previous offences must be considered. The child or young person must also admit the offence to a police officer or plead guilty in the Court. Before any party refers a child or young person to Youth Justice Conferencing, it must be explained to the child or young person the nature of the offence, their entitlement to legal advice, the option to have the matter dealt with by the Court, and what a Youth Justice Conference entails.

Unlike Queensland, New South Wales sets out a timeframe for the different processes required for Youth Justice Conferencing. This requires the conference component of Youth Justice Conferencing to be held not more than 28 days after the referral is received by the convenor, and not less than 10 days after notice is given to the child or young person.

Prior to Conferencing, convenors must ensure the child or young person is notified of their rights, any requirements to be met, and the consequences of failing to attend the Conference. Youth Justice Conferences run similarly to in Queensland and Victoria. The child or young person and the convenor must attend the Conference and the child or young person's guardian, members of their family, legal practitioner, school principal or representative, disability carer or social worker are also entitled to attend. Further, the victim/s may attend, as well as a support person for them, but this is not a requirement. Specialist youth officers, investigating officials, interpreters, and respected members of Aboriginal and/or Torres Strait Islander communities are also able to attend.

A significant element of New South Wales' legislation is the principle that Youth Justice Conferencing should be designed to provide developmental and support services to the child or young person concerned that will enable them to overcome offending behaviour. This is reflected in the possibilities for outcome plans, which may include verbal or written apology, making of reparation to the victim or community, taking of actions directed towards the reintegration of the child into the community, and participation in appropriate

programs. Programs may include counselling, drug and alcohol rehabilitation, education or other programs aimed at improving the child or young person's prospects.

Conferences which do not culminate in an agreed outcome plan are returned to the referring entity. For court referrals, the convenor must present outcome plans to the court for approval. The court may either approve the plan or continue with proceedings. Convenors must supervise the completion of outcome plans and give notice whether or not a child or young person has satisfactorily completed the plan.²³

Procedures and Practice

YJNSW have published their *Youth Justice Conferencing Manual* for public viewing.²⁴ This provides an in-depth view into the Conferencing procedures. The conferencing manual specifies that convenors must always offer a child or young person the option of inviting a support service or respected community member from their cultural or ethnic background. If the child or young person is Aboriginal or Torres Strait Islander, the convenor must also abide by the YJNSW *Aboriginal and Torres Strait Islander Good Practice Guide*.

Further, the convenor must consider the specific needs of the child or young person and the victim/s. This includes making modifications to the conference structure if necessary, such as allowing the Conference to be led by an Aboriginal or Torres Strait Islander community member, allowing the Conference to take place on Country in a location that is not related to Youth Justice, or by utilising storytelling circles. If Elders are invited to attend, financial compensation is deemed appropriate.

Convenors must also complete various screening tools in the pre-conference interviews, including a disability screening tool and a risk needs assessment. The convenor considers any possible referrals needed for the child or young person and is then able to connect with these services. The manual sets out a six-month timeframe for completion of the outcome plan.

2.4. South Australia.

Legislation and Policy

In South Australia, restorative justice conferencing for children and young people is referred to as Youth Justice Family Conferencing. Family Conferences are legislated in Division 3 of the *Young Offenders Act 1993* (SA). Convenors of Family Conferences are Youth Justice Co-ordinators who are often Magistrates of the Youth Court.

Children and young people in South Australia are generally referred to Conferencing by Police, but they can also be referred by the Youth Court. Minor offences may be referred to Family Conferencing if the child or young person admits the offence to a police officer, or if there is a finding or admission of guilt in the Court. Similar to the previously discussed jurisdictions, before referring a child or young person to Conferencing, the referring entity must ensure that the child or young person understands the nature of the offence, their entitlement to legal advice, and the option to have the matter dealt with by the Court.

In referring a child or young person to Family Conferencing, police officers must give the convenor the details of relevant parties such as the child or young person's guardians, other relatives or adults who may be able to usefully participate, and the victim/s of the offence. The Conference then consists of the child or young person, the Youth Justice Co-ordinator, any of the parties invited to attend and a representative of the Commissioner of Police. The child or young person's legal practitioner is also entitled to attend.

The outcomes of Family Conferencing in South Australia are different to those of the aforementioned jurisdictions. Family Conference outcomes may include the administration of a formal caution, the undertaking of the child or young person to pay compensation to the victim/s or carry out community service as reparation, or an apology to the victim/s. Neither therapeutic referral nor cultural needs are considered by South Australia's legislation.

Upon completion of undertakings by the child or young person, prosecution for the offence may not

occur. If outcomes are not complied with, a charge may be laid against the child or young person.²⁵

Procedures and Practice

The Conferencing Unit of the Courts Administration Authority of South Australia (CAA) run Youth Justice Family Conferencing. The CAA state that Family Conferencing is a diversion from the court system which avoids the interruption of children and young people's education, employment, and cultural identity. Information for children, young people and families involved in Family Conferencing suggests the possibility of outcomes including counselling and training programs. Any undertaking for the child or young person has a maximum duration of 12 months (Courts Administration Authority of South Australia, 2023).²⁶

2.5. Western Australia.

Legislation and Policy

Restorative justice conferencing for children and young people in Western Australia is legislated in Part 5 Division 2 and Division 3 of the *Young Offenders Act 1994* (WA). Western Australia refers to restorative justice conferencing as Juvenile Justice Team Meeting.

Children and young people can be referred to Juvenile Justice Team Meetings by Police, Prosecutors and Courts. There are a significant number of offences that cannot be referred to meetings, referred to as Schedule 1 and Schedule 2 offences. Many of these offences result in bodily harm or death, relate to organised crime, are drug offences, or are driving offences. Again, referral to meetings requires the child or young person to accept responsibility for the offence to the police officer, or plead guilty in court, and agree to dealing with the offence through Juvenile Justice Team Meeting rather than through the Court. It must also be made clear to the child or young person the nature of the offence and the requirements of a Juvenile Justice Team Meeting. Eligible first-time offenders should be referred to meeting, including those whose previous interactions with police include caution, receipt of infringement notice or previous Juvenile Justice Team referral.

The Juvenile Justice Team Meeting consists of the child or young person, a co-ordinator from the Department of Justice or from an approved Aboriginal community, and a member of the Police Force, Elder or other appropriate member of an approved Aboriginal community. The meeting may also include a responsible adult, the victim/s, a person representing the education minister, and a person appointed by the co-ordinator who is a member of the child or young person's ethnic group or another minority group. Western Australia differs from Queensland and the previously mentioned jurisdictions, as participants in the meeting, including children and young people cannot have legal representation in attendance.

During the meeting, the Juvenile Justice Team and participants determine how the matter should be disposed of, and any terms the child or young person should comply with post-meeting. Any restitution or compensation cannot be made into an order, but a child or young person's agreement to these terms are recorded. Meetings may also result in the determination that the matter should be dealt with by giving a caution or in Court, in which the referral is returned to the referring entity. Referral may also be returned to the referring entity if the child or young person does not agree to the terms specified in the meeting. If the child or young person complies with the terms specified by the Juvenile Justice Team Meeting, the Court must dismiss any charges.²⁷

Procedures and Practice

The conclusion of a Juvenile Justice Team Meeting is the creation of an action plan which sets out the specified terms that the child or young person needs to comply with. Action plans may include formal apology, agreement to be assessed for counselling, agreement to complete a voluntary work task or agreement to give financial payment to the victim/s (Government of Western Australia Department of Corrective Services, 2010).²⁸ Therapeutic referral is not a significant consideration in the Western Australian model.

2.6. Australian Capital Territory.

Legislation and Policy

In the Australian Capital Territory (ACT), restorative justice conferencing is legislated in the *Crimes (Restorative Justice) Act 2004* (ACT). The ACT refers to restorative justice conferencing in the same way as Queensland.

Children and young people can be referred to Restorative Justice Conferencing by Directors-General, police officers, the Director of Public Prosecutions and Magistrates of the Childrens Court. Contrary to other jurisdictions, children and young people who have committed less serious offences do not need to admit responsibility for the offence but must not deny responsibility. For more serious offences, the child or young person must accept responsibility for the offence, plead guilty or be found guilty in court. Explanations of the nature of the offence, the Restorative Justice Conferencing process and the child or young person's right to legal advice must be given before referral. Children and young people who are referred by police must also be advised of their ability to plead not guilty if the matter is taken to court. Like Queensland, children and young people can be referred to Restorative Justice Conferencing under an order, in which a report regarding the outcomes of the Conference must be given to the court post-conference.

Convenors for Restorative Justice Conferencing in the ACT are appointed by the Director-General and must be deemed to have sufficient legal training. Alongside the child or young person and the convenor, the victim/s or their representative are required to attend the Conference. The relevant police officer/s, parents, and other people approved by the convenor who may provide emotional or practical support for either the child or young person or the victim/s are also entitled to attend. Like in Western Australia, legal representatives are not able to attend the Conference in a professional capacity. There is no mention of the need to invite Aboriginal and Torres Strait Islander support people for Aboriginal and/or Torres Strait Islander children and young people.

Restorative justice conferences in the ACT may take place in different forms. Alongside face-to-face meeting or audio-visual Conferencing, Conference may also be completed through written or emailed statements exchanged between participants, or through pre-recorded videos exchanged between participants. The agreement may include the making of an apology, a plan to address the offending behaviour, a work plan to be carried out to benefit the victim/s or community, financial reparation to be paid, or any other act that is agreed would repair the harm. The agreement must be for no longer than six months. The Director-general or referring entity, may do anything reasonable to check that the child or young person is complying with the agreement, and must report any compliance or non-compliance to the referring entity.²⁹

Procedures and Practice

The ACT Department of Justice and Community Safety, who run Restorative Justice Conferencing in the ACT, state that agreements are not a compulsory part of Conferencing. Agreements may contain the terms listed in the legislation but may also include attending counselling or behaviour change programs, study plans, taking part in volunteering or sporting activities, or keeping the victim/s updated with the child or young person's progress.³⁰

2.7. Northern Territory.

Legislation and Policy

The Northern Territory legislates restorative justice conferencing for children and young people in Part 39, Part 64, and Part 84 of the *Youth Justice Act 2005* (NT). Restorative justice conferencing can be referred to as Youth Justice Conferencing, Pre-sentence Conferencing and Youth Justice Group Conferencing, depending on the stage of referral.

In the Northern Territory, children and young people may be referred to Conferencing by police or the Court. Police are required to refer a child or young person to Youth Justice Conferencing if a verbal or written warning, or another diversion program is inappropriate, unless the offence committed is a prescribed offence or diversion is unsuitable due to

prior convictions. To refer a child or young person, consent must be gained from both the child or young person and a responsible adult. The Court may refer children and young people to Youth Justice Conferencing without a guilty plea or finding of guilt, but responsibility must be accepted for the offence. If there has been a finding of guilt, the Court may refer a child or young person to a Pre-sentence Conference to assist in determining the appropriate sentence.

The *Youth Justice Act 2005* does not legislate who must or may attend the Conference, or what may be included in any agreement or plan made as part of the Conference.

If the child or young person completes a Youth Justice Conference to the satisfaction of the police or Court, no criminal legal proceedings can be commenced or continued for that offence. If a court-ordered Conference is not completed, the Court may not dismiss charges. Outcomes of pre-sentence Conferences must be reported to the Court post-conference.³¹

Procedures and Practice

Youth Justice Conferencing in the Northern Territory is run by non-government organisations. Jesuit Social Services (JSS) is one significant organisation that convenes Conferences throughout the Northern Territory. JSS state that the child or young person, their lawyer and the convenor are required participants, and that victim participation is not compulsory. Family members and support people, as well as police officers, people with appropriate cultural authority, and other professionals working with the child or young person and their family may also attend. JSS collaborate with Elders and Community-controlled organisations to ensure cultural appropriateness of the Conferences.³²

The Northern Territory also fund a program called Back on Track that includes Youth Justice Conferencing.³³ The program is for children and young people who have a history with the police or are at risk of entering the Youth Justice system. The children or young people must also be supported by a responsible adult and must have access to stable

accommodation. The program contains four elements. The first element allows understanding of the child or young person's therapeutic needs, and the Youth Justice Conference occurs in the second element. The third element works on building the child or young person's life skills and cultural connection as well as their family capacity and responsibility. Finally, the last element focuses on education, training, and employment. The program is delivered by various non-government organisations.

2.8. Tasmania.

Legislation and Policy

Part 2 Divisions 2 and 3, and Part 4 Division 4 of the *Youth Justice Act 1997* (TAS) legislate restorative justice conferencing for Tasmanian children and young people. In Tasmania, restorative justice conferencing is referred to as Community Conferencing.

Like Queensland, children and young people are generally referred to Conferencing by the police but they may also be referred by the Court. Tasmania's legislation is like other jurisdictions in that the referring entity must explain the nature of the offence, and the child or young person's rights as well as gain the child or young person's consent to have the offence dealt with via Conference before referring. The child or young person must also admit to committing the offence.

Besides the child or young person and the convenor, the Community Conference requires the attendance of a relevant police officer. The convenor is also required to invite an Elder or other representative of the Aboriginal or Torres Strait Islander community if the child or young person is an Aboriginal or Torres Strait Islander, and the victim/s, although the victim/s attendance is not compulsory. The Conference may also include the child or young person's guardians, other relatives, youth justice workers, and any other person who has had a close association with the youth.

Community Conferencing may result in sanctions that the child or young person must abide by. Like South Australia, a caution may be given as an outcome of

the Conference. The other possible outcomes are the same as Queensland, although Tasmania does not consider any therapeutic programs for the child or young person. The Secretary must notify the Commissioner of Police on whether undertakings are fulfilled.³⁴

Procedures and Policy

Community Conferencing is run by the Department for Education, Children and Young people through Youth Justice Services. There is a public Community Conferencing manual published in 2008, but there is no indication if this is still current. Keeping this in mind, the manual indicates that prescribed offences are not eligible for Community Conferencing. For children and young people over 10, this includes murder, attempted murder and manslaughter, and for over 14-year-olds it includes aggravated and armed robbery, being armed with intent to commit burglary, sexual offences, and some traffic offences.³⁵

2.9. New Zealand.

Legislation and Policy

Restorative justice conferencing in New Zealand is quite different to Australian jurisdictions. Conferencing is legislated in Part 4 of the *Oranga Tamariki Act 1989* (NZ) and is referred to as Family Group Conferencing.

In New Zealand, proceedings are not to be instituted against a child or young person unless a Family Group Conference has been held. Youth justice coordinators who convene the Conference have discretion around this, as they can decide to not hold a Conference if it is agreed with the child or young person and their family that holding a Conference would be of no use. Like in the ACT, to be referred to a Conference a child or young person must not deny responsibility for an offence or charge. New Zealand also have a prescribed timeframe which a Family Group Conference must be held within. The time frame varies from 7 to 21 days after receipt of referral, depending on the referring entity.

There are several people entitled to attend a Family Group Conference alongside the child or young

person and the youth justice coordinator. The people entitled to attend include parents or guardians, members of the family or family group, the victim/s, prosecutor or police, a lawyer or youth advocate, the chief executive or member of iwi social service if the child or young person is under care, a probation officer if relevant, or any other person who the child or young person and their family wishes to attend.

As part of the Family Group Conference, it is a requirement that the group consider whether the child or young person should attend a parenting education program, a mentoring program, or an alcohol or drug rehabilitation program. It must also be considered whether the child or young person's parents or guardians should attend a parenting education program. The Conference may also recommend either the proceeding or discontinuation of charges, a police caution, application for a care or protection order for the child or young person, appropriate penalties to be imposed, or making of reparation to any victim/s of the offence.³⁶

Procedures and Practice

The Oranga Tamariki Ministry for Children outline what they consider to be best practice for Family Group Conferencing. They state that in preparation for a Conference, the coordinator may work alongside a social worker. This social worker would assist in administering assessments to identify the wellbeing, health and education needs of the child or young person in the pre-conference stage. Social workers are also often involved in the monitoring and implementation of Family Group Conference plans to assist the child or young person and their family to complete this plan. At completion, the coordinator will review the plan and an effectiveness report is provided to the Court. The Court may then decide how to proceed with the matter, with the possibility of dismissing the offence or commencing a proceeding.³⁷

2.10. What Queensland is Doing Well, and What It Can Do Better – Legislation and Practice

- Queensland already provides the opportunity for children and young people to be referred to remedial programs but could consider placing a greater focus on this.
 - New South Wales and New Zealand both have models where the needs of the child or young person are considered holistically. There is a significant focus on referring to services that can help address various issues in the life of a child or young person that are contributing to their offending behaviour.
 - The Northern Territory's Back on Track program also provides a good example of how RJC could more holistically address the needs of the children and young people participating.
- Queensland only requires convenors to consider inviting respected members of Aboriginal and Torres Strait Islander communities to conferences for Aboriginal and/or Torres Strait Islander children and young people.
 - New South Wales, Western Australia and Tasmania require convenors to invite Aboriginal or Torres Strait Islander support people if the child or young person is an Aboriginal and/or Torres Strait Islander person.
 - Queensland could consider the techniques used by New South Wales, in which Conferences can be modified to ensure they are culturally safe for the child or young person, their family and other participants.
 - Queensland could also consider the possibility of having Aboriginal and/or Torres Strait Islander convenors who are not Youth Justice staff, such as in Western Australia.
- New South Wales, Victoria, Tasmania, and New Zealand have a timeframe in which a conference must occur. This is something that Queensland could consider to ensure the child or young person's emotions and circumstances around an offence are still memorable, and that matters are dealt with in a timely manner.
- The use of non-government services to provide RJC could be explored, like in Victoria and the Northern Territory.
- Queensland allows for a wide range of people associated with the child or young person to attend the conference, such as teachers or education providers, members of the child or young person's extended family, and other adults that may be beneficial to the process. Unlike Western Australia and the Australian Capital Territory, the child or young person is also permitted to have legal representation at the Conference.
- Unlike other jurisdictions, Queensland's legislation does not specify offences which cannot be referred to RJC, allowing for this diversionary option to be applied more widely.

3. A Statistical Picture of Restorative Justice Conferencing in Queensland.

3.1. Referrals to Restorative Justice Conferencing

3.1.1. Referral Numbers and Source of Referral

In 2020-21, there were 1,439 referrals to RJC by police and 1,730 referrals to RJC by the Court. This is an increase of 40.39 per cent from police referral numbers in 2017-18 (1,025 referrals),³⁸ and a 38.51 per cent increase in court referral numbers across the same period (1,245 referrals).^{39,40} There were also three referrals from Youth Justice.⁴¹

Although police referral numbers have increased since 2017-18, the ratio of police referrals to court referrals has remained steady, with police referrals consisting of approximately 45 per cent of total referrals. This means that 55 per cent of children and young people being referred to RJC are still needing to interact with the court in some capacity.

In 2017-18, when compared to children and young people being diverted through court pathways, children and young people referred to RJC by police, and thus diverted from court, are:

- more likely to be non-Indigenous,
- less likely to have been subject to previous orders, and
- come from a less disadvantaged socio-economic background.⁴²

When compared to police referral, children and young people referred by the court when it has determined that the offence warrants the less serious referral pathway (under a police s24A referral) are:

- more likely to be First Nations,
- generally older than those referred through other sources, and
- come from a more socio-economically disadvantaged background.⁴³

3.1.2. The Cohort

Age and Sex

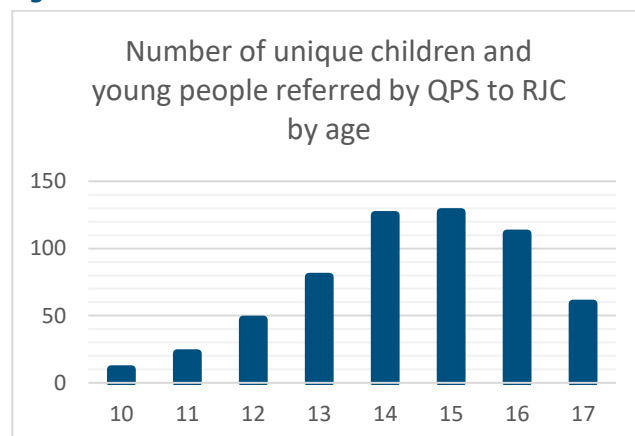


Figure 2 Number of children and young people referred to RJC by Queensland Police Service (QPS) in 2019, disaggregated by age.⁴⁴

In 2017-18, 25 per cent of children and young people referred to RJC were female, and 75% were male.⁴⁵ In 2017-18, children and young people aged between 14 and 16 made up 63 per cent of referrals to RJC.⁴⁶ This was consistent with QPS referral numbers in 2019.⁴⁷

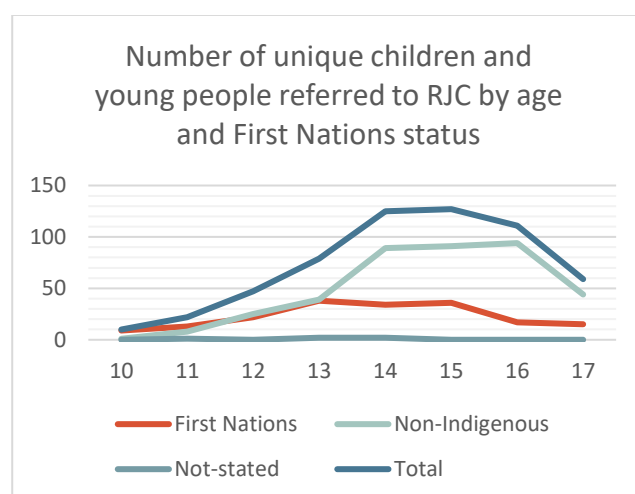


Figure 3 Number of children and young people referred to RJC by QPS in 2019, disaggregated by age and First Nations status.⁴⁸

First Nations children aged 10 and 11 are disproportionately represented both in RJC referrals and offences. First Nations young people aged 17 are underrepresented.^{49,50}

Offence Type

Offence type	Referrals in 2021-22 ⁵¹
Acts intended to cause injury	576
Sexual assault and related offences	290
Dangerous or negligent acts endangering persons	166
Abduction, harassment, and other offences against the person	46
Robbery, extortion and related offences	217
Unlawful entry with intent/burglary, break and enter	1163
Theft and related offences	2015
Fraud, Deception and related offences	368
Illicit drug offences	371
Prohibited and regulated weapons and explosives offences	125
Property damage	422
Public order offences	411
Traffic and vehicle regulatory offences	353
Offences against justice procedures, government security and government operations	279
Miscellaneous offences	66

In 2021-22, theft and related offences, unlawful entry with intent/burglary, break and enter, and acts intended to cause injury were the top three offence types for which a conference was held. Abduction, harassment, and other offences against the person was the offence type for which the least conferences were held.⁵²

3.1.3. Referrals by Location



Figure 4 QPS regions as of 30 June 2016.⁵³

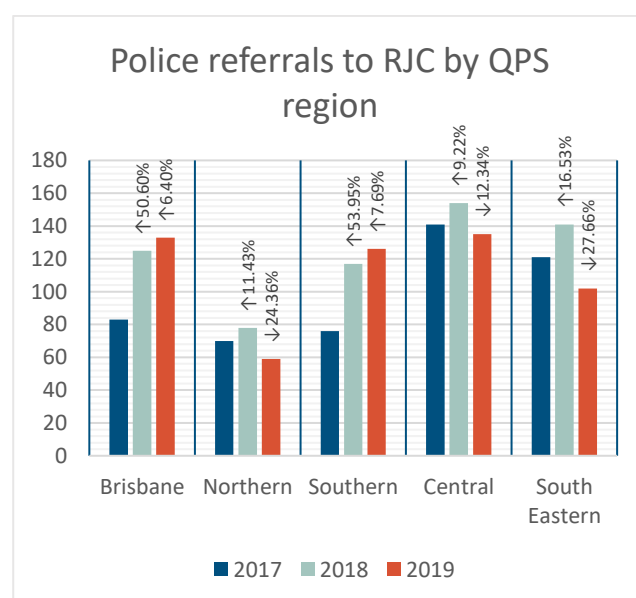


Figure 5 Police referrals to RJC for 2017, 2018 and 2019 disaggregated by QPS region.⁵⁴

For police referrals in 2019, Central QPS region had the highest volume of referrals, followed closely by Brisbane QPS region and Southern QPS region. Northern QPS region had the lowest volume of referrals in 2019. Southern QPS region saw the largest growth in police referral numbers between 2017 and 2019, with a 65.79 per cent increase. Brisbane QPS region also saw an increase in children and young people being referred, exhibiting a growth of 60.24 per cent. All three of the other QPS regions saw a decrease in referrals.⁵⁵

3.1.4. Restorative Justice Conferencing Referrals Compared to Other Actions

Overall Police Actions

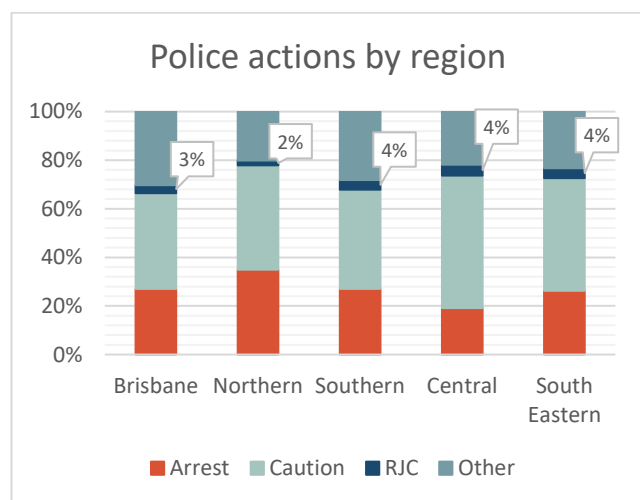


Figure 6 Police actions in 2019 disaggregated by QPS region.⁵⁶

When considering RJC referral as a percentage of all police actions, Central, Southern and South Eastern QPS regions had the highest percentage of children and young people referred to RJC in 2019. Northern QPS region had the lowest.⁵⁷

Police Actions for First Nations Children and Young People

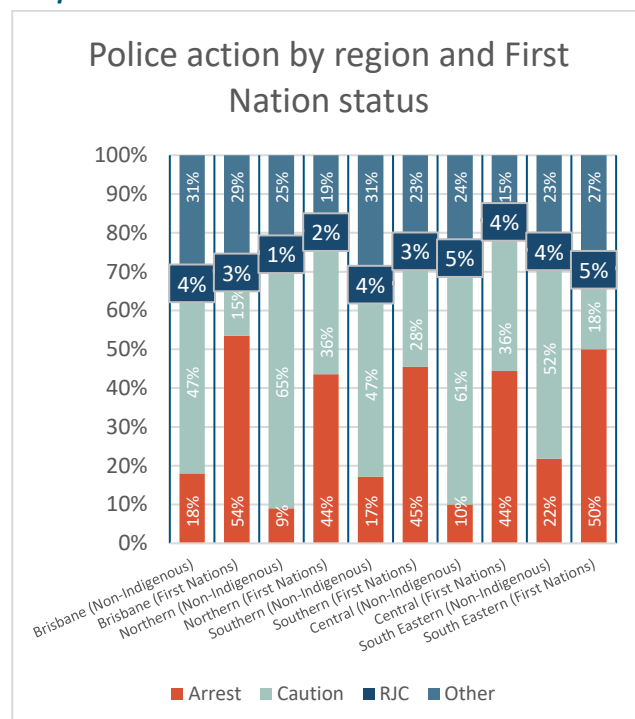


Figure 7 Police action for unique young offenders disaggregated by region and First Nations status.⁵⁸

The accessibility of RJC for First Nations children and young people varies across geographical locations. QPS data showed that, compared to their non-Indigenous counterparts, First Nations children and young people were:

- less likely to receive a police referral in the Brisbane, Southern and Central QPS regions,ⁱ
- more likely to receive a police referral in the South Eastern and Northern QPS regions.^{59,ii}

Although First Nations children and young people in South Eastern and Northern QPS regions were more likely to be referred to RJC than non-Indigenous children and young people, out of all police actions (including arrest, caution, RJC or other actions) non-Indigenous children and young people received a higher percentage of diversionary actions than First Nations children and young people.⁶⁰

ⁱ Non-Indigenous children and young people 1.33 times more likely to be referred in Brisbane and Southern QPS regions, and 1.25 times more likely in Central QPS region.

ⁱⁱ 1.25 times more likely in South Eastern QPS region, and 2 times more likely in Northern QPS region.

3.2. The Restorative Justice Conferencing Process

3.2.1. Conferences

Conference Numbers

Not all referrals to RJC result in a conference. Referrals may not lead to conference for several reasons, including if:

- the child or young person denies the offence after being referred,
- the child or young person will not come to an agreement or cannot be contacted, or
- the victim is not participating.⁶¹

In addition, in the case of an offence committed by multiple young children or young people, it is possible for a single conference to be held for all those involved. One conference may also be used in response to multiple referrals/offences.

In 2020-21, there were 2295 conferences facilitated, approximately 72 per cent of referrals for that year.⁶² This was a 41.93 per cent increase from 2017-18, there were 1617 conferences facilitated, which was approximately 71 per cent of referrals for that year.⁶³ In 2017-18, 77.37 per cent of police referrals led to a conference, compared to 66.02 per cent of court referrals. Of the three referrals from Youth Justice, two resulted in a conference.⁶⁴



Figure 8 Department of Children, Youth Justice and Multicultural Affairs regions as of 4 March 2021.⁶⁵

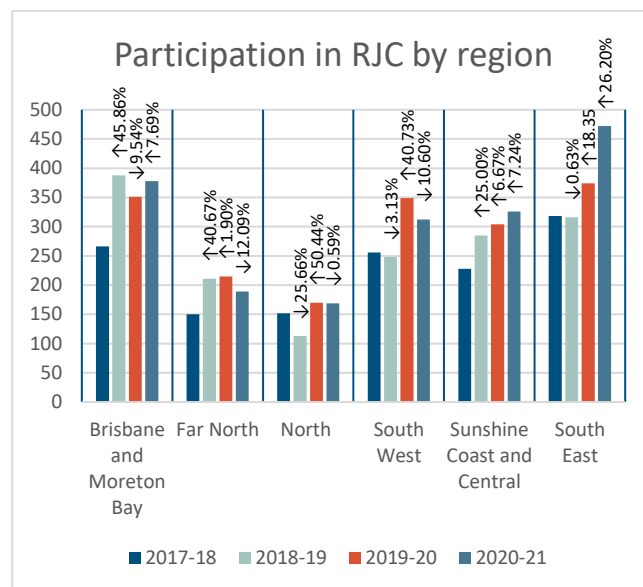


Figure 9 Number of children and young people participating in RJC between 2017-18 and 2020-21 disaggregated by DCYJMA region.⁶⁶

In 2020-21, South East DCYJMA region had the highest volume of RJC participants, and saw the largest growth in participation numbers between 2017-18 and 2020-21, with a 48.43 per cent increase. North DCYJMA region had the lowest volume of RJC participants in 2020-21. All DCYJMA regions displayed an increase in participation numbers between 2017-18 and 2020-21.⁶⁷

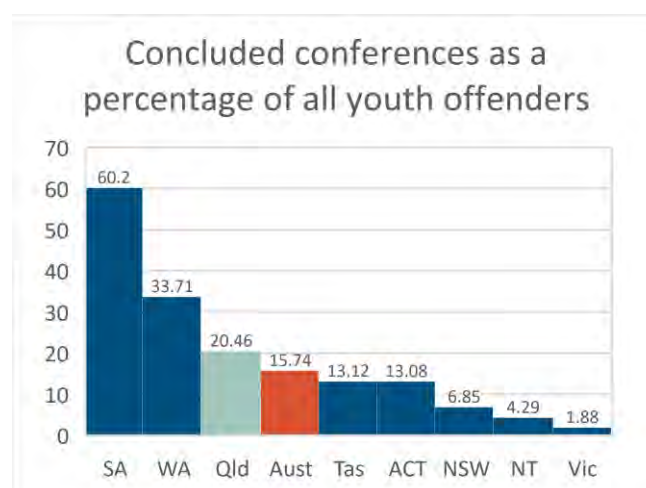


Figure 10 RJC conferences concluded, as a percentage of all youth offenders, disaggregated by state for 2020-21.⁶⁸ⁱⁱⁱ

ⁱⁱⁱ As more than one conference may be held for a child or young person in a year, concluded conference numbers may include the same offender more than once.

When comparing Queensland to other Australian jurisdictions, Queensland was third, following South Australia and Western Australia, in the number of concluded RJC as a percentage of all youth offenders. Queensland was above the Australian average.⁶⁹

RJC Participants

Families

Participation of a child or young person's family and/or kinship members in RJC is fundamental to the process, as RJC can help family members better understand a child or young person's behaviour, connect them with supports and address the child or young person's offending behaviour.⁷⁰ Stakeholders in KPMG's evaluation stated that they believe RJC is less effective and accessible for children and young people without a supportive family environment.⁷¹

In 2016-17, 78 per cent of conferences involved parents, 9 per cent involved immediate family members, 3 per cent involved other family members and 11 per cent involved other family-type support (friends, cultural support, Child Safety services or guardians and/or Youth Justice services).⁷²

Cultural Representatives

In conferences involving a First Nations child or young person, it is important that the process is culturally safe. One aspect of ensuring the cultural safety of a First Nations child or young person is the inclusion of and consultation with respected First Nations people, such as Elders or other respected community members.

Type of representative	Conferences ⁷³
Respected First Nations person	12%
Community Justice Group	6%

In 2016-17, for conferences in which a First Nations child or young person was involved, only 12 per cent included a respected First Nations community person, and only 6 per cent included a representative of a First Nations Community Justice Group.⁷⁴

Police Representatives

In 2016-17, 56 per cent of conferences involved a QPS representative.⁷⁵ The KPMG evaluation found that children and young people spoken to identified that police presence in conferences may help break down barriers between children and young people and the police.⁷⁶

Legal Representatives

In 2016-17, one per cent of conferences involved legal representation for the child or young person.⁷⁷

3.2.2. Agreement Outcome

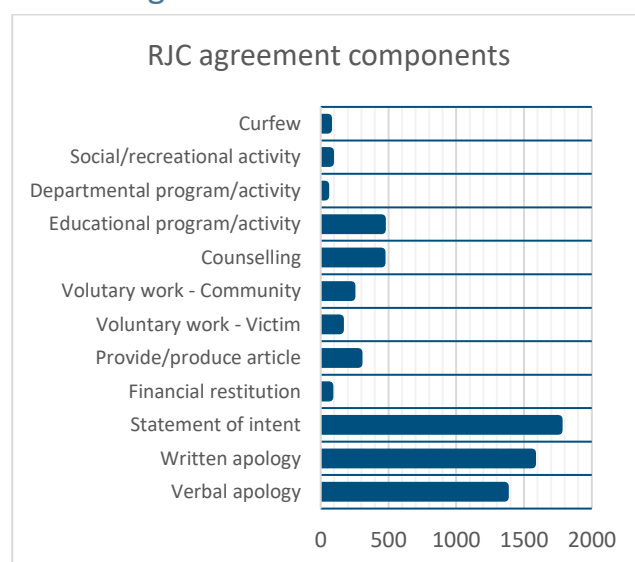


Figure 11 RJC agreement components made, from 2015-16 to 2017-18.⁷⁸

Out of 6,132 agreements made between 2015-16 and 2017-18, the most common component was a statement of intent. Departmental programs/activities were the least common agreement component.⁷⁹

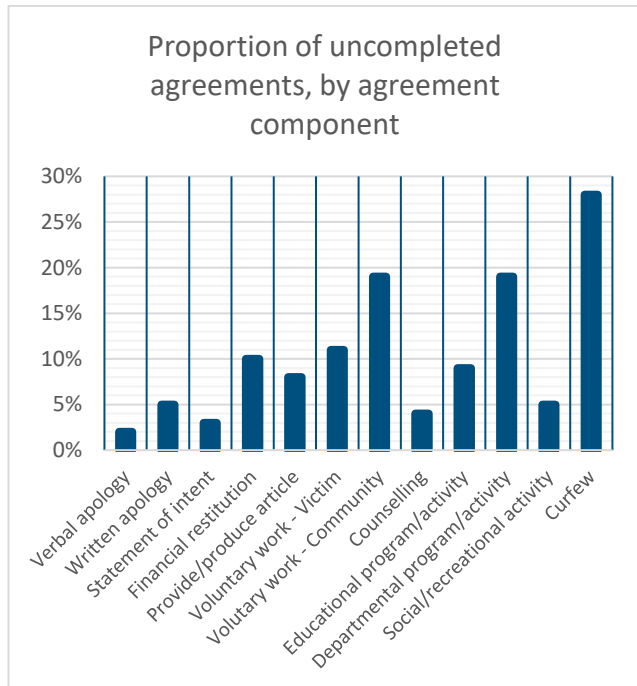


Figure 12 The proportion of agreements not completed, disaggregated by agreement component, between 2015-16 and 2017-18.⁸⁰

Curfew, voluntary work with the community, and departmental programs/activities were the most common components in incomplete agreements. Verbal apology, statement of intent, and counselling were least likely to feature in incomplete agreements.⁸¹

The prevalence of support programs and services in agreements has decreased between 2015-16 and 2017-18, with counselling decreasing from 10 per cent of all components to 6 per cent.⁸² Further, at the time of KPMG's evaluation, there was no mechanism to track support service referral or uptake.⁸³

3.3. What Queensland is Doing Well, and What It Can Do Better – Statistical Picture

- Many children are being diverted from court each year through RJC referrals from police.
 - However, a large number go to court to receive their referral. This is costly and ineffective.
 - Of particular note is that First Nations children and young people and those from low socio-economic backgrounds were less likely to be referred by police but were then referred by the court.
- Queensland has no restriction on the type of offence that can be referred to RJC, meaning police and courts are able to exercise discretion when referring children and young people.
 - Use of discretion within police could be reviewed and improved to ensure that all cohorts of children and young people are able to equitably access RJC.
- Most conferences involve police participation, which KPMG suggests breaks down barriers between children and young people and the police.
- Only one per cent of conferences involved legal representation for the child or young person.
- Most conferences involved members of the child or young person's family. A supportive family environment is thought to improve RJC outcomes.
- At the time of KPMG's evaluation, there was no mechanism to track support service referral and uptake. This should be addressed as diversion into early intervention and support services was an intended outcome of the enhanced model of RJC.
 - The establishment of partnerships with support services and programs was identified by KPMG as an area needing improvement to ensure a holistic approach is provided.⁸⁴
- All DCYJMA regions have seen an increase in RJC participants between 2015-16 and 2020-21.
- There is a clear disparity in referral and participation of children and young people in RJC across regions, and for First Nations children and young people.
 - This difference across regions needs to be addressed to ensure RJC is equally accessible for all children and young people.
 - The inequality in referral for First Nations children and young people must be an area of focus to ensure RJC is an effective diversionary method for all children and young people. This was recognised as an area for improvement in the 12-month evaluation of RJC commissioned by the Department of Youth Justice.⁸⁵
 - KPMG's report suggested that children and young people, especially First Nations children and young people, may be afraid to admit guilt. Education must be provided to children and young people, their families and support organisations to guarantee that participation in RJC is not limited due to this factor.
 - Police officers must be educated on when a RJC referral is appropriate.
- Participation of First Nations cultural representatives in RJC for First Nations children and young people is low.
 - The 12-month evaluation of RJC stated the possible influencing factors as:
 - Limited community engagement by staff.
 - Lack of trust and acceptance of RJC in communities.
 - Inability to record participants under multiple categories (e.g. support person AND First Nations community person).
 - Staff not educated in the need to consider cultural representatives.
 - Child or young person may not wish to have cultural representative.⁸⁶

4. Rates of Reoffending for Children and Young People Referred to Restorative Justice Conferencing.

4.1. Reducing Reoffending

Pre-conference offending magnitude	Did not reoffend ⁸⁷
Very low	85%
Low	82%
Moderate/low	62%
Moderate/high	75%
High	43%
Very high	39%

In 2016, the majority of children and young people who participated in RJC did not reoffend (59 per cent). The frequency and seriousness of offending (offending magnitude) pre-conference influenced whether children and young people reoffended, with those with a lower pre-conference offending magnitude less likely to reoffend.⁸⁸

Year of RJC completion	Did not reoffend ⁸⁹
2016	59%
2017-18	44%
2018-19	50%
2019-20	49%
2020-21	46%

In 2020-21, 46 per cent of children and young people who participated in RJC did not reoffend in the 12 months post conference.⁹⁰ This has decreased considerably since 2016.

4.2. Reducing Offending Magnitude

In evaluations of RJC, reoffending has been measured by considering offending magnitude. In the 12-month evaluation:

- 59 per cent of children and young people did not reoffend,
- 18 per cent showed a decrease in post-conference offending magnitude,
- 23 per cent had an equivalent or increased post-conference offending magnitude.⁹¹

In KPMG's evaluation, it was found that the likelihood of offending magnitude reduction post-conference was 78 per cent. The post-court likelihood of reduction was 75 per cent.⁹² When considering the impact of RJC on offending magnitude for different cohorts, the results differ.

4.2.1. Restorative Justice Conferencing Compared to Court

First Nations Children and Young People

Cohort	Reduced offending magnitude (likelihood) ⁹³	
	RJC	Court
First Nations	72%	72%
9 - 13 years	68%	69%
14 - 16 years	74%	75%
17 years	75%	67%
Non-Indigenous	81%	77%
9 - 13 years	78%	76%
14 - 16 years	82%	77%
17 years	86%	77%

For both First Nations and non-Indigenous children and young people, the likelihood of offending magnitude reduction post-conference was comparable to or higher than post-court. The effect of RJC on offending magnitude was more pronounced for non-Indigenous children and young people.⁹⁴

Pre-conference Offending Magnitude

Pre-conference offending magnitude		Reduced offending magnitude (likelihood) ⁹⁵	
		RJC	Court
Nil	First Nations	72%	72%
	Non-Indigenous	67%	64%
Negligible	First Nations	73%	69%
	Non-Indigenous	74%	75%
Low	First Nations	64%	76%
	Non-Indigenous	82%	83%
Moderate /low	First Nations	66%	74%
	Non-Indigenous	82%	82%
Moderate /high	First Nations	55%	76%
	Non-Indigenous	80%	76%
High	First Nations	74%	78%
	Non-Indigenous	83%	82%
Extreme	First Nations	69%	76%
	Non-Indigenous	87%	79%

For non-Indigenous children and young people of every pre-conference offending magnitude, the likelihood of offending magnitude reduction post-conference was comparable to or higher than post-court. This was the same for First Nations children with nil or negligible pre-conference offending magnitude.⁹⁶

For all other First Nations pre-conference offending magnitudes, the likelihood of offending magnitude reduction post-conference was lower than post-court.⁹⁷

5. Funding and Cost Effectiveness.

5.1. Funding

In 2015-16, aligning with the establishment of the Restorative Justice Project, the Department of Justice and Attorney-General assigned \$23.6 million to deliver and improve RJC over four years.⁹⁸

In the 2019-20 budget, \$8 million per year was allocated to continue RJC, as well as an additional \$27.5 million over four years included in the Youth Justice Strategy.⁹⁹

5.2. Cost Effectiveness

The KPMG evaluation considered the cost effectiveness of RJC compared to traditional court processes. In terms of overall cost-efficiency, RJC was consistently more cost effective. The evaluation showed that RJC results in annual savings of more than \$22.5 million to the youth justice system.¹⁰⁰

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