



The Uniting Church in Australia
QUEENSLAND SYNOD

23 April 2024

Moderator
Rev Bruce Moore

The Hon Justice Mordecai Bromberg
President
PO Box 209
Flinders Lane
Victoria 8009

Dear President,

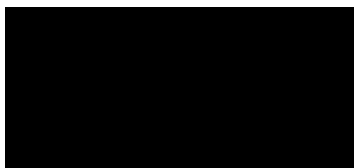
Justice Responses to Sexual Violence

The Uniting Church in Australia Queensland Synod (Queensland Synod) welcomes the opportunity to provide feedback to the Australian Law Reform Commission on the consultation for Justice Responses to Sexual Violence.

.

The Queensland Synod would welcome future opportunities to discuss this submission further. Should you require any more information, I can be contacted on [REDACTED].

Yours sincerely,



Rev. Bruce Moore
Moderator, Uniting Church in Australia Queensland Synod



Submission to the consultation on Justice Responses to Sexual Violence

The Queensland Synod is primarily responding to the consultation questions relating to restorative justice. Recommendations are provided that support the work of the Justice Reform Initiative in advocating for innovative justice responses, including victim-centred restorative justice approaches, and therapeutic justice approaches. In addition, the Queensland Synod recommends that the Queensland government shift the focus of public funding from expensive, ineffective incarceration for children and adults that does not provide rehabilitation and reintegration after incarceration, to community-led prevention and early intervention programs, particularly for First Nations people and communities. Funding must include resources for evaluation of these programs, to build up the evidence base of successful programs in Queensland. The continuing overrepresentation of First Nations children and adults in detention must be urgently addressed, as the consequences of this systemic discrimination continue to entrench First Nations communities in marginalisation and disadvantage.

Incarceration is a policy failure

Incarceration of people who commit crimes does not reduce crime, does not make communities safer, and fails to address the social drivers of contact with the criminal justice system¹. The overuse of incarceration in Queensland has historically been and is currently driven, by a politicised approach to criminal justice policy which emphasises “tough” approaches to offenders and ignores the evidence about what actually works to reduce crime². The over-use of incarceration causes inter-generational harm to First Nations communities and people, as well as other groups that experience multiple and intersecting forms of marginalisation and disadvantage, such as people with cognitive disability³.

This “tough” approach has resulted in an increasing prison population and skyrocketing costs for Queensland taxpayers⁴. Alternative approaches to addressing crime are available, however the policy environment remains heavily invested in incarceration⁵. The real direct cost per adult prisoner in Queensland is \$240.81 per day, equivalent to \$87,896 per year⁶. For children, this cost is higher at \$2,068.32 per day, equivalent to \$761,507 per year⁷.

Many states and territories in Australia have recognised the policy failures of incarceration and are advocating for alternative approaches⁸. However, Queensland continues to embrace a criminal justice system that centres the use of imprisonment⁹.

¹ Justice Reform Initiative (2023). Alternatives to incarceration in Queensland.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.



Queensland imprisons the highest number of children in Australia and the adult prison population has grown by 64% in the last 10 years¹⁰. In addition to an increase in the Queensland prison population, there has been an increase in the number of adults and children held on remand¹¹. This rise in the number of prisoners in Queensland has been driven by funnelling primarily disadvantaged and marginalised people into imprisonment¹².

As shown in a recent in-depth analysis of crime in Australia, imprisonment does not have a significant impact on decreasing crime rates¹³. Although imprisonment protects the community in the short-term for the period of time that someone is incarcerated, it does not address the root causes of crime¹⁴. In the medium and long-term, imprisonment does not rehabilitate people, and makes reoffending much more likely¹⁵.

Like all jurisdictions in Australia, Queensland continues to disproportionately imprison First Nations people¹⁶. The crude adult imprisonment rate for Aboriginal and Torres Strait Islander Queenslanders is 2,236.1 people per 100,000, compared to 151.2 per 100,000 for non-Indigenous Queenslanders¹⁷. This means Aboriginal and Torres Strait Islander adults are 14.8 times more likely to be in prison than non-Indigenous adults¹⁸. Similarly, the imprisonment rate for Aboriginal and Torres Strait Islander children in Queensland aged 10 to 17 years old is 40.9 per 10,000, compared to 1.8 per 10,000 for non-Indigenous children¹⁹. On an average night, two-thirds (66.6%) of children and over one-third (36.4%) of adults in Queensland prisons identify as Aboriginal or Torres Strait Islander, despite making up only 4.6% of the general population²⁰.

The existing criminal justice system

The threat of harsher penalties does not reduce crime²¹. Research has consistently shown individuals who commit crime are rarely thinking of the consequences of their actions²². Much crime is conducted in chaotic or desperate circumstances and is impacted by alcohol and other drug use, mental health conditions and disability²³. The threat of harsher penalties or longer sentences is not

¹⁰ Justice Reform Initiative (2023). Alternatives to incarceration in Queensland.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Justice Reform Initiative (2023). Pre submission to review of sentencing for sexual violence offences and aggravating factors for domestic and family violence.

²² Ibid.

²³ Ibid.



something that most people who engage in offending are considering at the moment they are committing crime²⁴.

Innovative responses

Mainstream court processes often fail to address the drivers of incarceration, and there are limitations with mainstream courts recognising or accommodating the unique needs of people experiencing marginalisation and disadvantage²⁵. This is especially the case for people with disability, mental health conditions, and for First Nations people²⁶. Mainstream courts are also limited in their capacity to divert people from the criminal justice system, as often magistrates do not have access to the services, supports and programs in the community that are fundamental when it comes to allowing magistrates to consider alternative options²⁷.

Queensland must significantly increase investment in the community sector to provide people who are caught in the justice system with a range of opportunities to address the factors that brought them into contact with the justice system, as well as prevent people from ending up in the justice system in the first place²⁸.

Approaches that seek to address the causes of contact with the criminal justice system include responses to housing needs, mental health issues, cognitive impairment, employment needs, access to education, the misuse of drugs and alcohol, and problematic gambling²⁹. There are examples of community-led programs, place-based initiatives, and alternative justice approaches that are working to reduce the numbers of people in prisons across Australia and internationally³⁰. Aboriginal and Torres Strait Islander-led organisations should be adequately resourced to provide appropriate support to Aboriginal and Torres Strait Islander people who are at risk-of being, and are, impacted by the justice system³¹.

While conventional criminal justice reform should be pursued, the state government should also consider introducing innovative justice responses to sexual offending to provide victims with more justice options³². There is a significant evidence base supporting alternative, diversionary, specialist, restorative and problem-solving court processes³³. These alternative court options should be expanded throughout Queensland, particularly in regional and remote areas³⁴.

²⁴ Justice Reform Initiative (2023). Pre submission to review of sentencing for sexual violence offences and aggravating factors for domestic and family violence.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Centre for Innovative Justice (2014). Innovative justice responses to sexual offending – pathways to better outcomes for victims, offenders and the community.

³³ Justice Reform Initiative (2023). Alternatives to incarceration in Queensland.

³⁴ Ibid.



Innovative justice mechanisms have the capacity to provide a justice response to many more victims of sexual assault than the current system is able³⁵. Pursuing innovative reform in conjunction with conventional reform is likely to provide more opportunities for victims to experience a sense of justice, for offenders to take accountability for their offending, and for broader public policy objectives to be met³⁶.

Alternative options for rape and sexual assault

Evidence-based, community led programs and services

This Review presents the opportunity for the Queensland Government to expand its investment in evidence-based, community-led programs and services, particularly First Nations-led organisations, to keep the community safe, address the social drivers of contact with the criminal justice system, and provide interventions to stop people cycling in and out of the justice system³⁷. Properly resourced programs such as these will provide the following benefits for Queensland³⁸:

- Significantly reduce recidivism for children and adults and in turn improve community safety.
- Successfully divert children and adults who are at risk of being involved in the criminal justice System.
- Strengthen families and communities.
- Result in significant cost-savings and substantial improvements in health and wellbeing across the community, including for victims.

Community-led programs in Queensland are already doing considerable work in breaking cycles of disadvantage by addressing the social drivers of over-incarceration for individuals impacted by the justice system³⁹. First Nations communities and First Nations community-led organisations are leading this work, often achieving remarkable outcomes with very limited support and resourcing⁴⁰.

A significant funding shift is needed so that all Queensland children and adults can receive effective support, care, connection and opportunity in the community rather than being 'managed' in the justice system⁴¹. This support needs to be available for both children and adults across the life-course and at different stages of contact with the justice system⁴². The importance of early intervention and early prevention strategies to engage children and families at-risk before they

³⁵ Centre for Innovative Justice (2014). Innovative justice responses to sexual offending – pathways to better outcomes for victims, offenders and the community.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Justice Reform Initiative (2023). Alternatives to incarceration in Queensland.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.



encounter the system, and to address the social drivers of incarceration at the whole-of community level, cannot be overstated⁴³.

Evaluations of community-led programs examined by the Justice Reform Initiative outline findings such as ⁴⁴:

- Early intervention and prevention programs reduce crime at a population level by between 5–31%, reduce offending among at-risk populations by 50%, significantly improve other health and wellbeing outcomes in children and families and result in significant cost savings including those resulting from reduced criminal justice system contact over time.
- First Nations place-based approaches have resulted in significant reductions in crime, criminal justice system contact including youth justice system contact and significant cost savings, as well as improvements in a range of cultural, social, health and wellbeing measures.
- Bail support programs significantly reduce reoffending by 33%, increase compliance with bail conditions by 95%, improve a range of other social and health wellbeing measures and achieve cost savings when compared to an absence of bail support.
- Post-release and diversionary community-led programs have resulted in dramatic decreases in recidivism, including: Intensive post-release support programs for people experiencing problematic alcohol and other drug use and other complex needs have achieved reductions in days spent in custody by 65.8%, reductions in new custody episodes by 62.6% and reductions in proven offences 62.1%, measured two years post-referral.
- A First Nations-led post-release service has achieved recidivism rates of 4.1% (compared to 57.3% for a comparable cohort).
- A place-based, intensive support service for children at-risk of criminal justice system involvement has dramatically increased the number of children engaging with education and/or employment by 85% and has led to significant reductions in crime in the surrounding community.

Evidence-based, community-led and place-based responses should be funded sustainably over a longer-term than is currently done⁴⁵. As part of this, funding must be provided for evaluations of successful components of service delivery and outcomes⁴⁶. This would provide a unique evidence base of what works in Queensland⁴⁷.

First Nations people and communities

Community-led, place-based approaches draw on the unique capabilities and strengths, as well as the challenges, faced by First Nations communities and challenge governments to develop genuine partnerships with communities to alleviate complex disadvantage⁴⁸. Place-based initiatives prioritise physical infrastructure, employment, education, community capacity building and cultural

⁴³ Justice Reform Initiative (2023). Alternatives to incarceration in Queensland.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.



connection as ways to address the social drivers of crime⁴⁹. First Nations-led, early intervention responses are the most effective to address offending by First Nations people, as they⁵⁰:

- are culturally responsive;
- designed and delivered by local First Nations communities and organisations;
- foster a genuine sense of community ownership and accountability; and
- ensure programs are more effectively targeted to local priorities and needs and aligned with local systems and circumstances.

Community Justice Groups (CJGs) have been coordinating place-based responses that support First Nations people interacting with the justice system, to improve justice outcomes for First Nations communities across Queensland⁵¹. CJGs were first trialled in three Queensland communities in 1993 in response to the Royal Commission into Aboriginal Deaths in Custody⁵². The program has since been expanded state-wide, with Aboriginal and Torres Strait Islander-led CJGs now operating in 41 communities across Queensland⁵³.

A 2010 evaluation found stakeholders involved in Queensland CJGs widely supported the initiative and that it closely aligned with state and national justice priorities; however, CJGs required greater resourcing and support to improve their capacity to deliver responses that reduce the over-representation of Aboriginal and Torres Strait Islander people in prison⁵⁴.

Innovative justice approaches

Tougher penalties, longer sentences and stringent release practices, do little to address the majority of sexual offending, instead making offenders reluctant to take responsibility for their offending and choosing to contest the allegations⁵⁵. This in turn makes victims reluctant to pursue a prosecution, not wanting to be drawn into the protracted adversarial process⁵⁶. In other words, most victims of sexual assault do not report to the police, do not pursue a prosecution, or if they do, do not secure a conviction⁵⁷.

While the prosecution and collective denunciation of sexual offending should continue to be pursued, and while ongoing efforts to reform the conventional criminal justice system remain critical, alone they will not achieve significant change⁵⁸.

⁴⁹ Justice Reform Initiative (2023). Alternatives to incarceration in Queensland.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Centre for Innovative Justice (2014). Innovative justice responses to sexual offending – pathways to better outcomes for victims, offenders and the community.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.



The Centre for Innovative Justice (CIJ) states that survivors/victims need a suite of options from which they can identify the path/s that best suit their circumstances, and options that provide them with the opportunity to tell their story, to have the harm acknowledged, to participate in the process and to have a say in the outcome⁵⁹. Some of these options may improve the justice system's response if implemented in the right way⁶⁰.

The Justice Reform Initiative also highlight that there is a need to implement alternative and innovative justice mechanisms, to ensure survivor/victim confidence in engaging with the criminal justice system, and in preventing further harm to survivors/victims through inappropriate criminal justice processes⁶¹. Innovative justice processes such as restorative justice approaches have the potential to meet more of the needs of victims of sexual offending; to address public interest concerns; and to prevent reoffending in ways that the conventional justice system has limited capacity to achieve⁶².

Appropriately, concerns has been raised in relation to victims being re-victimised; gendered violence disappearing from the public view; and attention being diverted from fixing the conventional criminal justice system⁶³. Nonetheless, some jurisdictions have begun trialling innovative justice mechanisms, such as restorative justice conferencing, for some sexual offence cases⁶⁴.

Restorative justice approaches

The Justice Reform Initiative recommends that the Queensland Sentencing Advisory Council should give consideration to more recent examples of sexual offence restorative justice processes in Australia and New Zealand⁶⁵. The evaluations for these programs have indicated positive results in terms of victim satisfaction, reduced offending, and a reduction in re-victimisation through the justice process⁶⁶. The Queensland Synod supports this recommendation that the state government investigate the expansion of restorative justice initiatives in the Queensland criminal justice process. These initiatives should be used only if the process is survivor/victim focused⁶⁷.

The Justice Reform Initiative has also recommended that restorative justice processes be expanded and applied pre-sentencing for 'lower level' sexual assault offences where the survivor/victim and

⁵⁹ Centre for Innovative Justice (2014). Innovative justice responses to sexual offending – pathways to better outcomes for victims, offenders and the community.

⁶⁰ Ibid.

⁶¹ Justice Reform Initiative (2023). Pre submission to review of sentencing for sexual violence offences and aggravating factors for domestic and family violence.

⁶² Centre for Innovative Justice (2014). Innovative justice responses to sexual offending – pathways to better outcomes for victims, offenders and the community.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Justice Reform Initiative (2023). Pre submission to review of sentencing for sexual violence offences and aggravating factors for domestic and family violence.

⁶⁶ Ibid.

⁶⁷ Ibid.



offender are adults, in order to inform the sentencing decision, subject to the consent of the victim to being involved in a restorative justice process⁶⁸. They also recommend that resourcing be increased to prevent delays in matters being finalised⁶⁹. The Queensland Synod supports these recommendations.

The Justice Reform Initiative support the approach recommended in the 2021 report of the Victorian Law Reform Commission on criminal justice responses to sexual assault where it was recommended that a new restorative justice scheme be available in the following situations⁷⁰:

- where a person harmed does not wish to report the harm or to pursue a criminal prosecution;
- where a harm is reported but there are insufficient grounds to file charges;
- where charges were filed but the prosecution discontinues the prosecution;
- after a guilty plea or conviction and before sentencing;
- after a guilty plea or conviction and in connection with an application for restitution or compensation orders; and
- at any time after sentencing.

The Queensland Synod supports the recommendation above, which is consistent with the view of the CIJ, that restorative justice should not be available during a criminal prosecution, and with the approach of the Australian Capital Territory for cases involving sexual offences⁷¹.

The Queensland Synod also recommends that the guiding principles for restorative justice in cases involving sexual offences from the Victorian Law Reform Commission report on criminal justice responses to sexual assault, be adapted in Queensland⁷²:

Guiding principles for restorative justice in cases involving sexual offences

Voluntary participation: Consent is informed and participants are free to withdraw at any time.

Accountability: The person responsible accepts responsibility. Outcome agreements are fair and reasonable.

The needs of the person harmed take priority: The process centres on the needs and interests of the person harmed.

Safety and respect: Safety measures are provided. The process is flexible and responsive to diverse needs, including the needs of children and young people, and of Aboriginal communities. Power imbalances are redressed, and the dignity and equality of participants is respected. The process is supported by skilled personnel with specialist expertise in sexual violence, and it is well resourced.

Confidentiality: What is said and done during restorative justice is confidential, with some exceptions.

Transparency: De-identified results are publicised to contribute to continuous program improvement. Programs are regularly evaluated.

⁶⁸ Justice Reform Initiative (2023). Pre submission to review of sentencing for sexual violence offences and aggravating factors for domestic and family violence.

⁶⁹ Ibid.

⁷⁰ Victorian Law Reform Commission (2021). Improving the justice system response to sexual offences: Report.

⁷¹ Ibid.

⁷² Ibid.



An integrated justice response: The process is part of ‘an integrated justice response’. Other criminal and civil justice options are available, as well as therapeutic treatment programs.

Clear governance: Legislation sets out the guiding principles, provides for implementation and oversight and explains how restorative justice interacts with the criminal justice system.

The Queensland Synod also supports the following recommendations from the Victorian Law Reform Commission being implemented in Queensland⁷³:

The restorative justice scheme should be adequately resourced to ensure:

- a. victim survivors and people responsible for harm have independent, professional support throughout the process
- b. participants have access to independent legal advice
- c. independent assessments for children who wish to participate are conducted, in addition to the standard screening procedures
- d. children who participate are provided with independent and specialised support.

Victoria’s Aboriginal communities should be supported to design accredited restorative justice programs for Aboriginal people.

The Justice Reform Initiative recommends consideration for Queensland of the model for restorative justice presented by the CIJ that is victim-centred, does not compromise the legal rights of the person accused, aims to achieve greater justice for more victims and hold more people who commit sexual offences to account, and addresses community safety⁷⁴. The model is based on restorative justice conferencing, which has significant potential to expand the existing criminal justice response when combined with the criminal justice system and other therapeutic justice initiatives (despite only being appropriate in certain cases)⁷⁵. The Queensland Synod supports this recommendation.

Restorative Justice Conferencing

Restorative justice conferencing involves a scheduled, mediated encounter between a consenting victim and offender, and/or their representatives and, in some cases, their families and broader communities, in order to decide collectively how to repair the harm caused by a crime⁷⁶. The term also includes practices traditionally called youth conferencing, adult conferencing, pre-sentence conferencing, victim-offender mediation, family group conferencing and diversionary conferencing⁷⁷. Restorative justice conferencing has not been extended to sexual offending in the adult jurisdiction in Australia, primarily because of legitimate concerns about victims being re-victimised and sexual assault being re-privatised, rather than condemned in the public sphere⁷⁸. The CIJ suggests that with comprehensive safeguards and a coordinated, properly resourced system, sexual offence restorative

⁷³ Victorian Law Reform Commission (2021). Improving the justice system response to sexual offences: Report.

⁷⁴ Justice Reform Initiative (2023). Pre submission to Review of sentencing for sexual violence offences and aggravating factors for domestic and family violence.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.



justice conferencing has the potential to meet more of the justice needs of those victims who are being failed by the existing system⁷⁹.

The CIJ argues that the damaging and widespread nature of sexual assault requires an appropriately tailored and flexible response from the justice system – one that seeks to tackle and unpack the complicated nature of sexual crimes; to operate as part of the solution not only to individual offences but also to the systemic nature of sexual violence; and to draw on expert knowledge of sexual offending⁸⁰.

The CIJ proposes a best practice, sexual offence restorative justice conferencing model and framework, influenced by national and international innovations, and which is able to be tailored and implemented in all Australian jurisdictions⁸¹. The model is victim-centred, does not compromise offenders' legal rights, and which addresses community safety objectives⁸². Taken in conjunction with the existing criminal justice system and other therapeutic justice initiatives, restorative justice conferencing has significant potential to expand the existing criminal justice response and move forward the debate and discussions that surround it⁸³.

Elements of a best practice restorative justice conferencing model for sexual offending are identified by the CIJ⁸⁴:

- legislation, overarching principles and operational guidelines
- a restorative justice oversight body, incorporating a specialist gender violence team, to oversee and monitor the implementation of the model
- skilled and specialist restorative justice conference facilitators
- an expert assessment panel to determine the suitability of individual cases for restorative justice conferencing
- basic eligibility criteria, including that all parties consent, and the need for offender and victim age limits
- pathways into and out of restorative justice conferencing, with appropriate police, prosecution and judicial oversight at different stages of the process
- protections around admissions made during a conference
- consultation with Aboriginal and Torres Strait Islander communities and culturally and linguistically diverse communities around any innovative justice initiatives
- being responsive to the needs of victims and offenders with cognitive impairments, disabilities and mental illness
- potential outcome agreements and what to do in the event of breakdown

⁷⁹ Justice Reform Initiative (2023). Pre submission to Review of sentencing for sexual violence offences and aggravating factors for domestic and family violence.

⁸⁰ Ibid

⁸¹ Ibid.

⁸² Ibid.

⁸³ Centre for Innovative Justice (2014). Innovative justice responses to sexual offending – pathways to better outcomes for victims, offenders and the community.

⁸⁴ Ibid.



- of funded, accessible community based sexual offender treatment programs to complement a restorative justice approach, and
- The balance required between victim autonomy and public policy considerations.

The CIJ suggests that victim autonomy, the consent of both parties, and expert forensic assessment should guide the decision about which sexual assault cases are suitable for restorative justice conferencing⁸⁵. They also recommend that sexual offence restorative justice conferencing be implemented in a phased approach – similar to New Zealand and the Australian Capital Territory⁸⁶. The CIJ (2014) also makes the following recommendations⁸⁷:

1. All jurisdictions should develop a restorative justice statutory framework. This will ensure consistency, accountability and transparency. Legislation should not be overly prescriptive, in recognition of the importance of flexibility and case-by-case assessments.
2. Restorative justice conferencing principles and guidelines should be developed. Guidelines should be both general and specific to sexual offending, and be based on the two-tiered guidelines developed in New Zealand.
3. Restorative justice units should be introduced within respective state and territory Departments of Justice to oversee all restorative justice conferencing programs.
4. Specialist gender violence teams should be incorporated within each restorative justice unit to oversee the administration of sexual offence restorative justice conferencing.
5. Assessment panels should be established to determine suitability for sexual offence restorative justice conferencing on a case-by-case basis. The assessment panels should comprise forensic mental health professionals, representatives of the Office of Public Prosecutions (OPP), senior restorative justice conference facilitators, and victim and offender specialists. The specialist gender violence team should coordinate and support the assessment panel.
6. A workforce of victim and offender specialists, modelled on New Zealand's Project Restore program, should be developed. A victim and offender specialist should be assigned to each case deemed suitable by the assessment panel.
7. Further consultations should be held with forensic mental health professionals, the justice sector and the gender violence sector to explore whether decisions of the assessment panel should be reviewable.
8. Two sets of minimum restorative justice facilitator competencies should be developed, the first relating to general restorative justice conference facilitators and the second relating to sexual offence restorative justice facilitators. These should be modelled on the core competencies devised in New Zealand. Associated facilitator specialist accreditation processes should also be developed.
9. Jurisdictions should adopt a two-stage process for determining whether a sexual offence case is appropriate for a restorative justice conference: first, eligibility and second, suitability.

⁸⁵ Centre for Innovative Justice (2014). Innovative justice responses to sexual offending – pathways to better outcomes for victims, offenders and the community.

⁸⁶ Ibid.

⁸⁷ Ibid.



10. Basic eligibility criteria should be developed, with no specific offence or offender exclusions.
11. Further consultations should be conducted in relation to whether there should be a minimum age for victims to participate in sexual offence restorative justice conferencing.
12. Ten years should be the minimum age for offender participation, in appropriate cases.
13. Opportunities for referral to restorative justice conferencing should be provided at all stages of the criminal justice system.
14. Further consultation should take place with police, the OPP, the legal profession and counsellors in relation to developing either oral or written information about restorative justice conferencing that can be given to victims during the 'options talk' and at the prosecution stage.
15. Referrals for restorative justice conferencing made by police at the pre-charge stage should only be permissible in those cases not being referred for prosecution (and where the eligibility criteria are met), with proper oversight of police discretion.
16. The OPP should only be permitted to suggest a restorative justice conference at the prosecution stage in cases where a successful prosecution is unlikely. Any such decision should be made according to published guidelines and by a number of OPP personnel.
17. There should be judicial oversight of any proposed referral to restorative justice conferencing made at the post-charge prosecution stage.
18. Subject to further consultation and consideration, a wholesale immunity should apply to admissions made during a restorative justice conference. The exception to this is that a facilitator should be permitted to make a report either to child protection or to the police if they consider someone to be at immediate risk. If this qualification is to apply, the offender must be advised of this qualification at the outset. Any immunity should be explicit and codified.
19. Further consultation should occur in relation to whether the fact that an offender has participated in and completed a conference should be recorded and able to be used for relevant public safety purposes.
20. A comprehensive consultation process should be undertaken with Aboriginal and Torres Strait Islander communities and a range of community organisations in relation to the justice needs of these communities. This should occur prior to the implementation of any restorative justice model to ensure that the perspectives and needs of Aboriginal and Torres Strait people are accounted for early in the design phase.
21. A comprehensive consultation should be undertaken to ensure appropriate application of restorative justice conferencing to culturally and linguistically diverse communities.
22. More community based sexual offending treatment services should be funded and linked in with restorative justice programs so that reoffending and rehabilitation can be properly addressed.
23. Restorative justice conferencing should be introduced in three phases, relating to type of offending and stage of the criminal justice process:
 - First: non-sexual, general adult restorative justice conferencing at all stages of the criminal justice system
 - Second: sexual offence restorative justice conferencing at all stages of the criminal justice system, except the post-charge stage, and
 - Third: post-charge sexual offence restorative justice conferencing.



24. Ongoing monitoring and evaluation of the restorative justice program should be a core function of the restorative justice units and specialist gender violence teams.

The Queensland Synod supports the above recommendations and suggestions for implementation of restorative justice conferencing for rape and sexual assault in Queensland.

Therapeutic justice mechanisms

The CIJ has also suggested a range of recommendations for the implementation of therapeutic justice mechanisms, including specialist courts, problem solving courts and re-entry courts, such as New York State's Sexual Offense Courts⁸⁸. These innovative justice mechanisms are designed to create justice options for victims, better meet their needs, properly respond to offenders rehabilitative and reintegrative needs, and significantly improve the capacity of the criminal justice system to respond adequately and holistically to the majority of sexual assault cases⁸⁹.

While primarily offender focused, initiatives such as problem-solving courts, specialist practices and courts, re-entry courts, and circles of support and accountability, all aim to reduce reoffending, and therefore, reduce victimisation⁹⁰. Such courts do not demonise or stigmatise offenders but, rather, recognise that community interests are best served by creating incentives for the rehabilitation of offenders⁹¹. Addressing offending behaviour within a rehabilitative and reintegrative framework should be a critical component of any systemic response to sexual assault⁹². Therapeutic justice practices usually operate once an offender has indicated a plea of guilty⁹³.

Therapeutic justice initiatives develop and promote the positive impacts of legal intervention, while aiming to reduce its negative impacts⁹⁴. This is achieved through the reshaping of legal rules, procedures and the behaviour of legal professionals to refocus on the psychosocial needs of court users while not compromising fundamental legal rights⁹⁵.

Therapeutic justice initiatives primarily aim to improve and build upon the operation of existing processes⁹⁶. Informed by research and operational expertise, therapeutic justice initiatives provide benefits to victims by improving court processes; benefits to offenders by focusing on their rehabilitative needs; and meet broader objectives of reducing offending⁹⁷.

⁸⁸ Centre for Innovative Justice (2014). Innovative justice responses to sexual offending – pathways to better outcomes for victims, offenders and the community.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.



The CIJ make the following recommendations for implementation of therapeutic justice practices at different points in the criminal justice system⁹⁸:

- All Australian jurisdictions should, as a minimum, develop specialist court-based practices for dealing with sexual offence matters, building on the suite of specialist practices implemented in Victoria.
- Governments should consider the value of developing and implementing specialist sexual offence courts as a way to respond to the complexities of sexual offending and to deliver more responsive justice outcomes to victims of sexual assault.
- Governments should consider establishing pilot sexual offence problem-solving courts initially in the Magistrates'/Local Courts, with a view to their possible subsequent expansion to the higher courts.
- Any consideration of specialist and problem-solving courts should include close examination of the New York Sexual Offense Courts as a best practice example of a multifaceted specialist and problem-solving approach to sexual offending
- Governments should review the benefits of sexual offence pre-release or re-entry courts in an Australian parole context.
- Governments should review the benefits of Circles of Support and Accountability for sex offenders and implement pilot programs as an additional strategy for reducing reoffending and supporting offender reintegration.

The Justice Reform Initiative states that alternative and specialist court processes reduce contact with the justice system in the following ways⁹⁹:

- In-court diversionary programs reduce reoffending, increase health and wellbeing and address the drivers of incarceration.
- Those who have their matter dealt with in a community and neighbourhood justice court have reoffending rates that are 25% lower than those whose matters are heard in mainstream courts.
- Restorative justice processes significantly reduce the likelihood of reoffending, work to support people to connect with services and programs in the community, as well as provide support to victims of crime and are extraordinarily cost-effective.
- Drug courts reduce the likelihood of reoffending and improve access to alcohol and other drug treatment.
- Mental health courts reduce reoffending and facilitate access to mental health treatment as well as improve other health and wellbeing measures, and
- First Nations courts reduce reoffending, empower First Nations communities, increase the likelihood of court attendance and improve access to other supports and services.

⁹⁸ Centre for Innovative Justice (2014). Innovative justice responses to sexual offending – pathways to better outcomes for victims, offenders and the community.

⁹⁹ Justice Reform Initiative (2023). Alternatives to incarceration in Queensland.



Importantly, the CIJ view is that any holistic and specialist approach to sexual offences should support and accommodate both restorative justice initiatives and therapeutic justice practices¹⁰⁰. The Queensland Synod supports this view, and the recommendation and suggestions above.

First Nations people and communities

Specialist First Nations alternative court models differ to the mainstream court system in that they incorporate restorative principles, support First Nations leadership, usually involving First Nations Elders, and adopt a culturally safe model for working with First Nations People¹⁰¹. First Nations Courts put culture and healing at the centre of the court process, with the ultimate aim of reducing incarceration and ongoing criminal justice system involvement¹⁰². First Nations specialist courts have been introduced throughout Australia¹⁰³. Overall, evaluations have found First Nations-led courts to be highly effective - court attendance is higher for specialist First Nations courts in comparison to mainstream courts and court staff are better equipped to support First Nations people¹⁰⁴. There are also strong indications that reoffending rates are also reduced when processes are implemented and resourced well¹⁰⁵.

In a recent evaluation of the Queensland Murri Court, which operates across 14 jurisdictions in Queensland, respondents reported that participation in the court had reduced their contact with the justice system, and that the involvement of Elders encouraged attendance at court and provided a layer of support and accountability that encouraged people before the court to take responsibility¹⁰⁶. The evaluation of the Murri Courts in Queensland noted the effectiveness and success of specialist courts was dependent on external factors such as the availability of adequate resources in First Nations communities, particularly services that are culturally appropriate and First Nations-led¹⁰⁷. This includes the opportunities to improve the availability of culturally meaningful diversionary programs, alongside addressing the structural and economic factors associated with First Nations over-incarceration¹⁰⁸. This means addressing unemployment, low school attendance, problematic alcohol and other drug use, homelessness, lack of crisis support, and family support¹⁰⁹.

In Victoria, it has been recommended that the reach, jurisdiction and scope of the Koori courts be expanded in a recent Parliamentary Inquiry into the criminal justice system in Victoria¹¹⁰. Internationally, studies in New Zealand and Canada have also found that people who participated in specialist courts were less likely to reoffend, and where reoffending did occur, it was less severe¹¹¹.

¹⁰⁰ Justice Reform Initiative (2023). Alternatives to incarceration in Queensland.

¹⁰¹ Ibid.

¹⁰² Ibid

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid.



Other benefits associated with specialist First Nations courts include their ability to empower First Nations people and communities by ensuring they self-determine their own outcomes related to criminal justice, increase access to justice, and foster a better relationship between First Nations communities and criminal justice authorities¹¹². Additionally, participants have reported positive lifestyle changes such as finding employment and engaging in education¹¹³.

The Queensland Synod supports the above recommendations and suggestions for the implementation and/or expansion of therapeutic justice practices for rape and sexual assault in Queensland.

¹¹² Justice Reform Initiative (2023). Alternatives to incarceration in Queensland.

¹¹³ Ibid.