



ACT
Government
Justice and Community Safety



Restorative Justice

The ACT Restorative Justice Scheme

RJ in the ACT

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History of RJ in the ACT

- In January 1994, police run diversionary conferencing commenced in the ACT, adopting NSW Police's model originating in Wagga Wagga in 1991
- ACT Policing's contribution to RJ became internationally recognized through its involvement with the Re-integrative Shaming Experiment (RISE) project
- RISE was conducted between 1995 and 2000 in partnership with the ANU, University of Maryland and ACT Policing

ACT RJ scheme

- In 2001, the ACT Government forecast its intention to expand RJ options in the ACT
- After extensive consultation an *Issues Paper* was released, which set out an innovative model of RJ
- In January 2005, the *Crimes (Restorative Justice) Act 2004* commenced operation
- It is part of JACSD and incorporates ACT Policing's diversionary conferencing program

ACT RJ scheme

- The ACT scheme is voluntary and victim centred
- It sits parallel to the ACT criminal justice system allowing matters to be referred:
 - as a diversion from
 - parallel to criminal proceedings
 - post-sentence

ACT RJ scheme

- Allows for less serious offences to be referred as a diversion or in conjunction with criminal proceedings
- Less serious offences are punishable for a term of imprisonment equal to or less than 14 years for property matters and 10 years personal offences
- Limits the referral of serious offences to only after criminal proceedings have commenced and once the offender pleads or is found guilty

Eligibility Criteria

- **Is it eligible to be referred at this time?** See referral stages
- **Is it an eligible offence?** Any ACT offence; excludes Commonwealth offences
- **Is the person responsible eligible?** Was at least 10 years at the time of the offence; accepts responsibility for having involvement; agrees to be referred
- **Is there an eligible person harmed by the offence?** Offence involves an identifiable person harmed or an immediate family member of a person harmed or a parent of a child victim
 - *A person harmed may also nominate someone to participate on their behalf*

ACT RJ scheme

- The Act has been amended to be implemented in three phases (rather than the original two)
- **Phase 1** involves the referral of young offenders (10 to 17 years) in relation to less serious offences involving a victim
- Phase 1 excluded the referral of family violence (FV) and sexual offences (SO)

ACT RJ scheme

- **Phase 2**, commenced in March 2016, expanded the scheme to include adult offenders as well as serious offences
- Phase 2 allows the referral of:
 - young offenders for less and serious offences
 - adult offenders for less and serious offences
- Phase 2 also excluded the referral of FV and SO

Victim Initiated Referrals

- **Post-sentence** removing the requirement for referring entities to provide people responsible with an explanation of RJ and to seek their agreement to take part prior to referral being made.
- Enables people harmed to **understand and explore** whether RJ **might meet some of their interests and needs prior to an person responsible being notified.**
- If a person harmed wishes to proceed, when it is considered safe to do so, an explanation will be offered to the person responsible and their agreement to take part will be sought.

ACT RJ scheme

- **Phase 3**, commenced in November 2018, saw the inclusion of FV and SO to the scheme
- Guidelines to manage FV and SO were developed in consultation with key Government and community stakeholders

Guidelines for DV and SO

- The guidelines are a robust set of principles and procedures that build on the suitability criteria set out in the Act
- The guidelines ensure that victim participation is safe, well informed and genuinely voluntary
- It is anticipated that only a small number of matters will meet the additional requirements and increased suitability threshold

FV & SO Considerations

Guidelines for the management of FV & SO referrals include:

- **Additional training and supervision** of staff including to understand and respond to the dynamics of gendered, domestic & family & sexual violence
- Referrals with **diversionary potential must meet exceptional circumstances**
- **Convening team** includes two convenors & a case reviewer
- **Risk assessment of static & dynamic factors**
- **Safety planning** with participants
- **Referral and participation of therapeutic supports** to promote insight & recovery
- **Statements of responsibility**
- **Interim agreement periods**

FV & SO Exceptional Circumstances

FV & SO referrals prior to a plea or finding of guilt, exception circumstances much exist ie:

- offence has a **low penalty**;
- **limited impacts** as described by the person harmed and observed by the attending Police Officer;
- is **not part of a pattern of controlling behaviour or coercion**.

Factors that **might exclude a referral** from pre-plea or finding of guilt in Court, on the basis it may increase the person harmed's risk, include:

- New or existing **protection orders**;
- **Bail conditions** excluding contact;
- **Contesting child access** in Family Court;
- **Prior convictions for violent offences**;
- **Recently separated**;
- The person harmed is **pregnant**;
- Person harmed has **relocated to a refuge** in the past 12 months.

FV & SO Co-convening Model

- **Two convenors** that are suitably trained
- Tasks are **negotiated** between the convenors based on **capacity and dynamics of client responsivity**
 - For example, clients may appreciate **female/male workers leading contact** with female/male clients. But they may not.
- **Both convenors are responsible** for the administrative tasks of the referral and will negotiate the completion of tasks.

FV & SO Case Reviewer

- Provides additional **supervisory oversight** & sign-off **throughout the entire process**
- Identified & written into the guidelines to **acknowledge the seriousness & complexity** of these types of matters

AIC Evaluation of Phase 3

- **Broad support** for the use of RJ for domestic, family and sexual violence matters
- **High levels of satisfaction** amongst participants
- There was **no evidence** that persons harmed were **pressured or manipulated into participating** or **felt unsafe**
- **Expertise and support of Convenors** was identified as **critical**

Gaps in response to sexual violence

- *Listen. Take action to prevent, believe and heal report (2021) – Recommendation 13*
- Recommended researching and piloting expanded availability of RJ and civil responses
- \$100k allocated in 2023-24 Budget to engage an independent researcher

Review of the Scheme

- 2025 will mark **20 years** since the implementation of the Scheme and 7 years since all phases were rolled out
- Centre for Innovative Justice at **RMIT University** appointed to **conduct review**
- Review will consider:
 - **Strengths and gaps** of the scheme
 - **Adequacy and effectiveness** of the legislation
 - **Changes in utilisation** of the Scheme over time
 - **Barriers to access** and participation in the Scheme
 - **Opportunities to increase the impact** of the Scheme



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Restorative
Justice Unit

Questions?

Restorative Justice Unit
Justice and Community Safety Directorate
ACT Government

Phone 02 6207 3992

Email restorativejustice@act.gov.au

Address Lower Ground Floor, Allara House, 48 Allara St, Canberra ACT 2601

Postal GPO Box 158 Canberra ACT 2601