

Restorative Justice and diversion from prison

**Effective Living Centre,
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Australian correctional snapshot

Corrective services net operating revenue
2014-15 (not including capital costs /
depreciation) is \$2.9 billion p.a. (prisons) +
\$0.5 billion p.a. (CCs) = \$3.4 billion p.a.
Including depreciation = \$3.7 billion p.a.

Source: Report on Government Services 2016.



Prisoners in Australia

The imprisonment rate (number of prisoners per 100,000 adult population)

86 per 100,000 adult population 1984

133 per 100,000 adult population 1996

169 per 100,000 adult population 2008

208 per 100,000 adult population at 31 Dec 2016

This is approximately 4 times the rate of population growth.



Prisoners in Australia

The number of prisoners in adult corrective services custody increased by 8% in the last 12 months from

36,134 prisoners at 30 June, 2015 to

38,845 prisoners at 30 June, 2016 (93% male, 7% female)

Coming and going: there are around 45,000 receptions and 45,000 releases from prisons in Australia each year.



Adult Prisons SA

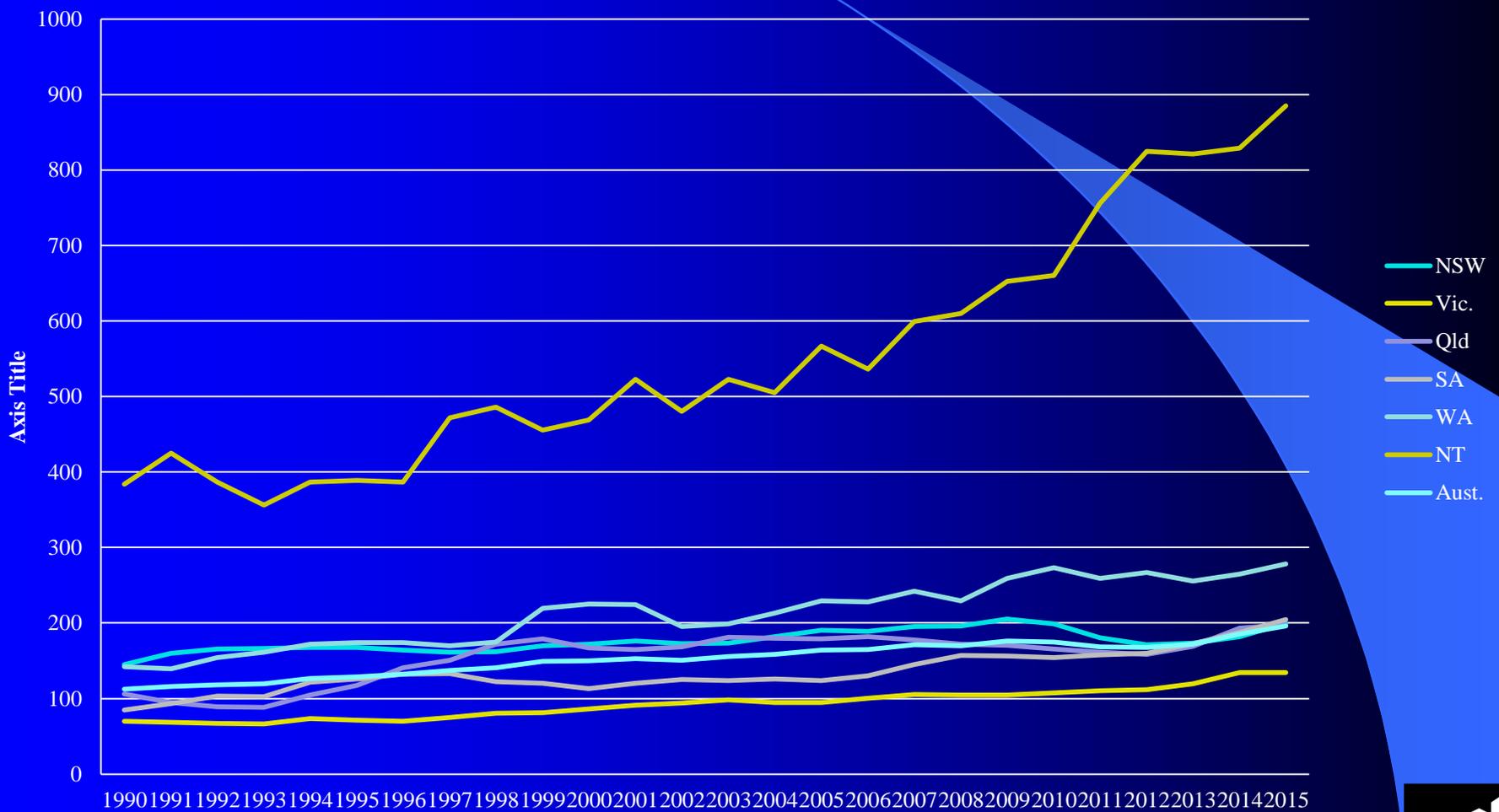
- About 2,948 prisoners, average daily population (2016) (8% growth)
- About 8% of the Australian total number
- 219/100,000 adult population (AU is 208)

- 9 prisons (Yatala, Mobilong, Cadell, Mt Gambier, Port Augusta, Port Lincoln, Adelaide Remand Centre, Pre-Release Centre (Grand Junction Rd), Women's prison (6%)) (111 Australia-wide)
- 19% Indigenous (trending down)
- Median age 36 years (highest in Australia)
- Average sentence length 4 years 5 months
- Recidivism rate: Released 2012-13 and returned to a new corrective sanction within 2 years:
 - Returned to prison = 38% (SA) 44% (Australia)
 - Returned to other correctional order = 46% (SA) 51% (Australia)
- 13% overseas born (UK, NZ, VN)
- 41% are unsentenced (average length of remand about 11 weeks)

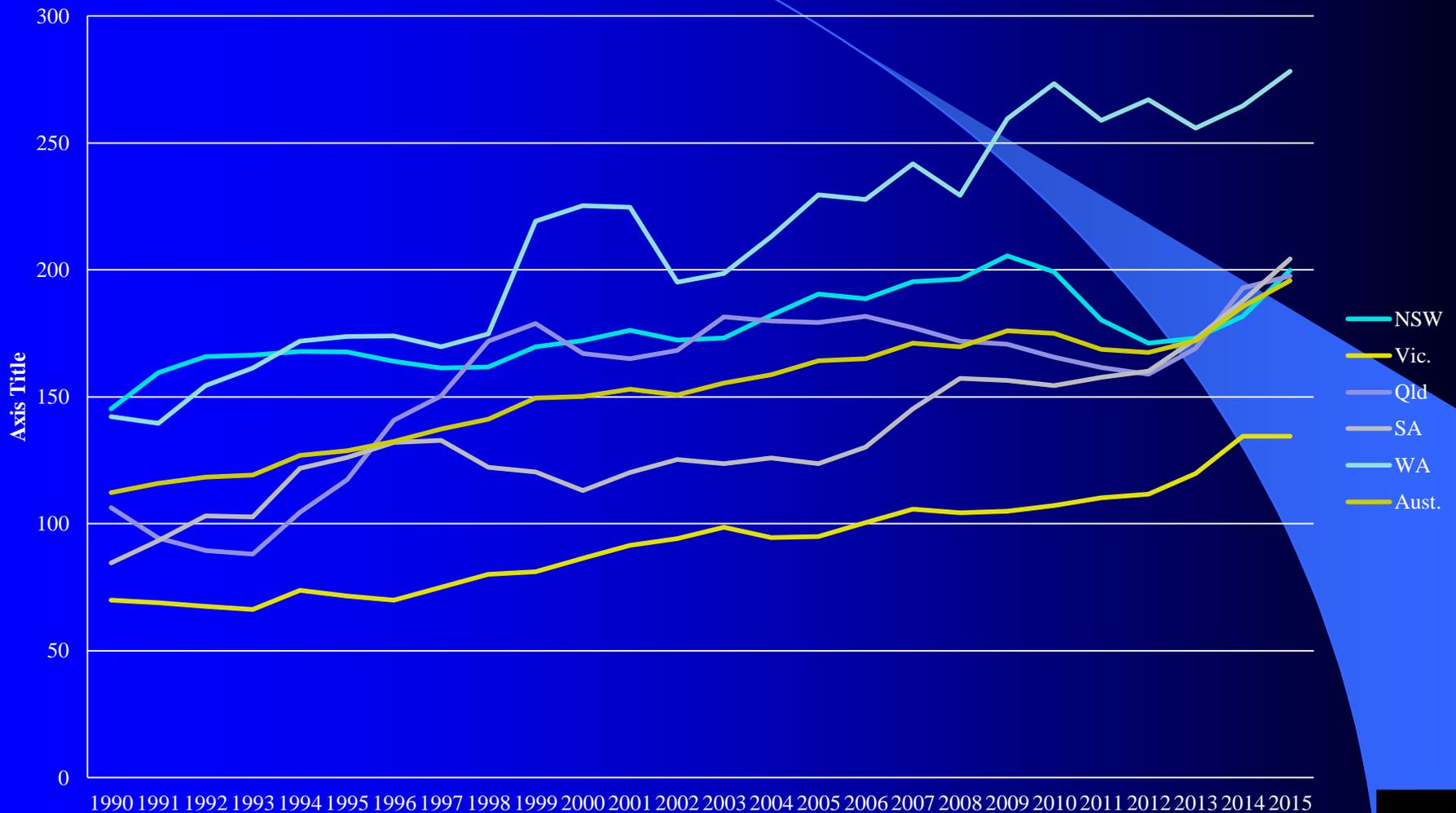
Source: ABS Corrective Services (2016) ; Productivity Commission (2016)



Imprisonment rates 1990-2015



Imprisonment rates from 1990-2015 without the Northern Territory



Prisoners: Indigenous

Indigenous Australians represent about 2.5% of the population, yet 27% of prisoners nationally and 19% of SA prisoners.

For every 1,000 adult Australian males, 2 are in prison.

For every 1,000 adult Indigenous Australian males, 37 are in prison.



Crime trends

Do high imprisonment rates give a crime reduction dividend?

Yes and No.

YES

Clearly people behind bars cannot commit crimes while they are there.

But are we any safer with more people behind bars?



Crime trends

Indeed, hasn't there been a significant drop in crime? Is that a result of the high imprisonment rates perhaps?



No

There are many reasons for crime drop, mainly demographic and private security strategies, AND...

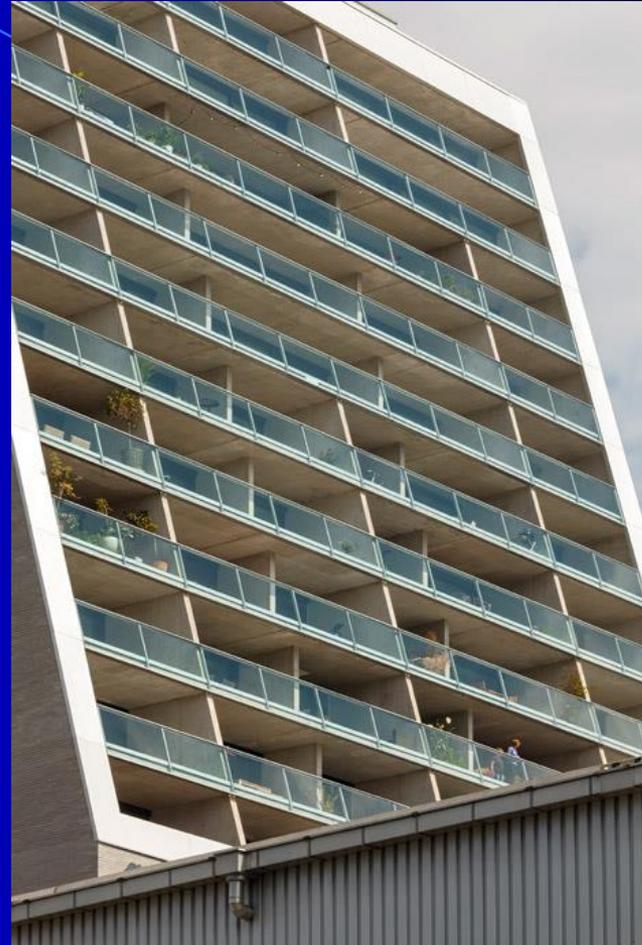
1. There have been *rises* in some crimes and *falls* in others with no pattern or correlation with custodial sentences, and remember, Scandinavia has low crime and low imprisonment.
2. There have been crime *drops* in places where the rate of imprisonment has *declined* (like Queensland, where the imprisonment rate dropped steadily from 2005 to 2012)
3. Study by the Center on Juvenile & Criminal Justice (October 2008) in California: the age cohorts that showed the *biggest increases* in imprisonment showed the *biggest surges* (or *slowest declines*) in violent and felony crime rates.



What is RJ?

Any justice mechanism that has the aim of repairing the harm caused by crime, so that crime is less likely to happen again

Rick Sarre, R. 'Restorative Justice – A paradigm of possibility' in M Schwartz, Martin and S Hatty (eds), *Controversies in Critical Criminology*, Cincinnati, Anderson, 2003, 97-108



The traditional model of justice:

- Crime is simply a violation of the rules
- The state prosecutes
- The focus is on blaming the perpetrator
- If guilty, offenders are punished
- Once they have served their sentence, they are returned to the community.



In restorative ('relational') justice settings

Crime is seen as a conflict between individuals; only secondarily is it lawbreaking

- The offender recognises the consequences of his/her offending and takes responsibility for it
- There's a chance for the offender to repair the injuries caused by the crime
- There's a chance for parties to be reconciled if possible
- Less anger /disruption for those who otherwise would have gone behind bars.



Such a mechanism would usually have:

- Direct involvement by victims, often in contact with offenders (process-oriented)
- Compensation for the emotional and material losses of the victim (victim-oriented)
- Reintegration of the offender into the community if possible (community-oriented)



Remember:

Restorative justice is not a *type* of justice. It describes *mechanisms* of justice such as:

- Any diversionary practice
- Family conferencing (young offenders)
- Victim-offender mediation
- ‘Circle’ sentencing
- Prison ministries
- *[School-based conflict resolution]*
- *[International peace-making: Braithwaite]*



Diversion

is not a new idea:

First Report of the Criminal Law and Penal Methods Reform Committee of SA (Justice Roma Mitchell, Prof Colin Howard, David Biles, with Mary Daunton-Fear, Doug Claessen, Geoff Muecke, July 1973, page 164.)

“The object of modern sentencing policy ... is not on sending offenders to prison but wherever possible on keeping them out of prison.”



Where did RJ come from? Contested!

- Indigenous traditions of shaming and reintegration
- Judaic *teshuwa*, *yom kippur* (atonement) & the jubilee principle “And ye shall hallow the fiftieth year ...and ye shall return every man unto his possession, and ye shall return every man unto his family” Leviticus 25, 810.
- Christian traditions of forgiveness and repentance

(Rick Sarre and Janette Young, “Christian approaches to the Restorative Justice movement: observations on scripture and praxis,” *Contemporary Justice Review*, 14(3), 345-355, 2011)



So...does RJ **work**?

There are 3 things that
make that question
difficult to answer



1. There are a number of criteria

There are a lot more desired outcomes that we may wish to measure to determine success other than lower crime rates, e.g.:

- Lower /slower rates of recidivism
- Greater victim satisfaction
- Greater confidence in police
- Greater process efficiency
- Safer correctional environment for staff and inmates



2. There are causes of crime that restorative mechanisms cannot affect...

- Economic disadvantage
- High rates of unemployment
- Familial dysfunction
- Historical and contemporary Indigenous disadvantage
- High rates of mental illness
- Drug and alcohol abuse



3. How do you know that it was the RJ intervention that led to any discernible change and not something else?

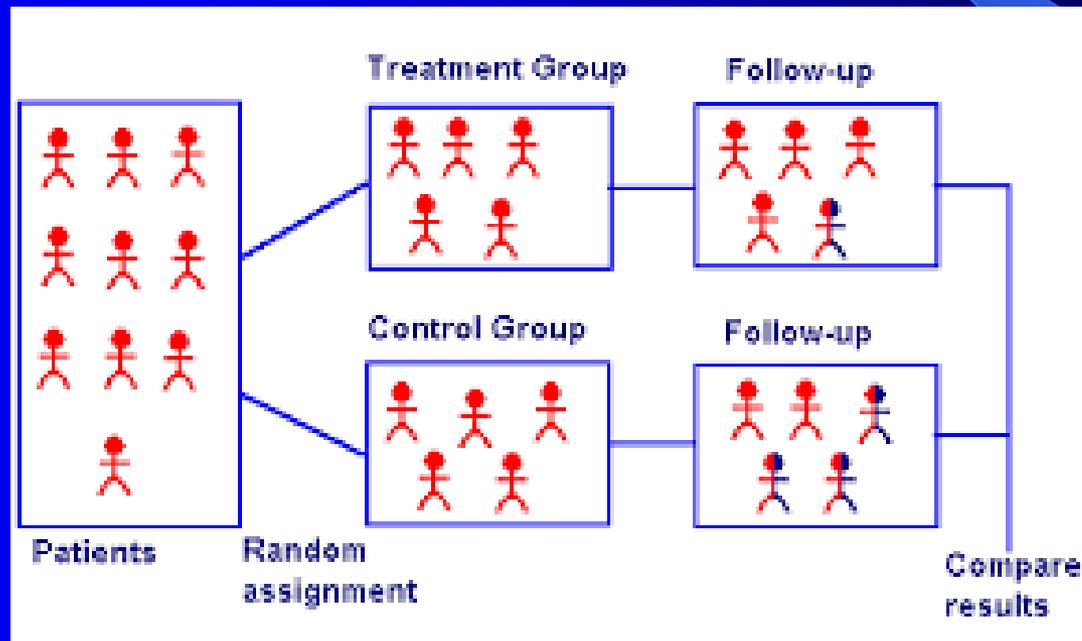


But there have been some attempts at evaluation of RJ in Australia

The main evaluations
have been of family
(group) conferencing
as a means of
diverting youths from
formal court
processes.



What do the randomized trial evaluations tell us?



Randomized trial

RISE (reintegrative shaming experiments).
Canberra 1995-2000

Randomized placement in conference / court and
tested the following re-offending (2 years):

- ❑ Under 18 property theft (stores)
- ❑ Under 18 property theft (personal)
- ❑ Under 30 drink-driving
- ❑ Under 30 offences involving violence



Did it work to reduce offending in the next two years? Yes and No

- Juvenile property theft (stores): no difference
- Juvenile property theft (personal): no difference
- Drink-driving recidivism: slightly higher for *conference-based* participants
- Violent offenders who participated in conferences had about 50% less reoffending than those who went to court.

Sherman, LW & Strang, H (2007) *Restorative Justice: The Evidence*, The Smith Institute: London.



Matched Control Group Evaluations

Sentencing circles

Aboriginal 'circle sentence' participants and a matched control group of Aboriginal offenders not circle sentenced, tested for recidivism and seriousness of next offence (2008).



Outcome

No difference between the two.

However, “giving Aboriginal Elders direct involvement in the sentencing of Aboriginal offenders encourages offenders to critically reflect upon their behaviour.... [and] be given opportunities to address the factors that get them involved in crime, particularly drug and alcohol abuse.”

‘Does circle sentencing reduce Aboriginal offending?’ Crime and Justice Bulletin No. 115, *Contemporary Issues in Crime and Justice* , BOCSAR, 16 July 2008, Sydney.



Qualitative and process evaluations

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SA: Juvenile Justice Study (2001)

Concluded:

There are two variables which, if present, *appear* to make a difference to recidivism rates and victim satisfaction:

1. Genuine remorse
2. Genuine consensus in fashioning an appropriate outcome

Kathy Daly and Hennessey Hayes (2001) *Restorative Justice and Conferencing in Australia*. Trends and Issues in Crime and Criminal Justice, No. 186, AIC: Canberra



NSW

Bureau of Crime Stats & Research May 2002

Not a randomized trial (compared the outcomes of candidates for one option or the other).

Concluded:

- the proportion of juveniles who re-offend is about 28% lower among those referred to a conference compared to those through court.
- the number of re-appearances in court is about 24% lower among those referred to a conference compared to those who proceeded through court.



Cont'd

NSW BOCSAR May 2002

- There were reductions of 15-20% in re-offending across different offence types and regardless of the gender, criminal history, age and Aboriginality of the offenders.

Garth Luke and Bronwyn Lind (2002) *Reducing Juvenile Crime*. Crime and Justice Bulletin 69, Sydney: BOCSAR



Adult conferencing: Pilot scheme

SA Flinders University and CAA 2005

“Victims strongly endorsed the process, most offenders at least accepted its value and appropriateness for victims and in many cases its value for them, and the small group of stakeholders outside the immediate participants were in favour of processes of this kind ...”

Andrew Goldsmith, Mark Halsey and David Bamford, (2005) *Adult Restorative Justice Conferencing Pilot: An Evaluation*, CAA: Adelaide.



AIC meta-analysis assessment in 2014

“The question, ‘does it work?’ is asked of all interventions in the criminal justice field and is most often answered by assessing the impact on reoffending. *On this point, the evidence for restorative justice remains mixed.*

However, the literature is replete with reports of high levels of victim satisfaction and feelings that the process is fair. Further, ... research conducted to date consistently demonstrates that restorative justice programs work at least as well as formal criminal justice responses.”

Jacqueline Joudo Larsen, (2014) ‘Restorative justice in the Australian criminal justice system *Research and Public Policy Series no.127*



If these mechanisms work just as well, and are cost-effective, should not the preferred response be to continue with restorative mechanisms?



A guarded 'yes'



But any
'restorative'
mechanism is
unlikely to get
public acceptance
in an environment
where public
resentment is
uncompromising.



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Conclusion

Restorative justice works for *some* offenders, in *some* situations in relation to *some* practices for *some* specified outcomes, and has strong support and acceptance with *some* victims.



...of that we can be certain.



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