**Restorative Justice and Re-offending:
The impact of the Juvenile Pre-Court Diversion
Scheme on the re-offending of juveniles in the
Northern Territory of Australia**

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Abstract

The Juvenile Pre-Court Diversion Scheme (JDS) was introduced in the Northern Territory in August 2000. The major objective of the Scheme was to divert juveniles from the court process and to use restorative justice practices and processes to prevent further offending (Waite, 1992). To achieve this aim, the Scheme provided juveniles with the opportunity to take responsibility for their offending behaviour, and allowed their families and communities key roles in assisting and supporting them in doing this. In both restorative justice practices and the JDS, the emphasis was therefore on adopting an inclusive and consultative approach to addressing juvenile offending. This thesis examines the first five years of implementation of the Scheme in relation to its success in preventing juvenile re-offending.

The analysis used data from the Police Online Realtime Management Information System (PROMIS) to examine demographic, geographic and offending characteristics of more than 3 500 juveniles over the five year period. Several types of statistical analysis were used to examine re-offending patterns, and to identify "at risk" groups of juveniles. To provide further insight into what impacts on re-offending, interviews were conducted with police officers, probation and parole officers, and other juvenile justice practitioners.

There were several key findings from the research. First, demographic, geographic and offence characteristics of offenders showed that the majority were younger Indigenous males who committed a property offence and were apprehended in regional centres or on remote communities. This finding is indicative of the level of over-representation of Indigenous juveniles in the criminal justice system in the Northern Territory, and is consistent with research elsewhere in Australia which also found such levels of over-representation.

Secondly, over three quarters of juveniles did <u>not</u> re-offend within the first 12 months after their initial event. An important conclusion to be drawn from this finding is, given that the great majority of juveniles did not re-offend, exposing them to a court process would have been an unnecessary and damaging experience for them and an unnecessary use of time and resources for the legal system.

A third finding was that offenders who had been given diversion were less at risk of re-offending than those who had an initial court appearance. This current research has therefore concluded that, in the Northern Territory, juveniles who were at greatest risk of re-offending were those who went to court. Additionally, offenders in some demographic groups were at twice the risk of re-offending than those who received a diversion—particularly if they were younger Indigenous males. Importantly, juveniles who had been diverted and re-offended took longer to re-offend compared with those who went through the court process.

The fourth important finding of this research related to the age of offenders, a factor which had the greatest impact on the extent of re-offending over the five year period. In the Northern Territory, although a greater percentage of juvenile offenders were 15-17 years of age, the analysis revealed that *younger* groups of juveniles were at risk of re-offending to a greater extent and more quickly after their first intervention, than older groups of juveniles, and that this finding was particularly applicable to those juveniles who had made a court appearance. This finding highlights the importance of identifying children at risk of offending from an early age and, for some children, certainly before the age of ten.

Finally, the qualitative analysis provided some evidence to support the statistical analysis. Respondents stated that diversion was an appropriate and much preferred way of reacting to their offending than court for the majority of juveniles, particularly given that most of them did not re-offend. They also emphasised that the restorative process successfully prevented re-

offending because offenders were given the opportunity to take responsibility for their behaviour, and because those affected by offending were included in providing a solution to that behaviour. Furthermore, respondents stressed that a critical factor in preventing a cycle of offending and re-offending, was to develop strong families by teaching parents skills necessary to provide safe and nurturing environments for their children.

Overall, the findings demonstrate that a number of factors are necessary in order to successfully address and prevent the cycle of re-offending by juveniles. These factors include that the individual has to be able to take responsibility for their offending behaviour; the community has to be part of the solution in changing the environment which led to offending; the victim, family members and others affected by the offending behaviour have to be included in the process, and that there has to be a whole of government approach to the issue. The thesis argues that policy processes needed to achieve such outcomes should be undertaken in a way which promotes inclusion, consultation, cooperation and trust, encompasses all areas of government and decision-making bodies, and includes a long term commitment to achieving policy objectives.

The thesis concludes that, in order to significantly improve the lives of people affected by crime and anti-social behaviour, there must be in place a process which is inclusive and which provides people with the opportunity for their own voice to be heard and, importantly, for that voice to be truly "heard" and respected by governments and the wider community.

Declaration

The work contained in this thesis has not been previously submitted either in whole or part for a degree at Central Queensland University or any other tertiary institution. To the best of my knowledge and belief, the material presented in this thesis is original except where due reference in made in the text.

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Publications and Presentations

Publications (refereed)

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Online Publications (not refereed)

Restorative justice and its impact on the reoffending of juveniles in rural and remote Australia: A Northern Territory perspective, http://www.ruralfutures.une.edu.au/rurcrime/proceedings.htm
Also at Restorative Justice Online, http://www.restorativejustice.org/resources/docs/cunningham/view

Presentations

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Introduction

On 21 June 2007 the Australian Federal Government took the unprecedented step of announcing that it would be taking responsibility for introducing wide-ranging measures to address poverty and violence in Indigenous communities throughout the Northern Territory. The extraordinary aspect of this initiative was that neither Indigenous communities nor the Northern Territory Government were consulted in relation to this intervention—nor were they advised that it was about to happen—until the Federal Government announced publicly that it was to occur (Behrendt, 2007; Anderson, 2007).

These measures were introduced in response to the *Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse 2007, Ampe Akelyernemane Meke Mekarle "Little Children are Sacred"* (also known as the Anderson/Wild Report). The Report, written by Pat Anderson, (Indigenous health advocate) and Rex Wild Q.C. (former Director of Public Prosecutions in the NT), found that child sexual abuse was prevalent in many Indigenous communities in the Territory, and this problem was mainly due to alcohol abuse and resulting dysfunctional families and communities. It went on to make 97 recommendations to deal with these issues.

A crucial aspect of the Report was that successful implementation of the recommendations would only occur if there was consultation with community members and other Indigenous groups. However, commentators argued that the most significant and worrying aspect of intervention by the Federal Government was that it would be taking control of the land and lives of Indigenous people and placing it in the hands of what they perceived as paternalistic and culturally inappropriate powers, without consultation with community members (Altman and Hinkson, 2007). Of equal concern to Indigenous organisations and communities was their feeling that the process would negate the many years fighting by Indigenous

peoples for land rights—from the initial declaration of a *terra nullis* at colonisation and culminating in the *Mabo* decision in 1992 granting land ownership to those Indigenous persons who had maintained a continuous presence on their land (Rowse, 2007).

Public and media responses to the Federal Government intervention were emotive and raised many fundamental issues relating to who should control Indigenous communities and who should take responsibility for management of these communities (Altman and Hinkson, 2007). There was consensus on the need for child abuse to be addressed as a matter of high priority. However, many statements were made in the media by policy makers, Indigenous and legal groups expressing their concerns about the extent to which these "reforms" lacked respect and concern for the basic human rights of people living in these communities (Altman and Hinkson, 2007; Anderson, 2007; Behrendt, 2007; Rowse, 2007). These statements include accusations of apartheid being practised by the Federal Government (Fran Baum, Professor of Public Health, Flinders University, *The Age*, 8 August 2007: 1), the lack of consultation in implementing the legislation as being an "affront to democracy" (Northern Territory Law Society, *ABC News Radio*, 9 August 2007: 1) and the intervention being "in some ways genocide" (John Ah Kit, former leader of the Northern Land Council and Labor member of the Northern Territory Legislative Assembly, *ABC News Radio*, 7 August 2007: 1). However, it was also argued that it was an "indulgent fantasy" for communities to require consultation before intervening to protect children and to prevent child abuse (Langton, 2007: 1).

An underlying concern of commentators was that none of the measures announced by the Prime Minister bore any relation to those recommended in the Anderson/Wild Report (ANTaR, 2007: 1). Additionally, Ian Anderson, Professor of Indigenous Health and Director of the Centre for Health and Society and *Onemda* VicHealth Koori Unit at the University of Melbourne, went on to say that the "reasons for this policy disconnect are unclear— although there has been some speculation in the press about the

government's response being more about electioneering or using it as a 'Trojan horse' for other policy agendas, particularly in relation to land rights" (Anderson, 2007: 2-3).

It was also argued that the intervention in many ways negated the *Agenda for Action* proposed by the Northern Territory Government in 2004 which stated that the NT government had made a commitment to five major objectives for Indigenous people–

- develop the ability of Indigenous peoples to govern their own communities;
- acknowledge Indigenous people as the traditional owners of the land;
- to recognise that traditional authority and ways of governing are essential for developing strong, effective communities;
- support Indigenous communities in managing their own affairs and making their own decisions and finding their own solutions to community issues; and
- negotiate fair solutions to Indigenous land claims (Northern Territory Chief Executive Task Force on Indigenous Affairs, 2004: 1-3).

However, in what appeared to be a direct contradiction of these NT Government strategies, the *Northern Territory National Emergency Response Act 2007* was passed by the Federal Senate on the 18th of August 2007. This legislation allowed "takeover of indigenous township leases by the Federal Government, the removal of the Aboriginal land permits system, quarantining of welfare payments for neglectful parents and bans on alcohol and pornography" (*Northern Territory News*, 18 August 2007: 3).

The "policy disconnect" between the Report and the intervention legislation was evident given that a major theme of the Report was that Aboriginal people had to be included and widely consulted in the process of addressing child abuse and that doing otherwise would result in failure to adequately and realistically address these problems. Commentators argued that by not doing so the Government

> ...robs Aboriginal people of their rights and respect. It will
> undermine trust that is so essential to good policymaking. It
> assumes Aboriginal people are the problem rather than the
> solution. It ignores evidence on the central importance of
> control to individual and community wellbeing' (Fran
> Baum, Professor of Public Health, Flinders University, *The
> Age*, 7 August 2007: 2)

As stated earlier, throughout the debate commentators at all level of politics and in Indigenous and human rights groups agreed that the issue of child abuse was of serious concern but it was imperative that this issue be approached in the context of fairness and equity for <u>all</u> people involved in providing a solution to this problem. For example, in its response to the *Northern Territory National Emergency Response Legislation (NTNERL)* the Human Rights and Equal Opportunity Commission (HREOC) emphasised that, while

> ... HREOC welcomes the recognition by the government of
> the serious, broad ranging social and economic disadvantage
> in many Indigenous communities. This recognition presents
> an historic opportunity to deal with a national tragedy ...
> HREOC does not support the NTNERL measures being
> exempt from the RDA (Racial Discrimination Act, 1985)...
> These laws clearly have a number of significant negative
> impacts upon the rights of Indigenous people which are
> discriminatory ... HREOC submits that a fundamental feature
> of "special measures" is that they are done following effective
> consultation with the intended beneficiaries and generally
> with their consent. The absence of effective consultation with
> Indigenous people concerning the NTNERL measures is
> therefore a matter of serious concern (Australian Human
> Rights and Equal Opportunity Commission, 2007:2).

It is of importance to note that these concerns are also of relevance to other interventions by the Federal Government in recent years which have overturned NT legislation and policy and which have affected both the Indigenous and non-Indigenous population of the NT.

Of particular relevance to this thesis is the overturning of mandatory sentencing legislation in 1999 and the consequent introduction of the Juvenile Pre-Court Diversion Scheme (JDS) in 2000 (further discussed in Chapter 3). At the time of its implementation mandatory sentencing was

condemned by the Federal Government which saw it as discriminating against Indigenous people. As a result, restorative justice, in the form of the JDS, was introduced as a means by which offenders could take responsibility for their own behaviour, prevent further offending and make reparation to their victims and to their community.

A major hypothesis of this thesis is that an integral part of preventing re-offending is to give young offenders an opportunity to take responsibility for their anti-social behaviour. Another major theme is that solutions to problems, such as anti-social behaviour, can only be achieved through consultation with, inclusion of and cooperation amongst people most affected by the situation and, to be effective, this has to be done over the longer term. This strategy requires a whole of government approach based on trust and cooperation between policy makers and local communities, issues which are discussed at length in Chapter 6. It should also be clearly stated that this situation is true of all juvenile offenders, not only Indigenous males. However the emphasis has been on this latter group of juveniles because, for many years, they have been over-represented in the criminal justice system.

This thesis will therefore examine how restorative justice is currently practised in the Northern Territory, how this needs to be done in an environment which promotes inclusion, consultation, cooperation and trust, encompassing all aspects of government and decision-making bodies, and which is based on a long term consistent commitment. The most important issue in all of this discourse is to find ways of preventing our young children and youth from continuing to make poor decisions which negatively impact on them and their communities.

In Australia and overseas, restorative justice has become an accepted way of responding to juvenile crime and research has shown that it has had a positive impact on preventing re-offending in many jurisdictions (Daly and Hayes, 2001; Latimer, Dowden and Muise, 2002; Luke and Lind, 2002;

Hayes and Daly; 2004; Maxwell and Hayes, 2006). This thesis examines the extent to which restorative justice practices impacted on juvenile re-offending in the Northern Territory of Australia during the first five years of operation, from August 2000 to August 2005.

As this thesis documents, restorative justice values, principles and practices were integrated into the Northern Territory Juvenile Pre-Court Diversion Scheme in order to more justly and fairly respond to juvenile offending, and to better address the needs of victims, families and the community. The Scheme was introduced in response to both international and national condemnation of mandatory sentencing, which was in place in the Northern Territory prior to 2000, and which legislated for the incarceration of juveniles for minor offences. A major factor influencing the introduction of the Scheme was an incident in February 2000, when a 15 year old Indigenous boy was found hanged in his cell in a Darwin juvenile detention centre. The boy, who was from a remote Indigenous community in the Northern Territory, had committed a non-violent minor offence of stealing pencils and other stationery from the local community council office. He had committed other minor offences in the past, and because of his prior offending record, was given a 28 day minimum sentence of detention in accordance with mandatory sentencing legislation. The boy committed suicide three days before his release. His death raised many issues about the use of mandatory sentencing relating to the social, legal and economic aspects of that regime. This thesis will argue that the paradigm of restorative justice has the ability to redress such imbalances and injustices in the Northern Territory criminal justice system. The findings will show that this can be achieved by providing the means by which offenders can take responsibility for their behaviour and be reintegrated into their community thereby preventing tragedies such as the one involving the 15 year old boy.

Research Gap and Research Problem

To date there has been no comprehensive evaluation of the Juvenile Pre-Court Diversion Scheme (JDS) in the Northern Territory in relation to its

impact on juvenile re-offending. Given that one of the major objectives of the Scheme was to change the behaviour of juvenile offenders, it is thought important to determine whether or not this had in fact occurred. This issue was examined in the context of whether, over the initial five years of the Scheme, diversion led to a decrease in the extent of re-offending and was consequently successful in achieving this goal. The research problem therefore examined the following question:

> *How successful were restorative justice practices, as represented by the Northern Territory Juvenile Pre-Court Diversion Scheme, in preventing re-offending for juveniles?*

Theories and Issues

The theory of reintegrative shaming, as developed by Braithwaite (1989), is used in this thesis as a basis from which to determine how effective restorative justice practices were in preventing juvenile offending in the Northern Territory. Braithwaite and Pettit (1990) further developed this theory to encompass the concept of a republican theory of criminal justice which describes how dominion, or personal freedoms, can be enhanced through the implementation of restorative justice practices. The major claim of this theory is that restorative justice provides the criminal justice system with a more equitable and just way in which to address offending behaviour than do retributive justice practices. Other issues which will be examined in the context of restorative justice, and which contribute to its efficacy, include the concept of "good" governance and its role in developing communities which are better able to address juvenile offending. Additionally, a theoretical framework for the development of social policy which addresses the issues raised by the findings from this thesis will also be examined. These theoretical issues are discussed in Chapter 2.

Contributions of the Research

This thesis makes the following five important contributions to research relating to juvenile offending and re-offending in the Northern Territory and the contribution of restorative justice to preventing this.

First, it demonstrates that Indigenous juveniles continued to be apprehended to a greater extent than non-Indigenous juveniles, and that this is particularly the case for younger males. This continuing level of over-representation of Indigenous juveniles in the criminal justice system, even with the introduction of the JDS, highlights the need for more interventions to be developed to address this issue.

The second important finding was the majority of juveniles did not re-offend within the first 12 months of their initial event. This finding provides evidence for the argument to further develop juvenile pre-court diversion in the Northern Territory.

Third, of those juveniles who did re-offend, the majority were young Indigenous males, who were apprehended for property crime, and who lived outside of the Darwin area. This finding provides a sound premise from which to determine which juveniles were most at risk, not only of offending, but also of re-offending.

Fourth, juveniles at greatest risk of re-offending were those who appeared in court, rather than those who received diversion. Whether a juvenile was diverted or required to attend court depended upon the type of offence committed. However it was found that, even for those juveniles who had committed serious offences, there was less risk of them re-offending if they had been diverted from the court process. This finding supported earlier research which showed that the court process was not a deterrent to offending and re-offending, and that juveniles who received diversion re-offended less than those who attended court (Griffiths, 1999; Luke and Lind, 2002; Hayes and Daly, 2004).

Finally, those juveniles who received a diversion and re-offended did so to a much lesser extent and also took longer to do so, than those who attended court. This finding indicates a group of "at risk" juveniles and the point of time at which they are likely to re-offend after their initial event. This provides an indication of the time in which juveniles may need to be given interventions in order to deter further offending.

Justification for the Research

This research provides an important addition to knowledge about juvenile offenders in the Northern Territory. It is the first research of its kind to examine the Juvenile Diversion Scheme in the context of restorative justice and its impact on the re-offending of juveniles. This research also provides a basis for policy development in the Northern Territory in relation to juvenile offending and crime, and can be used as a means to determine the ways in which "at risk" groups of offenders can be assisted effectively.

The methodology used in this thesis has not previously been applied to a statistical analysis of juvenile offenders and re-offenders in the Northern Territory. The use of Cox Regression and Survival Analysis therefore provides a much more comprehensive evaluation of the Scheme than has been previously available. Additionally, qualitative analysis was also conducted, and the combination of quantitative analysis with qualitative analysis provides a comprehensive analysis of juvenile offenders.

Methodology

A framework for the research is provided in Chapter 4. The methodology used includes several statistical techniques for quantitative analysis plus qualitative analysis in the form of interviews. The initial statistical analysis uses basic descriptive statistics, such as frequency distributions and cross-tabulations, to examine demographic, geographic and offending characteristics of juvenile offenders.

The statistical analysis examines re-offending patterns of offenders in relation to what variables impacted on re-offending, the time taken to re-offend and what variables predicted the risk of re-offending. In order to determine the strength and direction of relationships between variables, correlations between variables are examined. Cox Regression is then performed to provide information relating to the extent to which the independent variables impacted on the level of re-offending. Cox Regression is the appropriate technique to use when undertaking analysis relating to data which includes censored cases, as will be discussed in further detail in Chapter 4. The final phase of the quantitative analysis uses Survival Analysis to examine groups of juveniles over time to determine the extent to which one or other group was at risk of re-offending. Again this is the appropriate statistical technique to use for data which includes censored variables and which examines time taken for an event, such as re-offending, to occur.

The final analysis uses interviews of police and other practitioners about their perceptions of the Scheme and how effective it had been in preventing re-offending.

Outline of the Report

This Chapter outlines the foundations of the thesis in relation to the literature reviewed, methodology used and justification for the research. Chapter 2 presents a theory of restorative justice and Chapter 3 examines restorative justice practices both internationally and within Australia and includes discussion of the demographic and geographic characteristics of the Northern Territory. This provides a context in which to place restorative justice practices, as implemented in the Juvenile Pre-Court Diversion Scheme, and indicates areas on which social policy should focus in order to address issues raised by findings from this thesis.

Chapter 4 describes and justifies the methodology used for the thesis. As mentioned earlier several types of analysis were used both at the descriptive

and predictive levels. In addition a number of interviews were conducted in order to provide a qualitative aspect to the findings. The analysis of the data is provided in Chapter 5 and highlights issues which need to be addressed in relation to preventing juvenile offending and re-offending. These issues are examined at the individual offender, family and community levels. Chapter 6 discusses the implications of the analysis in relation to developing social policy to address the research findings, again from the perspective of the offender, their family and their community.

Definitions

There are several key terms used in this thesis which, in previous research, have been defined by researchers depending on the data they had available to them, and so these definitions are not necessarily uniform. To provide clarification of interpretation of the findings, the definitions of the main concepts used in this thesis are:

juvenile offender: A juvenile offender is defined in legislation as a person between the ages of 10 and 18 years.

Indigenous status: The term Indigenous, rather than Aboriginal, has been used throughout the thesis to denote a person of either Aboriginal or Torres Strait Islander descent. The majority of juvenile offenders were Aboriginal, however, the data included a minority of Torres Strait Islanders.

community: Researchers such as McCold (2000) define "community" according to the dictionary definition—an approach which will be taken in the current research. Therefore, for the purposes of this thesis, and unless otherwise specified, community will mean "local community" as denoted by "a social group of any size whose members reside in a specific locality, share government, and have a common cultural and historical heritage" (Blair,1984: 175) .

re-offending: This is defined as a juvenile being *apprehended* by police for a second time. This definition has been used by a number of researchers (Luke and Lind, 2002; Hayes and Daly, 2003, Wilczynski, Wallace, Nicholson and Rintoul, 2004). This is not to be confused with recidivism, which is usually used by researchers to refer to a person who has been imprisoned or detained for a second time.

Scope and Assumptions of the Research

The research refers to juvenile offenders in the Northern Territory who were apprehended between August 2000 and August 2005. The total population of offenders was examined, providing the basis for a robust statistical analysis establishing the characteristics of groups of juveniles in the Northern Territory who were "at risk" of re-offending. The analysis focuses on whether or not a juvenile re-offended, but not on the number of times they re-offended, or whether there were escalations in the seriousness of offences committed. The scope of the analysis does not allow examination of these issues which are, however, an opportunity for future research.

In relation to the qualitative analysis, the research only includes a limited number of interviews given the depth of the quantitative research which was the major focus of the thesis. Furthermore, time constraints precluded undertaking a greater number of interviews. However, despite this, the interviews provided important insights to the findings from the quantitative analysis. Again these issues are addressed in reference to future research.

Conclusion

This Chapter provides the foundation for this thesis. It introduces the research problem and research issues related to the capacity for restorative justice practices to reduce levels of re-offending by juveniles in the Northern Territory. The thesis addresses a gap in research relating to juvenile offenders in the Northern Territory of Australia, and the findings provide several major contributions to research in this area. Restorative justice

theory and its practical implementation, both internationally and in Australia, were briefly outlined and definitions provided explaining some of the key concepts used in this thesis. The final section of this chapter briefly explains the scope and limitations of current research. The following Chapter examines the theoretical basis of restorative justice practices in relation to juvenile offenders.

CHAPTER 2   THEORETICAL PERSPECTIVES

Introduction

The purpose of the current research is to examine the impact of pre-court diversion on the offending behaviour of juveniles in the Northern Territory of Australia.

This chapter begins by describing the setting for the research in relation to the history and development of restorative justice in traditional Indigenous and in westernised societies. The theory of restorative justice and its practical application and processes will then be examined in the context of determining how they could impact on criminal behaviour, and particularly the re-offending behaviour of juveniles. This discussion will be placed in the setting of the broader notion of community governance and what implications that has for the development of social policy which addresses juvenile crime.

The Development of Restorative Justice

Restorative justice has a long and varied history and it has been argued that it has been "the dominant model of criminal justice throughout most of human history for all the world's peoples" (Braithwaite, 1999: 2). The basis for this statement is that the earliest types of societies were non-state, acephalous societies which had been in existence for some 30,000 years (Weitekamp, 1999). These societies had no formal rulers as such, and consequently they were more egalitarian and provided community members with greater access to community resources, than do "modern" westernised societies. The way in which these acephalous societies dispensed justice was also different from more modern societies as the most common ways in which conflict was resolved was by providing restitution to victims and to the community.

This process required that the offender, the victim and other community members, be involved in negotiating a resolution to the conflict which was to the satisfaction of all parties. The process had at its basis several purposes,

including rehabilitating the offender and reintegrating them back into the community, addressing the victim's needs, reinstating the values and norms of the community and deterring further offending (Weitekamp, 1999).

One very important factor in this type of society was that every member of the community was valued and was needed to contribute to the well-being of the community at a social and economic level. This had implications for the treatment of the offender who, because they were needed as useful and productive members of society, were neither disgraced nor devalued and punishment, if any, was kept to as short a time as possible. These societies valued their members, treated them as equals through the equal sharing of resources and attempted to resolve conflict as peacefully and as non-destructively as possible.

The transition from restorative justice to the "modern" forms of retributive justice occurred when allegiance to the community, or an individual within the community, evolved into allegiance to a feudal lord. This occurred as communities developed and united, giving certain members of the community access to more and more resources. In the European "Dark Ages", which lasted from the collapse of the Roman Empire in AD400 to the 10th century, as the power of kingships increased, communitarian societies were replaced more and more by a feudal system, consequently giving the ruler ultimate power within the community (Weitekamp, 1999). The demise of restitutive law and the centralisation of power with a feudal lord, led to the monopolisation of power within states, including power relating to the law, justice and the punishment of offenders (Pratt, 2000).

Researchers have long argued that centralisation of the state has eroded restorative justice practices throughout the western world and that reintegration of restorative justice into society represents a return to more non-acephalous types of government and governance. They argue that governments have, over the centuries, taken power from people in relation to how they make decisions about their lives and that:

> the role of communities has been neglected by government ...
> Instead governments have only paid attention to the necessity
> of public order in a way that has embraced conflict in the
> communities—or even threatened community life itself
> (Walgrave, 1999: 137).

Braithwaite argues that the decline in restorative traditions led to an abuse of power by the state even by democratic rulers, who supported a social structure where they "were no more enthusiastic about returning justice to the people than were the tyrants they succeeded" (Braithwaite, 1996: 7).

While the centralisation of power was occurring in westernised society, Indigenous societies across the world continued to use various forms of non-state restorative justice practices. In many Indigenous societies the concept of community power was, and still is, recognised and practiced by community members. In these societies, bodies other than those which represent the local community are allowed no greater power than that allowed them by that community (Hall, 2005). The decisions made in these communities occur at a local level, and in doing so, take into account the resources, needs and traditional law and values of that community.

This is in contrast to the style of governance in Western society which precludes the ability of decision-makers to take these factors into account in relation to communities and individual needs. The concept of governance, and what is considered "good" governance, is discussed later in this chapter.

The way in which governance has developed in relation to existing acephalous non-Western societies is related to the way in which they were colonised in the 18th and 19th centuries (Radzinowicz and Hood, 1986; Cowlishaw, 1998). For example, during the colonisation of countries such as Australia, New Zealand and Canada, the extent to which the traditional law of Indigenous peoples was respected, very much depended upon the extent to which the colonists saw Indigenous peoples as "civilised", and the extent to which they respected the Indigenous culture and the rights of Indigenous

people to own land. The differing perspectives which colonists had for Indigenous cultures will now be examined.

In Canada, Indigenous peoples traditionally had two types of law, namely law from Indigenous peoples and law from developing traditions. During the colonisation of Canada the legal traditions of the Indigenous peoples were acknowledged by the British colonial government. In 1764, Sir William Johnson (Superintendent of Indian Affairs), invited the First Nations Peoples to meet with him to discuss how relations between the British and the Canadian Indians should proceed. He used traditional Indigenous tribal laws—wampum belts—in a ceremonial meeting, and made agreements with the Indian Peoples in accordance with their legal traditions. At the time western common, civil and international law did not extinguish Indigenous law and since that time Indigenous legal traditions have been successfully used to resolve council and tribal disputes in Canadian First Nation communities (Borrows, 2005).

This process of colonisation was similar to that in New Zealand, even though the colonists there proved to be somewhat hypocritical in relation to the extent to which they respected traditional Maori law. Until colonisation in the 19th Century, the Maori people practiced their own traditional law, and, as with other traditional Indigenous law, it was based on resolving conflict through family and community consultation, with the community elders and tribal chief having the decision-making authority for their respective community. In 1840 the Treaty of Waitangi was established between Maori and the British and, according to the colonists, this provided for the equal treatment of all New Zealand peoples. However, it was in fact devised in such a way that it led to Britain gaining sovereignty over New Zealand and Maori '*tino rangatiratanga*' (tribal authority of the chief). Consequently, the colonisation which took place gave little or no recognition to Maori rights and governance structures and Britain actually took more sovereignty than was ceded under the Treaty (Gibbs, 2005).

This situation continued until the 1980s when a paradigm shift occurred in relation to interpretation of the Treaty, resulting in the principles of the Treaty becoming consitutionalised (Havemann, 1985). Traditional Maori laws were then formally reinstated because they were seen as a more culturally appropriate, more accepted and more successful in addressing community issues, including as a more effective way of dealing with offending behaviour, than the westernised retributive system (Morris and Maxwell, 2002).

However, it has been argued that, although Canadian and New Zealand Indigenous peoples were not always treated fairly and equitably by colonists, the treaties made by colonists in these countries did provide a base line for more positive longer term outcomes for these Indigenous groups as:

> ... unlike Australia, long-established treaties in Canada, the United States and New Zealand, as well as greater theoretical clarity in identifying the process of colonisation and its ill-effects on Indigenous peoples, have provided a stronger foundation for policy and more positive outcomes (Alford and Muir, 2004: 101).

The lack of formal treaties or agreements between colonists and Indigenous peoples meant that the colonisation of Australia was different from that of both Canada and New Zealand. The respect shown by colonists for Canadian Indigenous laws and the, if somewhat hypocritical, respect shown for Maori traditional law, was not at all evident in Australian history, as no legal recognition of Australian Indigenous laws was evident until the *Mabo* decision of 1992 (Nettheim, 1995).

From the settlement of New South Wales in 1788 Aboriginal people were treated as British subjects bound by British law "however the posited relationship was hardly tenable as long as such laws did not recognise and safeguard traditional rights to land" (Hogg, 2001: 358). The settlers of Australia had little or no regard for Indigenous groups as landowners, as they perceived Australia as a *terra nullius,* consequently giving no property rights to Aboriginal people (Banner, 2005; Hogg and Carrington, 2006).

Throughout the process of colonisation the Europeans dispossessed Indigenous peoples of their lands, therefore undermining both the social and cultural networks of Indigenous groups (Alford and Muir, 2004). One of the major distinguishing features of settler societies "is that their claim to natural sovereignty and independence have been rooted in the culture of political identity of the European colonisers, not those they colonised" (Hogg and Carrington, 2006: 40).

European colonisation in Australia led to a large decline in the Indigenous population through disease and the systematic displacement of Indigenous communities, eventually leading to the diminishment of the culture and laws of Indigenous groups. In response to this treatment, and as a consequence of this dispossession, there was consistent resistance by Indigenous groups to European settlement. The response of Europeans to this resistance, and their perception that Indigenous peoples were unable to be integrated into westernised culture, was made apparent by a government order on 19 April 1805 which commanded that Captain William Bligh send his soldiers "for their [colonists] protection against those uncivilised insurgents" (quoted by the Australian Museum, 2005: 1). On 20 July of the same year, the Judge-Advocate, Richard Atkins, when asked if Aborigines could be witnesses before a court, stated that "...Aborigines are at present incapable of being brought before a criminal court - and that the only mode at present when they deserve it, is to pursue them and inflict such punishment as they merit" (quoted by the Australian Museum, 2005: 1). The only time any attempt was made to develop a treaty between the colonists and Indigenous people was in 1835 when John Batman attempted to "buy" Port Phillip Bay, near Melbourne, with blankets, tomahawks and other items. However Governor Bourke did not recognise this agreement and it was annulled (Australian Museum, 2005). Therefore, during the period of colonisation Indigenous people of Australia were treated as "backward peoples" who were so low on the scale of social organisation that they could not be acknowledged as having any right to land ownership (Brennan, 1992).

Australian colonists and the Indigenous population had little or no common ground on which to negotiate a treaty, and colonial authorities failed to achieve any form of political consensus with Indigenous people in Australia (Hogg and Carrington, 2006). Even if this had been the intention of colonists, the cultural diversity, language and geographic distances between Indigenous people, would have made it very difficult to establish a treaty acceptable to all groups. Furthermore, traditional Australian Indigenous law was incomprehensible to the Europeans who colonised Australia. This was mainly a result of culturally different responses to crime and offending. Unlike westernised criminal justice systems Australian Indigenous traditional law focused on the way in which people related to each other, to other species and to the land, rather than to a centralised authority. Traditional Indigenous societies were also comparatively egalitarian in an economic sense and consequently there were no significant differences in economic resources between people (Cowlishaw, 1988). Indigenous people therefore had a very different relationship with land and with property than the white settlers.

A traditional Aboriginal elder in the West Kimberley region of Western Australia has described Indigenous law as "pattern" thinking. This inferred a way of living in a community where there were no rulers and where power and authority came from the land, not from elected people or persons and not from any decision-making structures within the community (*The Law Report*, 1995). The first white settlers in Australia did not recognise this traditional view of "ownership" or links to the land in any formalised treaty or agreement with the Indigenous population. There was no recognition that, for Indigenous Australians, the land is the "real law" which is passed on from generation to generation through symbols which are impressed on the land. Therefore, Indigenous customary law was very much based on the "well-health" of the individual, the family and the community and:

> ... was/is the maintenance and healing of relationships and was/is a constant process of negotiation, mediation and conciliation in managing and resolving the conflicts

> natural to all human associations (Law Reform Commission, 2000: 3).

Therefore, the community or group was involved in all aspects of offending behaviour and its punishment, to the extent that the victim and his or her family inflict the punishment on the offender, or even on the offender's family, if the offender is not present. This concept of "payback" is prevalent throughout Indigenous culture, and is a form of tribal punishment which proved difficult for Europeans to accept, because it often contradicted western law. For example, for some time the concept of victims and families "spearing" an offender was not a practice which the Westminster justice system supported. However, in the past two decades, legal discussion by those involved in sentencing Indigenous people, has become more focused on the conflict between sentencing principles in traditional law and those in western law— particularly the appropriateness of sentencing Indigenous people under a western legal system they do not understand (Sarre, 1998).

The concept of "payback" in Indigenous communities has become central to the legal debate and punishment of the offender by their victims and family has, in a few cases, been sanctioned by the court. For example, in the case of a murder in 2002 in Central Australia, Alice Springs magistrate Michael Ward ordered the murderer be taken to his community where he would suffer traditional Aboriginal justice, or payback, at the hands of the victim's relatives and which involved spearing (*The Age*, 31 December, 2002).

One aspect of this type of tribal punishment is that, as the term would suggest, once payback is given the offender is considered to have "paid" for his crime and is reintegrated into the community. This is unlike the system where an offender attends court, is sentenced and can be taken from his or her community for many months or even years. Later sections of this chapter discuss in greater depth the issues and complexities involved when attempting to integrate traditional Aboriginal and western law systems in the Northern Territory.

As a result of these conflicting cultural views, even by Federation in 1901, the general lack of respect shown by European Australians for Indigenous Australian culture was evident in the way in which Indigenous peoples were used as entertainment, or treated as curiosities, in events such as the inaugural ceremony of the Constitution in Sydney in 1901 (Irving, 1999). For the next 90 years the doctrine of *terra nullius* continued and was not overturned until 1992, with the *Mabo* decision, providing Indigenous Australians with the opportunity to have their native title rights reinstated if they had continuously inhabited their land since colonisation and if the land had not been alienated legitimately since that time by freehold title (Nettheim, 1995; Banner, 2005).

The impact of colonial policies and practices had far reaching consequences for the way in which Indigenous people in Australia were treated by the criminal justice system (Gale, Bailey-Harris and Wundersitz, 1990). The colonisation of Australia was based on white values, norms and European practices of settling land and resulted in a series of policies and initiatives which affected the ability of Indigenous peoples to control their own lives (Cowlishaw, 1998; Cunneen, 2001; Broadhurst, 2002). Protectionist policies developed in the 19th century and resulting in the *Protection Act 1909*, gave white colonists considerable powers over the lives of Indigenous peoples in relation to where they could live, where they could go and banning their consumption of alcohol or gambling (Cowlishaw, 1988). Politicians stated that these policies were implemented to protect Indigenous people from the tensions and violence resulting from contact with white colonists (Hogg and Carrington, 2006) although, paradoxically, it was also recommended that Indigenous people be held accountable for "special codes of law" until they 'learned to live in a civilised and Christian manner' (Cowlishaw, 1998: 75).

These two contradictory aspects of protectionist policies led to the segregation, marginalisation and disconnection of Indigenous people from the white settler society (Broadhurst, 2002; Hogg and Carrington 2003:

Hogg and Carrington, 2006). These factors were further exacerbated by the removal of Indigenous children from their families from 1883 to 1969 (Cowlishaw, 1988). This action was again justified by white authorities as being for the protection and welfare of Indigenous people, but in fact it further dislocated families from each other and from their "country", making them more, not less, vulnerable to family and community dysfunction (Broadhurst, 2002). One example of how family and community dysfunction was exacerbated was evident by the refusal of some parents and community elders to teach their "knowledge" to their young people because they had to learn to live the "white way" (Cowlishaw, 1988).

Segregationist laws were repealed in the 1950s and 1960s, resulting in the closure of remote stations and missions (Hogg and Carrington, 2006). Indigenous families were encouraged to move closer to larger urban centres. The rationale for this development was to provide better services for Indigenous people, including housing, but this approach remained culturally inappropriate as it demanded adherence to, and assumed compliance with "anglo-Australian socio-spatial, domestic and civic norms" (Hogg and Carrington, 2006: 46). These policies therefore further alienated and marginalised Indigenous people from the dominant white society with the inevitable outcome that transgressions of white law occurred (Hogg and Carrington, 2006).

However Indigenous people did not just passively accept "white fella" laws and authority, but in some cases developed a "culture of resistance" in their dealings with white authority (Broadhurst, 2002). Resistance was based on Indigenous people retaining their Aboriginality and unique world view, and in doing so to survive as a people. By rejecting white authority Indigenous groups "dulled the full impact of colonial forces which would otherwise become all encompassing and result in the homogenisation of Aboriginal people in Australian society" (Broadhurst, 2002: 265 citing Trigger 1992: 222). This stance compounded tensions which were already inherent in the

system manifesting themselves at times in the form of "riots" in regional centres directed at police and other authority figures (Broadhurst, 2002).

Clearly the problematic relationship between Indigenous peoples and white authority is complex and longstanding and the result of policy implementation and colonial intervention over two centuries. Broadhurst (2002) discussed the concept of "frontier" cultures, where settler societies feel threatened by "outsiders", in most cases Indigenous people, and who therefore increase the level of punitiveness to deal with this supposed "threat". He states that the Northern Territory is in fact the most predominant of these cultures in Australia (as is Western Australia) and as a consequence Indigenous people are stigmatised and ostracised from the dominant culture. He argued that:

> the Northern Territory and Western Australia best illustrate frontier jurisdictions because their Aboriginal populations retain land or "country", maintain identity, and endure high levels of socio-economic stress associated with punitiveness (Broadhurst, 2002: 273).

The impact on the extent to which Indigenous people have contact with the criminal justice system therefore has to be addressed in the context of these colonial policies (Cunneen, 2001; Broadhurst, 2002). This will be discussed in greater detail later in this chapter.

The main prerequisite in addressing issues inherent in unequal relationships, such as those between Indigenous and non-Indigenous peoples, "requires genuine dialogue and the equalisation of power relationships" (Blagg, 2002b: 199). This is particularly important in addressing the level of discrimination which has historically been experienced by Indigenous young people (Cunneen and White, 2007).

The bases of discrimination, and the consequent over-representation of minority groups in the criminal justice system, are complex issues, deeply embedded within the fabric of a society. Discrimination is manifested through economic, social and political policies which reflect the norms of the

dominant society and disregards the world view of those groups whose cultural responses to certain behaviour may not be that of the dominant society (Broadhurst, 2002).

There has been some contention about the extent to which restorative justice in its present form was embedded in the traditional culture of Indigenous peoples and was therefore "resurrected" in response to their demands. In the first instance, there is a question of the extent to which Indigenous people are empowered to affect change in this way.   Historically, as discussed earlier, Indigenous people in Australia, and elsewhere, have been disempowered and this has impacted on their ability to affect change (Hogg, 2001; Broadhurst, 2002). This would point to a more politically motivated reason for linking restorative justice with Indigenous culture, by using this linkage as a way to legitimise these practices and "to be seen to be 'doing something' to address problems such as indigenous over-representation in custodial settings or, in the Australian context, indigenous deaths in custody" (Richards, 2006: 104).   The argument that these practices have been developed without consideration of Indigenous cultural needs, and are therefore inappropriate for Indigenous juvenile offenders, also appears to support the view that they are not embedded in traditional practices (Behrendt, 2002). The impact of this omission will be addressed later in this chapter.

However, ideally, restorative justice has been perceived as one way in which to build understanding and facilitate dialogue between culturally disparate groups, and ultimately work towards the equalisation of power between those groups (Blagg, 2002b). This dynamic has implications for the extent to which interactions and relationships between criminal justice agencies and minority groups can produce positive outcomes for marginalised people.

The development of a dialogue is particularly important for young people as a way in which to prevent them from becoming enmeshed in the criminal

justice system, and is why restorative justice has been recognised to be particularly relevant for juvenile offenders. This will now be discussed.

Restorative Justice and Juvenile Offending

In Australia the application of restorative justice practices to juvenile offenders was made in response to the need to better address the level of juvenile offending and re-offending than had been the case with the formal court process. This included developing a "full" concept of justice which addressed the needs of the offender, victim and community. For example the New South Wales initiative was to address four significant issues. These were:

- crime prevention;
- the use of early intervention in the criminal justice system through diversion, the use of informal cautions and warnings;
- community alternatives to court processing including community justice councils, juvenile justice panels and community aid panels; and
- Indigenous issues, including addressing the over-representation of Indigenous juveniles in the criminal justice system through strategies such as an increase in the use of informal warnings and in the range of pre-court diversionary schemes (Graham, 1993: 149).

In Australia further support was given for using restorative justice practices to divert children from the formal justice process because, for example in New South Wales, it was found that the younger the age at which a juvenile had a first appearance in a children's court the more likely they were to re-offend into adulthood (Chen, Matruglio, Weatherburn and Hua, 2007).

The policy direction used to address these issues was in part based on a restorative approach to offending as it focused on offending behaviour and the context in which that occurred, on the involvement of the victim and community in the process, a recognition and respect for the rights of the

victim and offender, and acknowledged the responsibility of the offender for their behaviour.

Practices implemented to achieve these objectives included diversion, addressing juvenile behaviour in the community and using detention as a last resort (Graham, 1993). This led to the implementation of what is called the Wagga, Wagga police cautioning model which used conferencing to bring juvenile offenders, victims, families and others together to provide a solution to offending behaviour. This model and other restorative justice practices which have been developed in Australia and internationally, will be further discussed in Chapter 3.

A restorative approach was introduced in the U.S.A. because of similar concerns. Legal practitioners, policy makers and the community perceived the juvenile justice system to be failing in its attempts to prevent juvenile crime and to assist juvenile offenders (Weitekamp, 2002). It was argued that this failure was due to the inability of the system to meet the needs of offenders, their victims or the community as it did not provide for offender rehabilitation, victim reparation or community safety (Bazemore, 1997).

For example, Umbreit (1998) explained that in the U.S.A., a major issue for policy-makers and other professionals was the increasing confusion within the juvenile justice system regarding what courts were trying to achieve in relation to "treating" offenders. Umbreit (1998) claimed that contradictory messages were given about whether the aim of the criminal justice system was to punish or rehabilitate offenders, to the extent that the purpose of sentencing became unclear. These contradictory messages related to whether the aim of the sentence was to rehabilitate the offender and change their behaviour, to deter others from offending or to protect society by removing the offender from it (Umbreit, 1998). Umbreit further argued that if society was protected by incarcerating criminals, the high rate of incarceration in the U.S.A. should make it one of the safest countries in the world but that the crime rate in the U.S.A. suggested otherwise. Additionally

incarceration was seen to be inhumane, to incite rather than deter crime by being a "breeding places for criminals", discriminatory and economically costly (Weitekamp, 2002).

The crisis of confidence faced by the juvenile justice system at that time led to state jurisdictions in America looking for new philosophies and programs to address these problems (Maloney and Umbreit, 1995; Bazemore and Umbreit, 1995; Bazemore, 1997; Bilchik, 1997; Bazemore and Day, 2002). In 1992 and 1996 grants were awarded by the U.S. Office of Juvenile Justice and Delinquency Prevention (OJJDP) to Florida State University to develop "a strategic approach for using restitution, reparative sanctions and related approaches as 'catalysts for change' in juvenile justice systems" (Bilchik, 1997: 3). This resulted in the balanced restorative approach to juvenile justice which is discussed in the next section of this chapter.

Factors which were found to impact negatively on outcomes for juvenile offenders in the formal justice process included:

- they did not take into account specific circumstances of the offender and therefore address underlying causes of offending behaviour;
- they further alienated the offender from society due to the negative effects of labeling and stigmatisation;
- they did not present the offender with the opportunity to change their behaviour;
- the victim was not included in the process and therefore the juvenile did not have the opportunity to understand how his or her behaviour affected the victim (Cuneen and White, 2007).

These factors, which are inherently addressed by restorative justice practices, have been found to provide opportunities for young offenders to improve their lives by preventing further re-offending, and reintegrating them back into the community. The extent to which restorative justice practices impact on re-offending is further discussed in a later section of this chapter.

Such an outcome is achieved by diverting juveniles from the formal justice system. For example, research in New South Wales indicated that "a systemic emphasis on diversion as a key juvenile justice principle has been shown to dramatically reduce the number of first time Indigenous offenders having to appear before the children's court" (Chen et al., 2005: 5).

One of the main aims of the restorative justice movement was to replace retributive justice values with those of restorative justice, or at a minimum, to integrate the two to some extent which is generally what has happened, resulting in a "hybridisation" of the criminal justice system (Cunneen and White, 2007). Daly (2000) argued that these practices should not be treated as opposite ends of the spectrum as "seemingly contrary justice practices— that is, of punishment and reparation—can be accommodated in philosophical arguments" (Daly, 2000: 34). Duff also argued that restoration and retribution are compatible and that restoration "requires retribution, in that the kind of restoration that crime makes necessary can ... be brought about only through retributive punishment" (Duff, 2003: 43).

Currently the Australian criminal justice process tends to work in this way as, to some extent, it incorporates both practices. In support of the inclusion of retributive values into the process Ashworth (2002) argued that the empowerment of communities and the disempowerment of state criminal justice agencies can have far reaching implications in relation to upholding the traditional values of conventional structures. These include ensuring the transparent operation of the criminal justice system, including addressing equality of respect of human rights and treatment of offenders, and ensuring the independence and impartiality of those administering the process. Ashworth further argued that these retributive factors must be incorporated in the restorative justice process, particularly in relation to the independence and impartiality of those administering the process.

This outcome is achieved by shifting the focus of the criminal justice process away from the adversarial situation where the offender is in opposition to the defendant and where all of those involved are not central to the process, to a situation which includes the offender, victim, stakeholders and, where necessary, involves other community members in the process (Ashworth, 2002; Zehr, 2005). Additionally, the restorative process is flexible in that who is included in the process very much depends upon the jurisdiction and the type of process involved. This process is in itself dependent upon community expectations of restorative justice and can be adapted to meet the needs of those with differing ideologies, include different professions and organisations. This flexibility is important when dealing with juvenile offenders because it takes into account the different needs and situations of offenders and in doing so has the capacity to more fully address the causes of offending behaviour (Crawford and Newburn, 2003). The extent to which there is a mesh between restorative justice values and the institutionalisation of those values has important repercussions for the outcomes of the restorative process, issues which will be discussed in a later section.

Researchers have suggested a number of significant differences in the values espoused by retributive and restorative justice (Braithwaite, 1989; Braithwaite, 1996; Daly, 1999; Miller and Blacker, 2000; Luke and Lind, 2002; Duff, 2003; Zehr, 2005). These commentators cited the following factors as being indicative of retributive justice stating it:

- focused on punishment for the offence and on the concept of "just deserts" in giving that punishment;
- is centralised by the state and focused on the interests and authority of the state;
- is based on the ethic of individualism and individual culpability at both the conviction and sentencing stage;
- placed a priority on legal rights and on legal staff who are the main decision-makers in the system;
- signified that the state has only a limited role in the care of its citizens;

- is distinctly mono-cultural;
- dehumanised the process in that it aims to eliminate emotion from the process; and
- focused on the offence and on blame for past behaviour.

Commentators argued that restorative justice, however, had quite different values and intentions and focuses more closely on the particular needs of the offender, victim and others who have been affected by the offending behaviour (Braithwaite, 1989; Braithwaite, 1996; Daly, 1999; Miller and Blacker, 2000; Morris and Young, 2000; Luke and Lind, 2002; Duff, 2003; Zehr, 2005).

These values included:
- changing future behaviour of the offender, such as preventing further offending;
- returning the conflict to those most affected by the offending behaviour, such as victims, offenders and "communities of interests", being the group of people who have shared concerns about the victim, offender, community and can contribute to a solution;
- including all stakeholders in an informal decision making process which creates an environment where everyone feels comfortable;
- emphasising human rights and addressing these through restoring responsibility to the offender for their behaviour and restoring the victim's sense of dignity, worth and self-control;
- promoting the concept that reasons behind offending lie not only with the individual but with the community and that therefore there is a collective responsibility to address that offending;
- promoting a multicultural and culturally sensitive approach to the behaviour; and
- treating, not punishing, the offender.

Researchers have argued that, given the entrenched nature of the retributive basis in the westernised criminal justice system, restorative justice should be reintroduced as an integral aspect of this system, not as an independent set of practices. As stated by Daly (2000) retributive and restorative practices need to work with, not against, each other. This transformation requires changes to be made to the system which are part of a "broader engagement with the politics of race, class and culture (and there needs to be) a 'dialogic view of morality' compared to a 'monologic' voice of law" (Daly, 2000: 22, drawing from Habermas, 1984, 1987). Restorative justice values are very much aligned with the former "dialogic" view, by taking into consideration the needs of individuals, in the context of their community, compared with the "monologic" view of retributive justice which focuses on punishing the offender. Gabbay, (2005) supported the view that there is a sound theoretical and practical basis for using the two perspectives concurrently. He argued that the employment of restorative practices in the current criminal justice systems provided a means to improve the retributive system. He stated that the restorative and utilitarian perspectives can be used in combination with theories of punishment and that:

> ...employing this different understanding does not contradict the basic principles upon which the current criminal justice system is based. On the contrary, they promote these principles and deepen their meaning... Through their inclusion, they can help amend some of the deficiencies our criminal justice system suffers from and advance a few of the goals this system strives for (Gabbay, 2005: 397).

Therefore, while the values and principles of restorative justice differ from those of retributive justice, it does not preclude them from being utilised in order to elevate and improve the criminal justice system's response to crime.

The underpinning objectives of restorative justice are therefore to encourage offenders to take responsibility for their actions and to look at the consequences of what they do. Unlike retributive practices, where there are limited, if any, discussions of consequences of offenders' actions, the restorative process uses discussion of the consequences of offending

behaviour as the most powerful way of showing offenders the impact their behaviour has had on their victim (Morris 2002; Zehr, 2005). A very important underlying factor of these differences is the inclusion, rather than exclusion, of people in the process. As Morris and Young (2000) state, the restorative justice process relies on building connections between people affected by the offending behaviour, and by making them an integral part of the process.

The emphasis on empowerment of the offender, as well as the victim and community, is seen as an important way of restoring self-respect and self-esteem (Cunneen, 1997). In this approach self-esteem is achieved by legitimising the process for those involved and therefore encouraging respect for others and for the law generally (Crawford and Newburn, 2003; Zehr, 2005). Restorative justice therefore ultimately aims to prevent offending by empowering individuals and the community. The extent to which this has been achieved in practice is discussed later in this chapter.

In summary, there have been restorative practices in place in some societies throughout most of human history. These practices involved local communities in the decision-making process in relation to dealing with offending behaviour and in doing so brought the individual back into the community and restored respect to the victim. Even though colonisation of countries such as Canada, New Zealand and Australia in the 18th and 19th centuries led to the diminishing use of many restorative justice practices, particularly in relation to Indigenous peoples, these practices were brought back into main stream justice practices during the latter half of the 20th century. This has largely been in response to communities that wish to address offending behaviour, and particularly juvenile offending, in what they perceive as a more realistic, culturally appropriate and therefore effective way than is achievable in a westernised justice system. Concerns have been raised however, about how restorative justice values are interpreted, and the extent to which they are implemented institutionally

(White, 2003). These issues will be discussed in a later section of this chapter.

In order to more fully place these issues within the context of restorative justice, theoretical perspectives will now be examined.

Theories of Restorative Justice

Three theories of restorative justice will be discussed. These are reintegrative shaming, balanced restorative justice and social restorative justice.

Reintegrative Shaming

In his seminal work *Crime, Shame and Reintegration,* Braithwaite (1989) defined restorative justice in terms of the reintegrative shaming of the offender, with an emphasis on moralising social control. He argued that, in order to provide a useful basis for explaining criminal behaviour, a theory of restorative justice needs to integrate explanatory theories, which explain how the world *is*, and normative theories, which explain how the world *should be* (Braithwaite, 2003).   He also argued that conventional practices have run their course, are outmoded and unhealthy and that therefore retribution needed to make way for restoration because, "retribution is in the same category as greed or gluttony; biologically they once helped us flourish, but today they are corrosive of human health and relationships" (Braithwaite, 1999: 7). Restoration, however, aims to restore responsibility to the offender for their actions, focus on future behaviour and restore the victim's sense of dignity and self respect, thereby building social relationships.

During the 20th Century, retributivism—the notion that offenders should be punished in proportion to the seriousness of their crime—gave way to preventionism, where offenders were kept away from society, but where there was also an attempt to rehabilitate them and to deter others from committing crime (Braithwaite and Pettit, 1990).   During the 1970s and 1980s social researchers, criminologists and others involved in the criminal

justice system came to realise that rehabilitation was not achieving its goals. They argued that rehabilitation was in fact harming offenders because the system was not necessarily treating them equally and fairly (Alder and Wundersitz, 1994; Bazemore and Umbreit, 1995; Bargen, 1996; Bilchik, 1997; Bazemore and Walgrave, 1999). For example, some offenders could convince authorities that they could be rehabilitated and were therefore given shorter terms of imprisonment, whereas other offenders, who were less able to convince professionals that they could reformed, were given more severe punishments (Braithwaite and Pettit, 1999: 4)

As a consequence of these perceptions came the emergence of the "new retributivists" in the 1970s. However Braithwaite argued that this group of criminologists moved too far to the retributivist end of the spectrum, ignoring the caring aspects of the previous era of preventionism (Braithwaite and Pettit, 1990). The emphasis of the "new retributivists" was still on "just deserts" in sentencing offenders, that is, the punishment must fit the crime. He argued that "just deserts" should not be used as the rationale for punishing offenders, as this led to a narrow and restrictive view of how we deal with people who have committed an offence. In relation to the broad political agenda Braithwaite and Pettit suggested that:

> ... complicated notions like the balancing of benefits and burdens which can underpin liberal egalitarian versions of retributivism are quickly discarded by law-and-order politicians who find that their press releases are most likely to get a run by appealing to simple-minded vengeance (Braithwaite and Pettit, 1990: 7)

Furthermore, at a system-wide level, legal practitioners have stated there are serious deficiencies from both a retributive and utilitarian perspective, in a system of justice where "just deserts" are not part of its foundation and where there are consequently unequal outcomes in sentencing for the same crime (Gabbay, 2005).

The core of the theory of reintegrative shaming is that controlling and decreasing the level of crime in a society is positively related to the ability of

a society to shame those who offend, in a reintegrative, not stigmatising way. The theory states that shaming, produced by interdependency and communitarianism, can result in either stigmatisation or reintegration. However, the premise is that where the society is based on communitarian ideals, the shaming is likely to become more reintegrative than stigmatising, whereas where this is done through stigmatisation, the offender is further ostracised from the dominant society, further alienating them from the interdependencies of that culture and therefore actively preventing their reintegration into the society.

The summary of Braithwaite's initial theory of shaming and reintegration was that individuals who have interdependent relationships within their society are more susceptible to shaming, and that communitarian societies tend to foster more interdependencies and are therefore more successful at reintegrating individuals. Braithwaite (1989) cited Japan as an example of a country where crime rates are much lower than in other societies such as the USA, where crime rates were constantly increasing. He argued that this was because the sense of community and belonging in the USA was not as strong as that in Japan and the consequent lack of communitarianism in the USA led to stigmatising, rather than reintegrative, shaming.

This stigmatising response to offending, Braithwaite argued, resulted in an increase in offending behaviour. For example, increasing police presence will lead to an increase crime if the police systematically stigmatise citizens or certain groups of society. These stigmatised citizens will then turn to criminal subcultures as a place where they are accepted, much as when people on their release from prison are not accepted by the broader society and therefore are likely to resort to further criminal activity. This conclusion is based around the notion that reintegrative shaming treats the crime, not the offender, as evil, whereas stigmatisation treats the offender as evil and the offending behaviour is treated as a result of that evil (Braithwaite, 1989). The basis of the theory is, that in order for reintegrative shaming to succeed, as measured by deterring or reducing criminal behaviour, the individual

must feel they are accepted as part of the wider society. This acceptance is denoted by the extent of interdependency of individuals and feeling of community within a society, and the meaningful placement of the individual within the societal framework.

Braithwaite also argued, that as reintegration of the offender back into the community, rather than exclusion of the offender from the community, will result in a reduction in crime, the criminal justice system should incorporate the notion of reintegrative shaming, rather than stigmatic shaming, as a method of social control (Braithwaite, 1989).

Reintegrative Shaming and Shame Management
The theory of reintegrative shaming was further developed with the concept of shame management (Ahmed, Harris, Braithwaite and Braithwaite, 2001). This concept related to the offender being able to manage shame in a positive way and to help them "acknowledge and discharge shame rather than displace it into anger" (Braithwaite and Braithwaite, 2001: 17). Ahmed et al. (2001) argued that displacement occurs when the individual does not acknowledge his or her wrongdoing, thereby externalising their shame and directing their anger at others resulting in further alienation from their external environment. This they called a "*denied-by-passed shame state*" (Ahmed et al., 2001). When this situation occurs shame is said to be "unresolved" and therefore has negative consequences for the offender in providing some form of closure to their offending behaviour because they feel stigmatised rather than reintegrated (Harris and Maruna, 2008).

At the other end of the spectrum is the "*discharged shame state*" where shame is "resolved" because the offender acknowledges that they:
- feel they have a moral obligation to accept responsibility for their behaviour;
- want to make amends for that behaviour and in doing so will be accepted by others;
- do not blame anyone else for the behaviour; and

- do not feel anger towards anyone else about their behaviour (Ahmed et al., 2001: 234).

Given these circumstances shame management therefore provided the offender with an opportunity to make sense of their past lives. This was achieved by involving them in a process which allowed reflection on their behaviour in an environment which facilitated forgiveness and acceptance (Braithwaite and Braithwaite, 2001).

At a practical level, Braithwaite stated that the theory underpinning restorative justice has to be consistent with findings about why people commit crime, and should be able to offer some explanation why crime is committed to a much greater extent by certain groups of people and sections of society. For example, why is it that those people who commit crime in Australia are more likely to be males, 15-25 years old, unmarried, have poor education, consort with criminals or are from certain racial groups. In relation to the last factor, research has shown that Indigenous youth are more likely to become involved in the criminal justice system than non-Indigenous youth and have been consistently over-represented in the criminal justice system since colonisation (Gale, Bailey-Harris and Wundersitz, 1990; Cunneen, 1997: Muirhead, 1998; Cunneen, 2001; Hogg, 2001; Blagg, 2002a; Broadhurst, 2002; Cunneen and White, 2007). Conversely, research showed that crime is less likely to be committed by young people who are "attached" to their school, their parents, who respect the law and who have high self-esteem (Braithwaite, 1989). The over-representation of Indigenous youth in the criminal justice system is discussed in greater depth in a later section of this chapter.

The requirement of reintegrative shaming for attachment and interdependency between individuals and in communities has been perceived as one of its major weaknesses, particularly in relation to Indigenous peoples. For example, Blagg (1997) argued that Indigenous people:

> ...do not necessarily live within the boundaries of the particular imagined community and its modes of comprehension, speech and interpretation: how can they, therefore, be participants in police-led *re*-integration ceremonies? ... Australian Aboriginal cultures may not operate within a shaming paradigm of social controls, as we would understand the terms (Blagg, 1997: 487).

Blagg argued that Indigenous society does not work on "corporate" principles and that the structure of Indigenous families and communities is such that shaming is not a recognised or understood phenomenon from their world view. Consequently using family or community members as a means to shame an offender is of little meaning to the offender, victim or to the community (Blagg, 1997). Cunneen (1997) also referred to the lack of power that "shaming" may have for Indigenous people. He stated that the reintegrative shaming approach was not appropriate for Indigenous communities for the following reasons:

> first, it assumes that Indigenous cultures in Australia operate on a model that prioritises a simple confrontational shaming process in resolving disputes and conflict. Second, it assumes that Indigenous young people can operate effectively within an imposed model without suffering significant disadvantage because of cultural difference. Third, it fails to adequately grasp the relationship between Indigenous communities and non-Indigenous colonial state formations (Cunneen, 1997: 300).

These concerns raise the following question of the efficacy of reintegrative shaming for minority groups in relation to *what* is the offender being reintegrated? As discussed earlier researchers have stated that Indigenous peoples have never been integrated into the dominant white society therefore cannot be *re*integrated into something to which they never belonged (Cowlishaw, 1988; Blagg, 1997; Broadhurst, 2002). This limitation of reintegrative shaming is therefore particularly relevant to groups such as Indigenous Australians who have historically been on the margin of, or segregated from, dominant white society and its constituent norms and values. In this social context the influence of reintegrative shaming on reducing offending is nullified by the fact that offenders are "freed from the

legitimate moral claims that membership places on them to comply with the tacit social compact on which the community is founded" (Hogg and Carrington, 2006: 197).

Reintegrative shaming may therefore be unsuccessful if it is applied to people from marginalised groups who may not share the world view, values and norms of those authorities who are facilitating the process. Cunneen (1997) argued that integral to this process is the development of respect and equality, but that this can only be promoted by forestalling a process where "inequality and domination structure the communicative process to the extent that the experience of the oppressed cannot be communicated, and indeed the practice of exclusion and silence are perpetuated" (Cunneen, 1997: 302).

In a conferencing situation it has been suggested that this problem arises in part from the extent to which the process is "professionalised" by those who facilitate it (White, 2003; Zehr, 2005). The professionalisation of processes, such as conferencing, is also an issue for other restorative justice approaches and will be discussed later in this chapter.

Braithwaite provided a "pessimistic account" of reintegrative shaming which highlighted problems which could arise in its implementation. For example, authorities could use this process to shame offenders in a stigmatising way and therefore further oppress offenders; that it could widen nets of social control; that it could lead to unaccountability in police powers; that it could increase a victim's fears of revictimisation (Braithwaite, 1999). Morris (2002) argued that shaming was a problematic concept as, even with the best of intentions, it could be perceived by the offender as a stigmatising process. Others have argued that shaming may in fact block efforts to communicate, and produce the opposite effect of what was required, that of anger towards others (Harris and Maruna, 2008). These issues would appear to be related to the concept of shame management as discussed earlier, where shame can

be constructively used if it is managed correctly, and does not result in unresolved shame because the offender feels he or she is being stigmatised.

The problem of introducing feelings of stigmatisation into the process also relates to the role of police and others in conducting the process. These issues are discussed in a later section of this chapter.

A Balanced Approach

The concept of Balanced and Restorative Justice for Juveniles (BARJ) was developed in the United States in the 1990s (Bazemore, 1997; Bilchik, 1997). This approach focused on bringing together offenders, victims and community members in order to balance "competency development, accountability, and public safety goals in an effort to restore victims, communities, and offenders and rebuild broken relationships" (Bilchik, 1997: ii).

The three main aims of the approach therefore related to the victim, the offender and the community and were to:

- ensure *accountability* to crime victims;
- increase *competency* in offenders; and
- enhance community *safety* (Bazemore, 1997; Bilchik, 1997)(italics added).

The concept of accountability related to accountability of the offender for taking responsibility for the harm they had caused both to victims and to the community. Accountability was demonstrated when the offender restored the loss which the victim had suffered (Bazemore, 1997; Bilchik, 1997).

Competency development related to development of the offender—for example, improving their life skills and providing them with opportunities to develop these skills. The aim was to increase the capability of offenders to be more effective members of the community. The emphasis was on the

development and demonstration of positive behaviour, not just the absence of negative behaviour (Bazemore, 1997; Bilchik, 1997).

The third aim of this approach related to promoting community safety. At a system level this was to be attained by cooperation and negotiation between community members, community services, such as police, educational services, and juvenile justice professionals, to develop positive strategies for addressing youth crime. The strategies were to focus on providing positive opportunities for the individual offender to develop competencies, while also monitoring the offender (Bazemore, 1997; Bilchik, 1997).

The success of this approach depended on the ability of the stakeholders in the process to cooperate, negotiate and develop resources to address juvenile crime. This basic requirement for successful development of this approach was its main strength, however it was also perceived by some as its major weakness. The weakness stemmed from a possible low level of commitment from the three groups of stakeholders in coming together in a meaningful and positive way to develop policies and practices (Bazemore and Day, 2002). However, it was further argued that it was precisely because of the inability of stakeholders to cooperate, that strategies should be developed to encourage the implementation of processes to achieve these aims (Bazemore and Day, 2002). These strategies included clearly evaluating the level to which the community understood and supported the approach, examining the policy connections between existing programs and practices, and allocating responsibility for undertaking the implementation of new policies and practices (Bazemore, 1997). It was recognised that the implementation of such initiatives would be a difficult and complex task and that it would need to be adapted to be relevant to the needs of communities, offenders and victims. However, policy makers and professionals stated that, at the minimum, the BARJ provided a means in which the problems inherent in the traditional juvenile justice system could be more clearly articulated and addressed (Maloney and Umbreit, 1995; Bazemore and Umbreit, 1995; Bazemore, 1997; Bazemore and Day, 2002).

Therefore for both reintegrative shaming and a balanced restorative approach to succeed, there needed to be a consistent understanding of the values, norms and needs of all of those involved in the process. This dialogue was needed to promote an underlying focus on restorative justice, that is, of a communitarian approach to justice (Broadhurst, 2002). Commentators recognised the weaknesses of each approach, but they were at least seen to be a more positive way forward in addressing juvenile offending than the formal justice system.

One further criticism of these approaches, and particularly that of reintegrative shaming, was that they focused too closely on the individual, and, in doing so, lost sight of the longer term objective of community empowerment. An approach which attempted to redress this balance was the restorative social justice approach.

Restorative Social Justice and Transformative Justice
A long term goal of restorative justice is community empowerment (Zehr, 2005). This aim can only be achieved if community needs and objectives are taken into account when processes of reparation are being developed, and a long term view is adopted of how restorative justice repairs and restores communities. However, often the restorative justice process is centered on the short term needs of individuals, usually the offender and the victim, and community needs and objectives are therefore given a lower priority or ignored. White argues that as a consequence "the heart of the matter remains that of changing the offender, albeit with their involvement, rather than transforming communities and building progressive social alliances that might change the conditions under which offending takes place" (White, 2003: 147).

It has been argued that the notion of community "transformation" is larger than both the concepts of reintegration and restoration. This is because the transformation is to a "new social justice" and, as such, there is no need for

re-integration and *restoration* but rather the need to develop new initiatives to address social inequality. This concept has been called "transformative justice" (Harris, 2008). There have been conflicting views in regard to the relationship between restorative and transformative justice. There are four main perspectives:

- to regard them as quite separate entities;
- restorative justice creates "spaces" for transformative justice to develop;
- restorative justice provides a conduit from the formal criminal justice process to transformative justice; and
- they are in fact the same thing and interchangeable (Harris, 2008: 556)

Harris provides further discussion for support of each perspective and the reasons for this. However, for those who agree that transformation is more than restoration, the main emphasis of transformative justice appears to be in relation to its application for *social* transformation at a *global*, rather than individual, level. For example, in their revision of the theory of reintegrative shaming, Braithwaite and Braithwaite (2001) stated that this transformation is achieved within the context of collective shame and collective accountability, not just at the individual level, and has to be developed within the historical context of the situation which led to the need for a new social justice (Braithwaite and Braithwaite, 2001: 55). Morris (1995) also argued that while restorative justice was superior to more punitive models, unlike transformative social justice, it ignored the structural causes of crime (Morris, 1995: 72).

In the Australian context criminologists have argued that these broader social processes need to be undertaken in the light of their colonial origins and that, as a consequence, repairing harm:

> demands more than an individualistic response on the part of the offender, or the state. It requires a direct integration of narrowly conceived criminal justice concerns with the wider issues of self-determination and

> social compensation for harms past and present (White, 2003: 150).

Practically, this means that the tasks and responsibilities given to the offender to make reparation should be undertaken with close links to community needs for addressing crime and providing solutions for offending. Therefore, at a broader societal level which addresses the needs of Indigenous people, an emphasis needs to be placed on social inclusion and this must take into account the unique community needs of this group of people in relation to dominion and self-determination (Cunneen, 2001; White, 2003).

Consequently the discriminatory nature of the criminal justice system for marginalised groups in society points to the need for a broader institutional approach to reparation. The social justice approach treats system reform and societal reform as interconnected entities which are embedded in the achievement of social justice. There are four main themes of this model:

- an emphasis on social inclusion in any process involving young offenders, victims and potential offenders;
- responsive practices that are based upon communal objectives;
- the formation of communities of support; and
- the enhancement of community resources (White, 2003: 148).

As with the BARJ, this approach is dependent on the cooperation and inclusion of all participants in the process, from the offender, victim to the community. This requirement can be a strength but also a weakness, of the process in terms of being able to provide resources to achieve these goals (Daly, 2008). However commentators have argued that it is worth attempting to achieve such aims because the capacity of such an approach to address the underlying issues affecting the extent to which juveniles offend (White, 2003).

The next section will examine the practical application of restorative justice processes in the current criminal justice system, in relation to the role of police.

Restorative Justice Processes

This thesis will demonstrate that, in order to address these issues, a theory of restorative justice needs to take a comprehensive and holistic approach to managing offenders within the criminal justice system.

Currently the Australian criminal justice system consists of sub-systems including police, courts, corrections and subsections of these including juvenile justice agencies. In some situations these agencies interact and communicate effectively, however in other situations, what happens in one sub-system may conflict with, and negate, what another subsystem is trying to achieve (Dignan, 2003). For example, where police presence is increased in response to a demand by politicians to reduce crime, the court system will have greater pressure put on it and often the prison population increases. These outcomes can have economic and social consequences in that they negate, for example, the attempt to reduce costs of the criminal justice system and to therefore have a more effective and efficient system. At a social level such outcomes may prevent the ability of the system to reduce the rate of imprisonment of certain groups of people in society. The final chapter examines the practical and policy implications of these outcomes and some policies to address these.

Problems such as these could be addressed by a more comprehensive theoretical approach to guiding and managing the criminal justice system. This approach would be used across the system "for assessing ... what ought to be criminalised, what ought to be policed, what ought to be investigated, and what ought to be brought before the courts" (Braithwaite and Pettit, 1990: 25). Dignan (2003) developed a model based on this systemic approach to restorative justice as shown in Figure 1.

Figure 1   A systemic model of restorative justice

Offender likely to
inflict serious physical
harm=Incapacitation

Serious or persistent offender =
Court imposed presumptive restorative
punishment

Recalcitrant offender or unwilling victim =
Court imposed restoration order

Willing victim and offender no 'public element' =
Informal restorative justice process
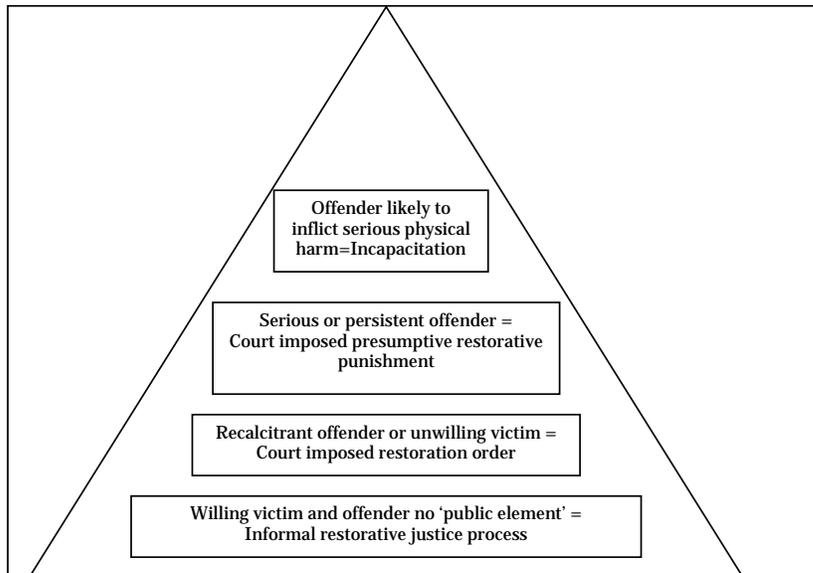
Adapted from Dignan, 2003: 147

At the "bottom" level of this hierarchical model is a situation where there are an offender and victim willing to sit and discuss the offender's behaviour in an informal process. In most cases the offence committed by the offender would not be of a serious physical nature, as these offences would usually have attracted a prison sentence. The next level up is where the victim or offender is unwilling to meet and therefore the court would impose some sort of restoration order upon the offender, perhaps community work or some other type of order not including incarceration.

One step up again and the court becomes more retributive in its approach when dealing with serious or persistent offenders. At this level a presumptive or restorative punishment is given, but this does not usually result in incarceration which is reserved for those violent offenders at the apex of the hierarchy. Elements of this model are evident in the westernised criminal justice processes which were discussed earlier and involve both retributive and restorative elements, usually depending on the type of offence and number of offences committed.

This model, however, represents how restorative justice is institutionalised and the role which the seriousness of the offence takes in this process. In a theoretical sense restorative justice values are not focused on the seriousness of the offence but on the ability of the offender to take responsibility for his or her behaviour and to provide restitution to the victim (Braithwaite and Braithwaite, 2001; Zehr, 2005; McCold, 2008).

Braithwaite and Pettit (1990) argued that a comprehensive and holistic approach to addressing offending behaviour should be *consequentialist*—that is, it should have as its aim a target for the criminal justice system to meet. This is in contrast to the *deontological* approach, which focuses on constraints inherent within the system and the demands which must be satisfied by those constraints. These demands include punishing the offender according to his or her "just deserts", and in doing so, not taking into account the offender's particular circumstances or situation. The central argument for the use of the republican theory of criminal justice is that the "just deserts" model focuses on punishment of the offender as the only way in which to respond to crime. These demands are therefore met at the expense of addressing the more complex needs of the offender and of the community.

The republican theory of criminal justice is based on the concept of dominion and the ability of a system to maximise this. Dominion is focused on the concept of liberty and freedom, not just a personal freedom to do as you please, but "the social status you perfectly enjoy when you have no less prospect of liberty than anyone else in your society and when it is common knowledge among you and others that this is so" (Braithwaite and Pettit, 1990: 85). Dominion and restorative justice are very much related, as dominion is restorative in nature because it restores control of the justice process to citizens and aims to restore harmony in society (Braithwaite, 1996).
Cunneen (1997) also argued that restorative justice promoted dominion as it provided a basis for the development of self-determination for Indigenous people.

In other words, the process promotes both citizenship and participation in the community for all citizens, not just those people who also control the basis of power.   The major aims of a republican system which promotes dominion are to:

- promote minimal intervention by the criminal justice system;
- check the powers of the criminal justice system to ensure balance of interests;
- favour effective community disapproval of criminal behaviour and restore dominion of victims and offenders by re-integration into the community (Braithwaite and Pettit, 1999: 87-89).

Underpinning these theorems of republicanism and dominion are wider religious and moral practices and values which are integral to developing and sustaining a community and society which values its citizens and which provides them with the ability and resources to promote their wellbeing. These beliefs and practices include:

- the importance of moral worth,
- building social capital, and
- promoting faith in civic life (Braithwaite and Pettit: 87-89).

It is useful to provide a definition of community at this point as previous research presents this concept at several levels of social groupings. At the broadest level we are all members of the human community and beyond that our community can be defined by geographical, political and societal boundaries. For the purposes of this thesis community will generally mean local community, as denoted by "a social group of any size whose members reside in a specific locality, share government, and have a common cultural and historical heritage" (Blair, 1984: 175). Community also encompasses the concepts of "partnerships, mutuality, social cohesion, solidarity, identity, trust, reciprocity, community building, social capital, and inclusiveness" each of which underpins restorative justice practices (Adams and Hess, 2001: 13).

Building strong communities requires social capital, faith in civic life and the importance of moral worth and "doing good" in society. These provide mutually beneficial outcomes for all citizens through empowerment and strengthening of their social connections. These are important concepts which are integral to any theory which attempts to address offending behaviour. At a broader level, these concepts are part of a system which addresses the needs of all of those affected by offending behaviour. The notion of "doing good" to others is based on a moral or religious belief in human nature in "informing a faith of civic life or a belief in the importance of communal bonds as 'social capital' or 'collective efficacy' of moral worth" (Crawford and Newburn, 2003: 21).

Social capital is a very important factor in this "faith of civic life" and is characterised by the norms of trust and reciprocity which produce mutually beneficial outcomes for people or a community. As a result the community is empowered and strengthened through reciprocal, trusting, social connections which help the processes of "getting by" or "getting ahead" (Stone and Hughes, 2002). Conversely, Carson (2004) argues that social capital has its "dark side" where strong social networks and ties can in fact advance criminal activity and the power of ongoing criminal subcultures such as the Mafia may attest to this. Additionally, he argued that by focusing on building social capital as a means of lowering crime rates, marginalised groups in society will be targeted further promoting discrimination of these groups (Carson, 2004).

Other commentators have argued that the community cannot always be expected to have an interest in developing social capital as a means of crime prevention. This is because, generally, middle class white communities do not share the community values which are required to build social capital *per se*, and therefore they buy their crime prevention from the government rather than develop it through community building (White, 2003). Therefore crime prevention is achieved without the "faith in civic life" or rather that faith is in governments taking responsibility and control for

providing a crime-free and safe community, not in community members doing so.

Carson (2004), however, still argued for collective alternatives to lowering crime and criminal activity, and stated that the emergence of social capital research in Australia, in conjunction with its acceptance by government policy makers, "will eventually make it one of the central doctrinal underpinnings of communal crime prevention in Australia" (Carson, 2004: 4).

In summary, restorative justice practices encompass the notion of "doing good" to others and enhancing social capital within the community by reintegrating offenders back into the community as productive, contributing people, and repairing harm to victims and ultimately to the community (Van Ness and Strong, 1997). In doing this social capital is enhanced by providing a solution to offending which focuses on the good of the wider community, rather than just on the need to punish the individual (Spencer and McIvor, 2000).

The present study will examine these issues in the light of findings from the impact of restorative justice practices on the re-offending of juveniles in the Northern Territory and the policy implications of the findings. The next section will provide a definition of *restorative justice* and examine the way in which restorative processes and practices have been implemented in the current criminal justice system.

A Definition of Restorative Justice

The diversity in types of practices used in restorative justice make it difficult to define clearly (Crawford and Newburn, 2003) and the term is currently being used to describe practices in place across a broad spectrum of societal conditions, including those occurring within the criminal justice system.

Most practices which are not defined as *retributive* are often included in the realm of restorative justice, and it has been argued that the scope of restorative justice has become so wide that it has been used to address virtually any harmful or morally reprehensible actions (Miller and Blacker, 2000). Nevertheless, a generally accepted definition of restorative justice is that of a "process whereby the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future" (Marshall, 1996: 37). However, Braithwaite argued that this definition is too limiting because it does not include the core values of restoration when compared to retribution. Braithwaite stated that Marshall's definition:

> ... does not define the core values of restorative justice, which are about healing rather than hurting, moral learning, community participation and community caring, respectful dialogue, forgiveness, responsibility, apology, and making amends (Braithwaite, 1999: 6).

Roche agreed that these are the values which should guide the restorative process and that such values offer a better indication of what restorative justice is about than any other available definitions (Roche, 2002).

Reparation is a means by which offenders make amends to their victims by addressing the harm they have caused. In this process the individual offender admits guilt and in doing so accepts responsibility to repair the harm they have caused. The admission of guilt by the offender is central to the restorative justice process and is seen as an essential element in the successful reintegration of the offender into the community (Braithwaite, 1989; Zehr, 2005). Harris (2001) stated that guilt is outward looking and "is described as involving feelings which are focused upon the damage that one has caused, and in particular, is associated with the recognition that one has hurt others" (Harris, 2001: 111). In the restorative process the admission of guilt by the offender is voluntary, which in itself is problematic. If an offender does not feel shame for his or her behaviour then why would they feel guilt? If guilt is not admitted then, in diversionary programs such as those in place in the Northern Territory, the offender is immediately

excluded from the restorative process. Again this issue relates to the whole notion of whose value systems and norms are dominant in the restorative process and acceptance of those systems and norms (Strang and Braithwaite, 2002). The implications for the voluntariness of the process are therefore that the more marginalised offenders are further excluded from diversionary processes (White, 2003). Additionally, diversionary programs tend not to be used for more serious intractable offenders and are restricted to first time offenders who have committed minor offences. This restriction also tends to exclude those marginalised groups and one result is that "Indigenous young people are less likely than non-indigenous young people to be referred to conferences due to their early and repeated contacts with the criminal justice system" (White, 2003: 145-146 citing Cunneen, 1997 and Harding and Maller, 1997).

However, as discussed earlier, a process which focuses on the individual does not necessarily address the wider underlying issues of why offending occurred (Bilchik, 1997; Blagg, 2002a; White, 2003). This is because the focus of the process is on reparation of immediate harm and admission of guilt, rather than on providing a forum to repair harm on a broader societal basis. The emphasis on the individual for taking responsibility for their behaviour also detracts from the pivotal role which the wider societal environment has on producing offending behaviour. Therefore it is argued that a restorative justice should not be defined only in terms of the individual offender or victim, and that "repairing social harm should not be seen as a 'micro' event, involving only the immediate affected parties. It is indicative of much broader social processes, in which both victim and offender are implicated" (White, 2003: 149).

The focus of the restorative process can therefore have far reaching implications in relation to the extent to which the process achieves its aims in addressing the needs of the offender, victim and community. The next section discusses the implementation and institutionalisation of restorative

justice values and how different models focus on different aspects of the process.

Restorative Justice Processes and Practices: Institutional Implementation

The way in which restorative justice theory and values are translated into institutional practices is important in determining the success or otherwise of the outcome of a program or process in terms of how successful participants thought the process was in addressing the offending behaviour (Braithwaite and Braithwaite, 2001; Blagg, 2002b; Cunneen and White, 2007).

One factor impacting on the successful translation of values into practice relates to the implementation of the ideals set by restorative justice values into a restorative process. Gaps between values and practice may occur because of the very high expectations which some practitioners have of restorative justice and the assumption that support structures are available to implement restorative justice values (Daly, 2008). For example, in the ideal process there is an expectation that communities have strong social ties and exist in the context of *gemeinschaft*, that is, they have "stability, a wholesome proximity to nature, (and) high levels of mutual trust and social cohesion" (Hogg and Carrington, 2005: 30). This has often been cited as the rural ideal as opposed to urban *gesellschaft* communities which are impersonal, formal, rational and where "personal rights take precedence over cooperative obligations" (Donnermeyer, 2007: 15). The environment within which restorative justice takes place, and the expectations of the levels of support and structures available to facilitate restorative justice, are therefore important to its successful implementation.

Walgrave (1991) suggested a number of factors which should be taken into account when implementing a theoretical approach to restorative justice. These included:

> That attention must be paid to the quality of the preparation of the experiment (clear goals and directives: a realistic estimation of the required means; a motivating and accurate information on the relevant institutional context), the quality of staff (educational characteristics; experience; motivation; teamwork), cooperation in the field between the relevant agencies (police; justice; welfare; host institutions; press; public), the real costs of the experiment, the flexibility and the consciousness of the goal-oriented strategies, and the psychosocial dynamics (Walgrave, 1991: 347)

He argued that the extent to which these factors were taken into account determined the extent to which an effective link was made between the theoretical perspective and the practical implementation of restorative justice values.

McCold (2000a) developed a typology of justice practices featuring three major groups which focused on the offender, the victim and the community. Some practices involved formal court or board appearances by the offender, such as the Youth Aid Panels and Reparative Boards, and some involved other government bodies such as family service agencies and victim services.

McCold (2000b) stated that only three processes—family group conferencing, community justice conferencing and circles—met the "holistic" restorative justice criteria and that each of these processes had at their core the following four steps:

1. Acknowledgement of the wrong (facts discussed)
2. Sharing and understanding of the harmful effects (feelings expressed)
3. Agreement on terms of reparation (reparation agreed)
4. Reaching an understanding about future behaviour (reform implemented) (McCold, 2000b: 2)

These processes differ structurally in relation to who attends the process and who facilitates it. A brief overview of these processes follows and a fuller examination is provided in the next chapter in the context of international and Australian restorative justice practices.

The first model described by McCold (2008) was the mediation model where a neutral third person provides a "bridge for dialogue" between victim and

offender following a scripted dialogue. The models within the mediation context include community mediation, victim/offender mediation (VOM) and victim/offender reconciliation programs (VORP) (McCold, 2008).

A second conferencing model relied on the same process as mediation but occurred with a group of people rather than just three participants. Several types of conferencing models were developed across the world and included:

- the New Zealand conferencing model facilitated by youth justice coordinators from the Department of Social Welfare (Morris and Maxwell, 1998, 2002);
- community justice conferencing facilitated by a police officer and includes the offender, victim, family and others. This is a scripted process (Watchel, 1997); and
- community conferencing can be facilitated by police but also by any official, such as a probation officer or teacher, who has the authority to divert the case from the formal process. This is also a scripted process.

Both mediation and conferencing are therefore a formalised process in that they are undertaken according to the script provided. The way in which the conference is facilitated can also have implications for the extent to which the process is formalised and professionalised. As will be discussed later in this chapter, this has important implications for both offender and victim in relation to outcomes of the restorative process.

The third model is more closely based on processes of traditional Indigenous ritual and spiritual practices. For example, prayers may be said before the process and the handing around of traditional symbols such as feathers may occur during the process (McCold, 2000b). This model includes Aboriginal peace circles and can have the following process:

- a healing paradigm (healing and peacemaking circles) which is held to dispose of hurtful situations. These circles include the offender,

victim, family, elders and others. Their focus is on resolving problems but not about imposing punishment;

- a co-judging paradigm (sentencing circles) which are limited to making recommendations to judicial authority for actual case disposition. The participants, including the offender, victim, police and judiciary attempt to understand the event and prevent it from recurring. The aim is to provide recommendations to the judge about what should happen to the offender (McCold, 2000b: 5).

As depicted in the centre of Figure 2, the restorative justice practices described above overlap each of the three areas relating to the victim, offender and family and/or community members. These processes have different theoretical bases and can therefore have differing priorities and expected outcomes from each perspective, ranging from shaming the offender to engaging the community in addressing underlying problems and issues for offending behaviour (White, 2003).

Figure 2   A typology of restorative justice practices

Victim Reparation

Victim services
Compensation schemes

Victim support circles

**Communities of care
Reconciliation**

Offender family services
Family centered social work

Restorative Justice

Community conferencing
Family group conferencing
Peace circles

Victim offender mediation
Truth and reconciliation
commissions

Therapeutic communities
Victimless conferences

Community Service
Youth aid Panels
Reparative Boards
Victim awareness programmes

Offender Responsibility

Source: McCold, 2000a: 5

The level of involvement of the offender and the victim in various types of restorative and retributive models is depicted in Figure 3.

Figure 3   Victim and offender involvement in the justice process

Victim involvement high **Offender welfare high** Victim/offender conferencing Truth and reconciliation commissions Peace and sentencing circles	**Victim involvement high** **Offender welfare low** Mediation and reparation Compensation schemes Victim services
Offender welfare high **Victim involvement low** Children's hearings system Youth Aid Panels Community service Reparative boards Victim awareness programs Victimless conferences	**Offender welfare low** **Victim involvement low** Juvenile and Youth courts

Adapted from Spencer and McIvor, 2000: 14

As shown in this figure the level of victim and offender involvement in different justice practices, and therefore the level of social inclusion in the process, varies according to the justice practice.

In the retributive justice process offender welfare is low and victim involvement is low, as is the case in westernised criminal justice systems. However, both of these factors are high in restorative justice practices such as conferencing as depicted in victim-offender conferencing, truth and reconciliation commissions and peace and sentencing circles. Offender welfare tends to be low and victim involvement high in mediation and reparation practices, such as those used in the United Kingdom and in Canberra, Australia. Offender welfare is high and victim involvement low in more welfare based practices such as children's hearing systems, where the rights of the offender are the priority.

However, whatever the intention of justice agencies in relation to the welfare of offender and victim, the outcome is dependent on the underlying context of the process. For example, a process such as conferencing is often

facilitated by authorities such as police and can therefore reinforce feelings of lack of control over the process for the offender and victim (Cunneen, 1997). White (2003) also argued dominant forms of control can be reinforced by perpetuating more formal justice processes. This may occur, for example, where the conference process is used only to address less serious crimes and first time offenders and therefore, by default, there is the need for a "tougher", i.e. retributive, approach for more serious and repeat offenders (White, 2003). Additionally, the rigid selection process, which excludes more serious offenders from diversion, can widen the net of social control "as there exists evidence that the implementation of restitution and mediation programs leads to the imprisonment of people who would have stayed out of prison without these programs" (Weitekamp, 2002: 99).

Dominant forms of control can also be advertently, or inadvertently, introduced by the "professionalisation" of the conference process having major implications in relation to how both victim, offender and others are engaged in the process (Walgrave, 2004; Zehr, 2005; Cunneen and White, 2007; Harris, 2007). For example, in a conferencing situation, discussions can be led and decisions made by the facilitator, often a police officer or other professional, without substantive input from those involved (Harris, 2007). This formalisation of the process therefore negates the aspect of restorative justice which requires that the offender, victim and other stakeholders are the central participants in an *informal* decision-making process for providing solutions to offending behaviour (Daly, 1999; Morris and Young, 2000). Rather the formalisation and professionalisation of the process underscores the fact that restorative practices are based on existing legal structures and that these are inherently biased towards the dominant society (Hogg and Carrington, 1998) because the conferencing process is an extension of the dominant legal system not a separate entity representing the needs of those involved. This aspect of conferencing raises concerns about the cultural issues relating to mediation including:

- *language issues* that lead to miscommunication and misinterpretation;

- *incorrect assumptions* about diverse cultures;
- *expectations* that others will conform;
- *biases* against the unfamiliar; and,
- *values in conflict* when the values of the dominant culture conflict with those of another culture (Behrendt, 2002: 186)

Therefore mediatory processes may not address current imbalances in the system or address underlying issues, particularly in relation to Indigenous peoples. This points to the need for a more inclusive approach to decision-making for Indigenous people and "space needs to be made available for Indigenous communities and families to develop and exercise control over their own decision-making and civil and criminal processes" (Behrendt, 2002: 190). This again relates back to the concepts of self-determination and its achievement through dominion (Cunneen, 2001). Furthermore, it has been argued that the formalisation of the process is not conducive to healing and that therefore the administrative structure of some restorative justice practices may not be relevant to, or appropriate for, Indigenous people (Behrendt, 2002). For example, in conferences which involved Indigenous offenders, victims and others, "heavily scripted, single issue conferences, ... convened and controlled by non-Indigenous parties, are unlikely to promote healing outcomes" (Blagg, 2002a: 191). Other researchers have also argued that power is only superficially transferred to the community and that "the overall tendency is for the state to retain control over the process and for social control to be maintained in fairly conventional ways" (Cunneen and White, 2007: 346).

The language of restorative justice can also be used for what is in fact a retributive process. For example, White (2003) found that because a process was called a "conference" it was therefore considered to be a restorative and that "regardless of whether or not the conference has a punitive (e.g. to shame the offender and extract restitution) rather than restorative focus (e.g. to restore peace and repair the harm) it is considered 'restorative' because the punishment happened to take place in this sort of forum" (White, 2003: 146). Commentators have also argued that the different philosophical

approaches of restorative and retributive processes have become confused in relation to how the offender is treated during the process (Peachey, 1992; Braithwaite and Braithwaite, 2001; Harris and Maruna, 2008). In many cases it has been found that, rather than taking a restorative approach where the offender him or herself does something to repair harm they have caused, the conference process focuses on what should be done *to* or *for* the offender, and therefore the offender becomes a passive entity in the process rather than an active participant in repairing harm (Bazemore, 1991; Braithwaite, 1999, 2001).

Clearly there can be many ways in which the restorative milieu is implemented in an institutional setting and the process and outcome may not necessarily be true to restorative ideals and values. This may be because of the practical limitations in implementing such values. In conclusion, as White argued:

> it is rare to see restorative justice appropriated as a general philosophical ideal; and even rarer therefore to see it as a systemic alternative intended to replace the existing system. Its relative marginalisation makes it that much easier for it to be overwhelmed by existing system imperatives, both philosophical (i.e. punishment or welfare orientation), and organisational (i.e. unequal and inadequate allocation of resources, staffing and funding) (White, 2003: 146).

The next section examines restorative justice practices in the broad context of community governance and the more specific level of policing in communities.

Restorative Justice Processes

As mentioned earlier in this chapter, restorative justice practices were introduced into western criminal justice systems in response to the dramatic increase in crime rates in the 1970s and 1980s, and the perceived inability of the retributive criminal justice system to address underlying issues thought to have caused this increase (Crawford and Newburn, 2003).

There are many significant differences in the criminal justice system in relation to the values espoused by retributive and restorative justice.   These values translate into significant differences in the criminal justice process—for example, where retributive justice draws a direct link between an offender being apprehended and his or her attendance in court, restorative justice provides a process where a diversionary course is available and where court attendance is not an integral part of the process.

There is also a distinction between the restorative and retributive justice in relation to who administers the outcome of the process.   In traditional retributive justice only the police, courts and correctional agencies are involved. In the restorative justice process it may be that only police are involved in both apprehending and administering the disposition given to the offender.

Figure 4 below provides a flow chart of both retributive and restorative justice processes and who administers the processes at which stage.   In this figure, process A refers to the retributive criminal justice process and shows that police are involved in detecting, arresting and charging the offender who is then referred to prosecution. A decision is made to prosecute and if this is done the case is taken before a court, a finding made and a disposition given.

Figure 4   Flow chart of retributive and restorative justice processes
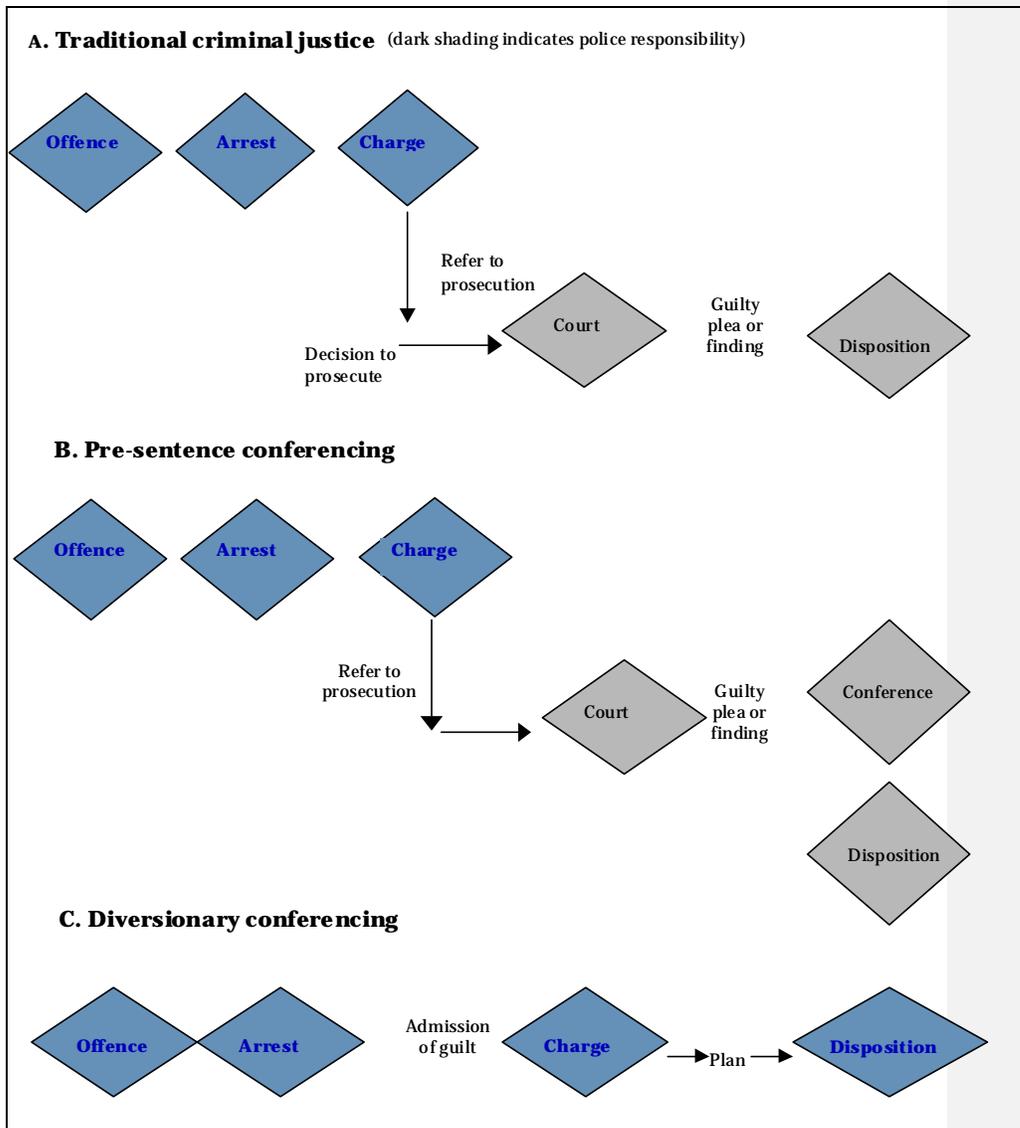
Adapted from Spencer and McIvor, 2000:10

Process B represents the pre-sentence conferencing model. It shows that the police are involved in detecting the offence, and arresting and charging the offender. Again the case is referred for prosecution and, if a decision to prosecute is made, it goes to court. With the pre-sentence conference model the court can determine that the offender undertake a conference which will

result in a disposition. The disposition could include anything from community work to a prison sentence. Therefore processes A and B both involve the court process.

Process C is the pre-court diversion model where police detect the offence, arrest the offender, and if there is an admission of guilt, will charge the person involved. Police, not the court, will then determine the type of disposition the offender must undergo. This may take the form of a warning or conference, from which a further disposition may be made in relation to reparation to the victim. As demonstrated by Figure 4, while restorative justice can be integrated into any stage of the process, it tends to be either pre-court, as in the Northern Territory, or pre-sentence (Spencer and McIvor, 2000).

The way in which restorative processes are administered will now be discussed in relation to the role of police in those processes, police discretion, urban and rural policing and relationships between police and Indigenous people.

The Role of Police
Different outcomes occur in the criminal justice system as a result of different inputs into the system such as the number of police present in a community, extent of police powers and police discretion.   During the colonisation of Australia police were given extensive powers, particularly in relation to controlling the movement of people in public places and between communities (Gale et al., 1990; Cunneen, 2001). This aspect of policing particularly impacted on Indigenous people who were treated quite differently from the white settlers.   It has been argued that this differential treatment included "the suspension of the rule of law and the use of terror and violence by police forces against Indigenous people (which) was contextualised and legitimated within racialised constructions of Aboriginal people as inferior, lesser human beings" (Cunneen, 2001: 76). The colonisation practices of European people in Australia and elsewhere, were

discussed earlier in this chapter and need not be repeated here, but the opinion of many researchers is that Indigenous peoples were discriminated against by police resulting in their continued over-representation in the criminal justice system (Cowlishaw, 1988; Carrington, 1990, 1993; Cunneen, 2001; Broadhurst, 2002; Cunneen, Luke and Ralph, 2006; Hogg and Carrington, 2006; Cunneen and White, 2007).

Until the 1960s laws were enacted specifically for Indigenous people and many of these laws controlled their day-to-day lives. Much traditional policing in Australia involved surveillance of families and of communities and specifically controlled use of public places by Indigenous people (Cunneen, 2001). The extent of law enforcement very much depended on stereotypes of groups of people held by police in the community, and traditionally discriminated against Indigenous peoples and minority ethnic groups (Hogg and Carrington, 2006). These perceptions were culturally based and resulted from what police perceived as normal according to their world view and what was considered acceptable behaviour in specific places and at specific times (Hogg and Carrington, 2006).

The application of police discretion, and the perceptions influencing that application, have been therefore been found to be important factors in determining in the extent to which juvenile offenders have contact with the criminal justice system. One of the criticisms of the implementations of restorative cautions and warnings is that net-widening occurs in that more juveniles become caught up in the system because the process requires that offenders are formally reported by police, a situation which would not have occurred if cautions were not required (Orlando, 1992; Bazemore and Umbreit, 1995; Schiff, 1999; Cunneen, 2001; Cunneen and White, 2007). As a consequence no-risk or low-risk offenders, who would not have previously received an intervention, become part of the criminal justice process (Orlando, 1992; Fox, Dhami and Mantle, 2006). For example, in the UK it was found that net-widening occurred when police discretion was reduced as a result of legislative requirements in the *Crime and Disorder Act 1998*, that

police systematically give restorative final warnings (Fox et al., 2006). Juveniles who were particularly susceptible to being caught in the "net" were those who were traditionally on the edge of the criminal justice system, in this case young females "of colour". The underlying cause of this was found to be institutionalised levels of sexism and racism which had previously been tempered by the officers' ability to use discretion in responding to offenders. The outcome was that "without discretion the system loses elements of compassion and mitigation found within the formal justice system" (Fox et al., 2006: 137). A decrease in the level of police discretion may therefore, inadvertently, address the needs of the retributive, not restorative, system of justice (Carrington and Schulenberg, 2004).

Research in Australia, discussed later in this chapter, examines the finding that police discretion is differentially applied and the impact this has had in increasing the over-representation of some groups of juveniles in the criminal justice system (Carrington, 1990; Carrington, 1993; Gale et al., 1990; Cunneen, 2001; Blagg, 2007; Cunneen and White, 2007).

Community and Rural Policing
Policing is traditionally part of the formal criminal justice system and administered by the state. However, in the past decade, there has been a growing trend towards a mixed mode of policing which involves both state and private agencies, including community policing. Community policing has the following characteristics which put it into a context which is broader than just enforcement of specific laws. It focuses on:

- police reliance on citizen input;
- administrative organisations that allows for a complexity of function rather than just oversight;
- an emphasis on general rather than prescriptive tactics to tailor methods for each community;
- more authority given to those officers on the ground; and
- multiple aims with broad goals aspects (Sharma, 2002: 19).

These factors provide a more flexible and proactive approach to policing than more traditional practices which are less community focused. One example of community policing was developed in South Africa where the Community Peace Programme was developed by community members according to their specific community requirements. Citizens were given equal representation and decision-making powers in the community, thereby promoting open accountability and building effective institutions (African National Congress, 1994; Malan, 1999; Sharma, 2002).

It has been argued that modern community policing in urban settings is very much based on ideas and practices which have been a traditional part of policing in rural communities (Weiseheit, 1994). It has been found that the causes of juvenile criminal activity in both urban and rural areas are similar, and related to the breakdown of social relationships, substance abuse and peer pressure (Carrington, 1993; Weatherburn et al., 2003). However, in rural communities, the visibility of youth and the tendency for older community members to label youth as "trouble makers" causes tensions and promotes policing of particular crimes, particularly in relation to public disorder, vandalism and substance abuse (Hogg and Carrington, 2003, 2006; Barclay et al., 2007).

The level of rurality and remoteness of a community has been found to be an important factor in determining how people perceive their space, and how they manage their community (Hogg and Carrington, 1998, 2003, 2006; Barclay et al., 2007). As stated earlier in this chapter the settlement of white Europeans in Australia led to the implementation of white norms, laws and policies which impacted negatively on Indigenous people residing in predominantly white communities. The location of Indigenous people in what were considered mainly rural and remote areas of the country has resulted in the development of what has been called "other rurals" and specifically "two rurals" (Hogg and Carrington, 2006: 200) indicating that rural society was divided into two sections, the dominant white society and

the minority Indigenous community, which were disconnected socially, economically and politically.

Researchers have found that part of this social disconnection was related to a common fear in rural communities of collective disorder. This fear was centred on the notion of concentrations of minority groups developing a '"collective will" or "collective mind" contrary to the common or national interest and a consequent disruption of civic order (Hogg and Carrington, 2006: 102 citing Hage, 1998: 110-112). Hogg and Carrington (2006) found that there was a commonly held belief in rural communities that police should have more power to "do something" about minority groups, highlighting the tentative and fragile nature of relationships between police, Indigenous people and the wider community.

As stated earlier police adopt practices they feel will be acceptable to community members and community groups as "rural police adopt a generalist style or community-oriented approach to policing grounded in close associations with residents" (Scott and Jobe, 2007: 131). It can be difficult for a police officer to ignore demands of a dominant majority in a community for more intensive policing of some groups because of the perceived number of offences they allegedly commit (Weisheit, 1994; Hogg and Carrington, 2006). This practice may influence the focus police place on aspects of law enforcement, such as public order, which consequently can result in the over-policing or under-policing of specific interest groups (Scott and Jobes, 2007). This process can therefore lead to discriminatory practices and lack of cultural sensitivity for certain ethnic and minority groups (Cunneen, 2001). However, Carrington (1990) argued that the over-policing of Indigenous communities "...is as much a consequence of the stress placed on policing public order and property offences as it is a consequence of conscious political decisions to subject Aboriginal communities to disproportionate degrees of policing" (Carrington, 1990: 15). However she pointed out that it was also important to remember that this type of discrimination was not just the result of the racism of a few community

members but rather a result of institutionalised forms of discrimination (Carrington, 1990).

Researchers have noted that the orthodox view in many communities is that Indigenous youth commit the majority of the crime (Cunneen, 2001; Hogg and Carrington, 2003, 2006; Barclay and Donnermeyer, 2007). A consequence of this view is that more police are put into such communities, which can lead to over-policing through an increase in police apprehensions. For example, on Groote Eylandt in the Northern Territory in 1989 the police presence was dramatically increased in response to the perceived increase in crime in the community allegedly committed by Indigenous youth. As a consequence of the increased police presence, the ratio of police to community residents became the highest in the Territory, a situation which eventually translated into the highest rates of apprehension and detention of Indigenous youth of any community in the NT (personal communication with a Northern Territory Magistrate, July 2004).

Therefore community members in rural locations may influence the intensity of policing in their community as a result of biased and prejudiced beliefs which influence police practice (Scott and Jobes, 2007). The extent to which this occurs depends upon the relative density of social networks in a community, and the extent to which police officers develop a greater connection with these networks than is possible in other less connected communities (Weisheit, 1994). The extent of over-policing and under-policing can therefore be very dependent on the extent of community cohesion and interaction. More dysfunctional communities may experience a greater degree of over-policing because of community fear of minority groups and their alleged propensity to flout community norms. As will now be discussed the focus of much of this fear is on Indigenous people, the greatest percentage of who live in rural and remote areas of Australia. Issues relating to rural policing therefore have many similarities to those of policing Indigenous communities.

Policing of Indigenous People

One of the most pervasive themes in the relationship between police and Indigenous people is that of managing Indigenous people in white public spaces (Hogg and Carrington, 2006; Cunneen and White, 1997). The policing of regional and remote centres is of particular relevance as nearly three quarters of Indigenous people in Australia live in rural and remote areas (ABS, 2007). The combination of a rural setting and a very visible Indigenous presence in the predominantly white community, has been found to have a significant impact on the way in which people are policed in these locations, and form the basis of law and order concerns in those communities (Hogg and Carrington, 2006). Hogg and Carrington found that rural communities in NSW were often preoccupied with minor social disorders allegedly perpetrated by Indigenous people and that "this penumbra of criminality represented the fears evoked on occasions by the mere presence of Aboriginal crowds or concentrations in presumptively white civic space, which has been, and remains, central to the politics of law and order in rural NSW" (Hogg and Carrington, 2006: 197). Cuneen and White (2007) stated that in Australia, the relationship between Indigenous young people and non-Indigenous authorities has historically, been a discriminatory one which has resulted in the over-representation of Indigenous persons in the number of police apprehensions and consequently in the court and prison system.

Jochelson (1997) examined the relationship between Indigenous people and public order legislation in NSW. He found that in 1994 and 1995 Indigenous people were over-represented for public order offences, such as offensive behaviour or offensive language, When examining the basis for the level of incidents involving alleged abusive language, it was found that "in the high Aboriginal country area this conflict often involves seemingly ritual confrontations between police and Aboriginal people over swearing in public places or at police themselves" (Jochelson, 1997: 15). However he argued that legislative change would not necessarily be sufficient to reduce the over-representation of Indigenous people in the number of apprehensions for

these offences. Rather that there needed to be an improvement in the relationship between police and Indigenous people and a rethinking of how they police Indigenous people in rural areas, and that this can only be achieved with active cooperation between police and the communities they serve.

Luke and Cunneen, (1998) found that there were differences in the percentage of court appearances for those Indigenous people living in regional centres and remote areas, in that the latter group were four times less likely to appear in court than those living in regional centres. This may again be linked to the extent of police presence in certain localities and the visibility of Indigenous people in the white communities impacting on the extent to which Indigenous people are apprehended. Cunneen and White also found that locality was a factor in determining the extent to which Indigenous juveniles came into contact with juvenile justice authorities, in that they were more likely to come from rural backgrounds, additionally they were female, younger, and more likely to be incarcerated (Cunneen and White, 2007: 73).

The level of apprehensions can also be a result of inherent tensions within communities relating to family infighting or other social problems. Tensions in remote communities may also be lessened because of greater feelings of attachment and connection with the community. The National Aboriginal and Torres Strait Islander Social Survey (2002) found, for example, that people living in remote Indigenous communities reported a higher cultural attachment, as measured by attendance at traditional ceremonies and living on their "country", than did Indigenous people living in regional centres. An environment of *gemeinschaft* may therefore be more apparent in these communities due to the feelings of social cohesion and attachment they instil in their members (Hogg and Carrington, 2006). Whether or not this is a result of more or less policing is unclear from the evidence. Conversely, in more dysfunctional communities police may feel more isolated and threatened by community behaviour and therefore adopt a more

confrontationalist approach to law enforcement by closing ranks and assuming a "them and us" mentality (Scott and Jobes, 2006).

An underlying theme of the relationship between white authorities and Indigenous people relates to the concept of Indigenous people as victims of the criminal justice system (Cowlishaw, 1988; Broadhurst, 2002; Blagg, 2002a; Lawrence, Sherman, Strang, Angel, Woods, Barnes, Bennett and Inkpen, 2005). The Royal Commission into Aboriginal Deaths in Custody (RCADIC) represented the "nadir" of police and Indigenous relations (Cunneen, 2007) and found that over-representation of Indigenous people in the criminal justice system was only partly a reflection of offending levels which were in themselves a result of bias in police practices because of over-policing and discriminatory law enforcement (Johnstone, 1991).

These outcomes are the result of embedded perceptions and patterns of behaviour of both Indigenous and non-Indigenous groups and that "these patterns of interaction with the criminal justice system, as both victims and offenders, perpetuate the deep and mostly destructive involvement of coercive legal authority in Aboriginal lives that has been central to the colonial experience" (Hogg and Carrington, 2006: 196).

Carrington (1990; 1993) discussed the criminalisation of *otherness* in relation to Indigenous girls and their consequent over-representation in the criminal justice system. She stated that the otherness of Indigenous people, in terms of their social and cultural context, was criminalised by the justice system and that "judicial and extra-judicial forms of normalising intervention contribute in a significant way to the over-commission of offences attributed to Aboriginal girls. Otherness, in this case Aboriginality, is effectively criminalised in such a context" (Carrington, 1990: 16).

Male offenders also appeared to have the added problem with constructing a masculine identity and this led them to undergo other "rites of passage" to manhood, including offending behaviour, which also, in some cases,

provided them with access to resources in detention which they did not have in their own communities (Olgivie and Van Zyl, 2001).

Therefore researchers have argued that, in relation to Indigenous juveniles, both genders are criminalised to a greater extent than non-Indigenous youth and that this situation is very much related to the level of discretion which police have in the diversionary process and the perceptions of police and community members of minority groups.

Police and Diversionary Practices

Each of the above factors therefore impact upon the extent to which juveniles come into contact with criminal justice agencies and therefore the extent to which they become enmeshed in the criminal justice system. As gate-keepers to the system "from an implementation point of view a lot depends upon how police discretion is regulated at the gate-keeping level, and how 'diversion' itself as a concept is interpreted by police agencies" (Cunneen and White, 2007: 344)

Once offenders have contact with authorities such as police, discretion is applied by those authorities in the way in which they dispense justice. As a consequence "policing shapes the meaning of crime and police decision-making can significantly impact on what we 'know' as offenders and offences" (Cunneen, 2001: 45). Research has found that Indigenous youth were less likely to be given police cautions and therefore more likely to be referred to court. In NSW it has been found that police were less likely to give Indigenous juveniles a caution or divert them from the court process (Cunneen, 2001; Bargen, 2005; Cunneen and White, 2007). A South Australian study found that less than 20 per cent of Indigenous apprehensions resulted in a formal caution compared with nearly one third of non-Indigenous apprehensions (Wundersitz and Hunter, 2005). In Western Australia over 50 per cent of arrests were of Indigenous juveniles but they only received a caution in 21 per cent of cases (Ferrante, Loh, Maller, Valuri and Fernandez, 2005).

Additionally, discretion can be used in determining the offence for which the juvenile is apprehended. Gale et al. (1990) found that, in South Australia police used more serious offence codes for Indigenous than non-Indigenous youths. Indigenous juveniles were charged with more serious property crime, such as break and enter, motor vehicle theft and for justice related breaches of orders whereas non-Indigenous offenders were charged to a greater extent with minor property crime.

As discussed earlier, in New South Wales it was found that Indigenous youth also tended to be charged to a greater extent with public order offences than non-Indigenous youth (Cunneen and Robb, 1987; Carrington, 1990; Jochelson, 1997; Cunneen, 2001; Hogg and Carrington, 2006).

A critical factor in relation to who receives diversion therefore relates to the offence for which the juvenile is apprehended and charged, and the availability of diversion tends to be for less serious offences. For example, in the Northern Territory, certain offences are excluded from diversion. These include property theft of over $100, break and enter and motor vehicle theft—offences for which Indigenous juveniles tend to be charged (Cunneen and White, 2007). Therefore, the very reason for reinstating restorative justice practices to address the over-representation of Indigenous youth in the criminal justice system, has to some extent been pre-empted by excluding from the diversionary process certain offences and categories of offenders. In the Northern Territory the continued exclusion of offences from diversion has been an ongoing issue for the administration of juvenile diversion. At the implementation of the scheme serious offences were not considered for diversion (a definition of serious offences in the NT is given in Chapter 4 Methodology). Since that time there has been continued diminishment in the number of offences considered for diversion but the offences deemed unsuitable for, and therefore excluded from, diversion are often those most committed by juveniles (personal communication with the Manager Juvenile Diversion Unit, May 2005). Such policy change have the

propensity to impact on the extent to which diversion is successful in addressing offending and re-offending behaviour in a major way.

As discussed earlier the professionalisation of the conference process can affect outcomes for offenders and victims. Police discretion can also play a part in determining these outcomes in relation to the officers role in assigning a disposition. For example, when comparing South Australia and New Zealand, the latter has clear guidelines on the extent to which police participate in the process (Morris and Maxwell, 2002). This is not the case in South Australia where there is more flexibility in the extent to which police assign the disposition and facilitate the conferencing process (Wundersitz, 2005). Jurisdictional differences in the assignment of dispositions by police discussed further in the next chapter.

Police presence, police discretion and the differential application of police powers are factors which have been found to impact on the extent of over-representation of Indigenous juveniles in the criminal justice system (Cunneen, 2001; Broadhurst, 2002; Snowball and Weatherburn, 2006; Hogg and Carrington, 2006). Consequently there is a strong link between how communities are governed and the role of police. Therefore "relations between police and Indigenous communities are firmly entrenched within the demands for greater autonomy, self-government and self-determination" (Cunneen, 2001: 77). This aspect of restorative justice will now be discussed.

Restorative Justice, "Good" Governance and Civil Society
The way in which restorative justice assists in addressing the problem of offending behaviour is through the broader notion of restorative governance (Institute of Governance, 2005). This concept incorporates the need for an integrated approach to addressing this behaviour and treats it as part of a much wider social issue. The responsibility for addressing offending behaviour not only lies with the criminal justice system but with all levels of government and civic institutions. In other words, the criminal justice system cannot be expected to take sole responsibility for offending behaviour and

providing the solution to it, as the problem is part of a much wider social process, including providing access to good health and education systems, alleviating poverty, improving civil literacy and generally maximising public good (Sharma, 2002; Miller and Schacter, 2000).

The concept of governance includes a number of social issues about how civil society works, how society is governed, decision-making which affects citizens, and about who is accountable for, and who is given the power to make, those decisions (Graham, Amos and Plumptre, 2003). The concept of governance can be applied to any form of collective action (Sharma, 2002) and has been defined as:

> … the dynamic processes, relationships, institutions and structures by which a group of people, community or society organises to collectively represent themselves, negotiate their rights and interests, and make decisions about:
> - how they are constituted as a group—who is the "self" in self governance;
> - how they are going to manage their affairs and negotiate with outsiders;
> - who will have authority within their group, and about what;
> - what their agreed rules will be to ensure authority is exercised properly;
> - who will enforce the decisions they make;
> - how their decision-makers will be held accountable; and
> - what arrangements and entities will be the most effective for implementing their decisions and accomplishing their ends (Smith, 2005: 13)

One important factor relating governance to offending behaviour is that it includes practices that are beneficial to both poor and other socially isolated groups (Sharma, 2002). The United Nations has stated that deficiencies such as poverty and social dysfunction can be addressed by good governance which "is perhaps the single most important factor in eradicating poverty and promoting development" (Graham et al., 2003: 1).

Previous research has found that criminal behaviour is very much linked to socio-economic status, in that groups at the lower end of the socio-economic

scale tend to commit the greatest amount of crime, or at least, they are apprehended for the greatest proportion of crime. This is the case in Australia, South Africa, Canada, the UK and many other countries. Given that such low socio-economic groups tend to include marginalised citizens, restorative governance can provide a means of empowering these groups of people by giving them a voice in the decision-making process and therefore in civil society. This is particularly the case where offenders who have unequal resources, such as educational attainment, socio economic status, are treated by the criminal justice system as if they had equal resources.

The concept "substantive equality" addresses this situation and has been incorporated into policy developed by the Western Australian Government, as part of their Anti-Racism Strategy. *The Policy Framework for Substantive Equality* which is embedded in *Equal Opportunity Act 1984,* focuses on the provision of services by the public sector and is aimed at "eliminating systemic racial discrimination in the provision of public sector services; and promoting sensitivity to the different needs of client groups" (Government of Western Australia, 2006: 7). The policy states that "if you want to treat me equally, you may have to be prepared to treat me differently" (Government of Western Australia, 2006: 1). This level of equality is proposed to be achieved through a process of continuous improvement in the areas of policy and planning, service delivery, employment and training.

Substantive equality is linked to restorative justice practices in that those practices can be made flexible enough to allow for individual needs, including the needs of the offender, the victim and others affected by the offending behaviour. One of the most important underlying aspects of restorative justice in policy-making is that it must be flexible enough to allow for each case to be considered individually (United Nations Office on Drugs and Crime, 2006). Recognition by government of these levels of inequality is particularly important in those societies where the needs of certain groups are

not addressed by the state and where civil society provides an important connection between the activities of the state and private sectors (Sharma, 2002). The following figure shows which sectors of society and civil life impact on the process of governance.

Figure 5   Social entities which impact on governance
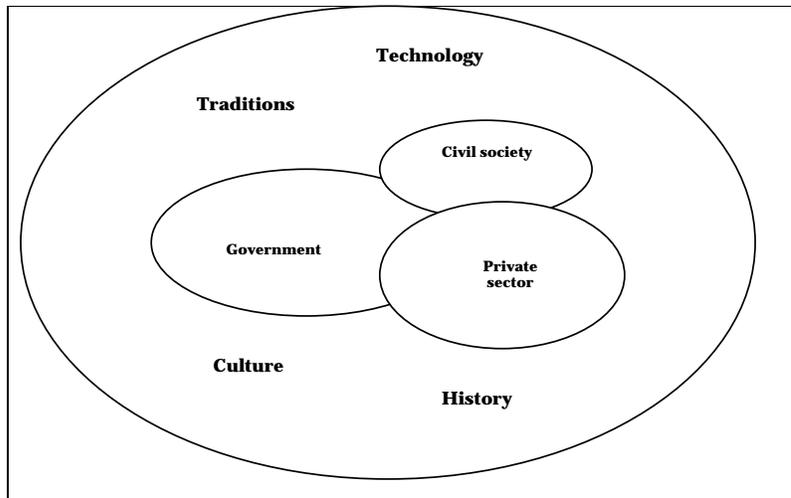
Adapted from Graham et al., 2003: 4

As is shown in the figure above, governance encompasses all aspects of a society including its culture, history, tradition and technology. Within these elements sit civil society, government and the private sector. Each of these is interlinked and each impact on the other. Therefore each of these factors needs to be taken into account when addressing the notion of governance, what it should achieve and who it should include. These factors are linked to governance through the concept of community capacity building. This concept focuses on building partnerships and relationships between the individual and the community and integrating personal and political aspects of society (Bright, 1997; Crawford, 1998; Hines and Bazemore, 2003; Barter, 2006; Hunt and Smith, 2006).

Research conducted in Canada supports the use of this approach to better address the protection of children and vulnerable families. It advocates the implementation of the following measures:

- early intervention and prevention services;
- a more comprehensive means of providing basic resources to families, such as food and shelter;
- forming closer partnerships between the judiciary, education and health systems;
- connect children and their families more closely with their community; and
- introduce culturally appropriate services to children and their families (Barter, 2006: 3).

In examining developmental approaches to crime prevention the *Pathways to Prevention* project in Australia found that problem behaviour in young children was a strong predictor of juvenile offending and by addressing this behaviour at an early age, later juvenile delinquency could be prevented (Homel, Freiberg, Lamb, Leech, Batchelor, Carr, Hay, Teague and Elias, 2006). The project recognised the negative impact of low socio-economic status and low parental involvement in child rearing on academic performance, and consequently on the behaviour of young children. It was found that there was a need for support and counselling, not just for children, but also for parents, and the provision of support by linking with school and community-based programs and initiatives. This program is an example of the positive affect of early intervention which has a holistic approach, on behaviour modification.

To some extent each of the strategies has been employed by the Federal Government in its intervention in the Northern Territory. This will be further addressed in the concluding chapter in the light of the findings from the current research and their implications for policy development.

There are inequalities in adopting such interventions, and in Australia and other countries, and particularly in Indigenous communities there have been ongoing problems in determining who and what is included in the governance of a community. This is partly because of disagreement about whose values become the values of "good governance" (White, 2003). Often the values which are supported are those of the wider society, not of the Indigenous community or other smaller sections of society. For example, in Canada, 90 per cent of First Nations did not, and still do not, recognise the Canadian government as being their rightful government. This created tension because additionally, the Canadian Federal Government did not recognise the First Nations as having their own self-government. This situation has led the Canadian government to accuse the First Nation Chiefs of mismanaging funds and community resources. In response the chiefs have stated that the Canadian government is not their government and it is therefore not their place to tell them how to manage their funds (Clatworthy and Delisle, 2004).

In the Northern Territory of Australia, the federal government intervention, as discussed in Chapter 1, has impacted on the level of governance and control which Indigenous people have in their communities. One of the most pervasive criticisms of the intervention was the lack of consultation which the federal government had with Indigenous communities (Altman and Hinkson, 2007). Although there was widespread condemnation of child abuse, which had been of concern for some years, many Indigenous people were critical of the lack of consultation with Indigenous communities prior to the intervention. However other commentators argued that it was "an indulgent fantasy to require 'consultation' before intervening to prevent crimes being committed" (Langton, 2007: 15). An underlying question from both perspectives appears to be whether the intervention is a real attempt at true dialogue or whether it is one "where 'normalized' individuals pursue the questionable "equality" of neo-liberalism, or one in which cultural difference is genuinely valued and supported?" (Hinkson, 2007: 11).

The successful implementation of proposed changes to community governance emanating from the federal intervention may depend on the effectiveness of the governance which the community had in place at the time of intervention. Members of some communities have argued that their community was functioning effectively in addressing the "rivers of grog", child abuse and offending behaviour (ABC News, 3 March 2008). People in these communities voiced their disappointment at being "unfairly targeted" for intervention strategies such as welfare quarantining. Members from other less functional communities were more positive in their response to the intervention as they felt they have been given greater control of their lives and of their ability to care for their families. The issues are therefore complex but suggest there is a need to treat each Indigenous community individually with reference to its own strengths and weaknesses and not take a "one size fits all" approach (Plumptre and Graham, 1999; Parter, 2005).

However, it is also acknowledged that these issues can be addressed by applying broad principles of *good* governance across cultural boundaries (Smith, 2005). This is because good governance requires that the system be open, have active participation from all citizens and have a social conscience (Hyden, 1992). For example, in relation to governance in Indigenous communities in Australia, the Australian National University, Centre for Aboriginal Economic Policy Research (CAEPR) found that governance has to be based on what is perceived as the reality within a given community. The structures upon which governance is built need to be in line with traditional customs and laws and cognisant of those relationships which exist within communities. Such structures also need to be flexible and allow for differences both within and across communities (Smith, 2005). It could be argued that these are issues for any community as, for each of them, community governance "includes activities at a local level where the organising body may not assume a legal form and where there may not be a formally constituted governing board" (Graham et al., 2003)

A study on American Economic Development found that the reason some North American Indian tribes developed self-determination while others did not, was determined by the following three factors:

1. having the power to make decisions about their own future;
2. exercising that power through effective institutions; and
3. choosing the appropriate economic policies and projects (Institute on Governance, 1999: 3).

Underpinning these factors is the need for legitimate structures which have the support of citizens, for citizens to have access to human, economic, technical and other relevant resources, to have the power and authority to make decisions for the community and to be able to demonstrate accountability in the way in which that power is exercised (Graham et al., 2003; Hunt and Smith, 2006).

Figure 6 shows the many aspects of governance as a people-centred approach where governance equals people and people equals governance. This figure indicates that in order to have some form of good governance people must have access to several important resources. These include, most importantly, the power and authority for decision-making which should be embedded in open accountability and equal representation. In order to achieve these goals community members must have access to adequate resources, effective institutions and social structures which are regarded as legitimate.

Figure 6   Aspects of governance
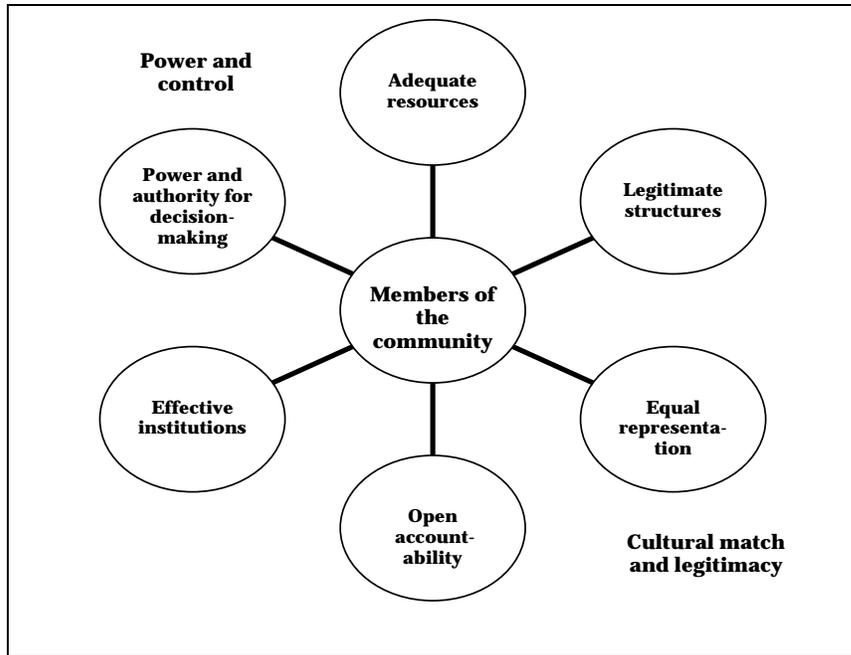
Adapted from Hunt and Smith (2006)

Figure 6 shows the links between community members, the community and civic life, and highlights the need for balance between power and control, legitimate structures and open governance of those entities. This linkage provides for strong, cohesive "communities of care" and in doing so provides a sound basis for restorative justice values and practices to become an integral part of the social fabric of the community (Strang and Braithwaite, 2002; Zehr, 2005). In this structure the state is the "enabler" for this process to occur. It has been argued that the role of the state in providing legal frameworks, legitimate structures and systems to devolve responsibility to members of the community "constitutes one of its most significant roles in restorative justice" (Jantzi, 2004: 151). However there is a danger that by providing these frameworks the state is merely reinforcing its own means of social control, for example, by using diversion for only first time minor offenders the need for a "tough" option is reinforced (White, 2003). However "good" governance should address this problem by a process

through which input from members of a community results in decision-making which supports accountability, as shown in the following figure.

Figure 7   The process of good governance
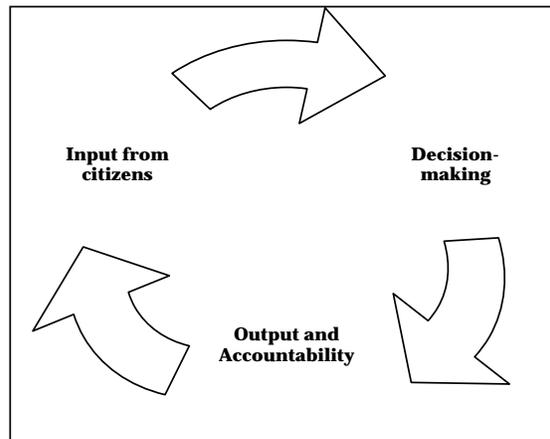
Adapted from the Institute on Governance (2005: 4)

"Bad" governance occurs when people feel disconnected from this process. This may be said to happen when citizens feel that politicians and others in power are not listening to them. This disconnection leads to disempowerment and further feelings of alienation from society (Institute on Governance, 2005). An example of this situation occurred in New Zealand, as described by Hall (2005), where the Maori Court was perceived by the Maori community as not addressing the needs of its people, leading to feelings of disempowerment. As one commentator stated:

> I think that the Maori Land Court has become overly fond of the sound of its own voice ... It has become casual with regard to the wishes of the people... it manipulates the people... it takes the power from the people ... the court treats the Maori like children ... Such training as the current court has, stems from the law of precedent and comes straight from Westminster. In the area of custom, the Maori Land Court has no greater experience then (sic) anyone else (Hall, 2005: 1).

This situation could be rectified through the implementation of good governance practices which allow the "voice" of the community to be heard

by government and equally as importantly for that voice to be treated with respect. Restorative justice practices, when implemented according to the needs of the community, are able to address some of these criticisms. However, the retributive, traditional system of administering justice, has, according to Hall, taken precedence in the administration of justice in New Zealand.

The ability of restorative justice practices to provide a forum for good governance is therefore limited by the extent to which there are linkages and a level of understanding between the wider society and the smaller community. These linkages determine the extent to which resources are available to the community and therefore who has decision-making power within the community. It also requires that private individuals accept the norms and laws of the state and an alliance of the state and "communities of care" (Strang and Braithwaite, 2001; Zehr, 2005).

Consequently good governance within communities is integral to the successful implementation of restorative justice practices. An essential aspect of good governance is the effective use of government services, and the link between restorative justice and social policy development will now be discussed.

Restorative Justice and Social Policy

A major aim of this thesis is to provide an analysis of the impact of restorative justice practices, in the form of pre-court diversion, on the re-offending behaviour of juvenile offenders in the Northern Territory. In the final chapter, the outcomes of this analysis will be discussed in terms of the development of policies in relation to this issue. Policy theorists such as Ham and Hill (1993) argue that rational models of decision-making and policy development require an in-depth analysis of issues, ideally resulting in a situation where all the relevant issues relating to problems are known and understood. However, they state that this is rarely the case in the real world,

and particularly in relation to social problems and the development of policy to address these. The conflict arises when, if not enough factors are taken into account, the outcome is policy which does not achieve what it was designed to do, and if too many factors are taken into account, then the policy can become unwieldy and consequently unworkable. Linked to this is the fact that those who have an interest in policy-making and its outcomes may not in fact support those attempting to develop policies in relation to some issues, or they may not have the skills to implement the policy effectively, or there may simply be a lack of resources to do so (Ham and Hill, 1993).

The implementation of restorative justice practices, and the policies to support them, may be hampered by any or all of the above factors, and consequently policy development will rarely follow a logical and rational process (Bridgeman and Davis, 2000). However, linear model of policy development and implementation incorporates problem recognition, identification of solutions, choice of the best solution, implementation of the policy, evaluation which may identify more problems and continue the cycle, or, where the solution is found, termination of the policy. Imbedded in this model is coordination and consultation in relation to developing the policy instruments and making decisions in relation to the implementation of policies (Figure 8).

Figure 8   An Australian Policy Cycle Model
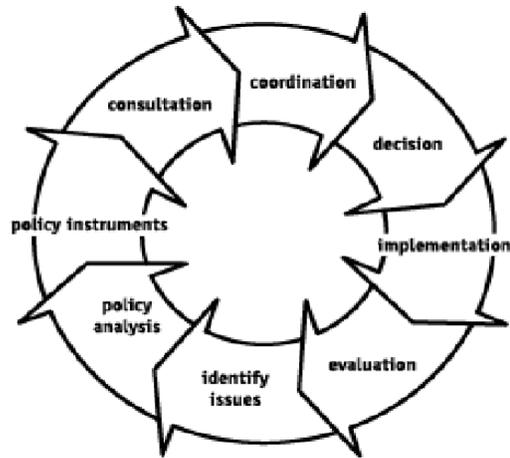
Source: Bridgman and Davis (2000: 27)

One process which presents a simplified, but not oversimplified, and realistic approach to the development of social policy, within the context of such a model, is that presented by Colebatch (2006) who describes it as the "social action approach". This approach examines ways in which the policy model can reflect reality "recognising that governing is a complex process involving the mobilising of authority through a range of distinct, overlapping, and often conflicting organisational forms" (Colebatch, 2006: 5). This account sees policy development in terms of *authorised choice, structured interaction* and *social construction.*

The first of these approaches, authorised choice, relates to the making of choices by elected leaders and the implementation of policy by the "machinery" of government, including the bureaucratic process involved in developing and implementing policy. The second account of structured interaction sees the process in terms of the interaction between the stakeholders in the process, the networking between government and non-government agencies and professional groups. In the case of restorative justice these stakeholders could include, criminal justice agencies, social workers, community members and others involved in caring for children. It

has been argued that an aim of this aspect of policy development should be to focus on a total system approach to developing the networks involved in this process in order to enhance relationships of juvenile offenders across the social contexts of family, peer groups, educational facilities and other relevant institutions (Hoge, 2001). Policy as social construction describes the conditions under which policy is developed, the accountability and validity of the institutions and persons involved and how applying expertise and appropriate resources are applied to the problem.

In terms of crime and restorative justice this approach to policy would involve police, courts, local elders or community leaders and other experts who provide professional advice and support to offenders. It could also include non-detention and detention institutions, where expert opinion considers this appropriate. This expertise would focus on providing advice in relation to what resources are required to effectively implement the policy and produce positive outcomes. In the case of restorative justice practices this would involve providing relevant support to offenders post diversion (Hoge, 2001). For example, there is little chance of a positive outcome for a juvenile who is put on a substance abuse program and then returned to his or her community where petrol sniffing is rife, without any follow-up or support.

The following figure depicts the approaches in relation to the institutions, key regulators, dynamics, focus, people and tools which contribute to the development of social policy.

Figure 9   Interaction and contribution of the state, enabling agencies and the community in the development of social policy

		Structured interaction/ social construction	
		Authorised choice	
	State democracy	**Enabling agencies**	**Community**
Institutions	Parliaments, governments	Government and non-government agencies	Families, associations
Key regulator	Votes, legislation	Standards and ethics	Values
Dynamic	Representation	Ethical responsibility	Reciprocity
Focus	Order redistribution	Professional responsibility	Equity, cohesion
People	Citizens	Professional groups	Members
Tools	Government policy	Professional standards, ethics	Networks

Adapted from Adams and Hess (2001: 20)

The final chapter will discuss the development of social policy in relation to restorative justice and its impact on juvenile re-offending in terms of the above model. This will place the development of policy for restorative justice in the wider context of developing safer communities—a government initiative which has received much attention in Australia, including in the Northern Territory. This approach relates to the use of communalism to develop approaches to crime prevention, which is further linked to building social capital as:

> ...what restorative justice brings to community and problem-oriented policing is a set of tools or "levers" for building social capital and efficacy around the direct

> response to specific incidents of crime, conflict, and harm
> (Bazemore and Griffiths, 2003: 337).

The contribution of the Northern Territory to this debate, and its impact on the way in which crime is addressed, will be discussed in greater detail in the final chapter.

Social policy currently developed and implemented by governments, including the Northern Territory Government, focuses on crime control and crime prevention and aims not only to make people safer, but to make them *feel* safer. For many people it is not just having been a victim of crime itself which causes fear, but the perception that they may *become* a victim. For example, women may feel particularly vulnerable and "when women are unable to enjoy public places for fear of harassment or worse, society as a whole is diminished" (Graycar, 1999:4). Therefore, diminishing the personal freedom of one group in society diminishes the dominion of all groups in relation to their personal feelings of safety and therefore their personal freedom. Strategies which have been developed by governments across Australia to promote safer communities have, however, veered from a punitive approach to addressing the issue of crime through increased enforcement, to focusing on strategies which are very much based on the principles of restorative justice including:

- promotion of problem-oriented and community policing;
- increased involvement of community members and agencies outside of the criminal justice system in strategic community safety partnerships;
- focusing correctional services, courts and victim support on reducing the rate of re-offending and repeat victimisation   (Graycar, 1999: 9).

These strategies link with the social action approach to policy development as they encourage structured interaction between stakeholders in order to promote and encourage tolerance of differences and respect for community standards. They are also based on policy as social construction where institutions which are best suited to achieve desired outcomes are identified

(Graycar, 1999:5). Therefore there are links between current government policy, restorative justice practices and the overarching concept of promoting dominion. The final chapter will further integrate these and propose social policy directions supporting restorative justice and its continued implementation in the Northern Territory.

This section has examined a theory of restorative justice, the processes and practices for implementing restorative justice and the ways in which these can provide a positive response to crime and juvenile offending. It has been shown that the longer term and overarching objective of restorative justice is to provide a foundation for healing victims, offenders and others affected by offending behaviour. At a wider level the aim of restorative justice practices is to build stronger families and communities, both at the local and wider societal levels, through the processes of good governance.

It has been argued that the development of policy to support these processes should be undertaken in a social context, which involves government and non-government agencies and community members. This leads to the main focus of the thesis which is to determine the extent to which restorative justice, as implemented through the police diversionary program, has impacted on the level of offending of juveniles in the Northern Territory.

Restorative Justice and Re-offending

One of the stated aims of restorative justice is to change future behaviour of the offender, which includes preventing further offending. Many studies have been undertaken in jurisdictions around the world about to the extent to which restorative justice practices impact on the level of re-offending of juveniles. Unfortunately, these use many different methodologies to measure and report on re-offending and as Hayes and Daly (2003) state, there are problems with comparing different types of intervention in relation to their impact on re-offending. This is because of the different approaches used in measuring re-offending across jurisdictions, including methodological problems such as sample bias, different approaches taken in

treating offenders and differing stages of the criminal justice process at which they are diverted.

A further complication arises because, in all jurisdictions, juveniles will only be diverted from court when they admit they have committed an offence. This issue is problematic when determining what causes and prevents re-offending, because those offenders who do not admit guilt may have an inherently different perception of their offending behaviour than juveniles who do admit responsibility.

By not admitting to the offence, if in fact they are guilty, the offender is demonstrating that they feel less responsible for their behaviour than those who did admit guilt. A possible outcome is that they are therefore less likely to succumb to the shaming and reintegration aspects of restorative justice. This self selection bias can therefore have repercussions in relation to the extent to which these groups of juveniles may, or may not, re-offend.

A number of evaluations have been undertaken in Australia and overseas to determine the impact of restorative justice practices on the rate of re-offending of juvenile offenders. Caution must be exercised when interpreting these findings, as some research examines recidivism and some re-offending, and these are quite different measures of an offender's involvement with the criminal justice system.

Furthermore, time frames used to measure when re-offending occurred ranged from as long as 6.5 years and to as short as 8 months, and different types of restorative practices were involved in treating the offender. However, although it was challenging to attempt to determine which factors impacted on re-offending behaviour this research found that, in most of the studies examined, juveniles who had undergone restorative programs generally had lower rates of re-offending than those who attended court.

At a global level, a meta-analysis of 22 studies which examined 35 restorative justice programs across several countries, including Canada, the USA, Australia and New Zealand, found that offenders who had undertaken restorative justice programs were statistically significantly less likely to re-offend in the follow-up periods after an initial event. The overall finding was that re-offending was lower for those who had completed restorative justice programs when compared to other groups (Latimer, Dowden and Muise, 2001:14). More recently another meta-analysis of 39 studies found that overall:

- restorative justice interventions had a small, but significant, impact on reducing recidivism and that the effects were more significant for more recent studies;
- informal and non-coercive interventions had the greatest impact on reducing recidivism;
- low-risk offenders benefited most greatly from restorative justice interventions possibly because they had been diverted from the more harmful affects of the formal process and they were therefore easier to reintegrate into the community; and
- restorative justice intervention may not be sufficient to decrease recidivism for high risk offenders (Bonta, Jessemen, Rugge and Cormier, 2008: 117).

In a study of the impact of restorative justice on re-offending in the UK and other countries Sherman and Strang (2007) found that restorative justice practice substantially reduced offending for some, but not all, offenders and that restorative justice worked differently for different people. One of the few instances they found where restorative justice actually increased re-offending was with a small sample of Indigenous Australians. As this is of importance to the current research as the majority of offenders were Indigenous, this finding will be further discussed in the analysis. However, Sherman and Strang stated that the positive outcomes for the great majority of offenders far outweighed that negative outcome, and that:

> ...there is far more evidence on RJ, with more positive results, than there has been for most innovations in criminal justice that have ever been rolled out across the country (UK). The evidence now seems more than adequate to support such a roll-out for RJ, especially if that is done on a continue-to-learn-as-you-go basis (Sherman and Strang, 2007: 8)

In Pennsylvania, USA, McCold (2002a) reported outstanding results in his evaluation of the Community Service Foundation (CSF) and Buxton schools. The philosophy behind this project was based on combining a number of restorative practices which encouraged juveniles to become more responsible for their behaviour and to develop their own behavioural standards. This was achieved by doing things *with* the juveniles rather than *to* them or *for* them. Programs run by the schools showed that re-offending was reduced by 58 per cent for those juveniles who successfully completed a program, or in some cases multiple programs, which were held either in a residential, home or community setting (McCold, 2002a: 1).

In New South Wales, Australia, it was found that conferencing produced a 15 to 20 per cent reduction in re-offending across different types of offences when compared to juveniles who attended court, regardless of demographic factors (Luke and Lind, 2002: 1). Chan, J., Doran, S., Maloney, E. and N. Petkoska (2005) evaluated the *NSW Young Offenders Act 1997* which introduced diversionary processes for juvenile offenders. They found that conferencing had a positive impact on outcomes for juveniles and that 90 per cent of offenders said that their respect for legal authorities had increased and that they would not re-offend.

In Victoria, Australia, although the sample size was small (only 71 offenders), in a 12 month follow-up period it was found that, whereas only one fifth of those who went through a conference re-offended, over one third of those who attended court did so (Griffiths, 1999: 8). In Canberra, over a 12 month follow-up period, the Canberra Reintegrative Shaming Experiment (RISE) found that there was a reduction in re-offending for juveniles who

had undertaken a conference. This was particularly evident for violent offenders, where there was a 38 per cent decrease in re-offending (Sherman, Strang and Woods, 2000: 1).

Further research conducted by Sherman et al., (2005) used randomised trials to examine the impact of restorative justice on victims of crime. They found that "from a justice policy perspective, the most favourable indication of the effect of RJ on victims is also the most important: the substantial and consistent reduction in the stated desire of victims for violent revenge against offenders" (Sherman et al., 2005: 392). As discussed earlier in this chapter in this respect restorative justice has the propensity to prevent victims themselves becoming offenders.

In the South Australia Juvenile Justice (SAJJ) Research on Conferencing Project it was found that, over an 8 to12 month follow-up period post-conference, 60 per cent of the sample had no further contact with police. The research did not compare court and conferencing but focused on the perceptions of procedural fairness experienced by victims and offenders who undertook the conferencing process (Daly and Hayes, 2001). It was found that:

- offenders and victims felt they were treated fairly and rated conferences highly in this regard;
- that victims fear of crime was reduced by conferences;
- the majority of victims felt positively about the process; but that
- even though participants thought the process was fair there were limits to the extent to which offenders appeared to want to repair the harm they had caused (Daly and Hayes, 2001: 5).

In Queensland Hayes and Daly (2004) examined offending records for 200 juveniles over a three to five year follow-up period post conference. They found that males and younger juveniles were more likely to re-offend than were other groups of offenders. They also found that re-offending was less likely if the *first* contact the juvenile had with the criminal justice system was

though a conference rather than through other interventions such as court or cautions.

In the first two years of the Northern Territory Juvenile Diversion Scheme Wilczynski et al. (2004) found that the majority of juveniles did not re-offend and that, of those who did, re-offending was more common for those who went to court.

Research in each of these jurisdictions therefore found that, in relation to young offenders, restorative practices were more successful in preventing further offending behaviour than retributive justice.

Hayes and Daly (2004) examined conferencing and its affect of re-offending for Queensland juveniles. In doing so they categorised offenders into the following four groups:

- "experimenters", who were offenders who offended only once;
- "desisters" who offended pre but not post-conference;
- "drifters" who re-offended post-conference; and
- "persisters" who offended both pre and post-conference (Hayes and Daly, 2004: 176).

Delinquency desistance theory treats desistance as a process over time rather than as a single event in the life of the offender (Bushway, Piquero, Briody, Cauffman and Mazerolle, 2001; Bushway, S., Thornberry, T. and M. Krohn, 2003). Maruna (2004) examined prisoners from a psychological perspective by interviewing them in relation to their "explanatory style of offending", that is, how they verbalised and justified their offending behaviour. He found that those offenders who had desisted from re-offending, were more likely to interpret their own behaviour as something over which they had no control, conversely they perceived that the positive aspects of their lives were controlled by external causes. The current research did not interview offenders in relation to their behaviour and therefore these psychological aspects of re-offending are not addressed. However, desistance theorists

have also found that social developmental factors, such as education and employment are intrinsically linked with psychological factors in determining the extent to which offenders desisted or persisted in offending and that in turn these factors are associated with race, gender and location (Uggen and Piliavin, 1998; Uggen, 2000; LeBel, Burnett, Maruna and Bushway, 2008). Uggen and Kruttschnitt (1998) found some gender differences in desistance from criminal activity and that "women are more likely to make the transition out of crime and remain crime free for longer periods of time than similarly situated men" (Uggen and Kruttschitt, 1998: 361). They concluded that this was due in part to the extent to which education and employment provided females with greater protection from committing further offences. However, they also found that black women were at greater risk of re-arrest than white women and more subject to social control which they thought could be due to the different "social locations" of these two groups of women (Uggen and Kruttschitt, 1998).

These social locations include the presence or absence of cumulative risks and a combination of social and psychological factors which vary over the life course and which are at the core of the developmental approach to crime prevention (Cunneen and White, 2007). As an example research found that factors which prevented the successful reintegration of prisoners back into a community included stigmatisation by police and a lack of a stable social environment, including employment, stable relationships and absence of delinquent peers and that:

> hence, there appears to be a genuine need to invest more efforts in offender reintegration and to provide individuals with tools that will allow them to maintain desistance efforts and resist temptations to engage in criminal behavior (sic) (Kazemian, 2007: 22).

From this perspective the concept of desistance and persistence in offending behaviour is of importance because this categorisation provides a useful tool for targeting offender groups and determining the extent to which they are at risk of re-offending.

It also provides a further means to identify and develop restorative programs and practices to address the needs of different offender groups. The analysis will examine the extent to which juveniles in the Northern Territory re-offended and the extent to which they were at risk of doing so. The application of this type of categorisation to policy development will be discussed in the final chapter.

In conclusion, this thesis will examine the proposition that restorative justice practices and processes at best, do reduce re-offending behaviour and at worst, do not increase re-offending. The next chapter will further examine how restorative justice practices have been developed and institutionalised internationally and within Australia.

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CHAPTER 3

RESTORATIVE JUSTICE PRACTICES:
INTERNATIONAL AND NATIONAL SETTINGS

International Perspectives

Restorative justice practices have been implemented in many other countries including Canada, the United States, South Africa and New Zealand. These jurisdictions have been chosen for discussion because of their similarity to the Australian context of criminal justice practices. In recent years these jurisdictions have implemented restorative justice practices to varying degrees and in varying contexts, ranging from police facilitated cautions and conferencing to community facilitated peace and healing circles. These various restorative justice practices will now be discussed for each of the jurisdictions in chronological order according to when they were introduced into each jurisdiction. As shown in Figure 10 the models differ across jurisdictions but basically they all have as their objective the need to provide reparation to victims and communities and to promote self worth and self esteem for offenders.

Figure 10   International models of restorative justice

	Model	Emphasis/objective
Canada	Healing circles and Circle sentencing	• Reintegration of the offender • Healing for the victim/community
England	Family conferencing Police led - warnings	• Accountability of offender to make reparation to the victim or community • Involvement of the victim in the process • Reduce offending • Increase victim satisfaction
South Africa	Community courts Truth and Reconciliation Commission Family group conferencing	• Fostering sense of children's worth • Reinforcing children's respect for human rights • Supporting reconciliation through restorative justice
New Zealand	Family conferencing	• Involvement of young persons and families in decision-making process • Take into account impact of offence on victims • Reach group consensus which addresses the accountability of the offender and reduces re-offending
USA	Victim Offender conference Circle sentencing	• Provide reparation to victim and community

Source: Derived from Skelton and Frank, 2001

Canada

High incarceration rates of juvenile offenders, particularly Indigenous juveniles, was a major reason for introducing restorative justice practices in Canada (Crawford and Newburn, 2003) where Indigenous juveniles are incarcerated at around eight times the national rate, with rates being highest in the more remote areas (Lillies, 2002).

The "modern" form of restorative justice commenced in Kitchener, Ontario, Canada in 1974, with what was considered the first victim offender reconciliation program (VORP). This restorative process was based on the Mennonite biblical interpretation of the restorative concept, that of repentance and forgiveness (Zehr, 2005). The pilot program led to the introduction of a formal program "involving information and voluntary 'face-to-face' meetings between offenders and victims" (Roberts and Roach, 2003: 239). The VORP was used to bring offenders and victims together to discuss the offending behaviour with an emphasis on the facts, feelings and agreements about addressing the behaviour of the offender (Zehr, 2005)**.** These meetings were based on traditional Indigenous practices which included healing and sentencing circles. These practices, which were used at different stages of the justice process, were a combination of Indigenous traditional laws and community initiatives, laws enacted by other legislative bodies, including Parliamentary committees, statutory sentencing reforms, codified sentencing provision made by the Supreme Court and other law reform proposals made by Law Reform Commissions (Roberts and Roach, 2003: 238).

One Indigenous traditional practice which was reintroduced in 1988 was circle sentencing—a product of a Parliamentary committee, the Supreme Court and various Indigenous groups. As a result a document was produced which set out the basis for the implementation of restorative justice in sentencing, including the need for offenders to take responsibility for their crime and also for the courts to look at alternatives to incarceration wherever possible. In 1996, a new intermediate sanction was created which allowed for

conditional sentences of imprisonment, also considered to be part of the restorative justice paradigm. These sentences allow for custodial sentences to be carried out within the community with conditions to be met by the offender including community service and restitution (Roberts and Roach, 2003). The Canadian Supreme Court made additional judgments in 1999 and 2000 which stated that restorative justice practices should be considered in sentencing. As a result of these judgments restorative justice was "identified by the Court both as a penal philosophy that focused on the needs of offenders, victims and the community affected by the crime and as a penal technique that involved community sanctions" (Roberts and Roach, 2003: 247).

One important restorative justice practice introduced by these reforms was "healing circles"—adapted from a practice used by the Canadian First Nations people. It was implemented to provide a basis from which to empower the community, and to provide for community capacity-building. The concept of community development and growth was central to this process and "community" was defined in terms of geographical area in more remote regions, and in urban areas, in terms of groups of people who shared similar cultural backgrounds and who understood the issues faced by the offender (Lillies, 2002).

In attempting to empower the community, participants in the healing circle examined the basis for offending and "the social and cultural arrangements that allow these forms of violence to persist" (Crawford and Newburn, 2003: 33). An example of such a community building project, was the Community Holistic Circle Healing Project established in Hollow Water, Manitoba. The process involved offenders, victims, community and an assessment team in participating in a number of circles

> ... in the first circle, offenders discuss the offence with the assessment team. In the second circle, victims tell offenders how the abuse has affected their lives. In the third circle the larger community is involved. The last circle has at times involved over 200 people in the small community (Roberts and Roach, 2003: 241).

The outcome was a "healing contract" signed by those involved in the process which was aimed at healing the offender, victim and community in terms of strengthening each of these participants.

As mentioned above, "circle sentencing" was also introduced but, unlike healing circles, and as the name suggests, involved a court sentencing process. However, it was used as an alternative to formal sentencing and therefore did not use sentencing submissions from defence or Crown lawyers.

Circle sentencing, which in itself does not have a statutory basis (Lillies, 2002), was used by the courts to acknowledge harm done to the victims and to the community and to determine an appropriate and just response to the offending behaviour (Roberts and Roach, 2003: 237). While restorative practices were taken into consideration by judges they were placed within the context of the retributive framework. This meant that, according to legislation, sentences took on some of the concept of "just deserts" as they had to be "proportionate to the gravity of the offence and the degree of responsibility of the offender" (Roberts and Roach, 2003: 237 citing Section 718.1 of the *Criminal Code)*. Safeguards included in each hearing attempted to ensure that there was compliance with natural justice and legal requirements (Lillies, 2002). These included ensuring that the process was voluntary in that the offender acknowledged guilt for their offence, a record was made of the proceedings, the process was open to the public, documentation relating to the case was made available to participants and that legal representation was available. Most circle sentencing cases and conferences were held in rural and remote locations, involved Indigenous offenders, both adults and youth and dealt with serious crimes such as sexual assault, incest and other domestic violence (Lillies, 2002; Crawford and Newburn, 2003).

The circle sentencing process was flexible in order to allow for cultural differences, traditions and community needs and resources. Most circles, usually involving 15-50 people, focused on the broader issues surrounding the offending, including examining the underlying causes of the crime, the impact of the crime on the victims, how the offender could be "healed", and who was going to provide support for the offender in completing their sentencing "plan" (Lillies, 2002). The offender's progress was then monitored by his or her support group, a probation officer and, when available, a Community Justice committee.

Since their inception there has been much discussion about the value or otherwise of circles and how successful they have been in achieving their aims. It is generally thought that circle sentencing is successful in that the majority of offenders complete their disposition in the agreed way (Crawford and Newburn, 2003). However, it is argued that this is because of the voluntary nature of the process for the offender meaning that they are more motivated to restore the harm they have caused (Lillies, 2002).

United States of America
In 1979 the first identified restorative justice program to be introduced in the United States was the Victim Offender Reconciliation Program (VORP) which was implemented in Elkhart County, Indiana, along the lines of the 1974 Kitchener, Ontario model (Zehr, 2005). This model was increasingly adopted by other jurisdictions and, by 1981 there was a total of 8 victim-offender programs in the USA and Canada, by 1987 there were 50 programs and by 1994 more than 100 programs operated in the USA (Cunningham and Trostle, 1994: 1).

In 1994 a pilot mediation program was set up in Anchorage, Alaska in an effort to divert juveniles from the court system and with the goal of gaining restitution and reparation for victims and offenders. It was intended that the program was intended "to restore both parties to a more positive social functioning in the larger community and to compensate for some of the

perceived inadequacies of the criminal justice system" (Cunningham and Trostle, 1994: 1)

In 1999 a circle sentencing court was set up in Kake, Alaska, in response to the demand for greater community responsibility in decision-making relating to criminal behaviour and a perception that rural justice practices were not effective (Rieger, 2001). This model followed from another previously set up in the Yukon Territory in Canada. This type of sentencing was community based and sought to provide reparation to the victim and to the community. Although sentencing occurred after conviction in the Crown Court, it was actually carried out in the community. This was with the intention that the sentence then became more meaningful to the offender and was in the interests of the community. The circle was open to both Natives and non-Natives as everyone was considered part of the community (Rieger, 2001).

In Pennsylvania, McCold (2002) reported outstanding results in his evaluation of the Community Service Foundation (CSF) and Buxton schools. Programs run by the schools in Pennsylvania resulted in a 58 per cent reduction in re-offending for those juveniles who successfully completed the program, or in some cases multiple programs, held either in a residential, home or community setting. The philosophy behind this project was based on combining a number of restorative practices which encouraged juveniles to become more responsible for their behaviour and to develop their own behavioural standards. McCold argued that these results were achieved by offenders feeling that case workers were doing things *with* the juveniles rather than *to* them or *for* them (McCold, 2002: 2).

England
Until the late 1990s restorative justice programs in the England were "stand alone" in that they had no statutory basis and operated outside of the formal justice system. Victim-offender mediation was introduced in 1979 with the implementation of the Exeter Youth Support Team. This program was used

where it was thought that a caution was not sufficient and as a diversion from court (Crawford and Newburn, 2003).

They relied on temporary funding and were implemented only at a local level. In these early programs the client group consisted of first time juvenile offenders who had committed minor offences (Dignan and Marsh, 2003). At the time victim offender mediation was run by practitioners whose aim was to address the inequality and punitive approach of the conventional system and promote reconciliation (Marshall, 1996).

In 1998 this situation changed with the passing of the *Crime and Disorder Act 1998* and then in 1999 the *Youth Justice and Criminal Evidence Act 1999*. Both Acts had a major impact on the application of juvenile justice through the incorporation of some restorative justice elements, notably conferencing, into the process, and by establishing multi-agency youth offending teams for offenders aged between 10 and 17 years (Dignan and Marsh, 2003). These initiatives were based both on New Zealand's family conferencing model and on the Wagga Wagga model which had been developed in New South Wales, Australia (Marshall, 1996).

The emphasis of these changes was to make offenders take responsibility for their behaviour and for them to make some sort of reparation to the community. The process included both serious and non-serious offences and could be applied to offenders who committed more serious offences, as part of a sentencing plan (Crawford and Newburn, 2003). Police cautions were replaced by reprimands and final warnings which meant that the practice was used both as a diversion from court and post conviction. A major change brought about by the Acts related to victims as the Acts stipulated that the victim must be consulted about the process and reparation and must consent to the reparation before it can be made. Historically, little emphasis had been placed on the needs of victims in the process (Dignan and Marsh, 2002).

Family group conferencing continued to be developed in England. Nine projects were funded, nearly all of which have the objective to reduce re-offending, to a lesser extent to increase victim satisfaction and, to a minimal extent, to repair the harm caused by the crime (Dignan and Marsh, 2002).

New Zealand

New Zealand and Australia have been the foremost countries in the world in implementing restorative justice in the form of conferencing (Daly, 2002: Maxwell and Hayes, 2006). In New Zealand restorative justice practices, such as family conferencing, were introduced largely in response to the needs of the Maori population whose traditional justice system was structured such that the base of power lay within the community rather than with an endogenous centralised power (New Zealand Maori Council, 1999). Maoris regarded the conventional justice system as unfair and discriminatory because of their over-representation in the criminal justice system. They therefore regarded restorative justice as a means to redress this imbalance by healing and strengthening the offender, victim and community.

In support of restorative justice practices the Maori Council of New Zealand stated that

> ... for Maori, the essence lies in restoration of authority to the community and a transfer of the focus from the individual to the group ... The restorative system can be the basis for ensuring that authority is given to people within their communities to take responsibility for all their own members, including victims, offenders and families' (New Zealand Maori Council, 1999: 25-26).

The Council also stated that these practices can exist alongside more conventional justice practices and should become an integral part of the system.

The underlying basis of the juvenile justice system in New Zealand was that juvenile offenders were diverted from court wherever possible through police warnings or, where this was not appropriate, given referral to the police

Youth Aide Section, a warning in front of their family, and possibly a sanction such as community work. If the juvenile re-offended, or committed more serious crime, he or she was then referred for a family group conference (established in New Zealand with the *Children, Young Persons and Their Families Act (1989)*). According to the process a conference had to be held before a matter was referred to the court, and if the matter was resolved successfully through the conference then no court appearance was required (Morris and Maxwell, 1998).

Conferences were held in an informal setting and included the parties involved in the offence—the offender, victim, family of both and the youth justice coordinator. The intention of the conference was for participants to develop a plan for the offender, taking into account the needs of the victim, with the aim of preventing future re-offending by addressing problems in a practical way (Morris and Maxwell, 1998; Maxwell and Hayes, 2006).

This model was developed for 14-17 year olds. Noticeably, unlike other jurisdictions, which usually address only less serious crime, the family group conference was used for all medium and serious offences, excluding murder and manslaughter (Daly, 2002; Crawford and Newburn, 2003). The model was also used as a pre-court diversionary process for juveniles who had not been charged and for pre-sentence recommendations for those who had been charged (Morris and Maxwell, 2003). The aim of the conference was to make the offender claim responsibility for the offence and to include those affected in the process, such as the victim, supporters of the offender or victim, police and social worker, who work together to reach a decision about how to address the problem.

This type of conference addressed the traditional Maori belief that offending happens in the context of cultural norms and values and that the response to the offence should therefore be made within this context (New Zealand Maori Council, 1999). This process provided a basis to understand why the individual offended within their family and community environment and

was linked to the notion of collective responsibility, not just individual blame (Morris and Maxwell, 1998).

South Africa

In South Africa restorative justice was derived in part from the Truth and Reconciliation Commission set up in 1996 through *the Promotion of National Unity and Reconciliation Act, 1995.* The aim of the Commission, set up by the first black government in South Africa, was to respond to the brutality associated with apartheid practices occurring since 1960. In 1999 Archbishop Desmond Tutu stated that restorative justice values reflected those of traditional pre-colonial Africa, as the focus of the process was to promote healing of the community through *ubuntu* and to restore broken relationships within families and the community (Tutu, 1999). The intention was to promote forgiveness and reparation instead of prosecution and retaliation for offenders, and to obtain confessions from those who had murdered and tortured by offering amnesty (*ubuntu*). An integral part of the process was also to offer victims reparation. As part of this process the Community Peace Making Programme (CPP) was established in 1997 which followed on from the Community Peace Foundation (CPF) in 1992 (Roche, 2002). Cunneen (2008) argued that it was problematic for the state to address the issue of victim reparation through restorative justice processes when it was the state itself that perpetrated the crime. This has also been a challenge in other jurisdictions such as Canada, New Zealand and Australia, where the need to implement restorative justice practices is in the purview of police and state authorities who, as discussed earlier, have been found to perpetuate an unequal system of justice.

South Africa developed, as part of its restorative justice structure, citizens' panels, community boards and peace committees. Peace committees were established according to the traditional (Zwelethemba) model of justice in 1997. The aim was to implement a community based conflict resolution process using peace committees (Roche, 2002). A number of other townships have since developed this process based on the Zwelethemba

model. Peace committees were based on the circle programs used in Canada and the USA together with the conferencing programs of Australia and New Zealand (Roche, 2002). Therefore peace committees, like Canadian and American healing and sentencing circles, attempted to address the underlying community problems which led to offending (Crawford and Newburn, 2003). They did this by engaging in peacemaking and peace-building between offender, victim and the community. In the peacemaking process members were involved in helping the community solve specific problems, while the peace-building process examined the wider problems and underlying conflicts in communities such as poverty, lack of basic resources and other social issues (Roche, 2002).

As part of the peace-making process commitments were made by peace committee members before each meeting. These included the commitment to heal, not hurt, reflecting a pledge in the South African Constitution related to repairing harm (Roche, 2002). The offence was treated as something that impacted on all of those affected by the offending behaviour and therefore, all of those people should be included in the process (Roche, 2002). As they were independent from the formal system "peace committees receive very few cases from the formal criminal justice system, instead relying almost entirely on community members coming forward to request the services of peacemaker committees" (Roche, 2002: 522). Committees were run according to a *Code of Good Practice* and were, like Canadian practices, independent from the formal criminal justice system. Unlike other jurisdictions, they were able to address a range of offences from trivial disturbances to the most serious crimes (Roche, 2002).

To ensure that community members were involved in the process, members of peace committees came from the same townships as offenders and victims. This was because, due to their segregation from other communities, members of one community had their own social relationships and environment (Roche, 2002). Community involvement was therefore vital to

the process so that problems were addressed using local knowledge
(Crawford and Newburn, 2003).

An Australian Perspective

Australia is a world leader in the development and implementation of
restorative justice practices, particularly conferencing (Daly and Hayes,
2001; Daly, 2002; Crawford and Newburn, 2003). In Australia the
introduction of restorative justice practices has occurred at different times in
different States and Territories. This was due to the devolution of criminal
matters to the states and territories and the consequent diversity of
legislation in response to differing needs of states and territories. All
jurisdictions have implemented some form of restorative justice practice,
only two of which, Victoria and the ACT, do not have a legislative basis.
These practices have been integrated into various stages of the justice
process, ranging from police-led diversionary cautioning and conferencing,
to decisions made before the court. The various state and territory models
used in Australia are shown in Figure 11.

Figure 11   Australian models of restorative justice practices

	Model	Legislative basis	Intervention
Australian Capital Territory	1993 Family group conferencing	None	Police referral as pre-court diversion
New South Wales	1991-94 Police trials 1994-97 mediators 1998 conference convenors	1991-1997 non-statutory; *Young Offenders Act 1997*	Police and court referral as pre-court diversion Sentencing option
Northern Territory	2000 Police cautions and conferencing	*Juvenile Justice Act 1997* amended 1999; *Police Administration Act*, Part VII, Division 2b as amended 2000	Police referral as pre-court diversion

Figure 11 continued

Queensland	1995-96 planned police trials; 1997 conference convenors	1995-96 non-statutory; *Juvenile Justice Act 1992* amended 1996	Police and court referral as pre-court diversion; Court referral pre sentence
South Australia	1994 Youth Justice Coordinators	*Young Offenders Act 1993*	Police and court referral as pre-court diversion
Tasmania	1994-99 police trials; 2000 conference coordinators	1994-99 non-statutory; *Youth Justice Act 1997* (proclaimed in 2000)	Police referral as pre-court diversion; Court referral for sentence
Victoria	1995 conference convenors	None	Court referral as an alternative to a supervised order
Western Australia	1991 Police cautioning 1993 Juvenile Justice Teams 1995 Conference coordinators	*Young Offenders Act 1994*	Police referral as pre-court diversion

Derived from Daly and Hayes (2001)

To a major extent the introduction of restorative justice practices in Australia has been in response to the consistently high and disproportionate rate of imprisonment of Indigenous people (Daly, 2002; Snowball and Weatherburn, 2006) who are some of the most imprisoned people in the world (Blagg, 2002: 227). The practices are discussed in greater detail below.

In 2002 the average rates of imprisonment of juveniles in Australia by Indigenous status is 256.7 per 100,000 relevant population compared with only 13.6 per 100,000 relevant population for non-Indigenous juveniles. The detention rates in the Northern Territory at that time were the second lowest of all states and territories at 141.8 persons per 100,000 relevant population,

possibly reflecting the achievements in diverting juveniles from detention (Table 1).

Table 1   **Australia: Juvenile detention rates as at 30 June 2002 by Indigenous status rate per 100 000 relevant population 10-17 years of age**

State/Territory	Indigenous	Non-Indigenous
NSW	267.4	17.1
WA	410.3	10.8
ACT	306.7	33.8
SA	372.8	17.2
Tasmania	unknown	unknown
Victoria	137.2	9.6
Qld	225.5	9.7
NT	141.8	41.2
Australia	**256.7**	**13.6**

Source: Bareja and Charlton (2003)

These high rates of imprisonment of Indigenous groups across Australia provided a significant impetus for the introduction of restorative justice practices. This was supported by recommendations from *The Royal Commission into Aboriginal Deaths in Custody* (RCIADIC) which was held from 1989 to 1996. The Royal Commissioners made a total of 339 recommendations in relation to the prevention of deaths in custody, many of which related to juveniles and the need to keep them out of police custody and apart from the criminal justice process wherever possible. The Royal Commissioner Elliott Johnston referred to the particular needs of young Indigenous people who, he found, were over-represented as much as sixteen times higher than non-Indigenous youth (Johnston, 1991). He stated that the reasons for this were complex and long-standing and a result of social and structural factors, such as those discussed in Chapter 2, which

influenced the extent to which Indigenous youth entered the criminal justice system.

As a result of the recommendations by the Commission, from 1990 onwards parliamentary committees in Western Australia (Select Committee into Youth Affairs), Queensland (Parliamentary Criminal Justice Committee), New South Wales (Standing Committee on Social Issues) and South Australia (Select Committee on the Juvenile Justice System) were asked to put forward recommendations for better addressing youth offending and for improving the juvenile justice system throughout Australia (Alder and Wundersitz, 1994). A number of restorative justice models were introduced as a result of the RCIADIC recommendations and the other committees mentioned. These will be discussed in relation to each jurisdiction in the following sections. The States and Territories are examined separately and chronologically in relation to the date on which they introduced restorative justice practices.

New South Wales
The first restorative justice model in Australia was introduced in Wagga Wagga, New South Wales, in 1991. This model was generally seen to be the first family group conference model in Australia (Alder and Wundersitz, 1994). It was developed as a "front-end" diversion and was similar to that used in the New Zealand model except that it was run by the police. Police cautioned the offender and police also led the conference. The conference itself was based around "reintegrative shaming", a theory developed by John Braithwaite (1989). This type of shaming includes "all social processes of expressing disapproval which have the intention or effect of invoking remorse in the person being shamed and/or condemnation by others who become aware of the shaming" (Braithwaite, 1989: 100). The reintegrative aspect of this process is where family, friends and other members of the offender's "community of care" are included in the decision-making process about reintegrating the offender into the community (Crawford and

Newburn, 2002). This model is still in use in other jurisdictions but not in its original form (Blagg, 2002).

The Wagga model continued until 1995 when a pilot scheme of Community Youth Conferences was established at six sites in NSW. These conferences were again operated by police, but also included the Department of Juvenile Justice, the NSW Children's Court and Community Justice Centres. In 1996 after an evaluation of this pilot scheme, a report was released by the Attorney-General's Department recommending that "community accountability conferences" be established for juveniles. These recommendations resulted in the *Young Offenders Act 1997* which required that a number of interventions be introduced, including police warnings and cautions and additionally, that conferences managed by the Department of Juvenile Justice, were to operate. Offences able to be dealt with under the Act included property offences, such as break and enter, motor vehicle theft and property damage. Other more serious offences, mainly relating to crimes against the person, such as sexual assault, manslaughter and murder, drug offences, and apprehended violence orders were excluded from the process (Strang, 2001).

The conference process, like those in other jurisdictions, could involve the offender, victim, support people, police, community members and a legal representative where required. As with other schemes outcomes are reached by consensus and a plan developed for the offender.

Western Australia

In the past two decades there have been several major policy and legislative changes in the way juveniles have been treated in the WA criminal justice system. In 1988 the *Children's Court of Western Australia Act 1988* provided the impetus for moving away from the treatment of offenders through the welfare model, which had been in place since the 1960s, to the "get tough" approach of "just deserts". This resulted in the introduction of mandatory gaol sentences for young repeat violent offenders through the

Crime (Serious and Repeat Offenders) Sentencing Act 1992 (Hakiaha, 1994). However, prior to this, in August 1991, restorative justice practices in the form of formal police cautioning, were introduced in conjunction with pilot Juvenile Justice Teams. These initiatives provided "front-end" diversion through police cautioning with second level diversion in the form of a Panel system run by the Juvenile Justice Team.

It is interesting to note that both Juvenile Justice teams and police cautioning were introduced at a time when there were increasing demands, presumably by the public and media, for tougher penalties for juvenile offenders. However, it was argued by advocates of these restorative justice practices that these initiatives were not at odds with the call to "get tough" because repeat and serious offenders *were* getting the tougher options whilst less serious offenders, who were perceived not to be a threat to the community, were given what some commentators called "softer" options such as diversion (Blagg, 2002).

Police cautioning and Juvenile Justice Teams were introduced as a response to reducing the high number of juveniles going through the Children's Court, as a response to advocacy from the RCIADIC and also as a response to Indigenous communities. Indigenous groups argued that juvenile offending was linked to problems inherent in communities, including a lack of understanding of Indigenous culture by those not in the community, and a feeling of disempowerment by Indigenous people (Hakiaha, 1994). A further reason for these initiatives was the state government's recognition of the high cost of imprisonment, and acknowledgment that prison does not rehabilitate the offender or deter re-offending (Government of Western Australia, 2004). The aim of the process is to divert all but the most serious offenders from the court system "by formalising police cautioning and the pilot scheme of Youth (now Juvenile) Justice Teams (JTT's)" (Bargen, 1996: 6).

Juvenile Justice Teams were fully introduced in July 1993. These teams were multi-disciplinary and multi-agency and set up to "introduce restorative principles into the system and complemented those principles set out in section 7 of the 1994 *Young Offenders Act* which focused on diversion and reparation" (Blagg, 2002: 236). The teams were comprised of a youth justice coordinator, police officer, Ministry of Education officer and Aboriginal community worker. In relation to the process the teams were intended "as a second level of diversion, dealing with cases which are too serious to warrant a police caution but not serious enough to require a formal court hearing" (Hakiaha, 1994: 106). The main strategy of the process was a family meeting convened along lines similar to that of the New Zealand model. The offender was to admit guilt and be prepared to make amends. The meeting included the offender, victim and support people for both and developed an action plan for the offender (Ministry of Justice, 2001). A major focus of the process was to empower the Indigenous community from which the offender came y allowing them to manage offenders by identifying appropriate outcomes for them.

South Australia

The move towards restorative justice in South Australia came with the *Young Offenders Act 1993*. The aim of this move was to "divert all but the most serious cases from the Youth Court through a three tiered system of cautioning, conferencing and court appearances" (Bargen, 1996: 4). The Act also

> gave precedence to the notions of accountability, community protection and deterrence and, for the first time, acknowledged the rights of the victim to receive compensation and restitution for the damage caused (Wundersitz, 1998: 33).

Thus the existing pre-court diversionary process consisting of Aid Panels, was replaced by a police cautioning system and included conferencing.

Police cautions were used for minor offences and gave police the ability to put an offender on community service. Formal cautions were given for more serious offences which were not considered serious enough to refer to a Family Conference or to the Youth Court (Bargen, 1996). Family Group Conferences (FGCs), run along the lines of the New Zealand model, were used for the more serious offences. Because they involved the victim, the offender, and most importantly family members and community representatives, FGC's were regarded as a more appropriate way of dealing with Indigenous offenders than the conventional justice practices, because they gave participants an opportunity to take part in decision-making processes. The FGC could require the offender to attend community service, to pay compensation to the victim or enter other undertakings, but with consensus from participants (Bargen, 1996).

Like Western Australia, tougher penalties were introduced in SA for more persistent and serious offenders at the same time as these restorative justice practices came into effect. The reason given for this was the courts would only be dealing with "hard core recidivists" and greater means of deterrence was therefore needed (Wundersitz, 1998).

Australian Capital Territory
In 1994 the ACT introduced conferencing as pre-court diversion. It was similar to the Wagga model in that the police administered the process. There was no legislative basis to this model. Participants in the process included the offender, victim and supporters and community members. Again, as in other jurisdictions, more serious offences, such as sexual assault and other offences against the person were excluded from the process, however unlike other jurisdictions, drink driving or drug offences were also excluded (Strang, 2001).

Victoria
In 1995 a Juvenile Justice Pilot Project on Group Conferencing was implemented in three court locations in Victoria. The person who managed

the project was employed by a non-government youth agency which, at that time was Anglicare (Bargen, 1996; Strang, 2001). The model, unlike many others, is independent of the criminal justice system and does not have a statutory base in itself, but it is based on the existing *Children's and Young Persons Act* 1989 (Strang, 2001).

The main features of the model were that it was a court referral after a second court appearance, and, like other conferencing models, the offender had to admit guilt in order to receive diversion. The main objective was to prevent re-offending rather than deal with minor crime as "a key feature is that the process is not used in minor or trivial matters; it is an attempt by the Court to deal effectively with young offenders at risk of progressing through the justice system" (Strang, 2001: 10). The process was aimed at providing and building support for the offender and empowering the offender and his or her family and community to make decisions relating to the outcomes of the conference. These decisions had to include some sort of reparation or restitution to the victim (Bargen, 1996). Unlike other conferencing models police did not have a major role in the process.

Tasmania

Conferencing, along the lines of the Wagga Wagga model, was first used in Tasmania in 1995. The *Youth Justice Act 1997,* which was proclaimed legislation in 2000, then established conferencing along the basis of the New Zealand model (Strang, 2001). The aim of the legislation was to provide for pre-court diversion for less serious offences. The principles of the Act dictated that the offender took responsibility for his or her actions and that victims were to be involved in the decision making process in relation to how this occurred (Strang, 2001). Participants included the offender, victim supporters, police officer and community members. As at December 2000, in Tasmania, there were concurrently police-run diversionary conferences and facilitator run community conferences (Daly, 2002).

Northern Territory

Between 1995 and 1996 a Wagga Wagga style model was trialed by the Northern Territory Police and the success of the program led to recommendations that it be continued (Strang, 2001). In 1999 a post-court diversionary conferencing program was introduced which was to be managed by NT Correctional Services. It was offered to all second-time juvenile property offenders and those who refused were automatically given a 28 day detention sentence as a result of mandatory sentencing (Strang, 2001). This regime eventually received national and international condemnation because of its treatment of young people.

As a result of this condemnation in 2000 a formal agreement was reached between the Northern Territory and Commonwealth governments on the introduction of pre-court diversion for juveniles between the ages of 10 and 18 years (after implementation the upper age limit was reduced to 17 years). The model was developed following examination of schemes in other jurisdictions, both within Australia and overseas, and adapting their processes to the Northern Territory social and geographic environment, particularly taking into account factors affecting the Indigenous community (Waite, 2003). A more detailed description of the Scheme is provided in the next section Northern Territory Setting, in terms of the demographic, geographic and offending characteristics of juvenile offenders and the political setting in the Territory.

Queensland

In 1997 conferencing was introduced through the *Juvenile Justice Act 1992* as pilot programs in Logan and Ipswich. Police were able to issue a warning, formal caution, take the matter before a community council or refer it to Youth Court (Hayes and Daly, 2004). As in other jurisdictions participants in the conference included the offender, victim, supporters, police officer, a legal adviser and a conference convenor. Conferences were administered by the Youth Justice Program and Families, Youth and Community Care Queensland and operated through non-government community

organisations, such as, Youth and Family Services, or in the case of Indigenous communities, the local elders (Strang, 2001).

The Northern Territory Setting

This section provides the setting for this research which examined the offending and re-offending patterns of juveniles in the Northern Territory over the first five years of the Juvenile Pre-court Diversion Scheme. The research aimed to provide an understanding of why juveniles offend as they do in this particular environment.

The following sections of this chapter relate to the unique characteristics of the Territory which have been found to have an impact on offending behaviour of juveniles. These include the geography and population demographics of the Territory, and the health and education standards of the population.

In relation to offenders and crime, the types of crime and offending in the Territory in relation to victimisation rates, the demographics of offenders and public perceptions of crime will be examined. The political setting of the Territory will be discussed in the context of responses to crime and juvenile offenders.

Geography and Population

The Northern Territory is geographically the third largest of Australia's states and territories. It covers one-sixth of the continent and has an area of 1.35 million square kilometres, but has less than one per cent of the total population of Australia. The majority of the Territory (1.09 million square kilometres) is tropical which means it has a "dry" season from April to October, when it does not usually rain, and a "wet" season from November to March which can produce heavy rain and cyclones. The remainder of the Territory consists of desert and semi-arid areas.

The map (Figure 12) shows the main centres of Darwin, Katherine, Tennant Creek, Alice Springs and Nhulunbuy, where the majority of populations are non-Indigenous and also the communities outside of these, the populations of which are mostly Indigenous.

Figure 12   Map of the Northern Territory
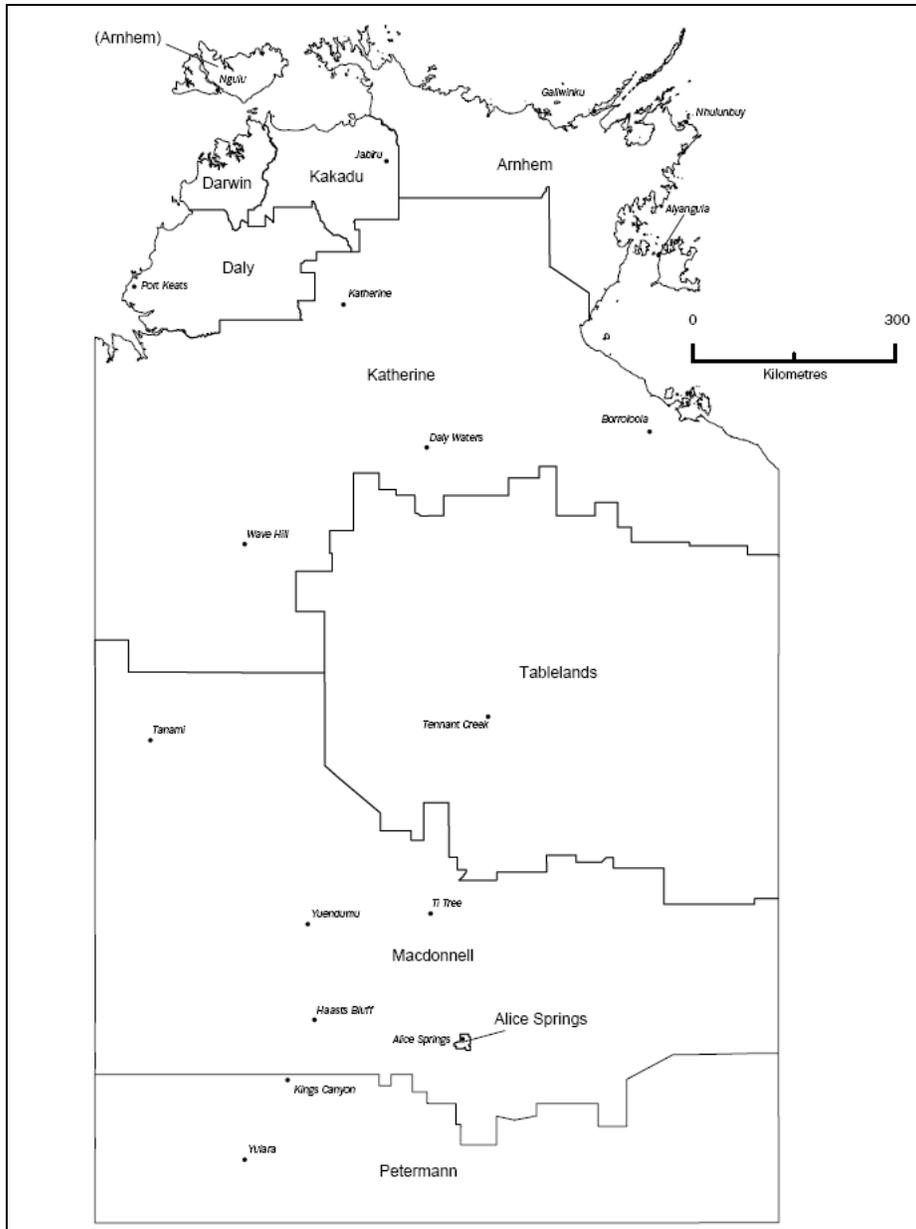
Source: ABS (2006) Catalogue Number 9503.0.55.001

The estimated resident population of the Northern Territory, at the March quarter 2003, was 197 100, representing approximately 1 per cent of Australia's total population (ABS, 2003a). There were six major regions in the Northern Territory namely Darwin Urban, Darwin Region, East Arnhem Region, Katherine Region, Barkly Region and the Central Region. The majority of the population (55 per cent) resided in the Darwin urban region. A further 20 per cent lived in the Central region which includes Alice Springs, 9 per cent reside in the Katherine region, 7 per cent in the East Arnhem region, whose major centre was Nhulunbuy on the Gulf of Carpenteria, 6 per cent in the Darwin rural region which includes the rural area and covers an area approximately 25 to 100 kms outside of the Darwin urban region, and 3 per cent in the Barkly region whose main centre was Tennant Creek (Figure 13) (ABS, 2002c). Only two of these centres had populations of more than 10 000 people, Darwin and Alice Springs, and nearly one third of the population lived outside of the five "major" urban centres. This widely dispersed population has had, and continues to have, implications for the provision of services such as health, education and justice.

Figure 13   Northern Territory population by region, (percentage of persons), 2001
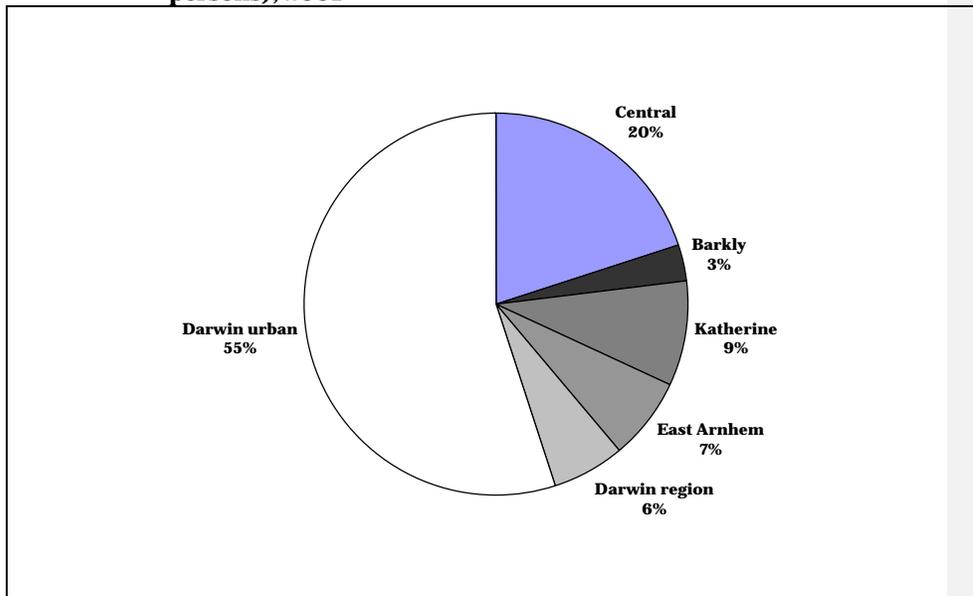
Source: ABS (2002c)

One of the main characteristics of the Territory which impacts on the provision and cost of services is the remoteness and isolation of many of its communities, and particularly Indigenous communities. In order to address the issue of remoteness and how to provide services to remote areas the Australian Bureau of Statistics developed an Accessibility/Remoteness Index of Australia (ARIA) which was used to reflect "remoteness" as a characteristic of an area (ABS, 2001b: 1).

The ABS defined five classes of remoteness as being "highly accessible", "accessible", "moderately accessible", "remote" and "very remote". The index was based on purely geographical methodology in which remoteness was defined on the basis of road distance from any point to the nearest town (service centre) in each of the five population size classes. The population size of the service centre was used as a proxy for the availability of a range of services and road distance was used as a proxy for the degree of remoteness from those services (ABS, 2001b: 9)

The ARIA scale scores Darwin as "accessible", Katherine and Alice Springs as "moderately accessible" and the remainder of the Territory "very remote". There were no "highly accessible" areas in the Northern Territory reflecting the spread of population and distances between services. The development and interpretation of ARIA scores has a major impact on the amount of Commonwealth funding allocated to services in the Northern Territory and therefore the provision of services, especially in relation to remote communities.

Those communities which were considered remote included places such as Milikapati on Melville Island, north of Darwin, to Port Keats on the west coast of the Territory, from Booroloola on the Gulf of Carpentaria to communities such as Docker River and Papunya in the Western Desert. Each of these communities, and many others like them, had limited access to resources and services.

During the period of the research, from 2000 to 2005, there were several noticeable distinctions between the population of the Northern Territory and that of other Australian states. One was that the Northern Territory has the youngest population in Australia with a median age of 29.6 years compared to a median age of 35 years for Australia as a whole as shown in Figure 14.

Figure 14   **Australia: Median age of population by state and territory as at June 2000**
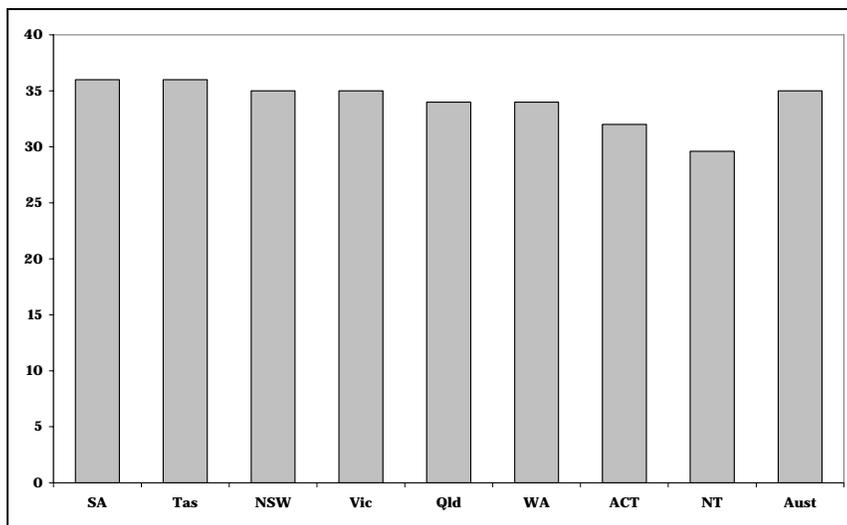
Source: ABS (2001c)

As shown in Figure 15 there was a greater percentage of Territorians under the age of 30 when compared with other states. Noticeably the Northern Territory had the highest proportion of people aged 14 years and under when compared to Australia as a whole (26 per cent in the NT compared and 20.4 per cent nationally). The Territory also had the highest proportion of people aged 20-34 years (28 per cent compared with 22.2 per cent nationally). In contrast it had the lowest proportion of people aged 65 years and over (3.5 per cent compared with 12.3 per cent nationally) (ABS, 2001c).

Figure 15   Australia and Northern Territory: Population by age group (percentage of persons), 30 June 2000
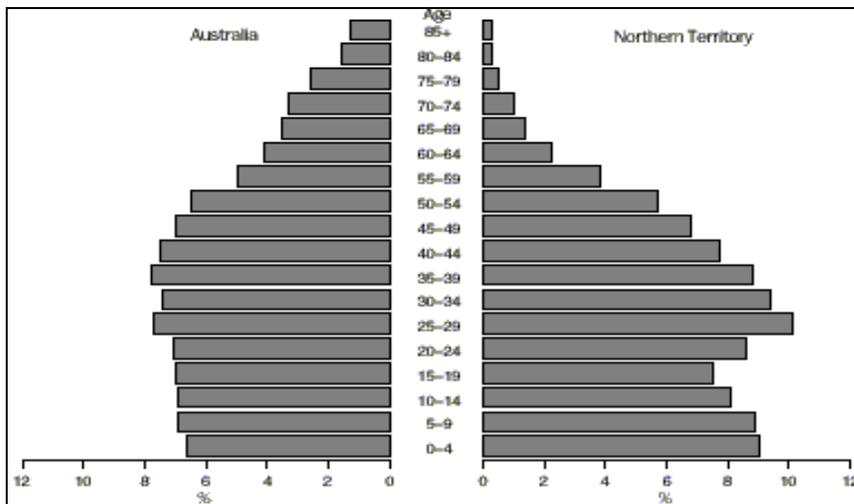
Source: ABS (2001c)

Figure 16 indicates that the low median age in the Territory was attributable to the Indigenous population whose age was lower than non-Indigenous population by between 9 to 20 years for each major centre.

Figure 16   Northern Territory: Median age by Indigenous status and region, 2001
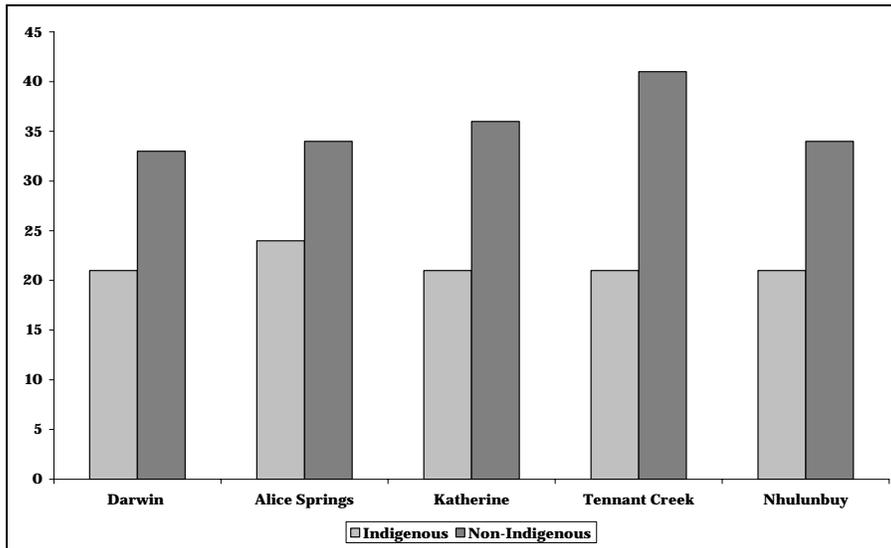
Source: ABS (2001a)

A further contributor to the low median age was the increase in army and navy personnel stationed in Darwin over the 5 year period.

Another important distinction of the demography of the Northern Territory was that it had the highest proportion of Indigenous population of any state in Australia. For census purposes a person was categorised as Indigenous if they reported themselves as such. The category "Indigenous" included mainland Indigenous as well as Torres Strait Islanders (Figure 17) (ABS, 2001a).

Figure 17   Proportion of Indigenous population by total state and territory population 30 June 2001
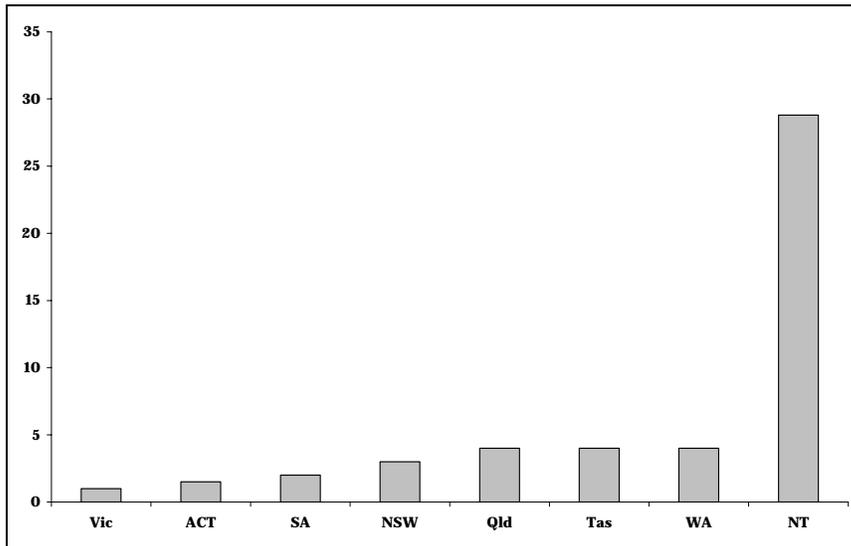
Source: ABS (2001a)

As shown in Figure 17, 28.8 per cent of the population of the Northern Territory was Indigenous, compared to the next highest proportion of 4 per cent or less of Indigenous people in other states (ABS, 2003a).

There were major issues in providing appropriate outcomes for Indigenous people in relation to many services, particularly health and education. The following section examines these areas.

Health

The health of a population is an extremely important determinant of how well a population is able to function. Poor health can be detrimental to a person's ability to learn, to gain employment, and to generally be a functioning member of society. The mortality rates for Indigenous people in Australia have been consistently lower than those of non-Indigenous persons. This is to the extent that from 1996-2001, life tables indicated that whereas 85 per cent of non-Indigenous men could expect to survive to the age of 65 years, only 45 per cent of Indigenous men can expect to do so (Cotter, Anderson and Smith, 2007: 70-71).   Survival rates for Indigenous women were somewhat higher than those of Indigenous men, but were still lower than those of non-Indigenous women, as 68 per cent of Indigenous

women were expected to survive to 60 years of age compared with 95 per cent of non-Indigenous women (Cotter, Anderson and Smith, 2007: 70-71).

A number of reasons had been given for this disparity in health outcomes and these incorporate the historical, cultural and social aspects of change in Indigenous society over the past two centuries. It has been said that the poor health of the Northern Territory Indigenous population was a result of the loss of homelands by Indigenous people (Condon, Warden and Arnold, 2001). However, according to other critics of land rights, this argument is too simplified because more than 20 years of gaining possession of land has led to little or no improvement in health for Indigenous people. As Mick Dodson (former Indigenous and Torres Strait Islander Social Justice Commissioner) said

> The return of people to their country, or the gaining of other land to live on, was an essential part of grappling with the manifold underlying sources of health problems. But mere "ownership" of land in the western legalistic sense, will not immediately resolve the historical and contemporary social and cultural pressures which surface in alcohol abuse, violence, physical and mental ill-health. These matters will only respond to the building of a real sense of control in individual and community life (Dodson, 1994: 21).

Condon et al. (2001) argued that in order to change the situation the underlying causes of poor health and illness need to be addressed in a holistic manner. This includes taking into account factors such as social and economic circumstances, stress, unemployment, social support and exclusion, food and addiction and incorporating them into a social policy. This requires greater emphasis on improving the physical, social and cultural environments in which Indigenous Territorians live and in providing people with a means to control their own lives and communities. As discussed in Chapter 2 these issues involve the concept of good governance, accountability and taking control of one's life. Policies which provide approaches to addressing these issues will be discussed in the final chapter.

Education

Education level has been found to be an important determinant of the wellbeing of individuals and of communities, that it is integral to the effective functioning of societies and that poor educational background and a low level of educational attainment are related to poor socialisation and offending behaviour (Gale et al., 1990; Baker, 1998; Hoge, 2001; O'Connor and Cameron, 2002; Bushway et al., 2003; Lynch et al., 2003; Cunneen and White, 2007; Le Bel et al., 2008). However, for Indigenous juveniles, there is no evidence to date to suggest that improvements in education, *in conjunction self-determination*, have a positive impact in reducing criminal behaviour (personal communication from Professor Rick Sarre, 2008). Studies which have examined developmental pathways to crime prevention of crime have however found that educational setting impacts on the propensity of children to exhibit anti-social behaviour and that a supportive setting has been found to positively reduce difficult behaviour at school, particularly for boys (Homel et al., 2006).

The Northern Territory education system includes both government and non-government schools. Of the 149 government schools in operation in 2001, 104 were primary, 11 secondary and 21 Community Education Centres (CEC's) (Northern Territory Department of Education, 2001). The latter were located in remote Indigenous communities throughout the Northern Territory and often offered secondary as well as primary programs. Primary schools in remote areas also offered some secondary programs. There were also three Area Schools which serviced a much wider area than urban primary schools, and also held high school classes and were located in Jabiru in East ArnhemLand and Batchelor, 100 kilometres south of Darwin. Additionally, there were two senior colleges, three Open Education Centres, five Special Centres for children with disabilities and 50 Homeland Centres. Other specialist centres included the Northern Territory School of Languages, the Northern Territory Music School, the LOTE Centre (Languages Other Than English) and SHAPES (Sport Health and Physical

Education School) (Department of Employment, Education and Training, 2003).

Non-government schools consisted of 15 Catholic schools located in the diocese of Darwin, five of which were in remote Indigenous communities. Darwin also had four Catholic primary schools, one in Palmerston (20km from Darwin) and two Catholic secondary schools, one of which took boarders from around the Territory.   Other non-government schools included a Steiner school, the Centre for Appropriate Technology (CAT), Lutheran schools and other Christian schools and colleges. In Indigenous communities where secondary programs were not available, Indigenous students were sent from their home communities to board in secondary schools in Darwin or Alice Springs.

In 2001, the Northern Territory had the largest percentage of Indigenous students when compared to the rest of Australia, (SCRCSSP (Steering Committee for the Review of Commonwealth/State Service Provision) (2003)). As shown in Figure 18 below the proportion of Indigenous students in the Northern Territory represented nearly two thirds of all students, compared to the next nearest proportion of around 5 per cent for WA, Queensland and Tasmania.

Figure 18   Indigenous full time students as a proportion of all students by state and territory, 2001
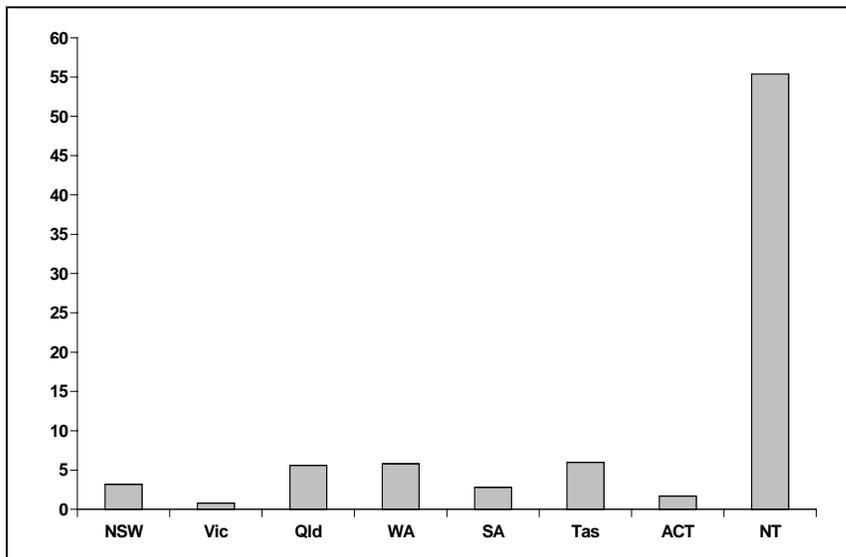
In order to monitor student progress across the Northern Territory, retention rates were used to indicate the progression of students to their final year of school. The apparent retention rate was derived by "expressing the number of full time students enrolled in year 12 in 2001 as a proportion of the number of full time school students enrolled in Year 10 in 1999" (SCRCSSP, 2003: 25). This was an "apparent" retention rate because no adjustment was made for student movements between states and territories or repeat years. These rates are provided in Figure 19.

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**Figure 19   Retention rate to Year 12 by state and territory and
Indigenous status (per cent) 2001**
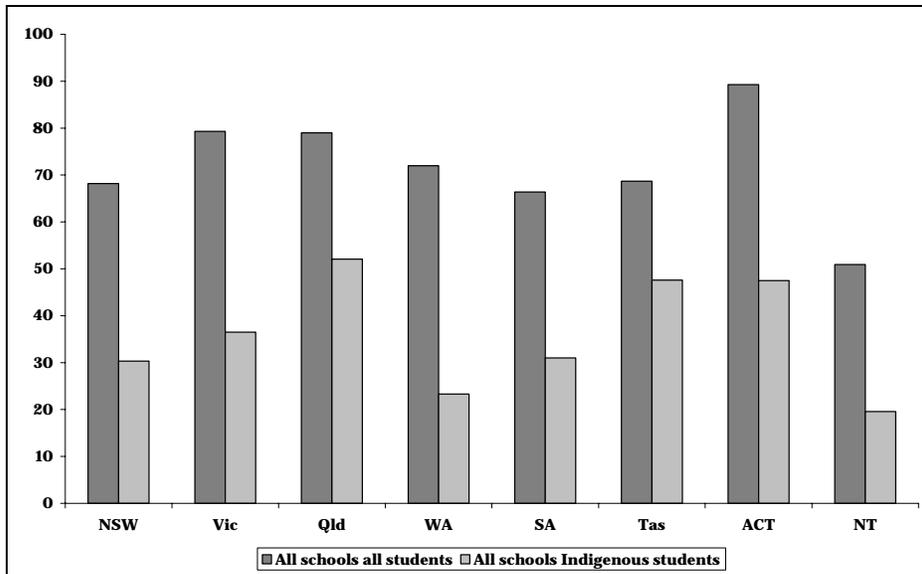
Source: SCRCSSP (2003)

The above figure shows retention rates to year 12 for all students (including
Indigenous students) and for Indigenous students only. As shown in this
figure the Northern Territory has the lowest retention rate of all states. In
relation to "all students" only half of Northern Territory students remained
at school to year 12 (50.9 per cent) being the lowest retention rate in
Australia and well below the Australian average of 73.4 per cent of students.
In relation to Indigenous students only 18.6 per cent remained to complete
year 12, again the lowest rate in Australia. The Australian average retention
rate for Indigenous students was 35.7 per cent.

States and territories were required to report nationally on literacy and
numeracy of students at certain levels of schooling. All students in Northern
Territory schools were required to undergo tests at years 3, 5 and 7. In order
to be assessed at a national level, national benchmarks were included in the
tests (DEET, 2003).

Figure 20   Year 3 students achieving the National Reading Benchmark by Indigenous status in NT government schools (per cent) 2000-01
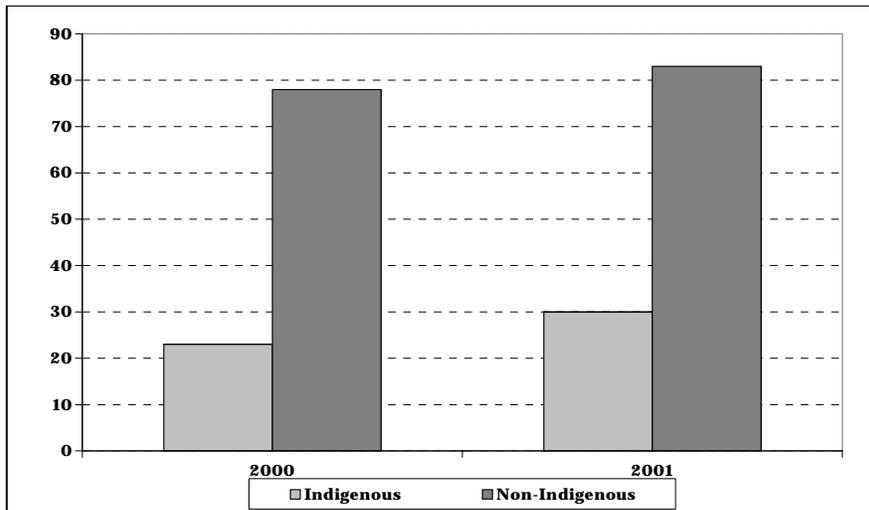
Source: Department of Employment, Education and Training (2003)

Approximately 80 per cent of Year 3 non-Indigenous students, in both 2000 and 2001, achieved the national reading benchmark, compared with 30 per cent or less of Indigenous students (Figure 20). This level was also reflected in the Year 5 students (Figure 21).

Figure 21   Year 5 students achieving the National Reading Benchmark by Indigenous status in NT government schools (per cent) 2000-01
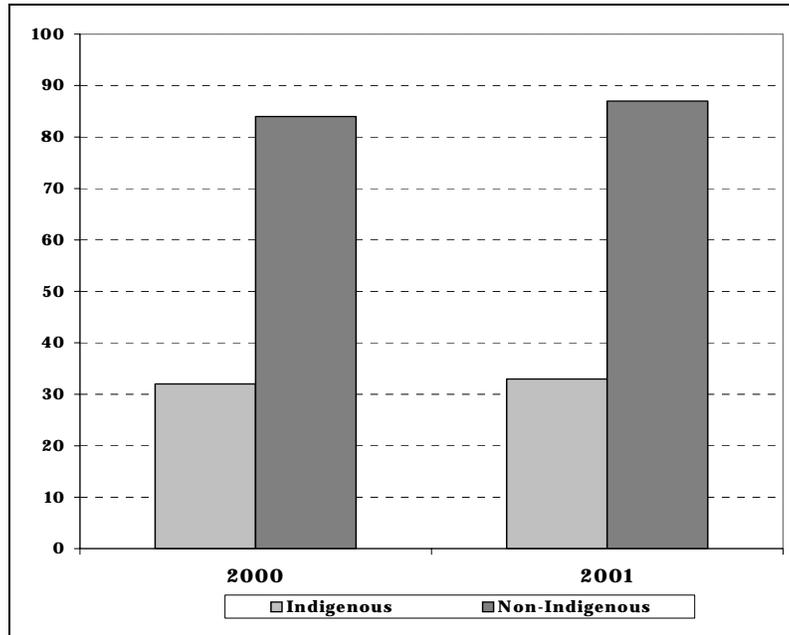
Source: Department of Employment, Education and Training (2003)

Over 84 per cent of Year 5 non-Indigenous students achieved the national benchmark compared to around 33 per cent of Indigenous students.

Northern Territory Multi-level Assessment Program statistics

At the Territory level the Multi-level Assessment Program (MAP) was used to test the ability of students in literacy and numeracy. The following figures indicate the percentage of Northern Territory students who achieved the highest category of 81-100 MAP scores by gender, Indigenous status, and whether they lived in urban or non-urban centres.

Figure 22   NT government schools: Students scoring 81-100 points in MAP tests by demographics (per cent) 2000
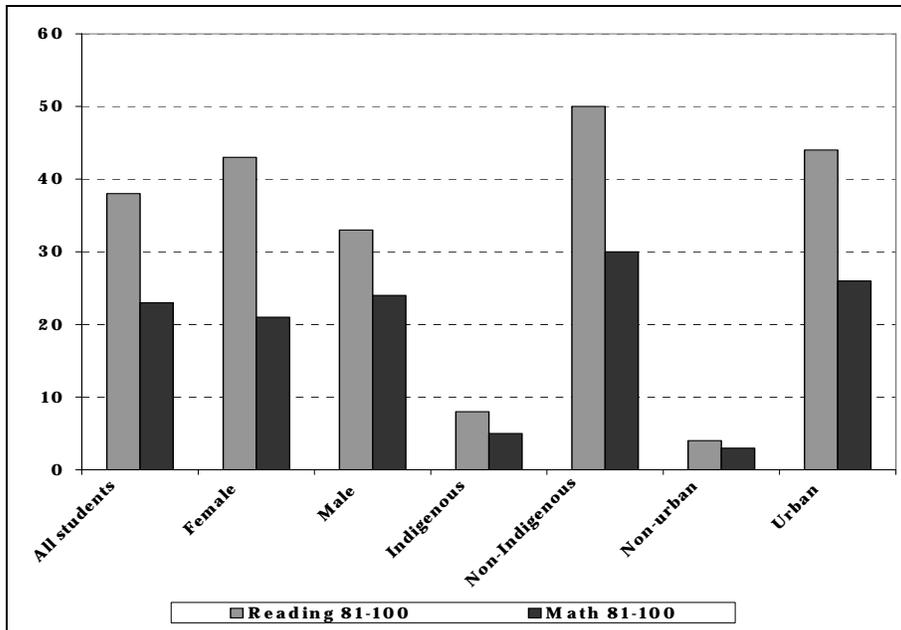
Source: SCRCSSP (2003)

As shown in Figure 22 the lowest percentage of students to achieve this MAP score, for both reading and mathematics, were Indigenous students or those students from non-urban centres. The scores for this group of students was dramatically lower than those in other groups with only 5 per cent of Indigenous students scoring this range in reading, compared to 50 per cent of non-Indigenous students. Only 4 per cent of students in non-urban centres achieved this level compared to 44 per cent in urban centres.

In relation to mathematics only 5 per cent of Indigenous students scored 81-100 (the highest reported category) compared to 30 per cent of non-Indigenous students. Only 3 per cent of non-urban students achieved this score compared to 26 per cent of urban students. The picture was similar for Year 5 students, where only 11 per cent of Indigenous students achieved a score over 80 for reading, compared to over one third (34 per cent) of non-Indigenous students. Thirty two per cent of urban students gained this score compared to only 3 per cent of non-urban students.

In mathematics only 3 per cent of Indigenous males achieved a score of 81 or more compared to 18 per cent of non-Indigenous students and only 2 per cent of non-urban students gained this score of 18 per cent compared to 16 per cent of urban students. At primary level, tests such as MAP suggest that being Indigenous and living in a remote community means achieving a lower success rate at a basic educational level than for other students. At a secondary level, as stated above, the retention rate for Indigenous students was lower than for non-Indigenous students to year 12.

Review of Education in the NT

One of the single biggest challenges in relation to the provision of education in the Northern Territory in the past and for the future has been to improve educational outcomes for Indigenous students. In 1999 a review was commissioned by the Department of Education to examine educational outcomes in schools throughout the Territory. The review was called *Learning Lessons* and its focus was to establish:

- the views and educational aspirations of Indigenous parents and community members in relation to their children's schooling, with particular reference to English literacy and numeracy;
- the key issues affecting educational outcomes for Indigenous children;
- supportable actions for educational outcome improvements (Northern Territory Department of Education, 1999: 1).

This review identified a number of key issues which needed to be addressed in order to provide better educational outcomes for Indigenous students. The recommendations included the need for all parties to acknowledge that outcomes were unacceptably low and that this was linked to a number of issues. These include the need to:

> Establish partnerships between Indigenous parents, communities and peak bodies, the service providers and both the Northern Territory and Commonwealth Governments, to honestly acknowledge the gravity and causes of declining outcomes, its destructiveness to future Indigenous aspirations, and to assume the joint responsibility of immediately reversing the downward

trend (Northern Territory Department of Education 1999: 1)

Since this report, several initiatives have been undertaken to address poor educational outcomes for Indigenous students. For example, in 2001, the Learning Lessons Implementation Steering Committee was established to oversee implementation of recommendations from the Review. These included pilot studies in certain remote communities focusing on "how to integrate the delivery of all aspects of education and how to achieve maximum cross-agency integration" (Northern Territory Department of Education, 2002: 116).

Governments, policy makers and health practitioners have therefore stressed the importance of good health and education in developing strong and effective individuals who are then able to develop strong and functional communities. It is evident that, in the Northern Territory, and particularly, but not exclusively, in relation to Indigenous people, there is not the level of good health and education which promotes these outcomes. Chapter 6 will examine policies which may be a means of addressing some of these complex and longstanding issues. They are however, integral to creating a process of assisting people to have "good" health and education and therefore helping preventing juvenile crime.

Offending

As discussed in Chapter 2 the extent to which crime is committed can be a mirror of much deeper problems and inconsistencies in individual welfare within a community, and also a reflection of government policy and the resultant policing practices. These factors interact in an often complex way to produce offending patterns, crime rates and to influence community perceptions of crime. For the purposes of this chapter, a general overview of crime and victimisation will be discussed comparing the Northern Territory with other Australian states, and also comparing regions within the NT. Additionally, as a broader aim of restorative justice is to provide a safer

community for citizens, this section examines the extent to which people, particularly in the Northern Territory, are victims of crime or fear that they may become so.

Levels of crime and offending in Australia can be measured in a variety of ways. One collection by the Australian Bureau of Statistics, the *Crime and Safety Survey* (CSS), has been conducted annually throughout Australia over a period of three months—for example, in 2002 the data were collected between April and July (ABS, 2002a). The CSS consists of data relating to crime not reported to or detected by police. The survey asks individuals and households about their experience of crime in the categories of personal and household crime and their reporting of such crimes to police. The definition of "victim" for the purposes of the Crime and Safety Survey (CSS) was "a household or person reporting at least one of the offences surveyed. Victims were counted once only for each type of offence, regardless of the number of incidents of the type" (ABS, 2002a).

In 2002, the CSS showed that approximately 54 400 persons were surveyed in urban and rural areas, but excluded 80 000 persons living in remote areas. The ABS stated that the exclusion of remote area persons had little impact on estimates for most of Australia "except the Northern Territory where such persons account for over 20% of the population" (ABS, 2002a: 2). A further 27 100 households were also surveyed. The response rate for the personal and household surveys was 76 per cent and 75 per cent respectively.

The main limitations of this collection were that
- it included crime not reported to police;
- the sample was relatively small;
- it was collected over a short period of time;
- it included only selected offences; and

- it excluded 27 per cent of the population from the survey most of whom lived in remote areas of Australia such as the Northern Territory.

The selected crimes for household crime were break-in, attempted break-in and motor vehicle theft. The following figure indicates the household crime victimisation rates by state and territory.

Figure 23   Australia: Household crime victimisation rates by state and territory, (percentage of respondents) 1993, 1995 and 2002
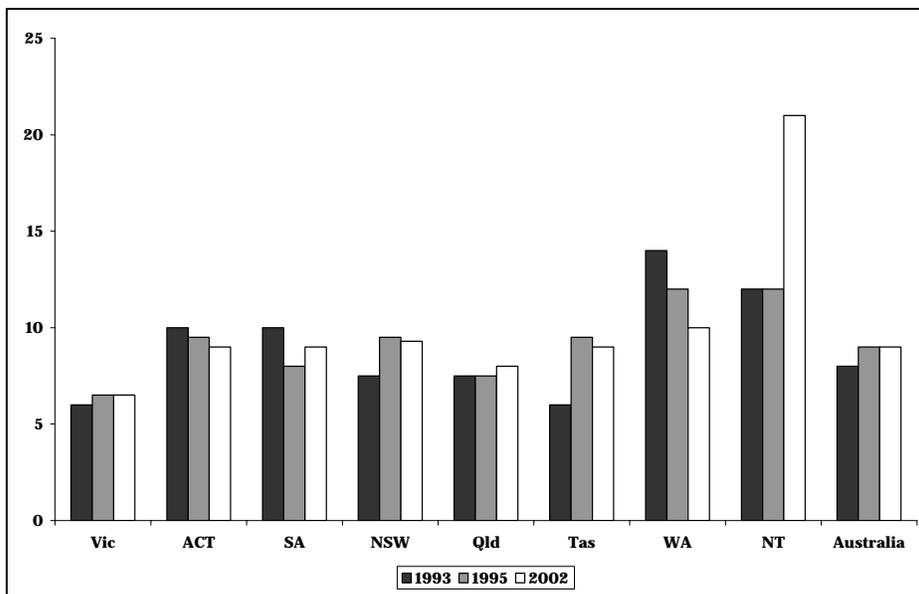
Source: ABS (2002b)

Figure 23 indicates that of those surveyed, the Northern Territory reported the highest level of victimisation for household crime. The rate nearly doubled from 11.3 per cent in 1993 to 20.3 per cent in 2002. Within the household crime offence categories the biggest difference between the Northern Territory and other states was the "break-in" rate which increased in the Northern Territory from 6.3 per cent in 1998 to 13.5 per cent in 2002. Victimisation rates for other states and territories remained fairly stable during this period.

Personal crime victimisation rates included robbery, assault and sexual assault and are shown in Figure 24.

Figure 24   Australia: Personal crime victimisation rates by state and territory, (percentage of respondents) 1998 and 2002
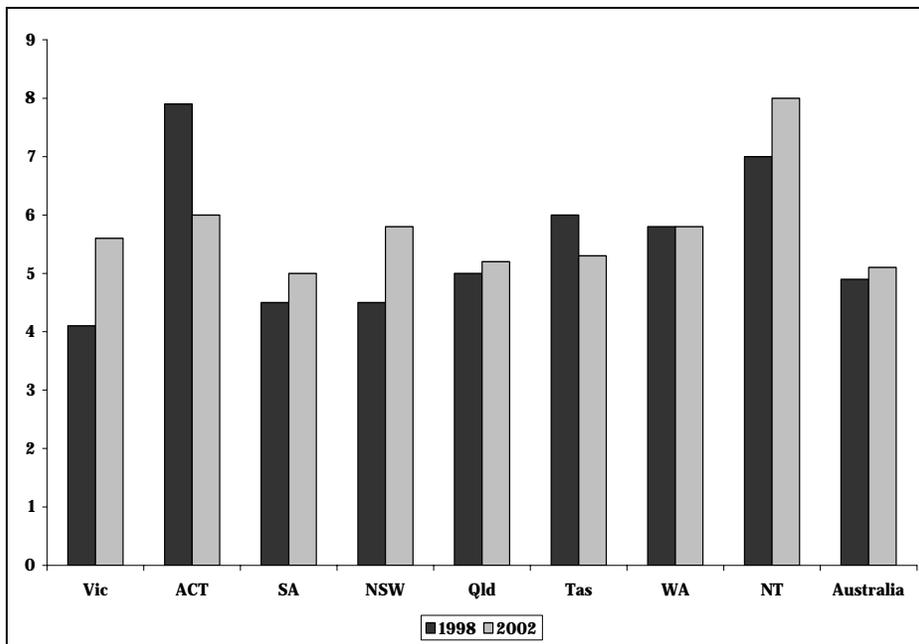
Source: ABS (2002b)

As shown in Figure 24, personal victimisation rates were highest in the Northern Territory and had increased from around 7 per cent to 8 per cent between 1998 and 2002. Within the personal victimisation offence categories the rate for assault was highest in the Northern Territory and increased from around 6 per cent to 8 per cent between 1998 and 2002. For 2002, rates in other states and territories were below 6 per cent. Both personal and household victimisation rates therefore indicated that the Northern Territory experienced the highest rate of victimisation in each category when compared with other states and territories.

Therefore, according to the CSS data, the Northern Territory experienced the highest rates of victimisation for both property and personal crime. Again this has implications in relation to policy development and in providing for a safe community. Strategies which have been put in place by the Northern Territory Government to address these issues are discussed later in this chapter.

Another publication produced by the ABS was *Recorded Crime – Victims 2002* which was a collation of data from each state and territory for that calendar year. This publication provided statistics in relation to a number of selected offences recorded by police for a calendar year for each state and territory and the data for previous years for comparison (ABS, 2002a). The main limitations of this collection were that data were collected by police, they represented only selected offence categories and they were reported by calendar year. The figure below indicates the rates per 100 000 persons of victims for selected crimes for Australia and the Northern Territory.

Figure 25   Australia and Northern Territory: Victimisation rate per 100 000 persons by offence, 2002

Source: ABS (2002b)

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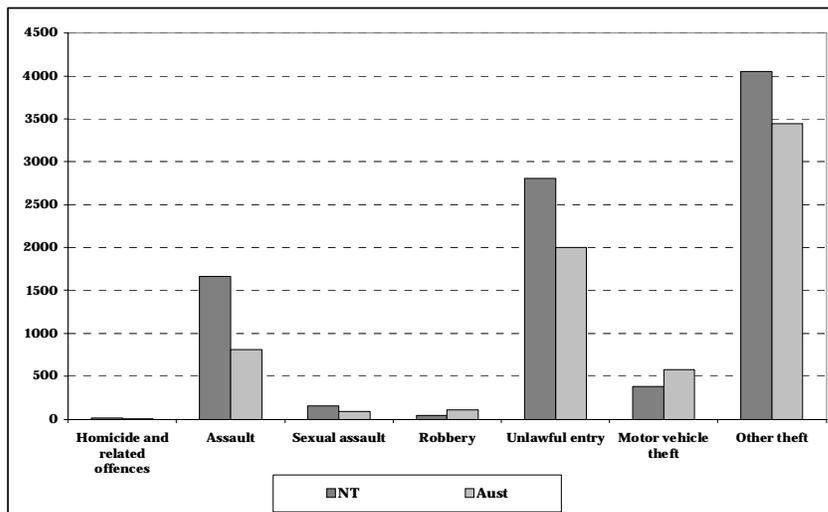
As shown in Figure 25, the Northern Territory had the highest victimisation rates for assault (1660.1 per 100 000 persons/809.7 per 100 000 for Australia), sexual assault (155.9 per 100 000/90.6 per 100 000 for Australia), unlawful entry with intent (2806.0 per 100 000/2001.4 per 100 000 nationally) and other theft (4050.8 per 100 000/to 3448.2 per 100 000 nationally).

In relation to the Northern Territory and rates of victimisation over the 6 years from 1997 – 2002 the trend was that rates per 100 000 persons increased for the offences of assault, sexual assault, robbery, unlawful entry and other theft. Victimisation for offences such as homicide and related offences and motor vehicle theft had either remained relatively stable over this period or had decreased (ABS, 2002b).

Police Apprehensions

Historically the Northern Territory has had the highest rate of police apprehensions of Indigenous persons in Australia. Figure 26 shows that, in 2002, over 80 per cent of incidents of police custody in the Northern Territory involved Indigenous persons, compared with the next highest of 46 per cent of incidents in Western Australia (Taylor and Bareja, 2002). This again indicates the level of over-representation of Indigenous persons apprehended by police in the Northern Territory.

**Figure 26   Indigenous persons: Number of incidents of police custody
              by state/territory Police apprehensions 2002**
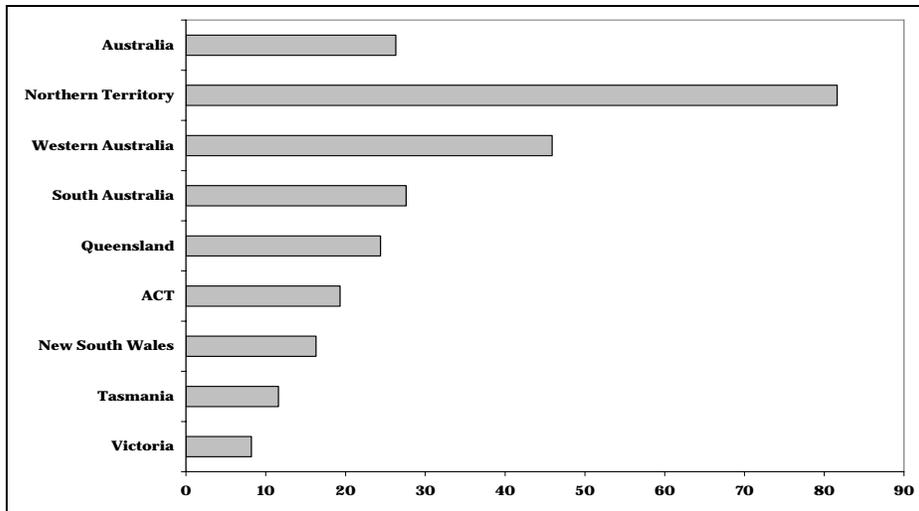
Source: Taylor and Bareja (2002)

The following figure provides a breakdown of apprehensions by juvenile and
adult status. Apprehensions in the former group included juveniles diverted
from court through the juvenile pre-court diversion scheme who were
therefore not represented in these statistics. Figure 23 therefore includes
only those juveniles who had attended court.

Figure 27   Northern Territory: Police apprehensions by juvenile and adult status, 1997 to 2003
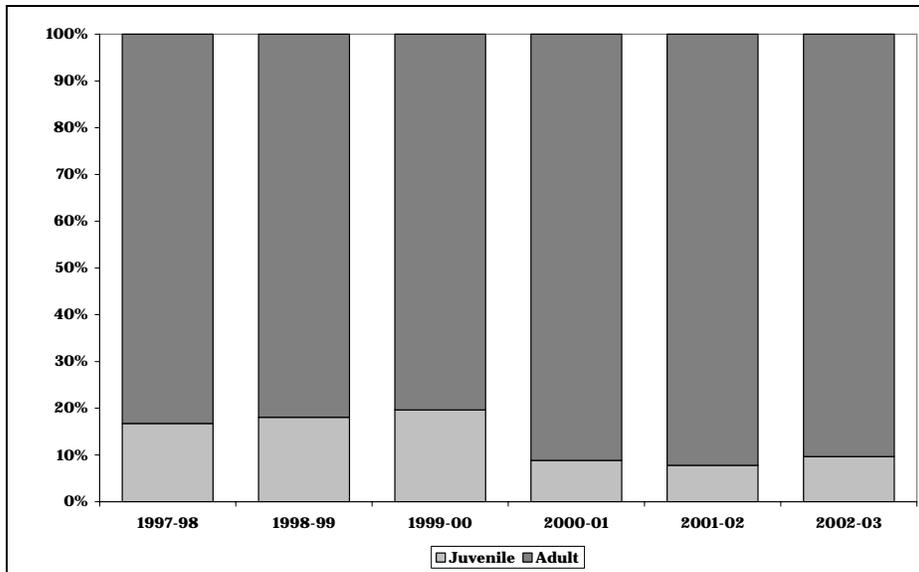
Source: Northern Territory Police, Fire and Emergency Services Annual Report (2003)

As shown in Figure 27, the percentage of juveniles as a proportion of all apprehensions decreased from around 15 to 20 per cent from 1997 to 2000, and to less than 10 per cent in 2000-01, which coincides with commencement of the Juvenile Diversion Unit. There was a slight increase in apprehensions in the subsequent two years.

Gender

Nationally, males have comprised a much greater proportion of police apprehensions than females as historically, males had always been involved to a much greater degree in criminal activity than females. Possible explanations for this were provided in the last chapter. As shown in the following figure, between 2001 and 2003, males represented over 80 per cent of all apprehensions in the Northern Territory.

**Figure 28   Northern Territory: Police apprehensions by gender
2001 – 2003**
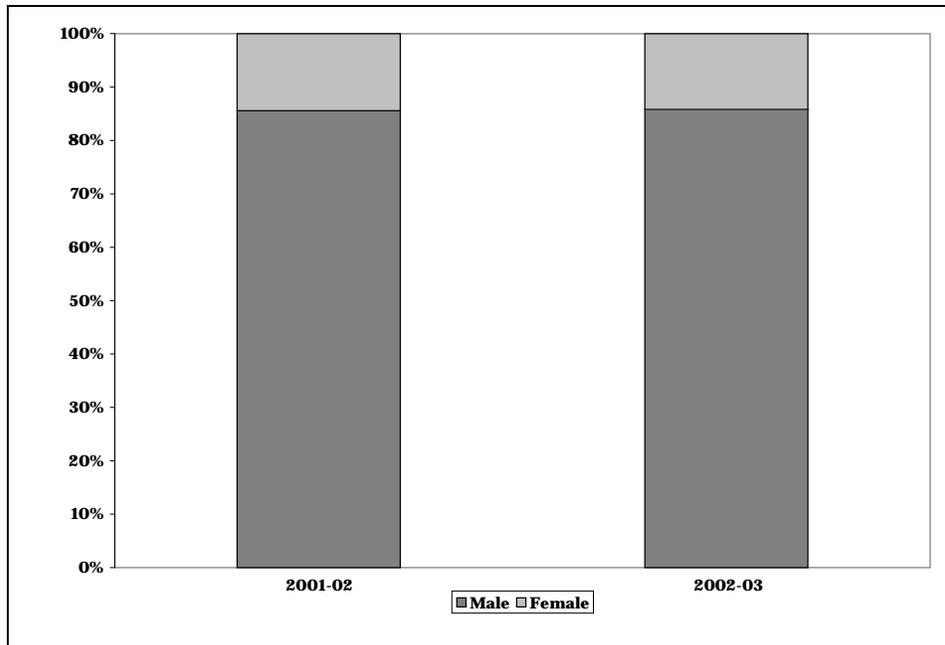
Source: Northern Territory Police, Fire and Emergency Services Annual Report (2003)

Offending by location

For the purpose of this thesis it was of interest to ascertain whether certain
offences occur at a greater rate in some locations rather than in others. As
discussed in Chapter 2 location can have an impact on the types of crime
targeted in a community because of the way in which certain groups of
people within the community are perceived by other community members
and policed. A general overview of offences recorded by police is provided
below. The regions examined were the police regions of Darwin, Central and
Southern Regions. The Central region included the urban centre of Katherine
and its communities, and the Southern region consisted of Tennant Creek,
Alice Springs and outlying communities.

Offence groups have been broken down into offences against the person
(including homicide and related offences), against property, for example,
break and enter, active policing, for example, public order offences and

traffic offences.   The following figure shows the breakdown of offence groups by region.

Figure 29   Police apprehensions by region and offence groups (percentage of apprehensions) 2002-03
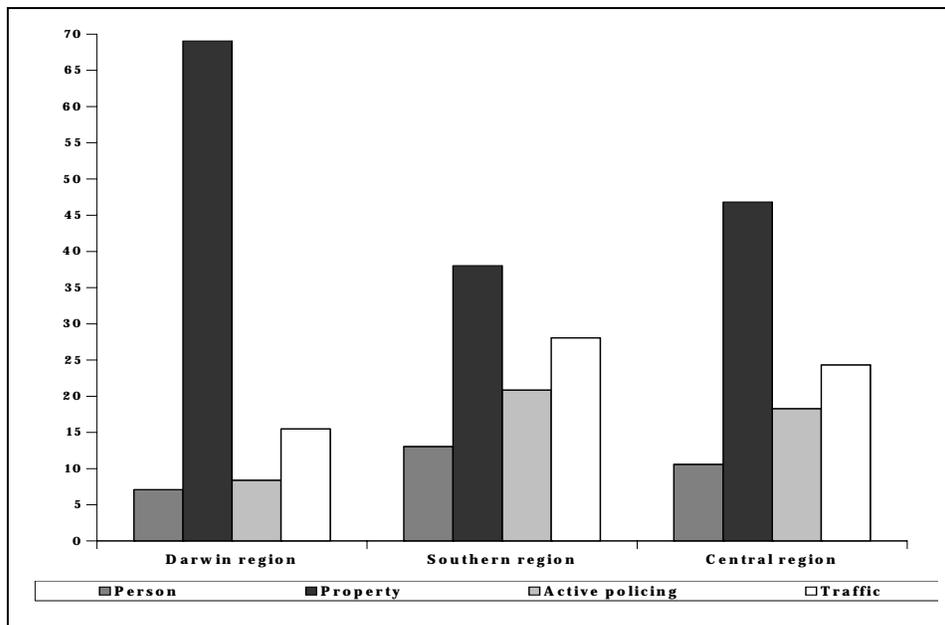
Source: Northern Territory Police, Fire and Emergency Services Annual Report (2003)

As shown in the above figure patterns of offending differed within each region. Property crime represented nearly 70 per cent of all offences in the Darwin region but only around 35 per cent of offences in the Southern Region. However, the Southern region had a higher proportion of offences against the person than the other two regions (12 per cent compared to less than 10 per cent respectively). Active policing and traffic offences also represented the highest proportion of offences for the Southern region (between 20 to 30 per cent compared with 8 to 25 per cent for active policing and traffic offences in Darwin and Central regions).

Community Perceptions of Crime and Safety

In dealing with offending and determining its causes and effects, it was also important to examine the community's perception of crime and how it affects

the community. This assists in determining realistic solutions which address both community concerns and offending behaviour.

This section explores how the Northern Territory community perceives problems relating to offending and crime and its response to those issues. Media in the Northern Territory have often reported that the public has had enough of crime and that there is a need to "get tough" with juvenile offenders (e.g. *Northern Territory News* 12 May, 2003: 4; *Sunday Territorian*, 4 May 2003: 6). Comments made on radio programs also refer to a breakdown in law and order,

> ...now what we were seeing was crime was escalating in Alice Springs, across the territory (sic) it's escalating. Talk to anybody in the street and they will tell you law and order was breaking down in this town (*ABC Radio* 30 April 2003).

According to such media reporting, people in the Northern Territory had a growing concern about the level of offending and crime in their community. In an attempt to measure the public's perception of offending and criminal activity the *National Survey of Community Satisfaction with Policing* was conducted throughout Australia on a quarterly basis on behalf of each police jurisdiction. These surveys were managed by the Australasian Centre for Policing Research (ACPR) which collated the data and provided it to each jurisdiction. Police had a significant interest in knowing this information in order to better address safety issues as "an important objective of police services was to 'reassure the public' by ensuring that the community feels safe (within themselves and regarding their property) in public and private" (Report on Government Services, 2005: 5.27). The survey contained questions used as performance indicators of perceptions of safety in the community. These indicators have been used for the past seven years by the Commonwealth Productivity Commission as a basis for comparison of public perceptions of safety across Australian jurisdictions.

One question asked of survey respondents was "How safe do you feel at home alone during the day?" Respondents in the Northern Territory,

compared to the national average, who stated that they felt "safe" or "very safe" at home during the day and after dark are represented in Figure 30 below.

Figure 30   Northern Territory and Australia: Respondents who said they felt safe at home alone during the day and after dark (percentage of respondents), 2003-04
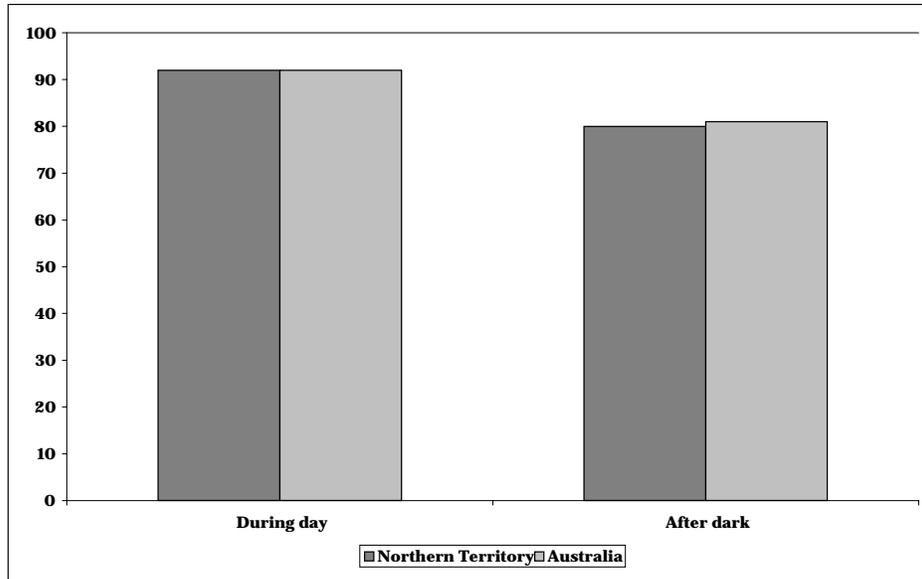
Source: SCRCSSP (2005)

Ninety-two per cent of respondents, both in the Northern Territory and nationally, felt safe at home during the day and a similar percentage of respondents (80 and 81 per cent) also said they felt safe at home alone at night.

People were asked how safe they felt "walking or jogging locally" during the day and after dark. The responses are shown in the following figure.

Figure 31   **Northern Territory and Australia: Respondents who said they felt safe walking or jogging locally during the day and after dark (percentage of respondents), 2003-04**
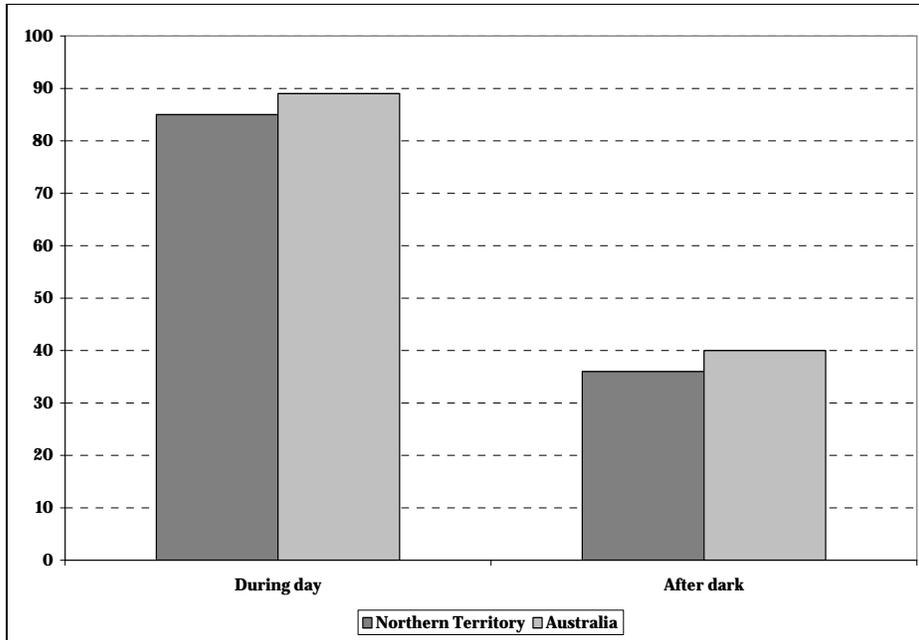
Source: SCRCSSP (2005)

The majority of respondents, both in the Northern Territory and nationally, felt "safe" or "very safe" walking in their local area during the day (Northern Territory 87.0 per cent, 87.6 per cent nationally). This percentage dropped quite significantly for feeling safe "after dark" where only around 40 per cent of respondents both in the Northern Territory and nationally stated they felt safe walking in their local area.

Therefore, in relation to perceptions of safety in their home, the majority of people in the Northern Territory felt safe, at an even higher percentage than nationally. A similar percentage of Northern Territory respondents, when compared to the national average, also felt safe in their community during the day, and a similar percentage both nationally and in the Northern Territory felt safe after dark. The Northern Territory therefore was *not* perceived to be an unsafe place generally and certainly no less safe than people nationally perceived their safety.

Another question people were asked in this survey was whether they were worried about being a victim of crime. Respondents were asked if they were worried about becoming a victim of physical assault, housebreaking or motor vehicle theft (Figure 32).

Figure 32 **Northern Territory and Australia: Respondents who were concerned, or very concerned, about being a victim of crime by type of crime (percentage of respondents), 2003-04**
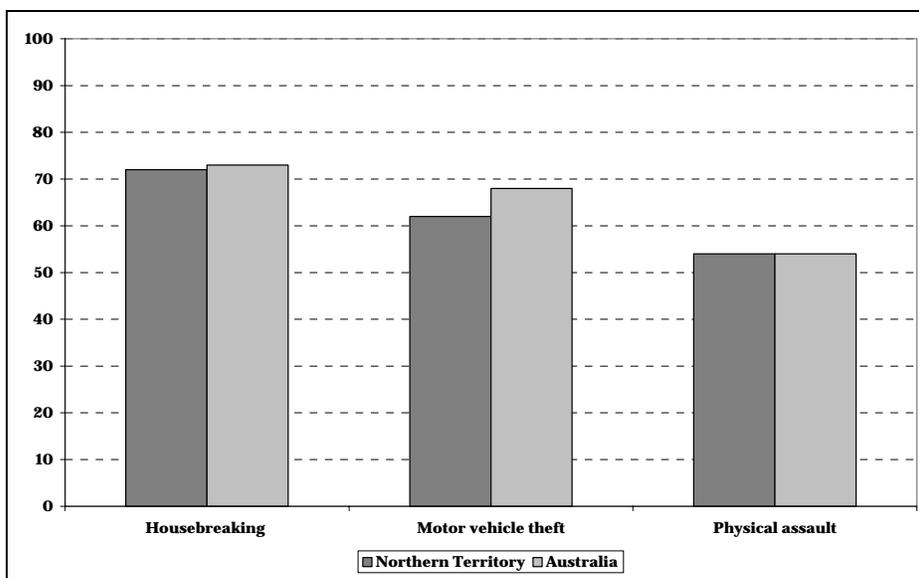
Source: Report on Government Services (2005)

A slightly lower percentage of respondents in the Northern Territory were concerned about being a victim of these crimes than the national average. This again indicated that Northern Territory respondents did not perceive the Northern Territory to be more dangerous than did respondents in other parts of Australia. Housebreaking was the cause of concern for the largest percentage of respondents (72 per cent Northern Territory and 73 per cent national average). Fear of motor vehicle theft was more of a concern nationally than in the Territory (68 per cent and 62 per cent) and just over one half (54 per cent) of respondents both in the Northern Territory and nationally were concerned they would be a victim of assault.

Therefore, although the majority of people said they felt safe at home and in the community (with the exception of after dark), they were concerned that they could become a victim of crime, particularly property crime. However, care needs to be taken when interpreting perceptions of crime as the perceptions of a problem and the actual incidence of that problem may be totally unrelated (SCRCSSP, 2005). It has been argued that that the level of fear of crime is not necessarily correlated with the actual incidence of crime, and that these perceptions can be influenced by a number of factors such as age, gender, income, previous experience with crime and the media (Grabosky, 1995). These issues will be addressed in a later chapter in relation to educating the public to a greater extent to enable them to understand more fully the causes of offending and the true extent of crime in their community.

Politics in the Territory

One of the aims of the current research was to identify, from the findings, gaps in social policy and ways in which to address these. Therefore, for the purposes of this research, it is important to provide some understanding of the political history and background of the Northern Territory. This section will provide an overview of the structure of politics within the NT, the political factions and their policies, particularly in relation to crime and to juvenile offenders.

At Federation in 1901 the Northern Territory was part of South Australia. It then became a Territory as part of the Commonwealth Government before self-government was conferred on 1 July 1978. The Northern Territory parliament was then given the power to legislate for state-type functions except for matters relating to Indigenous land, mining of uranium, national parks and most matters of industrial relations. From that date the Northern Territory had one house of Parliament which is the Legislative Assembly. During the greater part of this research, from 2001 to 2005, the Australian Labor Party (ALP) was in power in the NT and the Legislative Assembly

consisted of 13 members of the ALP, 10 members of the Country Liberal Party (CLP) and two Independents.

In recent years there was much debate in political circles in the NT about offending and crime, particularly in relation to juvenile offenders. Political parties were quick to pick up on any statistics which suggested that the crime rate had increased and to then blame each other for this trend. Although the rate of offending within a community is the result of a number of factors, many of which are interrelated, such as health, education, Indigenous status, community environment and access to resources the political response to the issue of crime appeared often not to take these factors into account sufficiently when addressing the issue of criminal activity. For example, whether as a reaction to public opinion or as a proactive move to address this perceived trend, the Country Liberal Party introduced mandatory sentencing into the Northern Territory in 1997 amending the *Sentencing Act 1995* (NT). The stated aim of this legislation was to deter offending and prevent further offending of both adult and juvenile offenders. The law, colloquially called the "three strikes and you're in" law, stated that juveniles aged 15 or 16 (adults were given longer terms of imprisonment) would receive 28 days imprisonment for three repeat property offences (these laws only related to property offences), with escalating penalties for subsequent offences. The legislation is discussed in greater detail in the next section.

The mandatory sentencing law caused much controversy in Australia on a number of levels, including within the judiciary (who saw it as interfering with judicial discretion) and among human rights groups. The latter were particularly critical, accusing the legislation of causing an increase in the rates of imprisonment for Indigenous offenders (Charlesworth, 1999). A major trigger for the repeal of this legislation was an incident in February 2000 when a 15 year old Indigenous boy hanged himself in the Don Dale Juvenile Detention Centre in Darwin after serving 24 days of a 28 day sentence. The boy was an orphan and had had a socially dysfunctional family life. His crime was that he had stolen stationery items worth less than

\$50. The death caused national outrage at the mandatory sentencing laws of the NT and at a federal level the Attorney-General asked the Northern Territory to override the laws and the Prime Minister agreed to use Commonwealth powers to do so. The then UN Secretary-General, Kofi Annan and the UN Human Rights Commissioner, Mary Robinson also became involved in the debate and affirmed that the NT legislation contravened human rights protocols. Consequently the Northern Territory was censured by the UN Committee on the Elimination of Racial Discrimination for breaching international conventions (Robson, 2000).

An outcome of the controversy between the Federal Government and the Northern Territory Government, then the Country Liberal Party, was that a consensus was eventually reached in April 2000 between the Prime Minister, John Howard, and Chief Minister of the Northern Territory. They agreed that the age at which a juvenile could be treated as an adult be raised from 17 to 18 years, and that a pre-court diversion scheme be adopted for juveniles who had committed minor property offences.

The Federal Government provided funding for this initiative which has been used to establish and manage a Juvenile Diversion Scheme in the NT. The Federal Government also provided funding for an Indigenous Interpreter Service to assist Indigenous people who were not English speakers to obtain access to interpreters when dealing with the police and courts.

In 2001 the Labor government repealed the laws relating to mandatory sentencing for property crime. The NT Attorney-General stated at the time that there was "no evidence to suggest that, under mandatory sentencing, offenders had been deterred from committing property offences and moreover, the sentencing regime has done nothing for victims" (Australia's Northern Territory, 2001).

However, 18 months later the NT government introduced its *Six Point Plan on Crime Prevention* as a way to "get tough" on crime and causes of crime,

but at the same time take into account the need for a "just" sentencing system and also to provide support for victims of crime. The plan set out strategies to provide for safer communities and equal access to justice for all Territorians. It stated that the government was committed to "addressing the social and economic causes of crime through an integrated approach to crime prevention, early intervention and education" (Northern Territory Government, 2003: 1). A number of strategies were identified to achieve this, including:

- Promoting a tough but common-sense and just sentencing system;
- Developing a tough approach to home invasion;
- Refocusing and resourcing police personnel;
- Addressing the needs of victims;
- Making crime prevention a high priority and supporting families, children and youth; and
- Establishing an Office of Crime Prevention to coordinate and evaluate a whole of government crime prevention strategy, provide policy advice on crime reduction initiatives, collect and independently analyse and publish crime statistics (Northern Territory Government, 2003: 1-3)

In adopting this policy the new Labor government was attempting to address offending on a number of levels. First, and what appeared to be a priority, was to show how the government was taking the crime problem seriously and therefore that it would be "tough" on offenders. Second, the needs of victims were to be taken into account in the criminal justice process. Third, by treating crime as a social problem, offenders, their families and the wider community were to be given a voice through legislative and policy change. Fourth, strategies to address offending were to be appropriately resourced through providing a high profile police presence in the community, and finally these problems would be implemented through an integrated approach by government and non-government agencies and entities. The extent to which this policy has impacted on juvenile offending will be discussed in Chapter 6.

This "tough" approach was therefore implemented as policy in conjunction with the Juvenile Pre-Court Diversion Scheme, providing the framework for what could be argued as a somewhat contradictory approach to juvenile offending. The history of the Scheme and the controversy which surrounded its development and implementation will now be discussed.

The Juvenile Pre-Court Diversion Scheme

Mandatory sentencing was introduced in 1998 through the *Juvenile Justice Amendment Act* which stated that, in accordance with section 53AE(2) of the Act, a "mandatory period" of 28 days detention would be given to juveniles found guilty of a property offence. The introduction of mandatory sentencing was supported by the then Chief Minister, Denis Burke, who argued that it was the law which the NT "had to have" in order to curb crime. He stated that "we'll (the Country Liberal Party (CLP) government) extend mandatory minimum sentence regimes to other crimes, if the justice system does not respond to the clear message from Territorians that they want criminals punished for their crimes" (*Northern Territory News*, 16 Feb, 2000: 16). The public response included harsh disagreement with Chief Minister Burke's statements to the extent that letter writers to the *Northern Territory News* and *The Australian* said they were "disgusted and ashamed" of the use of this type of sentencing regime and more than 1000 Darwin residents signed a petition to have the regime abolished (*Northern Territory News*, 15 Feb 2000: 2) which, in Darwin terms, was a large proportion of the population of 71 000 people at that time (ABS, 2001).

Protagonists against mandatory sentencing argued that it specifically targeted Indigenous people and it was therefore discriminatory. Pat O'Shane, an Indigenous NSW magistrate, even went to the extent to say that "there might even be a hidden genocidal intent in the Northern Territory's mandatory sentencing laws" (*The Australian*, 19 May 1999: 6). The United Nations, other human rights organisations and academics also added to the backlash against mandatory sentencing in the NT. One commentator, a

professor of law (Professor Hilary Charlesworth) at the Australia National University, stated that the Northern Territory was violating the *International Covenant on Civil and Political Rights* and the *Convention on the Rights of the Child*. Professor Charlesworth argued that the Federal Government was not acting responsibly in its approach to the application of human rights in the Northern Territory and that "Australia is prepared to give some place, even if hesitantly and inconsistently, to human rights in its foreign policy (for example with respect to East Timor), but it resists the application of other human rights principles to its own laws and practices" (Charlesworth, 1999:1). In support of this view, a submission to the Senate and Constitutional Reference Committee, produced by the National Children's and Youth Law Centre, also cited other instruments which the Australian government had failed to observe through the implementation of mandatory sentencing. These included the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985* (The Beijing Rules); the *United Nations Guidelines for the Prevention of Juvenile Delinquency 1990* (The Riyadh Rules) and the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990* (Schetzer and Sandor, 1999).

Reasons for the level of dissatisfaction with the process were that, in addition to the erosion of human rights, mandatory sentencing reduced judicial discretion and, as a result of the increased apprehension and detention of juvenile offenders, greatly increased the cost to the criminal justice system (Schetzer and Sandor, 1999; Robson, 2000). It was argued that the overall result was the further over-representation of Indigenous people in the criminal justice system and the problems associated with this level of inequality. What was considered by policy makers and academics to be one of the overriding recommendations made by the RCIADIC was, that in order to reduce the numbers of deaths in custody, there had to be a substantial reduction in the over-representation of Indigenous people taken into police custody (Johnston, 1991). In the Northern Territory, mandatory sentencing was, however, seen to be achieving quite the opposite of the recommendations of the RCADIC. Consequently, both within Australia and

internationally, pressure was exerted on the Northern Territory and Federal Governments to revoke the mandatory sentencing legislation in the NT. Following these criticisms the onus then rested with the Federal Government to overturn mandatory sentencing in the Northern Territory. This option was available through Constitutional provisions which allow the Federal Government to overturn and repeal legislation in the Northern Territory. This resulted in repeal of mandatory sentencing laws in 2001 by the incoming Labor Government shortly after the implementation of the Juvenile Pre-Court Diversion Scheme.

The Aims and Objectives of the Scheme

The Juvenile Pre-court Diversion Scheme was implemented in August 2000. The Scheme was initially fully funded by the Commonwealth Government and administered by the Northern Territory Police. It was developed as a form of restorative justice which provided diversion from court through the use of a process of warnings and conferences administered by police for minor offences.

One of the major aims of the Scheme was to divert juveniles from court, particularly those juveniles who had committed minor offences. In avoiding the court process the juvenile was also diverted from detention and an aim of the Scheme was therefore also to prevent a situation occurring where a youth was placed in detention away from their own community and from the support of their family and friends (Waite, 2003). This was very much a concern because of the geographic locations of many Indigenous communities in the Northern Territory several hundred kilometres from major centres containing the two juvenile detention centres in Darwin and Alice Springs. Basically the argument for restorative justice was that detention should only be used as an absolutely last resort. A further major concern of practitioners in relation to placing juveniles in detention was that it provided a basis for developing intergenerational offending when offenders perceived detention as an accepted part of their transition to adulthood, or as a "rites of passage" (Ogilvie and Van Zyl, 2001).

Despite the implementation of pre-court diversion, the over-representation of Indigenous people in the criminal justice system did not decrease over the period studied in this thesis. On the contrary, the Productivity Commission found that throughout Australia from 2000 to 2004, imprisonment rates for Indigenous women increased by 25 per cent and for Indigenous men by 11 per cent. The Commission also found that such rates of imprisonment had a significant impact on the ability of Indigenous families to function effectively. It stated that the dysfunction resulting from fractured family groups led to a breakdown in family structures, thereby developing social alienation which was exacerbated, through imprisonment, by loss of education and income. The ultimate consequences of this situation were individual's physical and mental health problems and consequently low life expectancy (SCRGSP, 2005: xlii).

National indicators also showed that intergenerational offending was common amongst Indigenous families and the consequent cycle of imprisonment caused dysfunctional families and communities. As the Federal Government recognised, "it is important that people who have contact with the criminal justice system have the ability and opportunity to integrate back into the community, lead productive lives, and not re-offend" (SCRGSP, 2005: xliii). As demonstrated in the findings from this thesis, restorative justice practices provide one opportunity for achieving this aim. However, the findings also highlight that this needs to be undertaken within the context of a committed, long term, whole of government approach. This point is discussed further in the final chapter.

An additional aim of the Scheme was to provide victim and community reparation and support from the outcome of criminal offences. Overall the move towards a restorative justice approach was made to provide those affected by offending behaviour with a means to rectify the harm caused by that behaviour and to restore some sense of justice having been done within their community. These issues will be discussed at greater length below.

In summary, the Territory has, like other states, territories and nations, its own specific problems in relation to crime and offending behaviour, and its causes and prevention. In the NT the ability to deal with such behaviour is hindered by its sheer geographic size and the consequent remoteness of many of its communities. It is also affected by the composition of the NT population, both in relation to Indigenous communities and the fact that the NT has the youngest average population of any state or territory in Australia. As discussed in Chapter 2, each of these factors has been found in previous research to increase the amount of crime and offending behaviour in a population. These issues therefore have to be taken into account when determining how the criminal justice system should respond to juvenile offending. The next section will examine the context in which the Scheme was developed and implemented.

The Structure and Implementation of the Scheme

The Juvenile Pre-Court Diversion Scheme (JDS) was developed as an initiative to prevent juveniles from being imprisoned for minor crimes, and to involve those people affected by offending behaviour in the justice process. The specific objectives of the Scheme were to:

- provide and maintain an effective alternative to the prosecution and sentencing of young offenders in the formal justice system;
- encourage young offenders to be responsible members of the community by providing opportunities for positive behavioural change and improvement in life skills through diversion activities (Waite, 2003: 3).

The following principles were also developed:

- treat young people fairly
- support and involve victims
- take account of the impact on the victim
- encourage parental responsibility
- foster closer police and community interaction
- foster positive social change (Waite, 2003: 3)

The agreement between the Federal and the Northern Territory Governments stated that the Northern Territory Police were to administer the Scheme through two Juvenile Diversion Units, one located in Darwin and

the other in Alice Springs. In communities outside these centres, the officer in charge of the local police station was to take responsibility for monitoring the Scheme, with support from either the Darwin or Alice Springs office. In more remote communities, Aboriginal Community Police Officers (ACPOs) were involved in providing diversion, particularly in relation to assisting Indigenous communities to understand the pre-court diversion process.

The Scheme was established under the *Police Administration Act* and the *Juvenile Justice Act 1999*. In addition, the *General Order J1 Juvenile Pre-Court Diversion* and *General Order C1 – Children (Juveniles)*, specified the appropriate police responses for each offence category. Within this framework four types of diversion were established. The least onerous of these was a Verbal Warning—only to be given for minor and trivial offences as listed in Schedule 1 of the *Traffic Regulations* or Regulation 3 of the *Summary Offences Regulations*. Written warnings, the next step on the hierarchy of diversions, were to be given where the offence was still of a trivial or minor nature, but as well, where the behaviour of the offender had caused a greater risk to the community. In the case of a Written Warning, where property was involved in the offence, it had to be fully recovered, or restitution made to the victim for any loss or damage done to the property, for the diversion to be considered completed. Under the *General Order J1* it was not appropriate to give Written Warnings for more serious offences such as unlawful entry, unlawful use of a motor vehicle and driving either uninsured or unregistered vehicles.

More serious offences and repeat offending were to be dealt with through conferencing, either a Family Conference or a Victim/Offender Conference. These diversions were used to deal with the group of offences in the "gap" between minor and excluded offences. As its title suggests, a Family Conference was to include family members, and particularly if the offender was Indigenous, could include extended family. A Family Conferences was also to be used when verbal or Written Warnings had been given but had been ineffective in reducing offending behaviour. Another aspect to be taken

into account when determining the type of diversion was whether the police officer considered that, given the circumstances of the offence, a Family Conference would achieve better results than other interventions.

At the top of the diversionary hierarchy was the Victim/Offender Conference. This type of conference was to be undertaken where more serious offences had been committed or where re-offending had occurred repeatedly and it was considered by the police member that this type of conference may reduce re-offending behaviour. As denoted by the name, the victim was included in this process, and other people invited to attend the conference could include the victims support group, including family or friends, a police officer, support people for the offender and others.

In addition to the diversion, provision was made for a police officer to place conditions on the juvenile which had to be met in order to successfully complete the diversion. These conditions included a written apology to the victim, and restitution or restoration of damaged property. Juveniles could also be required to undertake programs which were used to compliment diversions by providing added support in managing offending behaviour. Programs could be informal, such as an offender undertaking community service and managed by the local police officer, or more formal, such as a substance abuse program managed by a professional counsellor. The availability of programs depended on the extent to which resources were locally available, therefore not all programs were available in all locations. Due to this factor it was not possible in this research to have a great deal of consistency in comparing the extent to which programs reduced offending behaviour. However, it was possible to examine the outcomes of programs run in communities which had received consistent resourcing over the five year period of the study. These programs included those run by Community Youth Development Units (CYDU's) and the findings from these programs in relation to re-offending are presented in the following chapter. These programs were set up in the communities of Wadeye, Groote Eylandt, Tennant Creek, Borroloola, Papunya, Elcho Island, Mutitjulu, Batchelor and

the Tiwi Islands—places where it was thought juveniles would gain maximum benefit from this intervention. The aim of these programs was to alleviate youth boredom, develop skills to assist juvenile offenders to become useful members of their community and generally develop broader community building capacity. The programs included counselling, mentoring, job training, education, sport, substance abuse, adventure, employment and community service.

CYDU management comprised of community members, including traditional owners, council and education department staff, police officers, health and corrections staff and any other persons in who were key decision makers in the community (Juvenile Diversion Unit, 2006). In addition to remote communities, a number of Community Youth Development Units (CYDU) were developed in locations such as Darwin and major regional centres such as Katherine and Alice Springs. These units contracted agencies including the Young Women's Christian Association (YWCA) and Young Men's Christian Association (YMCA) to provide programs for offenders and to case manage juveniles through interviews, pre-conference arrangements and individual case management. These programs were put in place to provide support for offenders who may not have had family or community members with whom to discuss their problems (Waite, 2004: 108).

In summary, legislation and police *General Order J1* required that juveniles be diverted from the court process where at all possible. The major objectives of the NT Scheme was to provide a holistic approach to offending behaviour, to improving the life chances of offenders, and to provide a basis for the restoration of victims.

Conditions for Receiving Diversion
According to *General Order J1*, in order to receive diversion, a juvenile had to admit to the offence, that is admit guilt, and agree to diversion. In order to successfully complete the diversion any conditions or programs attached to the diversion had to be fulfilled to the satisfaction of the parties involved.

As discussed in Chapter 2 the admission of guilt is considered an important part of the restorative process, as, by admitting guilt, the offender is deemed to have taken responsibility for his or her behaviour.

The Scheme required that, if an offender committed an offence not excluded from diversion but then denied culpability, in doing so they declined diversion and were required to make a court appearance. Additionally, if the juvenile did not successfully meet the requirements of the diversion, including meeting the conditions and programs of the diversion, then he or she could be referred to the Court for prosecution. The Scheme allowed that, at any stage of the process, the juvenile had the option to deny diversion and to have the matter dealt with by a court. The offender could also initially elect to go to court and then later decide to accept diversion if they admitted responsibility for their offending behaviour.

Diversion, Seriousness of the Offence and Re-offending

The main consideration in giving a diversion was the type of offence which had been committed and the seriousness of that offence. As stated above, the seriousness of an offence was the most important factor in determining whether or not an offender received a diversion because some offences, especially those against the person, were excluded from diversion, and consequently the offender who committed such an offence automatically went to court. Juveniles who committed other, less serious offences, were automatically offered diversion if they had not been a persistent offender.

The *type* of diversion given to a juvenile offender was also dependent on the type of offence committed and the seriousness of that offence or offences. The *General Order J1 Juvenile Pre-Court Diversion* informed police officers about which diversions were appropriate for which offences. This Order provided for three broad categories of offences, namely "excluded", "serious" and "minor" offences. According to Schedule A of the *General Order* police were not able to give diversions for certain types of "excluded" offences. These "excluded" offences include those against the person such as murder,

manslaughter, serious assault, sexual assault and dangerous acts causing harm or death. Serious property offences, drug offences including supplying, manufacturing or possessing a dangerous drug were also "excluded", as were offences relating to driving under the influence of alcohol or refusing a breath test, dangerous driving or driving disqualified.

"Minor" offences included those property offences where the value of the property involved was $100 or less, but not where the juvenile had unlawfully entered a building. "Serious" property offences included Unlawful Entry of Buildings (Section 213 *Northern Territory Criminal Code*), Stealing (Section 210 of the *Criminal Code*), Receiving Stolen Property (section 229 of the *Criminal Code*), Taking Reward for Recovery of Property Obtained by Means of a Crime (section 231 *Criminal Code*) Criminal Damage in General (Section 251 *Criminal Code*) and Persons Suspected of Having Stolen Goods (section 61 *Summary Offences Act*).

Where a juvenile had committed a minor offence and where the parent or guardian of that juvenile agreed, police were required to divert the offender. The *Diversion Requirements* stated that police had the discretion "to provide diversion for offences that were not an 'excluded offence'" and that "all offences apart from excluded offences may receive diversion" (*General Order J1*: 5).   Additionally, in all cases the officer had to ensure that "the level of diversion intervention must be commensurate with the level of seriousness of the offence" (*General Order J1*: 9). The *General Order* stated that however, if a juvenile re-offended and even though the offences were not excluded that "in those cases diversion would not be appropriate and application should be made to deny diversion" (*General Order J1*: 5). As mentioned in Chapter 2 , over the period of the research (2000-2005), there was an increase in the number of offences which were excluded from diversion which suggests an increase would occur in the number of offenders who made court appearances. This is an issue which should be explored in future research.

Summary

Many jurisdictions both internationally and within Australia have implemented restorative justice practices in some form or another. This has often been in response to the perceived inability of the conventional justice system to address juvenile offending and the underlying issues related to this problem, particularly in Indigenous communities. The common elements in these practices emphasised empowerment of the offender, victim and the community through reparation in some cases and restoration in others.

This chapter also provided the setting for the development of the JDS within the Territory, in relation to demographics of the population, and the health and education of that population. It has shown that the unique characteristics of the Territory, including its small population, and the remote location of much of that population, has an impact on the provision of services to some locations and groups, particularly in relation to health and education, where Indigenous groups were of poorer health and had a lower educational attainment than the non-Indigenous population.

Additionally it was shown that, in relation to crime, Northern Territory residents generally did not perceive themselves as less safe than residents in other states, as they felt relatively safe in their own homes and in their local neighbourhood when compared to the national average. However they recorded the highest vicimisation rates for certain crimes and this resulted in their concern that they could become a victim of certain types of crime, particularly house breaking.

In relation to the political setting, successive governments in the Northern Territory attempted to address crime rates through various mechanisms, including mandatory sentencing. This initiative was severely criticised both nationally and internationally as it was perceived as discriminating against Indigenous people in the Territory. As a result the JDS was put in place as a means to address the issue of the over-representation of Indigenous juveniles and adults in the criminal justice system. More recently, the

Northern Territory Government released its *Six Point Plan* which focused on building a safe community and providing greater access to justice for victims. Both the JDS and the *Six Point Plan* were aimed at providing a fairer, more just and more integrated approach to crime prevention and juvenile offending than had been the case with mandatory sentencing.

The next Chapter will describe the methodology used to analyse the impact of restorative justice practices on juvenile re-offending during the first five years of the Scheme.

CHAPTER 4   METHODOLOGY

Introduction

The major focus of the research was to identify issues relating the offending and re-offending behaviour of juveniles in the Northern Territory and the impact of restorative justice practices through pre-court diversion, on this behaviour. The analysis involved examining all juvenile offenders who were apprehended by police in the Northern Territory between August 2000 and August 2005, a total of 3435 offenders.

A basic methodological consideration which was of importance to this study was the fact that a whole population was included in the analysis rather than just a sample. By using the whole population of offenders, several problems were avoided relating to the statistical interpretation of results. A major consideration was that, by using a whole population, the problem of sampling error did not need to be addressed. This provided a basis for greater robustness in the statistical analysis as it eliminated problems of sample bias. Another important consideration was that problems relating to assumptions about the representativeness and randomness of the sample and normality of the "spread" of cases were also avoided. As a result, issues relating to statistical inference from a sample to the population and the reliability and validity of inferring from a sample to the population were also not problematic (Professor David DeVaus, LaTrobe University, personal communication, 19 October, 2005).

It should be emphasised, however, that even though the analysis is done on the population rather than a sample of offenders, statistical significance and probability levels were still provided. This manner of reporting statistical probability is somewhat different from that traditionally undertaken. Reporting significance levels in this thesis means they are interpreted as indicators that the discovered "effects" and "relationships" between variables are robust enough that they continue to be discovered in the future, or in other similar samples, from other jurisdictions. Therefore "significance" in this *new* context is the confidence in the replicability of these results. It should be noted however, that since the replication will be in a new time or

context, the probabilities and significance levels should be viewed with some caution (Dr Matthew Rockloff, Central Queensland University, personal communication, 26 July, 2007).

Justification of and Framework for the Methodology

In order to provide a comprehensive and robust examination of the data, in relation to the impact of restorative justice practices on the offending and re-offending behaviour of juvenile offenders, the following framework was developed for the data analysis.

The research examined characteristics of offenders, such as gender, Indigenous status, age and type of offence committed, which, as discussed in Chapter 2, have been found by researchers in Australia and overseas, to be related to offending behaviour. Statistical techniques used in the analyses were those which have been found to have been the most appropriate for the type of data used in this thesis, as will be demonstrated later in this chapter. Predictive analyses were undertaken to examine variables which determined the extent to which juveniles were at risk of re-offending over time, and differences in survival time to re-offending, for juveniles who attended court and those who received a diversion. These techniques included Cox Regression and Survival Analysis which researchers (including Broadhurst and Loh, 1994) recommend be used where there are censored data—a concept which is explained later in this chapter. A framework of the approach used in the analysis is shown in Figure 33.

Figure 33   Framework of the research

Research problem	Restorative justice practices and their impact on juvenile re-offending in the Northern Territory
Review theory and practices	Restorative justice theory Governance theory Policy theory International and national restorative justice practices The Northern Territory setting

Methodology	Data measurement
	Quantitative statistics
	    • Descriptive analysis
	    • Predictive analysis
	Qualitative analysis
	    • Interviews

Analysis	Characteristics of juveniles who offend Characteristics of juveniles who re-offend Who is at risk of re-offending?
Conclusion	Social policy development and implementation

The Quantitative Analysis

The first part of the analysis was undertaken in order to provide a basic understanding of the characteristics of juvenile offenders. The analysis involved examining variables relating to the demographic, geographic and criminological factors associated with each offender, including variables which, in previous research, had been found to have an effect on offending behaviour. The operationalisation and transformations of variables are shown in Table 2 in the section *Measurement of Variables*. This aspect of the research analysed questions such as whether males were more likely to

have been apprehended than females; whether Indigenous or non-Indigenous juveniles were more likely to offend; which age group of juveniles offended most frequently; what offences were committed; what was the seriousness of the offence; forms of diversion given by police and how many offenders received diversion or went to court.

The re-offending behaviour of the juveniles was then examined. Variables used in the initial descriptive analysis were cross-tabulated to determine re-offending patterns. One example of this analysis was whether males were more likely to re-offend than females; another example was whether re-offending was greater for one age group than for others. In addition, other aspects included whether juveniles who committed certain offences re-offended at a greater rate or whether juveniles who were apprehended in one location re-offended to a greater extent than those who were apprehended elsewhere and whether juveniles who received a diversion re-offended to a greater degree than those who went to court or vice versa. As this thesis argues this last issue is a major factor in attempting to determine the impact of pre-court diversion on the re-offending of the juveniles in the study.

Correlation Analysis

The next step in the analysis examined re-offending patterns by investigating the relationships between independent and dependent variables relating to the demographic, geographic, offences and event type and re-offending characteristics of offenders. Variables which were required for the correlation and regression analysis, and which had been recorded as nominal or ordinal in the *Police Online Management Information System* (PROMIS) database, were transformed into "dummy" variables, as both type of analyses require that variables entered into the equation are interval scale—that is, they are able to be measured in a linear way. For example, age is an interval variable whereas gender is a categorical variable, therefore gender becomes a dummy variable (for coding of dummy variables see Table 1). Therefore a number of dummy variables were constructed for the analysis including

variables relating to gender, Indigenous status, location of the offence, offence category and type of diversion or court appearance.

The first part of the analysis involved running correlation and partial correlation analyses in order to examine the strength and direction of the relationships between the independent and dependent variables. This is an also an important step to take when undertaking regression analysis in order to determine whether multicollinearity exists between the independent variables. Multicollinearity occurs when there is a high correlation between variables to be entered into the analysis. It is problematic if this occurs as a basic assumption of regression analysis is that there are no highly correlated variables in the regression equation, as they cause "over fitting" of the model (Kerlinger and Pedhazer, 1973). The concept of "over-fitting" results in the regression model having too many parameters and therefore providing misleading results from the model. This happens because, statistically, if there are enough variables entered into an equation, a significant amount of variance in the dependent variable may be explained, but the model itself is has two or more variables which measure the same construct (Kerlinger and Pedhazer, 1973). Moreover, the significance of each variable is diluted by multicollinearity (Dr Matthew Rockloff, personal communication, 26 July 2007). For the purposes of this analysis if two variables had a correlation of .75 or more they were deemed to be highly correlated and one variable was then excluded from the regression equation (Garson, 2007: 16).

The analysis also examined the partial correlations between location, offence, seriousness of the offence and event type when controlling for the demographic variables, gender, age and Indigenous status. Partial correlation is defined as that correlation which remains between two variables after removing the correlation that is due to their mutual association with the other variables. In other words, it is the correlation between the dependent variable and an independent variable, when the linear effects of the other independent variables in the model have been removed from both (Hardy, 1993).

Partial correlations were used to determine whether or not there were spurious or suppressed relationships between variables. It was important to examine the possibility of these relationships being present in data because spurious relationships falsely indicate *causality* while suppressor variables falsely indicate *no causality* (Sapp, 2006). Partial correlation coefficients can address this problem as they isolate the effect of one independent variable on the dependent variable while controlling for the effects of other independent variables (Kerlinger and Pedhauzer, 1973).

An example of a spurious relationship is where a statistically significant relationship is found between offence and amount of re-offending at a zero-order level, but that, when gender is controlled, the results show that the initial significant relationship between offence and re-offending becomes insignificant. Therefore, the initial zero-order significant correlation between the offence and re-offending, is due to gender not the offence.

Suppressor variables occur when the zero-order relationship, for example between location and re-offending, is insignificant but becomes significant when Indigenous status is controlled. This happens when the dependent variable has a positive relationship with one independent variable and a negative relationship with the other, therefore cancelling out the significance of the relationship at a zero-order level. This can be described as follows. In statistical terms:

> A suppressor variable may be defined as those predictor variables which do not measure variance in the criterion measures, but which do measure some of the variance in the predictor measures which is not found in the criterion measure (Horst, 1996: 363)

It is important to identify these types of relationships in order to accurately explain relationships between variables, and therefore as an integral part of explaining how one set of variables predicts an outcome when used in regression analysis. Both spurious and suppressor variables, if not identified, can produce incorrect results and faulty research outcomes

(Woolley, 1997). As a check for possible spurious or suppressed relationships between variables each of the demographic variables were controlled against each of the other independent variables, again using the amount of offending as the dependent variable.

This analysis provided a clear indication of the relationships between variables and determined which variables were to be included in the Cox Regression analysis.

Cox Regression Analysis

The next stage of the analysis used Cox Regression to examine the impact of each of the independent variables on the length of time taken to re-offend, in order to establish whether they added significantly to the prediction of failure, that is, of a juvenile re-offending. In statistical terms, participants who did not experience the "terminal" event, in this case re-offending, within the study period are termed "censored" observations. These observations occur because some participants will either have dropped out of the study before it ceases, or will not experience the terminal event before the study ceases (Dawson and Trapp, 2001: 218).

For the purposes of this thesis censored observations included either those juveniles who attained the age of 18 years before the end of the study, or those who had not re-offended by the end of the study period. In other types of statistical analyses such offenders would normally be excluded from the analysis, resulting in a loss of information and the possibility that the research results do not accurately reflect the amount of re-offending which occurred. Conversely, including these observations in the analysis can have a similar outcome. Therefore, using incorrect techniques to analyse this type of data may lead to false conclusions being drawn from the analysis.

As an example, Multiple Regression is a commonly used statistical technique when predicting a dependent variable. However, where there are censored observations and time variables, which are usually highly skewed, Multiple

Regression is therefore not an appropriate type of analysis as the data violates the assumptions of this regression technique (Tabachnick and Fidell, 2001). Cox Regression was therefore used as it was the appropriate model for the analysis of the data containing censored cases. The Cox Regression model also allowed the independent variables, or covariates, to be incorporated into the regression equation, and it was therefore possible to examine the simultaneous, and possibly confounding, effect of a number of variables on survival time to re-offending (Dawson and Trapp, 2001: 248).

Additionally, the model was used to examine the probability of offending for those juveniles who had not re-offended within the first year of their initial apprehension. The Cox Regression provides this information as a r*isk* or o*dds ratio* which indicates the predicted change in risk for each unit change in the independent variable or covariate. When the ratio is greater than 1.0 then the larger the covariate and the greater the risk of the event occurring, where the ratio is 1.0 then the covariate has no predictive value of the event occurring, the further the ratio is below 1.0 then the greater the covariate and the less risk of the event occurring (Garson, 2007: 1). The standardised regression coefficient provided in the analysis indicates the impact of each of the independent variables on the dependent variable.

The Cox Regression analysis was therefore used to examine the impact of the independent variables on the risk of a juvenile re-offending. The next stage of the analysis delineated between groups of juveniles, as defined by whether they made a court appearance or received diversion, in relation to the time taken to re-offend and the proportion surviving, or not re-offending, by the end of the five years of the study. Survival Analysis was undertaken to examine these issues.

Survival Analysis
Another focus of the research was to examine re-offending patterns of the juveniles and the extent to which juveniles were at risk of re-offending after either attending court or receiving a diversion. This issue is partially

examined using Cox Regression, however, in order to examine the impact of the initial event, court or diversion, on the extent of re-offending a statistical technique was needed which would address this issue by comparing groups of offenders. One such technique is Survival Analysis, which like Cox Regression, allows the inclusion of censored observations in the analysis (Tabachnick and Fidell, 2001).   Survival Analysis uses information from all cases to determine how likely it is that a juvenile will not re-offend, by providing an indication of the survival rate of offenders.   This aspect of the analysis was particularly useful in examining the survival rates of juveniles whose first event was towards the end of the research period and who therefore had less time in which to re-offend than had other juveniles who offended earlier in the study. Survival Analysis examines the number of cases "at risk" and the probability of survival or failure of these cases. In this thesis this was taken to include the proportion of juveniles not re-offending (survived) and the proportion of those who re-offended (failed). The cumulative proportion of offenders surviving represents the "survivorship" or survival function.

Survival Analysis was used to further examine re-offending in relation to what the survival rates were for various groups of offenders, that is, of all the offenders in the analysis what was the percentage of those who were likely to fail the "treatment", i.e. diversion, and re-offend.   Offenders were tracked from the date of their initial diversion or court appearance to their second apprehension, if there was one—if not then 31 August 2005, or their 18th birthday. In order to do this a period had to be defined in which the offender was tracked.

There has been much debate about whether the follow-up should begin at the initial arrest, at the beginning of the program, or "intervention" or treatment (Hayes, 2005). For the purposes of the current analysis the follow-up period began on the date of the completion of the event which included the diversion and any related programs. The follow-up period then concluded on the date of the second apprehension, if the juvenile had re-offended.

Where they had not re-offended—and were therefore censored observations— the follow-up period concluded on 31 August 2005, or the date of the juvenile's 18th birthday, whichever occurred first.

The quantitative analysis therefore used a number of steps in order to clearly represent the characteristics of juvenile offenders and their re-offending behaviour after their initial event, whether that was a court appearance or diversion. The next section discusses the qualitative analysis which was conducted after the quantitative analysis had been undertaken.

Qualitative Analysis

In addition to statistical quantitative analysis, a qualitative analysis was conducted in order to provide further insight in relation to the statistical findings. This analysis involved interviewing a number of practitioners in the field of juvenile justice. Interviewees were selected because of their extensive experience and involvement with juvenile offenders in the Northern Territory and in relation to the Juvenile Diversion Scheme. In this context qualitative analysis was used to elucidate and add depth and meaning to the quantitative findings, and to extend and deepen theoretical propositions and understandings from quantitative studies. Respondents were therefore chosen in accordance with their knowledge, expertise and length of experience in the juvenile justice field. The choice of respondents in this way represents *purposeful* or *judgment* sampling, a method which allowed the researcher to decide the purpose they want the respondent to serve and then find interviewees who are able to do so (Patton, 2002). In this research the sample chosen was also *homogenous* in that a small, homogenous group of respondents was chosen to further examine the subgroup of interest, in this case juvenile offenders (Patton, 2002: 235). The knowledge and expertise of the interviewees in this area provided a sound basis for using their responses to support the quantitative findings and provide indications for future policy and research.

A further justification for the interviews was that no qualitative data was available on the PROMIS database regarding the socio-economic status or family environment of offenders, factors which have been found to have a significant impact on the extent to which offending behaviour occurs, as discussed in Chapters 2 and 3. While police officers are required to take case notes, which are then entered into PROMIS, the same information is not necessarily recorded for each case and neither are these notes easily transferable into a format useful for quantitative analysis. An aim of the interviews, therefore, was to draw on the interview responses to address and inform these issues.

The Interviewees

A total of nine interviews were conducted in Darwin, Alice Springs and the Tiwi Islands. The interviewees included police officers, juvenile caseworkers, program managers and community members who had had some contact with either juvenile offenders, development of the Scheme or administration of the Scheme at some time over the five year period, and included the following participants:

1. The Superintendent of the Northern Territory Juvenile Diversion Scheme who had carriage of both the development and implementation of the Scheme in August 2000 (20 years in the police force);

2. A Senior Sergeant of the Scheme in Darwin who was also involved in the development and implementation of the Scheme (30 years in the police force);

3. The Senior Sergeant and Officer in Charge of the Scheme in Alice Springs who was also there at its inception (25 years as a police officer);

4. A Police Auxiliary in Darwin Juvenile Diversion Unit who also had experience as a probation and parole officer (5 years police experience);

5.   The Manager Programs of the Juvenile Diversion Unit with 15 years experience working in remote communities;

6.   An Indigenous elder in the Tiwi Islands—who was also a Community Corrections officer involved in developing and managing programs for juvenile offenders (30 years working with juveniles in his community);

7.   A juvenile justice worker with 15 years experience in the Northern Territory working in Correctional Services and other justice areas;

8.   The manager of a Probation and Parole office in Darwin with 20 years experience in assessing and working with juvenile offenders;

9.   The manager of programs at Darwin Prison with extensive experience of developing programs for juvenile offenders (25 years in correction and detention centres).

In accordance with Central Queensland University *Ethical Guidelines*, interviewees were provided with an Information Sheet, Consent form and questionnaire prior to the interview (See Appendix 2).   Ethical clearance was approved by the University. The researcher initially intended to record all of the interviews on tape, however, as tape recorders were not permitted in Darwin Prison, where one of the interviewees was employed, it was decided that in order to maintain consistency, the researcher would instead make notes throughout the interviews. Interviewees were informed that they could obtain copies of the notes on request as per ethical requirements.

The Interview Questionnaire
The questionnaire consisted of ten questions which were open-ended, that is, they did not require interviewees to give exact responses. This approach was taken to give interviewees maximum flexibility in providing responses, but within parameters for maintaining consistency of responses. Interviewees were asked 10 questions which related to their involvement in the Scheme, whether they thought the Scheme had achieved its objectives and what could be done to improve it. The questions were:

1.	How long have you been involved with/known about
	the Scheme?

2.	What involvement have you had with the Scheme? For
	example, have you worked in the Juvenile Diversion
	Unit or as a police officer who has diverted juveniles, or
	as a member of the community who has assisted in
	conferences?

3.	Have you been involved with juveniles from
	urban/rural/remote areas?

4.	In a general sense do you think the Scheme is achieving
	its objectives of:

	(a)	Providing a better way of dealing with juvenile
		offenders by making them more responsible for
		their actions;
	(b)	providing victims of crime with a more
		supportive environment for dealing with the
		offending behaviour; and
	(c)	through these mechanisms fostering positive
		social change in the community.

5.	If you think positive outcomes have been achieved
	could you, without naming individuals or specific
	places can you give me any examples of why and when
	you think these have occurred?

6.	Is the process flexible enough to accommodate the
	needs of the juveniles you have seen?

7.	 Do you think more options, such as programs, should
	be made available to the diversionary process?

8.	What other options or programs, if any, do you think
	should be made available to juvenile offenders?

9.	Do you think the Scheme would be useful for adult
	offenders?

10.	Any other comments you would like to make?

Interviews took between 30 minutes and one hour to complete. In two cases
interviewees were unavailable to be interviewed face-to-face and therefore
completed the questionnaire by email. Ethical considerations required that

interviewees were asked to sign a consent form and were told they could request a copy of the results when they were available.

Responses provided from the interviews are reported in the thesis in the form of statements and quotations reflecting on the findings as revealed by the quantitative analysis. It was decided not to conduct a content analysis of the responses as the aim of the interviews was to provide a qualitative perspective, rather than to present further quantitative analysis.

In summary, several steps were included in the analysis in order to provide a comprehensive understanding of the characteristics of the juvenile offenders, and of the relationships between the demographic, geographic and offending patterns of the juveniles. This included both quantitative and qualitative aspects of data analysis. The measurement of the data items will now be described.

The Data
The data consisted of all apprehensions of juvenile offenders in the Northern Territory from August 2000 when the Juvenile Diversion Scheme (JDS) commenced, to August 2005. The data consisted of 3435 juveniles aged 10-17 years of age. There were a small number of 18 year olds in the cohort for 2000, however the legal definition of "juvenile" upper age was reduced from 18 to 17 years in August 2001 and, given that 18 year olds were therefore only included in the JDS for the first 12 months of its operation, they were excluded from the analysis.

The data was retrieved from the Police Online Management Information System (PROMIS) which is a database used by all police officers to enter and store information relating to all offenders. Police routinely collect information in relation to gender, Indigenous status, age, offence and location of the offence and, as discussed in Chapter 2 and Chapter 3, previous research has found these variables to be correlated with re-

offending behaviour.   Written permission to access the database was given by the Deputy Commissioner of Police.

A limitation of the thesis is that interviews with the juvenile offenders themselves were not conducted. The first reason for this omission was that, given the quantity of the data at hand, it was considered important to conduct a comprehensive and detailed statistical analysis in order to examine the characteristics of offenders and of re-offending patterns of juveniles over the five year period.   It would be outside of the scope of this research to carry out both a comprehensive quantitative analysis of all offenders and then attempt to determine which group to analyse in more depth from a qualitative perspective.

The second reason was that, given that it was likely that only a sample of juveniles would volunteer to be interviewed, juveniles who were more likely to volunteer would be those who were at least risk of re-offending and who were most satisfied with the Scheme and what it attempted to achieve. In this situation it was possible that the resulting sample would have been comprised of a biased group of offenders. It would have been necessary to also analyse the characteristics of all offenders in order to determine the extent of sample bias in the analysis.

Measurement of the Variables

All of the variables used in the analysis were retrieved from PROMIS. They included demographic variables, namely gender, age and Indigenous status. The geographic location of the apprehension was categorised into three main regions of Darwin, a regional centre (i.e. Katherine, Tennant Creek, Alice Springs or Nhulunbuy), or community (for example, remote Indigenous communities including Wadeye, the Tiwi Islands and desert communities around Alice Springs). The type of offences committed were also examined and these variables related to the category of offence according to ABS classifications and further classified in relation to whether they were property offences, offences against the person or other types of offences (see

Appendix 1). The seriousness of the offence (according to the definitions
provided in the *General Order J1*) was also analysed, that is, whether the
offence was considered minor, serious or excluded from diversion. To
determine the time taken to re-offend, if this occurred, the number of days
between the date of the initial apprehension and commencement of the
diversion and the date of the second apprehension were computed. The
event type was defined as a warning, conference or court appearance. In
order to conduct the multivariate analyses a number of variables were
recoded as dummy variables, a further discussion of why this was done is
examined later in this section.   The description and operationalisation of the
variables are shown in Table 2 below.

Table 2   Variable descriptions and transformations

Variable name	Coding	Comments
Gender	Male, female	Dummy variable (1) male (0) female
Age	At first apprehension	*General Order J1* states that under the *Juvenile Justice Act*, the *Police Administration Act* and the *Community Welfare Act* the term 'juvenile' means: "a child or person who has not attained the age of 18 years; or in the absence of proof as to age, a child who apparently has not attained the age of 18 years" (section 4.6)
Age group	10-14 years 15-17 years	This grouping was used by police as a way of defining very young offenders and older juveniles. The actual age of the juvenile at their first apprehension was also used in the Correlation analysis
Indigenous status	Indigenous/non-Indigenous	Dummy variable: (0) non-Indigenous (1) Indigenous
Event start	The date the juvenile was apprehended	Used in the Cox Regression and Survival Analysis = days between the end of the first event and commencement of the second event

Table 2 continued

Event end	Date diversion complet	Used in the Cox Regression and Survi Analysis as the date at which the first event was completed
Diversion type	•Verbal warning •Written warning •Family conference •Victim offender conference •Denied or declined and goes to court	Dummy variables: (1)Warning (0) Other (1) Conference (0) other (1) Court (0) other
Offence		Offence categories as recoded into Australian Standard Offence Categories (ASOC). Divisions and subdivisions are provided at Appendix 1
Offence serious		Seriousness of offence. Recorded as minor, serious and excluded as defined in the *General Order J1*
Offence recoded		Dummy variables: (1) Person (0) other (1) Serious Property (0) other (1) Minor Property (0) other (1) Other (0) other
District		Regional centre or community where the juvenile was apprehended — recoded into Location variable
Location		District variable recoded into; • Darwin region including Darwin, Casuarina, Palmerston and Litchfield Shire • Other regional centres including Alice Springs, Katherine, Tennant Creek and Nhulunbuy • Communities – Aboriginal communities as listed in Appendix C Recoded as a dummy variable: (1) Darwin (0) other (1) Other regional (0) other (1) Communities (0) other

Age

Age was recorded as the age of the juvenile at the time of their first apprehension by police. To be recorded as a juvenile, the offender had to be between 10 to 17 years of age. In the Northern Territory a juvenile is defined in *General Order J1* which states that under the *Police Administration Act*, the *Juvenile Justice Act* and the *Community Welfare Act* that the term "juvenile" means "a child or person who has not attained the age of 18 years; or in the absence of proof as to age, a child who apparently has not attained the age of 18 years" (*General Order J1*, 2001: Section 4.6). In the first six months of the Scheme, 18 year olds were also given the opportunity for diversion as they had offended during the time in which the Scheme was being developed. These juveniles were excluded from the analysis.

Gender

This variable was coded as male and female. The dummy variable was coded (1) male.

Indigenous status

The Indigenous status of a juvenile was that as ascertained by police, that is, it was not self-reported by the juvenile. The variable was coded as Indigenous or non-Indigenous. The term *Indigenous* was used as Torres Strait Islander people were included in the Indigenous category.

Location

The location referred to where the offender was apprehended. For the purposes of this study, location was recoded into the Darwin region which included Darwin, Casuarina, a major suburb of Darwin, and Palmerston, which is situated 20 km south from Darwin, and which has a similar infrastructure to both Darwin and Casuarina in relation to proximity to various utilities, amenities and police presence.

For the purposes of the analysis the Rural Area, as it is known colloquially, which extends approximately 30 to 80 kilometres south of Darwin, was also included in the Darwin region. Although this area was somewhat further

from the major Darwin centre than were Casuarina and Palmerston, it was much closer to those centres than to the other nearest regional centre, Katherine, which had access to similar amenities but which was over 200km from the Rural Area. Additionally, unlike other regional centres and communities, the majority of the population in the Rural Area was non-Indigenous and therefore had similar characteristics to the populations of Darwin, Casuarina and Palmerston.

Outside of the Darwin region there were the major regional centres of Katherine, Tennant Creek and Alice Springs, all of which were located along the Stuart Highway, and Nhulunbuy which is located in East Arnhem Land. These regional centres were combined as they have similar infrastructures, amenities and population bases. For the purposes of the analyses they were called Regional Centres. The remaining communities in the Northern Territory were combined in the analysis as Indigenous Communities. These communities were located a few kilometres to several hundred kilometres from either a regional centre or from Darwin, and were considered remote or very remote in relation to access to community infrastructure and to amenities.

Offence categories
In PROMIS, offence types are recorded according to ASOC divisions and subdivisions (see Appendix 1), the standard reporting tool for all Australian states and territories. This classification provides an offence hierarchy which, at a broad level, defines offences by their level of seriousness. For example, offences in categories 1 to 6 relate to offences against the person—including murder, manslaughter, sexual assault and robbery. Categories 7 to 9 relate to property offences, including unlawful entry and theft, category 10 relates to drugs. As previously discussed, offenders could have been apprehended for more than one offence at one time and therefore the most serious offence committed by the offender was used.

Event type

These included Verbal Warnings, Written Warnings, Family Conferences or Victim Offender Conferences. They were also recoded into Court, Conference or Warning for some analyses. The Event Start was the date the juvenile was apprehended by police. This is also recorded as the date of the commencement of the diversion. These variables were used in the analysis to calculate the number of days from the end of the first apprehension to the start of the second apprehension for those juveniles who re-offended.

Re-offending defined

In previous research, re-offending has been defined according to the data available to the researcher and the way in which that data has been recorded in an organisations' system (Hayes and Daly, 2004). Therefore, for the purposes of this study, re-offending was defined as a person being apprehended for any subsequent offence, irrespective of the seriousness of the offence, after undergoing an initial apprehension and diversion, including court. This definition is to be distinguished from "recidivism" which more often relates to an offender receiving a further custodial sentence in an institution, which in the case of juveniles, is usually a detention centre.

Re-offending was examined in relation to the characteristics of juveniles measured by whether or not the juvenile had re-offended. Therefore two groups were included in the analysis, first those who had not re-offended, and second those who had re-offended after their first apprehension.

Whether re-offending occurred, and length of time to re-offending, were used as dependent variables in the analyses. Therefore the analysis consisted of first, examining factors which affected initial offending and second, using these to also examine their impact on the amount of re-offending where that occurred. Hayes and Daly (2004) categorised offenders in this way when they examined 200 young Queensland offenders who had attended a conference and distinguished between those juveniles who offended pre-

conference or post-conference, and those who did not. Those who did not re-offend post- conference, were referred to as "reformed" offenders. These juveniles had only offended once, that is they had no pre-conference or post-conference offending. The other group who did not re-offend were referred to as "desisters". That is, they offended pre-conference but not post-conference. In the present study a similar nomenclature has been adopted and therefore "reformed" offenders and "desisters" were those juveniles who did not re-offend after a first apprehension including diversion, which could have included a warning or conference, or after a court appearance. Hayes and Daly (2004) also examined re-offenders and grouped them into "drifters", who offended only after a conference, and "persisters" who offended both pre- and post-conference. The current study represented these two groups of re-offenders, those who had re-offended after the first diversion, and those who had re-offended after a second diversion.

As is discussed in the Chapter 6 of this thesis, using this type of grouping and classification could have important policy implications for the types of diversions which need to be used for each group of juveniles, in that more intensive diversions would be put in place for those juveniles who appear to be at risk of becoming "persisters" and more informal diversions where it would appear that the juvenile is at less risk of re-offending.

Analysis of the data is undertaken in the following chapter using the descriptive and predictive statistical procedures described in the Methodology. The chapter will provide an analysis of the first five years of the Juvenile Diversion Scheme and its impact on re-offending behaviour, and in doing so will attempt to ascertain whether restorative justice practices have had any success in achieving their aim of a reduction in juvenile reoffending.

Chapter 5   **ANALYSIS**

The Characteristics of Juvenile Offenders

This chapter begins by providing an analysis of the characteristics of juvenile offenders in the Northern Territory over a five year period from the introduction of the Juvenile Diversion Scheme in August 2000. Utilising the framework established earlier, the analysis will begin by examining the demographic, geographic, offending and initial event variables.

Gender, Age and Indigenous Status

The characteristics of the juveniles apprehended in the Northern Territory for the period of this study are summarised in Table 3.

Table 3   Demographic characteristics of offenders

	N	%
Male	2 639	73.4
Female	958	26.6
Indigenous	2 046	56.9
Non-Indigenous	1,551	43.1
Male		
• **Indigenous**	1 551	58.8
• **Non-Indigenous**	1 088	41.2
Female		
• **Indigenous**	495	51.7
• **Non-Indigenous**	463	48.3
10	68	1.9
11	134	3.7
12	200	5.5
13	399	11.1
14	555	15.4
15	621	17.3
16	767	21.3
17	691	19.3
18	162	4.5
10-14 years	1 356	37.6
15-18 years	2 241	62.4

Derived from PROMIS August 2000-2005

As shown in this table, nearly three quarters of the juvenile offenders were male (73.4 per cent, n=2 639), over half of the offenders were Indigenous (56.9 per cent, n=2 046) and over half of the males were Indigenous (58.8 per cent, n=1 551). Therefore the greatest percentage of juvenile offenders was Indigenous males. This finding provided an indication of the level of over-representation of this group of juveniles in the criminal justice system, because of the much lower proportion of Indigenous than non-Indigenous male juveniles in the total Northern Territory population. This issue will be examined later in the discussion section of this chapter.

In relation to females, just over half (51.7 per cent, n=958) of the offenders were Indigenous. Again Indigenous juveniles were over-represented in the juvenile offending statistics, given that Indigenous females represented a lower proportion of the female population than non-Indigenous females.

Over three quarters of juveniles were 15 years or older at their initial event (62.4 per cent). Only 1.9 per cent of the offenders were 10 years of age, 3.7 per cent 11 years, 5.5 per cent 12 years and 11.1 per cent 13 years of age when they were first diverted or attended court. There were also only a small percentage of 18 year old offenders (4.5 per cent). The 18 year olds were included in this initial descriptive analysis of all offenders, however they were excluded from the later analysis because, as mentioned in the Methodology Chapter, the age at which an offender was defined as a juvenile was lowered to 17 years in 2001, and therefore 18 year olds were not treated as juveniles for the full five year period. The average age of <u>all</u> juvenile offenders was 15.3 years. Indigenous females were the youngest at first apprehension at an average age of15 years, Indigenous males were next youngest at 15.2 years followed by 15.3 years for non-Indigenous females and 15.8 years for non-Indigenous males.

Therefore the demographic characteristics showed that the majority of juvenile offenders were Indigenous males and were 15-17 years of age at their first apprehension.

Offence by Demographic Variables

The offence included in the analysis was the most serious offence for the first apprehension. The offences were categorised using the ABS Australian Standard Offence Classification (ASOC). The Divisions and Sub Divisions of the classification are given at Appendix 1. Table 4 shows the offence category for the first event by gender, Indigenous status and age.

Table 4   Offence type by gender, Indigenous status, and age

	Person		Property		Traffic		Other		Total	
	n	%	n	%	n	%	n	%	n	%
Male	282	10.7	1 540	58.4	457	17.3	360	13.6	2 369	100.0
Female	130	13.6	609	63.6	86	9.0	86	9.0	958	100.0
Indigenous	271	13.2	1 280	62.6	257	12.6	238	11.6	2 046	100.0
Non-Indig	141	9.1	869	56.0	333	21.5	208	13.4	1 551	100.0
10-14	46	8.7	351	66.7	43	8.2	86	16.3	526	100.0
15 -18	95	9.3	518	50.5	290	28.3	122	11.9	1 025	100.0

Derived from PROMIS August 2000-2005

Offences Against the Person

Offences against the person include murder, manslaughter, dangerous driving causing death, assault and sexual assault. The percentage of juveniles who committed offences in this category was lower than for the other offence groups. Only 10.7 per cent (n=282) males and a slightly higher percentage, (13.6 per cent, n=130), of females were apprehended for a first offence which was against the person. A greater percentage of Indigenous than non-Indigenous offenders were apprehended for offences in this category, however, the percentages were fairly small (13.2 per cent, n=271 and 9.1 per cent, n=141 respectively). A slightly higher percentage of 15-17 years olds committed an offence against the person when compared with the

younger age group (9.3 per cent, n=95 and 8.7 per cent, n=46 respectively). Therefore juveniles who committed an offence against the person tended to be female, Indigenous and 15 to 17 years of age.

Property Offences

Offences in this category included unlawful entry, theft and stealing. This offence category represented nearly 60 per cent (59.7 per cent, n=2 149) of all offences committed. As shown in Table 3, a greater percentage of females than males committed property offences, at 63.6 per cent (n=609) and 58.4 per cent (n=1 540) respectively. Also a greater percentage of property offences were committed by Indigenous than non-Indigenous juveniles (62.6 per cent, n=1 280, 56.0 per cent, n=869 respectively). Juveniles apprehended for property offences tended also to be in the younger age group, as nearly two thirds (66.7 per cent) of offenders were 14 years or younger compared to half of those who were 15 years or older.

It appeared that one reason that females, rather than males, were apprehended for property offences was because they were apprehended for a greater proportion of theft offences. For example, 60 per cent of non-Indigenous females (60.3 per cent, n=279) who offended, were apprehended for theft. This is compared to only around one third (36 per cent, n=178) of Indigenous females and non-Indigenous males (31.4 per cent, n=342), and one fifth (19.6 per cent, n=304) of Indigenous males. In relation to age group two thirds (66.7 per cent, n=351) of the 10-14 year olds who had offended had been apprehended for property offences compared to one half of 15-17 year olds (50.5 per cent, n=518).

Therefore property offences tended to be committed by females, Indigenous juveniles and those who were 14 years or under. The high proportion of females represented for these offences appeared to be in part to be explained by the greater percentage of non-Indigenous females who were apprehended for theft.

Traffic Offences

Traffic offences comprised only 16.4 per cent (n=590) of all offences. Males committed slightly more traffic offences than females (17.3 per cent, n=457 and 13.9 per cent, n=133 respectively). A greater percentage of non-Indigenous (21.5 per cent, n=333) than Indigenous offenders committed these offences (12.6 per cent, n=271) and they tended to be older as 28.3 per cent (n=290) of those in the 15 years and older age group were apprehended for a traffic offence compared to only 8.2 per cent (n=43) of those juveniles who were 14 years or younger.

In the Northern Territory juveniles can get a drivers learners permit at 16 years of age and so older juveniles are therefore more likely to have access to a vehicle and therefore to be apprehended for a driving offence. As a reflection of this juveniles who committed a traffic offence as their first offence tended to be slightly older than those who committed other offences, with an average age of 16.3 years, compared to less than 16 years for other offence categories.

Other Offences

The remaining 12.9 per cent of apprehensions related to Other Offences. These offences included possession, cultivation and importation of drugs, offences against public order, and justice and firearm offences.   These offences accounted for only a very small percentage (3.2 per cent, n=115), of all offenders. Justice offences, such as breaches of court orders accounted for only 0.2 per cent (n=8) of juveniles, weapons offences only 0.7 per cent, (n=24) of juveniles and deception offences, including fraud and bribery, less than one per cent of offenders (0.5 per cent, n=19).   The highest percentage was for public order offences, such as disorderly conduct, which involved 8.3 per cent (n=299) of juveniles.

Therefore only small percentages in each group committed these offences. A slightly higher percentage of males than females (13.6 per cent, n=360 and 9.0 per cent, n=86 respectively), of non-Indigenous than Indigenous

offenders, (13.4 per cent, n=208 and 11.6 per cent, n=238) committed offences in this category. The juveniles also tended to be slightly younger as 16.3 per cent (n=86) of those in the 10-14 year age group committed an offence in this category compared with 11.9 per cent (n=122) in the 15-17 year age group.

Location of Offenders

As would be expected, given the dispersal of population across the Territory, the greatest percentage of offenders lived in the Darwin region (44.3 per cent, n=1 594). Of those juveniles only one third were Indigenous (32.9 per cent, n=525).

Table 5   **Offenders by location and Indigenous status**

	Indigenous		Non-Indigenous		Total	
	n	%	n	%	n	%
Darwin region	525	32.9	1069	67.1	1594	44.3
Other regional	837	64.4	462	35.6	1299	36.1
Communities	684	97.2	20	2.8	704	19.5

Derived from PROMIS August 2000-2005

As shown in Table 5, just over one third (36.1 per cent, n=1 299) of the offenders were apprehended in other major regional centres and nearly two thirds of those were Indigenous (64.4 per cent, n=837). The smallest percentage of offenders were from communities (19.5 per cent, n=704). Nearly all of those juveniles apprehended in communities were, as would be expected, Indigenous (97.2 per cent, n=684).

Table 6 provides information relating to the types of offences committed in each location to determine whether juveniles tended to be apprehended more for certain types of offences in one location rather than another. These

factors would have an impact on whether or not the juvenile was given a diversion or went to court. As shown in this table, in relation to location and the types of offences committed, the great majority of apprehensions in each location were for property offences. The greatest percentage of these property offences were committed in communities (71.2 per cent, n=501) compared with 58.7 per cent (n=935) for the Darwin region and 54.9 per cent (n=713) in other regional centres.

However, juveniles from communities also committed the lowest percentage of offences of the three locations in relation to offences against the person (7.5 per cent, n=53), traffic offences (13.1 per cent, n=92) and other offences (8.2 per cent, n=58).

Table 6   **Offence by location of first apprehension**

	Darwin		Other regional		Communities	
	n	**%**	**n**	**%**	**n**	**%**
Person	199	12.5	160	12.3	53	7.5
Property	935	58.7	713	54.9	501	71.2
Traffic	263	16.5	235	18.1	92	13.1
Other	197	12.4	191	14.7	58	8.2
Total	1 594	100.0	1 299	100.0	704	100.0

Derived from PROMIS August 2000-2005

While the lowest percentage of property offences were committed in other regional centres (54.9 per cent, n=713) juveniles in these centres also committed the highest percentage of traffic offences (18.1 per cent, n=235) and other offences (14.7 per cent, n=191).

Seriousness of the Offence

The seriousness of the offence category was determined by the most serious offence committed. Offences against the person were all categorised as violent offences and were therefore excluded from diversion. Juveniles who committed offences in the minor and serious categories could be eligible for diversion. Minor offences included minor property crime and serious offences included the remaining offence categories. As shown in Table 7 below the majority of juveniles (73.4 per cent) committed offences in the "minor" category.

Table 7   Seriousness of the offence

	n	%
Excluded	384	10.6
Serious	574	16.0
Minor	2639	73.4
Total	3597	100.0

Derived from PROMIS August 2000-2005

Event Type

As explained in Chapter 3 juveniles could be given either a diversion or have to attend court, depending on the type of offence for which they had been apprehended.

Table 8   Juvenile offenders by court appearance or type of diversion

	N	%
Declined	79	2.1
Denied	938	26.0
Court total	**1017**	**28.1**
Verbal Warning	514	14.2
Written warning	927	25.7
Family conference	827	22.9
Victim offender conference	312	8.6
Diversion Total	**2580**	**71.7**
Total	**3597**	**100**

Derived from PROMIS August 2000-2005

As shown in the above table the majority of juveniles received a diversion
(71.7 per cent, n=2 580). One quarter (25.7 per cent, n=927) received a
Written Warning, closely followed by 22.9 per cent (n=827) who attended a
Family Conference. Only 14.2 per cent (n=514) received a Verbal Warning.

The smallest percentage of juveniles were those who attended a
Victim/Offender Conference with only 8.6 per cent (n=312) doing so. Only a
very small percentage (2.1 per cent, n=79) of juveniles declined diversion,
and only one quarter (26 per cent, n=938) made a court appearance.

Table 9   Court/Diversion by gender and Indigenous status

	Male Indigenous		Male Non-Indigenous		Female Indigenous		Female Non-Indigenous	
	n	**%**	**n**	**%**	**n**	**%**	**n**	**%**
Declined (Court)	47	3.0	10	1.0	7	1.4	5	1.0
Denied (Court)	492	31.7	284	26.1	94	18.9	63	13.6
Verbal warning	184	11.9	179	16.4	77	15.6	80	17.2
Written warning	274	17.7	304	28.0	158	31.9	219	47.4
Family conference	419	27.0	204	18.7	123	24.9	66	14.3
Victim/ Offender Conference	135	8.7	107	9.8	36	7.3	30	6.5
Total	**1 551**	**100.0**	**1 088**	**100.0**	**495**	**100.0**	**463**	**100.0**

Derived from PROMIS August 2000-2005

As stated earlier, the greatest percentage of offenders were Indigenous males. Of that group one third made a court appearance (31.7 per cent Denied, n=492, 3.0 per cent Declined, n=47).   In comparison one quarter of non-Indigenous males made a court appearance as 26.1 per cent (n=284) were denied diversion and 1.0 per cent (n=10) declined diversion. A greater percentage of non-Indigenous than Indigenous juveniles received a Written Warning (28 per cent, n=304, 17.7 per cent, n=274) and a greater percentage of Indigenous juveniles than non-Indigenous juveniles attended a Family Conference (27.0 per cent, n=419, 18.7 per cent, n=204). Similar percentages of both groups received a Verbal Warning (Indigenous 11.9 per cent, n=184, non-Indigenous 16.4 per cent, n=179) or attended a

Victim/Offender Conference (Indigenous 8.7 per cent, n=135, non-Indigenous 9.8 per cent, n=107).

When compared with males, a much lower percentage of females were denied diversion (18.9 per cent Indigenous females, n=94, 13.6 per cent non-Indigenous females, n=63). Females were instead more likely than males to have received a Written Warning, as nearly one third (31.9 per cent, n=158) Indigenous and nearly half (47.4 per cent, n=219) of non-Indigenous females were given this diversion. Again a greater percentage of Indigenous offenders attended a Family Conference (24.9 per cent, n=123) when compared with non-Indigenous females (14.3 per cent, n=66). A similar percentage of both groups of females attended a Victim/Offender Conference (Indigenous 7.3 per cent, n=36, non-Indigenous 6.5 per cent, n=30).

Therefore males, and particularly Indigenous males, were the group most likely to be denied diversion. Indigenous juveniles, both male and female, were also more likely to attend a Family Conference than non-Indigenous offenders. Females were diverted to a greater extent than males, usually in the form of a Written Warning. A similar proportion of all groups received a Verbal Warning and only a small percentage attended a Victim/Offender Conference.

In relation to age group, Table 10 shows that, while over half of the younger group of offenders received a Verbal Warning (19.5 per cent, n=264) or a Written Warning (35.5 per cent, n=481), less than one third of those offenders 15 years and over did so (Verbal Warning 11.1 per cent, n=250, 20.0 per cent, n=446 Written Warning).

Table 10   Court appearance or diversion by age group

	10 to 14 years		15 years and over	
	n	%	n	%
Declined (Court)	19	1.4	60	2.7
Denied (Court)	161	11.9	777	34.7
Verbal warning	264	19.5	250	11.1
Written warning	481	35.5	446	20.0
Family conference	307	22.6	520	23.2
VOC	124	9.1	188	8.3
Total	**1356**	**100.0**	**2241**	**100.0**

Derived from PROMIS August 2000-2005

In summary, older juveniles were more likely to have been denied diversion (34.7 per cent, n=777) as over one third of them made a court appearance, compared with only 11.9 per cent (n=161) of the 10 to 14 year olds. A similar percentage of offenders in both groups attended a Family Conference (10-14 years, 22.6 per cent, n=307, 15 years and older, 23.2 per cent, n=520) or a Victim/Offender Conference (9.1 per cent, n=124, 8.3 per cent, n=188).

Older juveniles were therefore more likely than younger offenders to make a court appearance, having been denied diversion by police. These findings reflect the types of offences for which juveniles were apprehended as, as discussed earlier, whether or not a juvenile attended court or received diversion depended greatly upon the type of offence they had committed. The following section examines the type of offence and diversion given.

Diversion and Offence Category
As discussed earlier the type of diversion given depended on the type of offence committed. Therefore it would be expected that the cross-tabulation

would reflect this. However, there would also be some cases where police discretion allowed that some juveniles did not receive diversion for minor offences or that they received diversion for more serious offences. Table 11 addresses this issue.

Table 11   Offence by type of court or diversion type

	Person		Property		Traffic		Other	
	n	%	n	%	n	%	n	%
Declined (Court)	10	2.4	61	2.8	5	0.8	3	0.7
Denied (Court)	195	47.3	381	17.7	305	51.7	57	12.8
Verbal Warning	27	6.6	238	11.1	94	15.9	155	34.8
Written Warning	40	9.7	632	29.4	89	15.1	166	37.2
Family Conference	99	24.0	580	27.0	88	14.9	60	13.5
VOC	41	10.0	257	12.0	9	1.5	155	1.1
Total	**412**	**100**	**2149**	**100**	**590**	**100**	**446**	**100**

Derived from PROMIS August 2000-2005

Table 11 shows type of diversion by offence category. It can be seen that, of those juveniles who committed an offence against the person, 47.3 per cent (n=195) were denied diversion by police and 2.4 per cent (n=10) declined diversion, and therefore went to court. This situation occurred because the majority of offences in the "Person" category would have been excluded from diversion as they were defined as more serious offences (refer pages 153ff).

Just over one third of juveniles who committed an offence against the person undertook either a Family Conference or a Victim/Offender Conference (24.0 per cent, n=99 and 10.0 per cent, n=41 respectively). The remaining juveniles received either a Written Warning or a Verbal Warning (16.1 per cent, n=67). Therefore, as stated in the police *General Order J1*, offences

against the person received the harshest penalties, as nearly half of the juveniles who committed such offences went through the court process and another third undertook conferences, which were again used for more serious offences.

In relation to offences against property, 17.7 per cent of juveniles (n=381) were denied diversion by police and 2.8 per cent (n=61) declined diversion. A further 39 per cent (n=837) had either a Family Conference or Victim/Offender Conference (27 per cent and 12 per cent). The remaining 39.5 per cent (n=787) received a Verbal Warning or a Written Warning (11.1 per cent and 29.4 per cent respectively). Again the diversion given reflects the seriousness of the offence as a greater number of juveniles who committed property offences received warnings, than juveniles who committed offences against the person.

Over half of those juveniles who committed traffic offences were denied diversion (51.7 per cent, n=305). This is mainly due to the fact that a lot of traffic offences committed by the juveniles were excluded offences, such as unlawful use of a motor vehicle, drink driving, dangerous driving and driving disqualified. Only 16.4 per cent (n=97) of juveniles undertook a Family Conference or Victim/Offender Conference (14.9 per cent and 1.5 per cent respectively) and the remaining 31 per cent (n=183) received a Written Warning or a Verbal Warning (15.9 per cent and 15.1 per cent respectively).

The greatest percentage of offences in the Other Offence category was for public order offences (66.8 per cent, n=298) such as disorderly conduct. Of these offences, 49 per cent (n=146) juveniles received a Verbal Warning and 32.2 per cent (n=96) a Written Warning. Twenty five juveniles (8.4 per cent) were denied diversion, only two juveniles declined diversion. Twenty nine offenders (9.7 per cent) had a Family Conference or Victim/Offender Conference (8.4 per cent and 1.3 per cent respectively). A further 24 per cent (n=115) of juveniles were apprehended for drug offences. Of these 56.1 per cent (n=60) received a Written Warning, and 6.6 per cent (n=7) received a

Verbal Warning. Just over a quarter (26.2 per cent, N-28) had a Family Conference and only one person had a Victim/Offender Conference. In relation to the remaining Other offences, 20 juveniles (4.5 per cent) had been apprehended for firearms offences of which 10 received a Written Warning, seven a Family Conference, two a Verbal Warning and one was denied diversion. Six juveniles who committed justice offences were all denied diversion, and two offenders were apprehended for escaping police custody and were also denied diversion.

In summary, there was a large degree of cross-over between offences, which could have been deemed excluded from diversion—such as offences against the person—and the extent to which juveniles received diversion. For example, around half of juveniles who committed offences against the person received diversion. This may be because the offences committed by juveniles were not considered by police to be serious enough to endanger life. A more in-depth examination of specific offence categories would need to be made in order to determine whether or not this was the case. The finding is however an indication of the extent to which police had discretion to provide diversion for offences against the person, the majority of which would have been in the excluded offence category.

Programs

As discussed in Chapter 3, a number of programs were developed in conjunction with the JDS to support juvenile offenders. However, as not all programs were available to all juveniles in all locations, it was difficult to undertake analysis which would provide results relevant across the Northern Territory. However, in order to provide some indication of the success or otherwise of programs, it was decided to examine Community Youth Development Unit programs as there were available in both remote and regional locations.

Table 12   Remote Programs Community Youth Development Units (CYDU) and diversion type – selected communities

	Groote Eylandt n=85 per cent	Tennant Creek n=175 per cent	Tiwi Islands n=42 per cent	Wadeye n=115 per cent	Average n=104 per cent
Indigenous	85.9	78.3	100.0	99.1	90.8
Male	92.9	85.7	83.3	90.4	88.0
Serious offence	97.6	73.1	90.5	87.8	87.2
Received a diversion	80.0	58.3	88.1	47.8	68.5
Conference	57.6	20.6	47.6	45.2	42.7

Derived from PROMIS August 2000-2005

As shown in the above table, the majority of offenders in these communities were Indigenous males, with the highest percentage of Indigenous juveniles in the Tiwi Islands (100 per cent) and the highest percentage of males from Alyangula (92.9 per cent).

The highest percentage of juveniles who committed a serious offence were from Alyangula (97.6 per cent). However, a very high percentage of between 70-90 per cent of juveniles in the other communities, were also apprehended for having committed a serious offence.

The average percentage of juveniles receiving a diversion in all communities was 68.5 per cent. However, a much higher percentage of juveniles in Groote Eylandt and the Tiwi Islands received a diversion (80 per cent and 88.1 per cent respectively) than those in Tennant Creek and Wadeye (58.3 per cent and 47.8 per cent respectively). The average percentage of juveniles undertaking a conference was 42.7 per cent. The extent to which conferences were undertaken differed greatly for these communities, as only 20.6 per

cent of juveniles in Tennant Creek undertook a conference compared with 57.6 per cent on Groote Eylandt.

Therefore, groups of juveniles differed quite considerably across communities where CDYU programs were implemented in relation to the percentage who committed serious offences, and whether or not they received a diversion or appeared in court as a result of these, what may have been, very similar offences.

Summary

The purpose of the descriptive statistics was to identify characteristics of the juvenile offenders as a means of assessing what offending patterns occurred, who committed what types of offences and where and what the response by police was to this offending behaviour, in relation to the extent that diversions were given.   This analysis of the data provided a basis for determining what restorative justice practices are being used and for whom. The over-representation of Indigenous offenders, particularly males, was demonstrated by these findings. As stated in Chapter 3 this has been an ongoing issue in the Northern Territory and policy solutions to this problem will be discussed in the final chapter.

As shown in the analyses, the majority of Indigenous offenders resided either in other regional centres or on communities. This again has implications for the type of policy needed to address what may be a lack of resources in these locations, including the lack of both an economic and social basis which, as discussed in Chapter 2, impacts on the ability of communities to effectively respond to offending behaviour. In relation to the types of offences committed the analysis shows that the majority of juveniles did <u>not</u> commit excluded and therefore, what are legislatively considered, very serious offences.

Considering that the basis of the legal system is to make the punishment "fit the crime", the findings indicated that diversion represented a much fairer

and more equitable outcome for the majority of juveniles. Given that fact, it would appear that the types of diversions given to these juveniles were a much more appropriate response to the types of offences they committed than a formal court process. Putting these offenders through the court process would have been a waste of valuable resources, because not only were the majority of offences not considered serious enough by the police to warrant a court process, but as will be shown in the next section, most juveniles did not re-offend. These findings have implications for the types and extent of restorative justice practices which should be made available to juvenile offenders and the final chapter will address these.

As the main focus of this thesis is on the extent to which restorative justice practices, in the form of pre-court diversion in the Northern Territory, impacted on the extent of re-offending of juveniles, the remainder of this chapter will address the issue of re-offending from the perspectives established in the framework described in the methodology.

Re-offending patterns

The previous section examined the findings relating to the descriptive characteristics of offenders by their demographic, geographic, offending and diversion variables. It was found that the majority of offenders were Indigenous males, were 15 years of age or older, who were apprehended in Darwin for a property offence and received a diversion in the form of a Verbal Warning or Written Warning. The analysis therefore provided the basic bi-variate statistics in relation to juveniles. The next stage of the analysis examined offenders in relation to the extent of their re-offending.

The analysis first examined the characteristics of juvenile offenders and those who re-offended. In order to take into account the fact that not all juveniles had a similar time to re-offend, only those juveniles 16 years of age or younger at the time of their first apprehension were included in this preliminary analysis, giving the older group of offenders at least one year in which to re-offend. Therefore, juveniles who were between 16 and 17 years of

age at the time of their first apprehension were excluded from the initial analysis. A total of 2 744 offenders were therefore included in the cross-tabulations.

As discussed in Chapter 4 the analysis involved the population of juvenile offenders, not a sample, and as a result the statistical significance of the relationships should be interpreted in the context of the replicability of these findings to samples of juvenile offenders in other jurisdictions.

As shown in Table 13, an important finding was that three quarters (75.8 per cent) of offenders did not re-offend within 12 months of their initial diversion or court appearance (see Table 13).

Table 13 **Juvenile re-offending within one year of completion of initial event by demographic, geographic, offending variables and event type**

	Not re-offend within one year		Re-offend within 1 year		Total	
	n	%	n	%	n	%
Total	**2081**	**75.8**	**663**	**24.2**	**2744**	**100.00**
Gender	χ2=69.3 df=1 p<.00					
Male	1,406	71.6	559	28.4	1,965	100.0
Female	675	86.6	104	13.4	779	100.0
Indigenous status	χ2=91.7 df=1 p<.00					
Indigenous	1,116	69.3	495	30.7	1,611	100.0
Non-Indigenous	965	85.2	168	14.8	1,133	100.0
Age (years)	χ2=2.7 df=6 p=ns					
10	52	76.5	16	23.5	68	100.0
11	102	76.1	32	23.9	134	100.0
12	148	74.0	52	26.0	200	100.0
13	311	77.9	88	22.1	399	100.0
14	423	76.2	132	23.8	555	100.0
15	459	73.9	162	26.1	621	100.0
16	586	76.4	181	23.6	767	100.0

Table 13 continued

	Not re-offend within one year		Re-offend within 1 year		Total	
	n	%	n	%	n	%
Location of the apprehension	$\chi2=10.7\ df=2\ p<.00$					
Community	384	72.2	148	27.8	532	100.0
Darwin	987	78.6	268	21.4	1255	100.0
Region	710	74.2	247	25.8	957	100.0
Offence category	$\chi2=40.5\ df=3\ p<.00$					
Person	223	74.6	76	25.4	299	100.0
Serious Property	891	71.9	349	28.1	1240	100.0
Minor Property	449	86.0	73	14.0	522	100.0
Other	518	75.8	165	24.2	683	100.0
Seriousness of the offence	$\chi2=41.2\ df=2\ p<.00$					
Excluded	151	67.1	74	32.9	225	100.0
Serious	1481	74.2	516	25.8	1997	100.0
Minor	449	86.0	73	14.0	522	100.0
Event type	$\chi2=94.9\ df=4\ p<.00$					
Court	365	61.3	230	38.7	595	100.0
Verbal	330	76.6	101	23.4	431	100.0
Written	664	82.9	137	17.1	801	100.0
Family	519	78.0	146	22.0	665	100.0
VOC	203	80.6	49	19.4	252	100.0

Derived from PROMIS August 2000-2005

In relation to gender, 71.6 per cent of males and 86.6 per cent of females did not re-offend within one year of their initial event ($\chi2=69.3$, df=1, p<.00). The findings for Indigenous status showed that non-Indigenous offenders were significantly less likely to have re-offended within the first year than were Indigenous offenders (85.2 per cent and 69.3 per cent respectively, $\chi2=91.7$, df=2, p<.00). Therefore, of those who did re-offend, over twice the percentage of males re-offended compared with females (28.4 per cent and

13.4 per cent, $\chi2$=69, df=1, p<.01) and twice the percentage of Indigenous juveniles compared with non-Indigenous juveniles (30.7 per cent and 14.8 per cent, $\chi2$=91, df=1, p<.01).

Age was not significantly related to re-offending. The percentage not re-offending was similar for all ages at between 73.9 per cent and 77.9 per cent of offenders.   Age is further examined later in this chapter with Cox Regression and Survival Analysis in order that all cases, including censored observations, could be included in the analysis therefore providing more detailed findings about the impact of variables, including age, on the risk of juveniles re-offending.

Differences in re-offending between locations were not large but were significant ($\chi2$=10.7, df=2, p<.00), with juveniles from Darwin re-offending less than those from regional centres or communities (21.4 per cent, 25.8 per cent and 27.8 per cent respectively). Juveniles who committed serious property offences re-offended slightly more (28.1 per cent) than those who had committed offences against the person (25.4 per cent) and other offences (24.2 per cent). However, those juveniles who committed minor offences re-offended significantly less than other groups (14.0 per cent; $\chi2$=38, df=3, p<.00).

There were also significant differences in relation to the seriousness of the offence ($\chi2$=41.2, df=2, p<.00) with one third (32.9 per cent) of those juveniles who had committed an offence in the excluded category re-offending, compared with one quarter of those (25.8 per cent) of those in the serious offence category, and only 14 per cent of those in the minor offence category.

Importantly, significant differences were found between re-offending and receiving a diversion or court attendance ($\chi2$=39.3, df=2, p<.00). Over one-third of juveniles (38.7 per cent) who appeared in court re-offended within the first 12 months, compared to just under one quarter of juveniles who had

Comment [j1]: 39% in table

Comment [j2]: 21% in table

received a Verbal Warning or had undertaken a Family Conference (23.4 per cent and 22.0 per cent), and less than 20 per cent of those who received a Written Warning or had attended a Victim/Offender Conference (17.1 per cent and 19.4 per cent).

The following cross-tabulations examine the relationship between re-offending, gender and Indigenous status, by location of the apprehension, offence and seriousness of the offence and event. Age was not included in the following analysis as it was not found to be significant in the earlier findings.

Table 14   **Re-offending within one year of the initial event by Indigenous status and gender by location of the apprehension**

	Not re-offend within one year		Re-offend within one year		Total	
	n	%	n	%	n	%
Indigenous Male	$\chi2=3.2\ df=2\ p=ns$					
Community	297	67.5	143	32.5	440	100.0
Darwin	165	60.9	106	39.1	271	100.0
Region	322	64.9	174	35.1	496	100.0
Indigenous Female	$\chi2=10.6\ df=2\ p<.00$					
Community	73	94.8	4	5.2	77	100.0
Darwin	142	80.2	35	19.8	177	100.0
Region	117	78.0	33	22.0	150	100.0
Non-Indigenous Male	$\chi2=7.0\ df=2\ p<.05$					
Community	13	92.9	1	7.1	14	100.0
Darwin	404	79.5	104	20.5	508	100.0
Region	205	86.9	31	13.1	236	100.0
Non-Indigenous Female	$\chi2=1.5\ df=2\ p=ns$					
Community	1	100.0	0	0.0	1	100.0
Darwin	276	92.3	23	7.7	299	100.0
Region	66	88	9	12.0	75	100.0

Derived from PROMIS August 2000-2005

As shown in Table 14, location of the apprehension and whether or not a juvenile re-offended was found to be significant for both Indigenous males and females and non-Indigenous males. Results for non-Indigenous females were not significant. Indigenous males who had been apprehended in a community re-offended slightly less than those apprehended in a regional centre or in Darwin (32.5 per cent, 35.1 per cent and 39.1 per cent) (χ_2=10.6, df=2, p<.00). Indigenous females apprehended in Darwin re-offended slightly less than those from a regional centre (19.8 per cent and 22.0 per cent). Those juveniles apprehended in a community re-offended least (5.2 per cent) however the numbers of females in this category were very small (n=4) so these results should be interpreted with some caution. Of the non-Indigenous males, those who had been apprehended in Darwin re-offended most (20.5 per cent), with only 13.1 per cent of those in regional centres re-offending. There was only a total of 14 non-Indigenous juveniles apprehended in a community, 94.8 per cent of whom did not re-offend, and only one non-Indigenous juvenile who had re-offended, therefore, again because of the small numbers, these results should be interpreted with caution. The majority of non-Indigenous females were apprehended in Darwin and the great percentage (92.3 per cent) of those did not re-offend. Numbers of non-Indigenous females in regional centres and communities were small but indicated that over 88 per cent did not re-offend.

**Table 15   Re-offending within one year of the initial event by
             Indigenous status and offence category**

	Not re-offend within one year		Re-offend within one year		Total	
	n	**%**	**n**	**%**	**n**	**%**
Indigenous Male	χ2=3.1 df=3 p=ns					
Person	88	68.2	41	31.8	129	100.0
Serious Property	481	64.5	265	35.5	746	100.0
Minor Property	55	72.4	21	27.6	76	100.0
Other	160	62.5	96	37.5	256	100.0
Indigenous Female	χ2=1.2 df=3 p=ns					
Person	60	81.1	14	18.9	74	100.0
Serious Property	106	79.7	27	20.3	133	100.0
Minor Property	99	84.6	18	15.4	117	100.0
Other	67	83.8	13	16.3	80	100.0
Non-Indigenous Male	χ2=1.3 df=3 p=ns					
Person	55	77.5	16	22.5	71	100.0
Serious Property	228	81.7	51	18.3	279	100.0
Minor Property	113	83.7	22	16.3	135	100.0
Other	226	82.8	47	17.2	273	100.0
Non-Indigenous Female	χ2=6.9 df=3 p=ns (marginally at .07)					
Person	20	80.0	5	20.0	25	100.0
Serious Property	76	92.7	6	7.3	82	100.0
Minor Property	182	93.8	12	6.2	194	100.0
Other	65	87.8	9	12.2	74	100.0

Derived from PROMIS August 2000-2005

Table 15 and Table 16 examine the category and seriousness of the initial
offence by gender and Indigenous status. In some cases both offence
category and seriousness of the offence were highly correlated as all violent
offences were excluded from diversion. Certain property offences could have
either been excluded or serious, and therefore the offender could have been
given diversion or made a court appearance. These relationships will be
examined later in this chapter using correlation analysis.

Neither the offence category nor the seriousness of the offence were significantly related to re-offending when cross-tabulations were made with gender and Indigenous status. Only non-Indigenous females were marginally significant in both cases (p=.07 and p=.08). However caution must be taken in interpreting this finding as the number of cases were small in relation to offences against the person and excluded offences. It is of some interest however, that these findings were significant in the earlier analysis, suggesting some confounding factor may be causing the findings to become insignificant for all groups. This issue will also be addressed later in this chapter using partial correlation analysis.

Table 16   Reoffending within one year of the initial event Indigenous status and seriousness of the offence

	Not re-offend within one year		Re-offend within one year		Total	
	n	**%**	**n**	**%**	**n**	**%**
Indigenous Male	$\chi2=2.0$ df=2 p=ns					
Excluded	82	63.1	48	36.9	130	100.0
Serious	55	72.4	21	27.6	76	100.0
Minor	647	64.6	354	35.4	1,001	100.0
Indigenous Female	$\chi2=3.4$ df=2 p=ns					
Excluded	18	69.2	8	30.8	26	100.0
Serious	99	84.6	18	15.4	117	100.0
Minor	215	82.4	46	17.6	261	100.0
Non-Indigenous Male	$\chi2=3.6$ df=2 p=ns					
Excluded	40	72.7	15	27.3	55	100.0
Serious	113	83.7	22	16.3	135	100.0
Minor	469	82.6	99	17.4	568	100.0
Non-Indigenous Female	$\chi2=4.9$ df=2 p=ns (marginally at .08)					
Excluded	11	78.6	3	21.4	14	100.0
Serious	182	93.8	12	6.2	194	100.0
Minor	150	89.8	17	10.2	167	100.0

Derived from PROMIS August 2000-2005

The final cross-tabulation in this section examines the relationship between Indigenous status, gender and event type.

Table 17   **Re-offending within one year of initial event by Indigenous status and gender by event type**

	Not re-offend within one year		Re-offend within one year		Total	
	n	**%**	**n**	**%**	**n**	**%**
Indigenous Male	$\chi2=21.2\ df=4\ p<.00$					
Court	315	60.7	204	39.3	519	100.0
Verbal	114	64.0	64	36.0	178	100.0
Written	190	72.0	74	28.0	264	100.0
Family	290	72.7	109	27.3	399	100.0
Victim Offender	92	73.6	33	26.4	125	100.0
Indigenous Female	$\chi2=10.4\ df=4\ p<.05$					
Court	74	73.3	27	26.7	101	100.0
Verbal	67	87.0	10	13.0	77	100.0
Written	126	85.1	22	14.9	148	100.0
Family	101	87.8	14	12.2	115	100.0
Victim Offender	31	86.1	5	13.9	36	100.0
Non-Indigenous Male	$\chi2=11.8\ df=4\ p<.01$					
Court	215	78.5	59	21.5	274	100.0
Verbal	133	78.7	36	21.3	169	100.0
Written	248	87.3	36	12.7	284	100.0
Family	168	86.6	26	13.4	194	100.0
Victim Offender	83	83.8	16	16.2	99	100.0
Non-Indigenous Female	$\chi2=5.0\ df=4\ p=ns$					
Court	58	85.3	10	14.7	68	100.0
Verbal	75	93.8	5	6.3	80	100.0
Written	195	93.3	14	6.7	209	100.0
Family	60	90.9	6	9.1	66	100.0
Victim Offender	28	93.3	2	6.7	30	100.0

Derived from PROMIS August 2000-2005

The findings showed significant relationships for Indigenous males and females and non-Indigenous males ($\chi2=21.2$, df=4, p<.00, $\chi22=10.4$, df=4, p<.05 and $\chi2=11.8$, df=4, p<.01) between re-offending and whether they made a court appearance, received a warning or attended a conference as

their initial event. Findings for non-Indigenous females were not significant. Indigenous males who attended court re-offended most of all groups at 39.3 per cent, compared to around one quarter of Indigenous females (26.7 per cent) and fewer non-Indigenous offenders (21.5 per cent males, 14.7 per cent females). For Indigenous males nearly as many who received a Verbal Warning re-offended (36.0 per cent) as went to court. However, only just over one quarter of males in this group re-offended after receiving a Written Warning or attending a Family Conference or Victim/Offender Conference (28.0 per cent, 27.3 per cent and 26.4 per cent).

Over one quarter (26.7 per cent) of Indigenous females who went to court re-offended compared to only 13 to 15 per cent of those who received a verbal or Written Warning (13.0 per cent, 14.9 per cent) or who attended a family or victim/offender conference (12.2 per cent, 13.9 per cent).

A similar percentage of non-Indigenous males who went to court re-offended to those who received a Verbal Warning (21.5 per cent, 21.3 per cent). Only between 13 to 16 per cent of non-Indigenous males who had received a Written Warning or attended a conference re-offended (12.7 per cent Written Warning, 13.4 per cent Family Conference, 16.2 per cent Victim/Offender Conference).

Indigenous females were similar to non-Indigenous males in relation to the percentage who re-offended after a court appearance (26.7 per cent) and after a Written Warning or conference (14.9 per cent, 12.2 per cent Family Conference, 13.9 per cent Victim/Offender Conference). However, they offended less than non-Indigenous males after receiving a Verbal Warning (13.0 per cent).

Again the findings were not significant for non-Indigenous females who re-offended, although those who attended court still re-offended the most at 14.7 per cent compared to between 6 and 9 per cent for those who received

warnings or who attended a conference. The implications of these findings for policy development will be discussed in the next chapter.

Discussion

The analysis of re-offending of juveniles within 12 months of their initial event showed that the majority of juveniles did not re-offend and that, of those who did, the majority were Indigenous males. These findings are consistent with previous research conducted in Australia (Cunneen, 2001; Hayes and Daly, 2004; Wilczynski et al., 2004; Cunneen and White, 2007). However, in contradiction to previous research, age was not found to be significantly associated with re-offending. Given the expectation that age would be an important factor in determining future re-offending, this finding was further addressed in the Correlation, Cox Regression and Survival analysis.

Juveniles who re-offended tended to be located in regions other than Darwin, possibly because of the higher percentage of Indigenous males residing in regional and remote areas. As discussed in Chapter 2 there is a strong link between Indigenous status, location and re-offending as a result of policing practices in remote communities and the Indigenous use of public places in predominantly white regional centres (Cowlishaw, 1988; Carrington, 1990; Cunneen, 2001; Broadhurst, 2002; Carrington and Hogg, 2003, 2006).

Seriousness of the offence was found to be not statistically significant for any group of offenders but this finding was thought to be as a result of some confounding factors again addressed in the following correlation analysis.

In terms of diversion and court appearance similar proportions of Indigenous and non-Indigenous males re-offended after a Verbal Warning and after a court appearance. These two groups of offenders, seemingly at opposite ends of the offending spectrum, therefore have similarities in their response to the justice intervention. It may be that in neither case is the

intervention taken as something to be taken seriously but that rather the offender sees it as a means to either ignore the system or treat it as something to boast about to their peers (for an example see the results of the qualitative analysis).

The following section will discuss the correlation analysis which was conducted in order to further examine these findings.

Correlation Analysis

The next stage of the analysis examined in greater depth the relationships between variables. With the exception of the interval variable of age, dummy variables were created for all other variables for inclusion in correlation and regression analyses. Correlation analysis was then run to examine the strength and direction of relationships between the independent and dependent variable. As discussed earlier, the significance of the relationships should be treated as an indication of the confidence of the replicability of these findings for samples of juvenile offenders in other jurisdictions, as the analysis in this thesis was for a population of offenders. It was also used to determine whether there was any multicollinearity, or high correlation, between the independent variables which, as discussed in the Chapter 4, can be problematic when using such variables in a regression equation. Partial correlation was conducted to examine whether there were any spurious or suppressed relationships between the independent and dependent variables. Finally for this section of the analysis, a Cox Regression was performed using the variables deemed suitable from the correlation analyses.

Using the Pearson correlation coefficient of .75 as the limit, the correlation matrix for the independent variables showed multicollinearity between the independent variables "minor property" offence and seriousness of offence category "minor" (Pearson correlation coefficient=1.0). The "minor" seriousness of offence category was therefore omitted from the regression analysis and the minor property offence was included as it was thought

comparing offences themselves would provide a more comprehensive explanation of re-offending than comparing seriousness of the offence.

The correlations between the independent and dependent variables, Table 18, showed that there were significant zero-order correlations between re-offending and gender (p<.00), age (p<.00), Indigenous status (p<.00), Darwin(p<.00), region (p<.05), community (p<.00), serious property offence (p<.00), minor property offence (p<.00), other offence (p<.00), serious offence category (p<.00), court (p<.00) and warning (p<.00). Offences against the person, excluded offences and conference event were not found to be significant at the zero-order level.

Table 18   **Zero- order correlations and partial correlations: dependent variable re-offending (N=2 744)**

	Zero Order	Partial Gender	Partial Age	Partial Indigenous status
Gender: Male=1	.18 p<.00			
Age	-.14 p<.00			
Indigenous status Indigenous=1	.20 p<.00			
Darwin	-.07 p<.00	-.04 p<.01	-.08 p<.00	.01 ns
Region	.03 p<.05	.02 ns	.03 p<.05	.01 ns
Community	.04 p<.00	.02 ns	.05 p<.00	*-.03* p<.05
Person	-.00 ns	-.00 ns	-.00 ns	-.01 ns
Serious Property	.13 p<.00	.09 p<.00	.12 p<.00	.09 p<.00
Minor Property	-.08 p<.00	-.02 ns	-.11 p<.00	-.05 p<.00
Other	-.06 p<.00	-.08 p<.00	-.04 p<.01	-.04 p<.01

Table 18 continued

Excluded	-.02	-.03	.00	-.02
	ns	p<.05	ns	ns
Serious	.08	.04	.09	.06
	p<.00	p<.00	p<.00	p<.00
Court	.07	.04	.12	.05
	p<.00	p<.00	p<.00	p<.00
Conference	-.00	-.01	-.01	-.02
	ns	ns	ns	ns
Warning	-.05	-.02	-.09	-.02
	p<.00	ns	p<.00	ns

Derived from PROMIS August 2000-2005

The zero-order correlations between the variables "male", "Indigenous" "region", "community", "serious property" offence, "serious" offence category and "court" were *positively* related to re-offending. These positive significant relationships indicated that males were significantly more likely to have re-offended than females, and Indigenous juveniles more than non-Indigenous juveniles. The relationship between age and re-offending was significant but *negative*, indicating that the younger the offender, the greater the extent to which they re-offended.

In relation to location, offenders who were apprehended either in a region or community re-offended to greater degree than those apprehended in Darwin where there was a significant, but *negative,* relationship with re-offending. Offenders who had committed a serious property offence re-offended more than those who had committed a minor property offence, or other offence, where again the relationships were significant but negative. Importantly for the purposes of this research, there was a significant and positive relationship between court appearance and re-offending, indicating that those juveniles who attended court re-offended more than those who were diverted. Although the conference event was not significantly related to re-offending, the relationship was negative. The lack of significance between re-offending and attending a conference is further addressed in the next

section of the analysis. The relationship with Warning was significant but also negative, indicating that those offenders who received a diversion re-offended less than those who attended court.

In summary, the zero-order correlations showed a number of significant relationships between the independent and dependent variables. However, as discussed in the Methodology chapter, relationships between variables can be misinterpreted if they contain spurious or suppressed relationships. The former indicates causality where there is none, while suppressor variables falsely indicate no causality (Sapp, 2006).

Findings from the partial correlations showed some evidence of spurious significant relationships and some evidence of suppressed relationships between some of the variables. As shown in Table 6, when gender was held constant, the original significant zero-order relationship between being apprehended in Darwin and re-offending became insignificant, and was therefore spurious, when Indigenous status was controlled. This important finding indicated that being Indigenous, not where the offender lived, was the principal determinant of re-offending. The same situation occurred for apprehension in a region and in a community, where the zero-order significant correlations became insignificant when gender was controlled. This spurious relationship showing that gender, not location, was the determinant of re-offending for juveniles in those locations.

The results also showed that the relationship between being apprehended for a minor property offence became insignificant when controlling for gender, indicating a stronger link between gender and re-offending than between re-offending and being apprehended for a minor offence. The opposite effect occurred when gender was controlled for excluded offences, that is, the original zero-order correlation was insignificant but became significant when controlling for gender (p<.05) indicating that gender was suppressing the zero-order relationship.

There was also a spurious zero-order correlation between warning and re-offending as the significant zero-order relationship became insignificant when controlling for gender or for Indigenous status. In relation to court appearance the correlations remained significant when controlling for gender, age and Indigenous status. The correlations remained not significant for conference. When the age of the offender at the time of the apprehension was controlled the original significant zero-order correlation for each of the variables remained.

Figure 34 provides a diagrammatic representation of the spurious relationship between being apprehended in the Darwin region, and the amount of offending and Indigenous status.

Figure 34   Diagram showing the spurious relationship between court appearance, receiving a warning and the extent of offending when controlling for Indigenous status

The plus sign indicates a positive, significant relationship
The minus sign indicates a negative, significant relationship
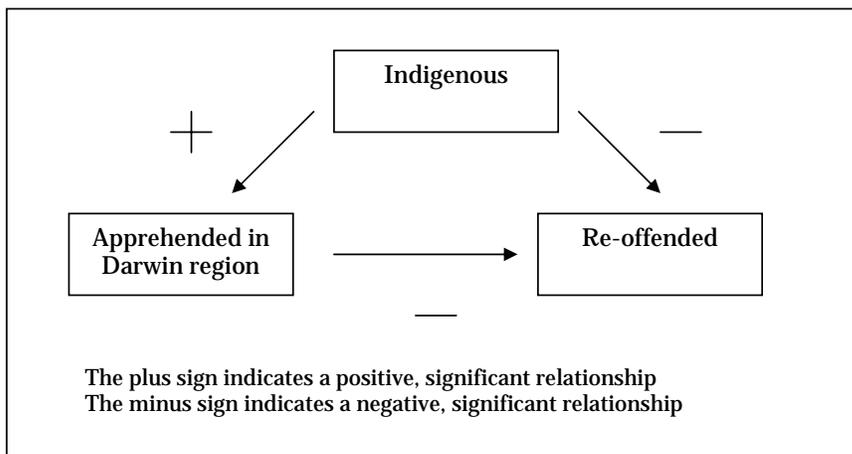
Adapted from Sapp (2006: 1)

Figure 35 shows the effects of a suppressor variable, in this case gender, on the initial zero-order significant correlation between excluded offence and re-offending.,

Figure 35   **Diagram showing the suppressed relationship between the excluded offence category and re-offending when controlling for male gender**

The plus sign indicates a positive, significant relationship
The minus sign indicates a negative, significant relationship
The zero sign indicates the suppressed relationship
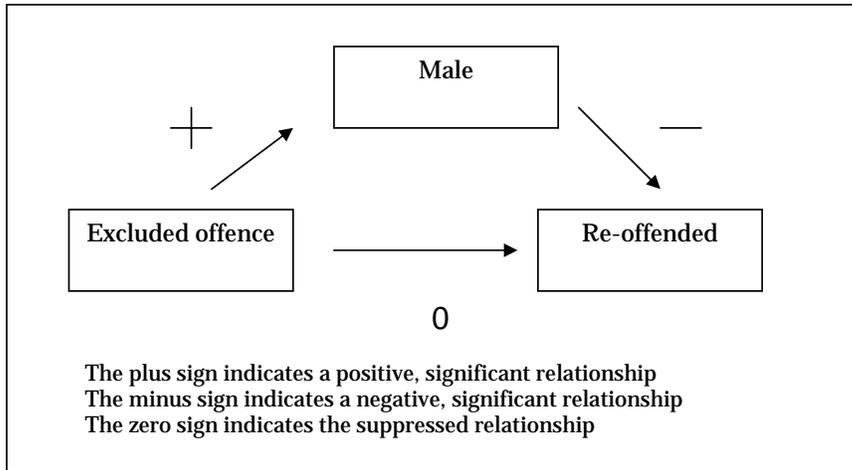
Adapted from Sapp (2006: 1)

As will be discussed in the next section, the Cox Regression analysis showed that court was indeed a "pure" suppressor variable in that, although it was not significantly related to the dependent variable in the zero correlation, it significantly increased the total R value, and therefore increased the predictive ability of the regression model, (Woolley, 1997). This is an example of the importance of examining partial correlations between variables in order to produce the most accurate research outcome.

Cox Regression

In this analysis the independent variables included gender, age, Indigenous status, location of the apprehension, offence and event type. The dependent variable was number of days between the first and second apprehension, if a second apprehension occurred. Each of the variables entered into the Cox Regression were categorical and the analysis automatically excluded one category from the equation, as the reference category, to prevent perfect multicollinearity (Garson, 2007: 2). Table 19 shows the results of the Cox Regression analysis.

Table 19   **Cox Regression with dependent variable number of days to re-offending**

Variable	Regression coefficient (B)	Risk Ratio Exp(B)	Probability
Age			
10 to 13 years	.71	2.0	.00
14 to 15 years	.68	1.9	.00
Event			
Court	.78	2.2	.00
Conference	.09	1.1	ns
Gender			
Female	-.74	.47	.00
Location			
Darwin	.16	1.1	ns
Community	.01	1.0	ns
Offence			
Person	-.02	.78	.05
Minor Property	-.03	.96	ns
Indigenous	.61	1.8	.00

Derived from PROMIS August 2000-2005

The age of the offender, 15 years of age or under (p<.00), event of court attendance (p<.00), gender female (p<.00), offences against the person (p<.05) and Indigenous status (p<.00) each had a significant impact on time to re-offending.   Both "female" and offences against the person had a negative impact, signifying that females and those who committed offences against the person were less at risk of re-offending than were other groups of offenders. That is, the more "female" the lower the risk of re-offending and the more violent the offence the less risk of re-offending. The dummy variables which were not significant were the event conference, each of the location categories and minor property offences.

The risk ratios showed that, in relation to age, using the 16-17 year olds as a reference group, those in the two younger age groups were twice at risk of re-offending as the older juveniles.   Furthermore, those who attended court were over twice at risk as those in the reference group who received a warning (Risk Ratio=2.2). Females were half as likely to re-offend as males

(Risk ratio=-.47). Those who committed an offence against the Person were somewhat less at risk (Risk ratio=.78) of re-offending than those offenders in the reference group who committed a serious property offence.

Discussion

Zero-order and partial correlation and Cox Regression analyses were undertaken as a means to examine relationships between the independent and dependent variables, the impact which variables had on re-offending and the extent to which the independent variables predicted re-offending.

The findings showed that the combination of variables relating to, age at first apprehension, Indigenous status, gender, making a court appearance, offences against the person, property and traffic offences and committing an excluded offence accounted for only small amount of variance in relation to re-offending. The model, however, was nonetheless statistically significant.

The demographic variables had the greatest impact on re-offending, particularly age at time of first apprehension, with both gender and Indigenous status having a similar contribution. This finding supports previous research as discussed in Chapter 2 which indicated that age is one of the biggest predictors of future offending, in that the younger the age at first apprehension the greater the propensity to re-offend.

It is also of interest to examine the variables which were not included in the equation because they were not statistically significant. The results showed that the location of the offence did not predict the amount of offending although they were significantly correlated.   Being apprehended for a minor offence was also not a significant predictor of offending.   This was mainly due to the spurious relationship of these variables with the amount of offending.

It has been confirmed by the analysis that offending and re-offending was very much a male dominated behaviour for the juveniles represented in the

data. Offending behaviour was also very much related to the Indigenous status of the juvenile, where Indigenous juveniles were apprehended to a much greater extent than were non-Indigenous juveniles. The analyses clearly showed that in the Northern Territory the greatest proportion of offenders and re-offenders were Indigenous males and indicated the extent to which Indigenous males were over-represented in the criminal justice system.

These results supported earlier research conducted both within Australia and internationally which found that juvenile offenders tend to be male and, where there are Indigenous populations present in the community, tend to be Indigenous. The current findings also support previous research which showed that Indigenous juveniles, whether in Australia, New Zealand or Canada, are over-represented in the criminal justice system.

Through the introduction of restorative justice practices in the Northern Territory juvenile offenders were provided with an alternative to formal court processes. These offenders were provided with what they may have perceived as a more understandable process and realistic response to their behaviour. The court process and criminal justice system generally is not well understood by many Indigenous people, particularly those in remote communities who speak very little, if any, English.

Another important finding from this analysis is that the greater percentage of juveniles offended only once. If they re-offended, they tended to only do so once and then they desisted. The concept of desistance theory was discussed in Chapter 2 and the notion of providing a forum which maximises the opportunity for juveniles to manage shame in a positive way, can provide an avenue for desistance from offending (Robinson and Shapland, 2008). This type of outcome may be reflected by these findings.

Additionally, the majority of juveniles were apprehended for only minor offences. These findings are again important in determining how juvenile

offenders should be treated by the criminal justice system.   First, if the majority of them are not going to re-offend anyway, the question has to be: why put them through the often lengthy and stigmatising process of a court appearance, where the result could cause more harm than good because of the stigmatising nature of the system? This marginalisation results in greater feelings of alienation for the offender, producing reduced feelings of remorse for the offence and consequently a reduced feeling of responsibility for addressing their offending behaviour. Therefore those juveniles at a greater risk of re-offending should be protected from the consequences of those actions by being given more opportunity to remain within their community rather than being ostracised from it. The issue of risk and who is at risk of offending is addressed to a greater extent in the section on Survival analysis.

The findings would also suggest that making a court appearance in itself does not deter re-offending, as juveniles who went to court re-offended to a greater extent than those who were diverted from the court process. Additionally, re-offending was particularly prevalent for that small group of offenders who refused to undertake diversion and therefore went to court. Again this would suggest that more options for pre-court diversion should be developed which focus on the particular needs of these groups of juveniles.

The broader policy implications of these findings are discussed in the final chapter, however, before attempting to develop these recommendations it was considered of important to undertake an analysis of the extent to which these juveniles were at risk of re-offending.

Survival Analysis
The aim of this section was to examine the differences in risk of re-offending for two groups of offenders—those who made a court appearance and those who received a diversion.

The study examined a five year period during which time juveniles would have entered and left the study at different times, and would have had different lengths of time in which to re-offend. For example, those juveniles who entered the study when they were 12 years old in 2000 would have had 5 years in which to re-offend before reaching their 18th birthday, or the end date of the study in August 2005. On the other hand, juveniles who were 15 years of age in 2004 would have had only one year in which to re-offend before the end of the study.

Using nonparametric statistical methods other than Survival Analysis would have meant that a number of juveniles would have been excluded from the analysis either because they had not re-offended before the end of the study period, or they had reached their 18th birthday before the end of the study period and also had not re-offended. Such cases are termed "censored" as they do not have complete information about the dependent variable. An example of censoring is illustrated in Figure 36. The appropriate statistical analysis to use when there are censored data is Survival Analysis (Broadhurst and Loh, 1995). Survival analysis allows the researcher to compare groups of offenders and their probability of surviving during a follow-up period, or conversely what the probability is that they will "fail", or for the purposes of this study, re-offend, during the follow-up period.

Figure 36   Example of Type III censored data
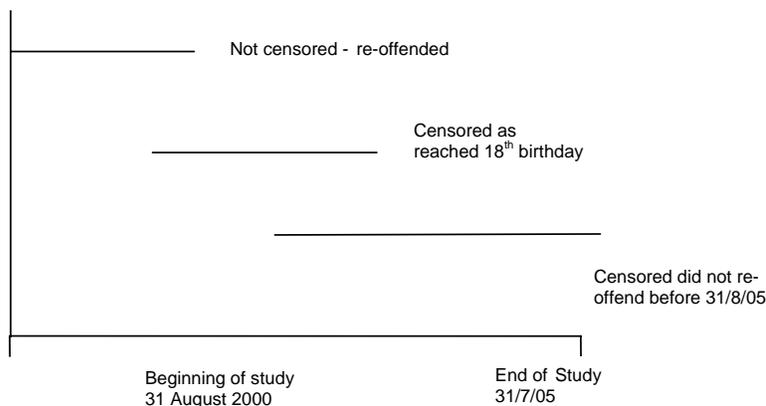
Source: Lee and Wang (2003)

This type of analysis has been used in past research to examine survival rates for various groups of offenders. For example, Broadhurst and Loh (1995) used it to examine recidivism rates in Western Australia over a 10 year period for adult offenders who had received a prison sentence. Hayes (2005) used Survival Analysis to examine differences between offenders who went to court and those who underwent a conference in the Bethlehem, Pennsylvania Restorative Policing Experiment. Hayes found that there were significant differences in survival rates of those who went to court and who had a conference and certain types of offences. He also compared effects of gender, Indigenous and age on re-offending for those who went to court and those who attended a conference. The only significant finding from this analysis was that females attending conference had a higher survival rate than males. He also found that violent offenders in conference had higher estimated rate of survival than those who went to court.

Survival analysis therefore provided information regarding *how long* it took groups of juveniles to re-offend after a diversion or court appearance. For example, it gave an indication of the time taken for Indigenous males to re-offend compared with other groups of offenders. In addition to providing statistics relating to how quickly groups of juveniles re-offended, the analysis also showed those juveniles most at risk of re-offending. This information was provided by the hazard ratio which indicated whether, for example, those who committed property offences were at greater risk of re-offending than those juveniles who committed a traffic offence. Therefore Survival Analysis measured two aspects of re-offending behaviour, namely the length of time to re-offend and the risk of re-offending.

Findings

Survival analysis was undertaken in order to examine the differences between groups in relation to the demographic, geographic and offence and event variables. The results of the analysis provided an estimation of the survival rate of all juveniles by the days from which they first offended to their second apprehension for those who offended, or, for the censored

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observations, from the time of their first apprehension to the 31 August 2005 or their 18th birthday, whichever came first.

The analysis used the Kaplan-Meier Product Limit Estimator for group comparisons and the log rank Cox-Mantel Probability Level as the test of significance between group comparisons. The following figures show the extent to which groups of offenders were at risk of re-offending over the study period and the length of time they took to re-offend after their initial diversion or court appearance. The survival analyses were run for each demographic variable, for location and for the seriousness of the offence by whether or not the offender received a diversion or appeared in court for their first apprehension. Where it was thought that further analysis would provide better insight into the survival rate of offenders certain variables were combined, for example gender and Indigenous status. The Survival Analysis will first examine the impact of diversion or court appearance on the extent of re-offending.

Figure 37 shows the survival function, that is, the proportion of juveniles who would *not* have re-offended in the study period, by days to second apprehension and whether juveniles had a diversion or attended court for their first apprehension. The survival curves show a difference between those groups who attended court and those who received a diversion. Whereas only 45 per cent of juveniles who had attended court would not have re-offended by the end of the study period (5 years or 1 825 days), 50-56 per cent of those who had received a diversion would not have re-offended. The highest proportion of juveniles who would not have re-offended were those who received a Written Warning or who had attended a Victim/Offender Conference (56 per cent). The survival functions for the groups were significant (χ_2=97.562, df=5, p<.000).

Figure 37   Survival function based on time to second apprehension for juveniles who had received a diversion or made a court appearance
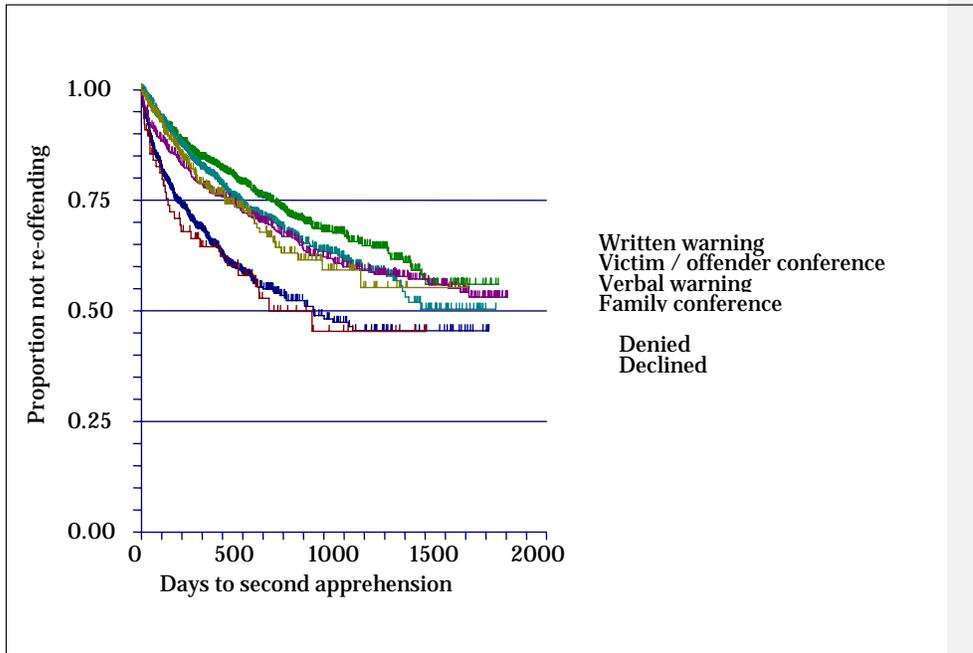
Derived from PROMIS August 2000-2005

The slope of the survival curve also indicates how quickly the juveniles re-offended after their initial apprehension. This shows that those juveniles who went to court re-offended more quickly than other groups. It is usual to provide the median time to second offence when making these comparisons, however this would require that more than 50 per cent of all groups had re-offended, which was not the case for those juveniles who had received a diversion. Therefore, to provide a comparison between groups in the length of time in which it would have taken them to re-offend, the first time at which 50 per cent of a group of juveniles had re-offended was used.

As shown in Figure 38, 50 per cent of juveniles who had been denied or had declined diversion, and therefore went to court, re-offended by 600 days (1.6 years), compared with 70 per cent of juveniles who had either a Verbal Warning, Family Conference or Victim/Offender Conference and 76 per cent

who received a Written Warning. These findings show that the largest difference in the extent of re-offending was between those who went to court and those who received a Written Warning.

The hazard ratio between groups indicated that those juveniles who attended court had a probability of re-offending at 51 per cent (100 per cent-49 per cent) higher than those who received a Written Warning (CMHR=.49, p<.000), 40 per cent higher than those who attended a Victim/Offender Conference (CMHR=.60, p<.000), 34 per cent higher than those who had a Verbal Warning (CMHR=.60, p<.000)and 43 per cent higher than those who attended a Family Conference (CMHR=.57, p<.000).

Figure 38   Survival function based on time to second apprehension for juveniles who had received a diversion or made a court appearance by gender
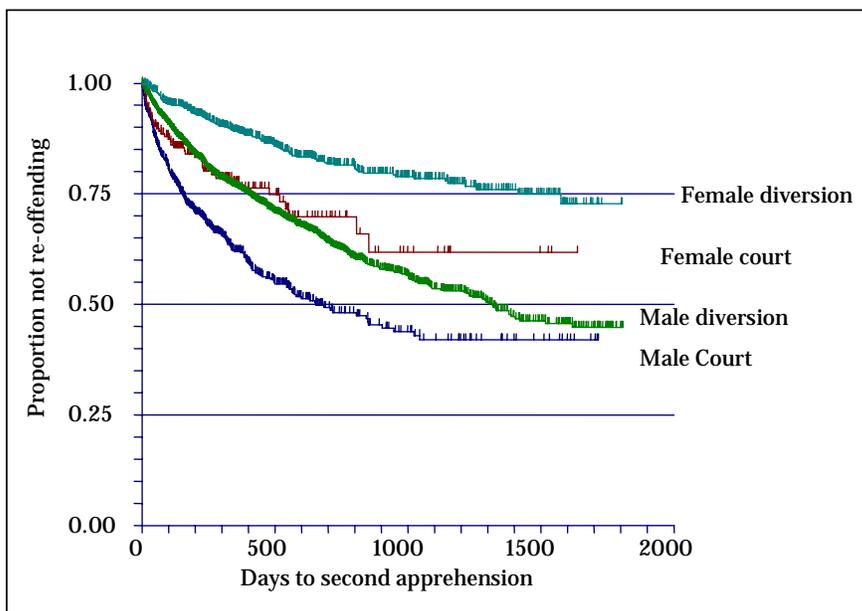


Figure 39 shows that fewer juveniles who received a diversion, both male and female, would not have re-offended by the end of the study period $\chi2$=185.016, df=3, p<.000). This was clearly more the case for females rather than males, where by the end of the study period just under 75 per cent of females who had received a diversion would not have re-offended,

compared to only 65 per cent of females who went to court (CMHR= .55, p<.000). In relation to males the final outcome was much closer, as around 45 per cent of those who had a diversion would not have re-offended compared to 42 per cent of those who went to court.

Figure 39   Survival function based on time to second apprehension for juveniles who had received a diversion or made a court appearance by Indigenous status
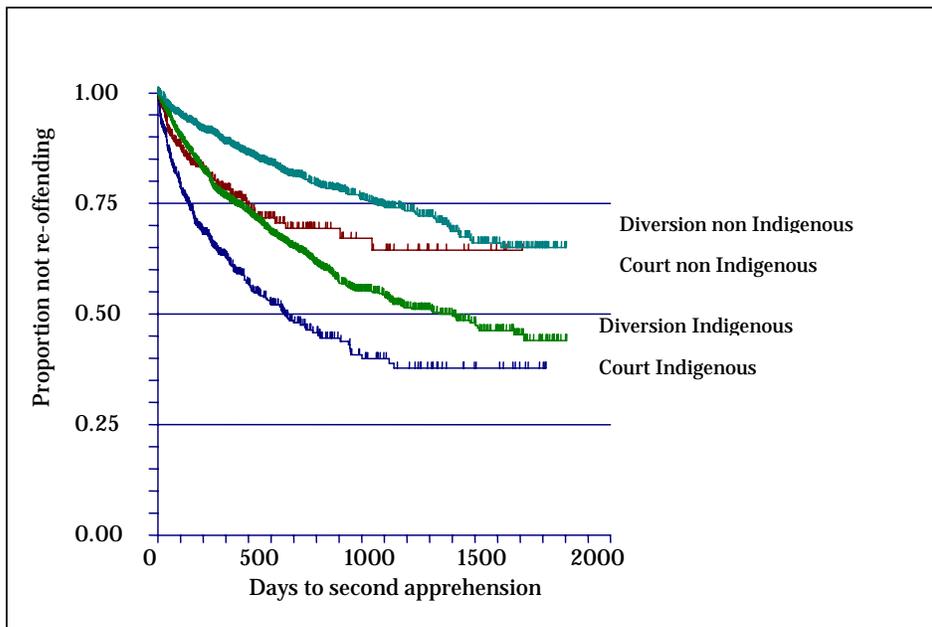
Derived from PROMIS August 2000-2005

However, as the survival curves show, the "court" group would have re-offended much more quickly than those who had received a diversion and therefore the difference between the two groups of male offenders was significant (CMHR=.42, p<.000).   For example, only 50 per cent of the males with an initial court appearance would not have re-offended, and therefore 50 per cent would have re-offended, within 1.9 years (700 days) after their first diversion or court appearance. This was compared with 70 per cent of males who had received a diversion who would not have re-offended in the same time. The time to second apprehension was longer for

females, and particularly for those who had received a diversion, where 83 per cent of female offenders would not have re-offended within 1.9 years whereas, for those who had made a court appearance the figure was 70 per cent (CMHR=.55, p<.000).

As shown in Figure 39, at the end of the study period the proportion of juveniles not re-offending was higher for Indigenous juveniles who had received a diversion rather than having made a court appearance, but similar for both groups of non-Indigenous juveniles. The survival functions for the groups was significant (Logrank test: $\chi2$=207.176, df=3, p<.000).

The largest difference in the proportion re-offending was between Indigenous juveniles who had made a court appearance and non-Indigenous juveniles who had received a diversion. For these groups, the hazard ratio of .30 indicates that those non-Indigenous juveniles who received a diversion had a probability of re-offending which was 70 per cent lower (1-.30) than for Indigenous offenders who had been to court (CMHR=.30, p<.000).

At the end of the study period, fewer Indigenous juveniles who had an initial court appearance would not have re-offended compared with Indigenous juveniles who had received a diversion (37 per cent and 45 per cent respectively). The differences between the groups were significant (CMHR=.60, p<.000) and the time to second apprehension was much shorter for the court group. In the first 500 days half of the Indigenous juveniles who had an initial court appearance would have re-offended, compared to only one third (100 per cent-67 per cent) of the juveniles who had received a diversion.

Non-Indigenous juveniles re-offended to a much lesser extent than Indigenous juveniles, as around two thirds (65 per cent) of non-Indigenous juveniles, either court or diversion, would not have re-offended by the end of the study period (Figure 39). However there was still a significant difference between the two groups of non-Indigenous offenders in the length of time it

took them to re-offend (CMHR= .56, p<.000). Again using the 500 days as an example, 85 per cent of non-Indigenous juveniles who had a diversion would not have offended by this time compared to 73 per cent of those who went to court.

To better understand what was happening in relation to survival patterns for both gender and Indigenous status, two separate analyses were run for males and females and Indigenous and non-Indigenous juveniles who had either been to court or received a diversion, resulting in four groups for each gender as shown in Figure 40 and Figure 41.

Figure 40   Survival function based on time to second apprehension for male who had received a diversion or made a court appearance by Indigenous status
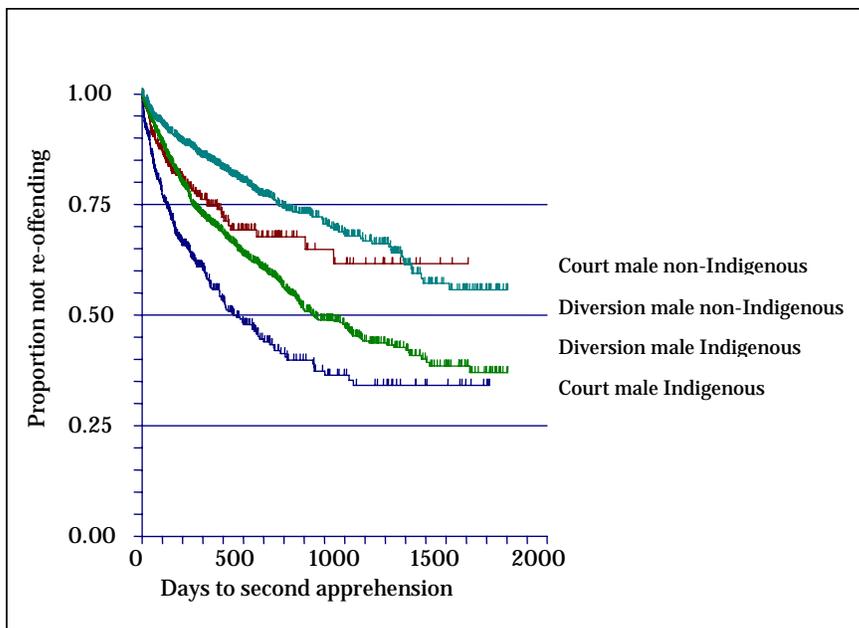
Derived from PROMIS August 2000-2005

As would be expected, given the previous two figures, Indigenous males who had an initial court appearance re-offended to a greater extent than other groups. Again the survival function for the groups was significant χ_2=136.803, df=3, p<.000), and the hazard ratio of .32 between indicated

that those non-Indigenous juveniles who received a diversion had a probability of re-offending which was 68 per cent lower (1-.32) than for Indigenous offenders who had been to court (CMHR=.30, p<.000).

The outcome for the two groups of Indigenous juveniles was similar at the end of the study period, with only a 3 per cent difference between them (35 per cent and 38 per cent not re-offending respectively). The much shorter time period to second apprehension for the court group the differences between the two groups was significant (CMHR= .64, p<.000). By analyzing the time it took 50 per cent of a group to re-offend it can be seen that, at 13 months (400 days), half of the court group would have re-offended, whereas only one third of the diversion group would have done so.

The findings in relation to non-Indigenous males was somewhat different as a smaller proportion of those juveniles who had initially made a court appearance had not re-offended by the end of the study period when compared with those who had undertaken a diversion (62 per cent and 56 per cent respectively). The court group would again have re-offended more quickly as, by 13 months (400 days) for non-Indigenous males, 30 per cent of the court group would have re-offended (100 per cent-70 per cent), compared to only 15 per cent of those who had received a diversion (100 per cent-85 per cent) (CMHR=.65, p<.01).

Figure 41   Survival function based on time to second apprehension for females who had received a diversion or made a court appearance by Indigenous status
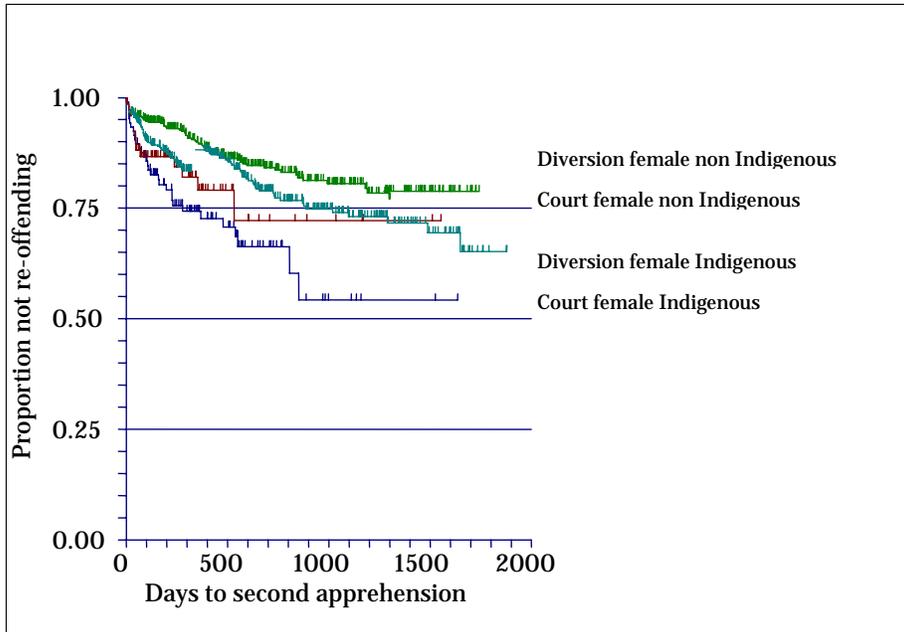
Derived from PROMIS August 2000-2005

As the previous analyses would suggest, overall Indigenous females re-offended to a much lesser degree than Indigenous males, and non-Indigenous females to a much lesser degree than non-Indigenous males.

As shown in Figure 41 non-Indigenous females re-offended to a lesser degree than Indigenous females whether they had a diversion or had been to court ($\chi2$=38.167, df=3, p<.000). For both groups, a greater proportion of those females who had been to court would have re-offended by the end of the study period. In fact it was 74 per cent more probable that an Indigenous female who had been to court would have re-offended than a non-Indigenous female who had received a diversion (CMHR=.26, p<.000).

Of all of the groups examined so far the greatest difference in groups, and the lowest proportion of juveniles who would not have re-offended by the end of the study period, were those age 10-14 years at the time of their first

apprehension and who had a court appearance as a result of that
apprehension (χ_2=132.130, df=3, p<.000) (Figure 42).

Figure 42   Survival function based on time to second apprehension for juveniles who had received a diversion or made a court appearance by age group at first apprehension
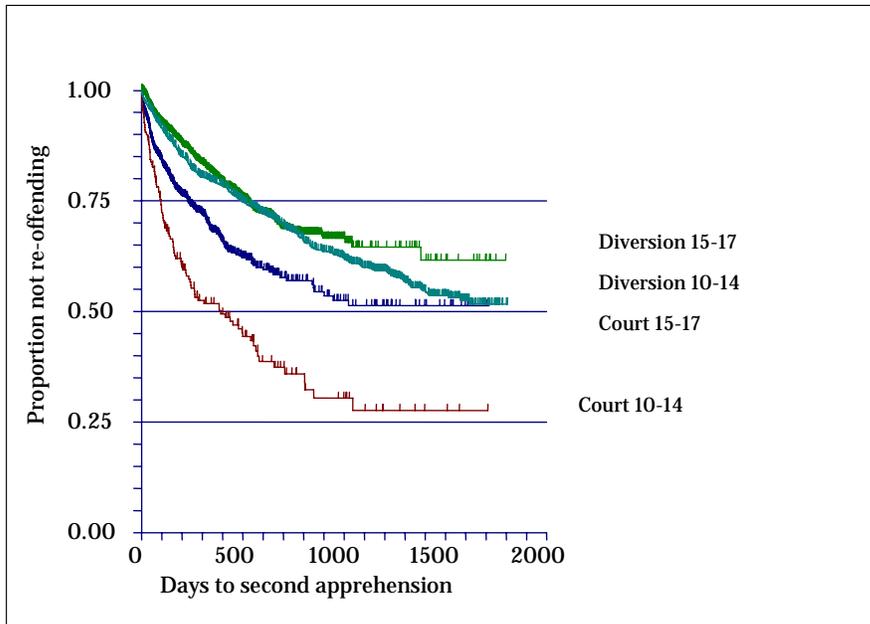
Derived from PROMIS August 2000-2005

As shown in Figure 42, only 27 per cent of the 10-14 year olds who had been
to court would not have re-offended by the end of the study. This is
compared with around 50 per cent of 10-14 year olds who had a diversion,
15-17 year olds who had been to court, and 63 per cent of 15-17 year olds who
had received a diversion. In fact the probability of re-offending for a 10-14
year old who had been to court was 63 per cent higher than for a 10-14 year
old who had received a diversion (CMHR=.37, p<.000). The probability was
also 68 per cent higher than a 15-17 year old who had received a diversion
(CMHR=.32, p<.000) and 48 per cent higher than a 15-17 year old who had
been to court (CMHR=.56, p<.000).

In order to compare the length of time it took groups of juveniles to re-offend the number of days it took a group of juveniles to reach the 50 per cent re-offending rate was examined. In relation to age group, Figure 38 shows that fifty per cent of the 10-14 year old court group would have re-offended by 400 days (13 months). This is compared with over two thirds (68 per cent) of 15-17 year olds who went to court, and 80 per cent of both 10-14 and 15-17 year olds who had received a diversion. The analysis concludes that 10-14 year old juveniles who had been to court would have re-offended to a much greater extent and much more quickly than would 10-14 year olds who had received a diversion or older juveniles.

Diversion and seriousness of the offence

One important aspect of whether or not a juvenile received a diversion or went to court related to the type of offence they had committed. Offences which had been classified as excluded always resulted in a court appearance. Serious offences could have resulted in a court appearance or a diversion and minor offences a diversion. Often, if the juvenile had committed a serious offence and had been consistently re-offending, he or she would have had to go to court.   The next analysis therefore combined the variables relating to diversion/court and seriousness of the offence.

Figure 43   Survival function based on time to second apprehension for juveniles who had received a diversion or made a court appearance by seriousness of the first offence
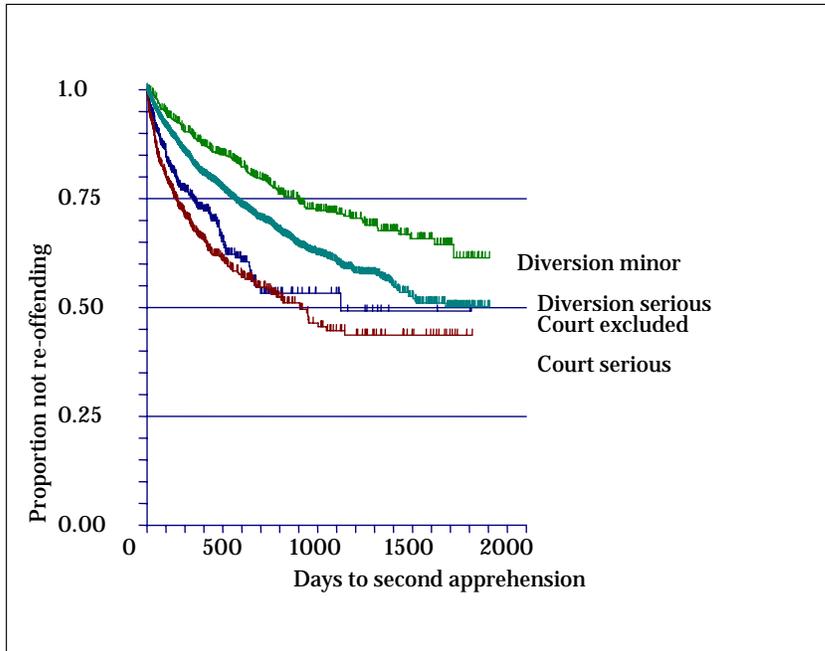

Derived from PROMIS August 2000-2005

At the end of the study period, the proportion of juveniles who would have re-offended was the same for the diversion plus serious offence and court plus excluded offence categories, at 50 per cent (Figure 43). The main differences were between those juveniles who had committed a minor offence, where 63 per cent would not have re-offended by 5 years, compared to only 45 per cent of those who had committed a serious offence and who had been sent to court ($\chi2$= 111.444, df=3, p<.000). The slope of the survival curve also shows that the length of time between the first and second apprehension was shortest for those who had committed a serious or excluded offence and who had been sent to court. This curve seems to flatten out for the court groups at around 18 months (550 days). At this stage, when comparing the court and diversion groups for juveniles who had committed a serious offence, whereas around half (50 per cent) of those who had been to court would have re-offended within 18 months only one third (1-66 per cent) of those who had received a diversion would have done so.   At this

stage, the large majority (75 per cent) of those who had committed a minor offence, and therefore received a diversion, would not have re-offended. The relationships between each of the groups were statistically significant (p<.000) with the exception of court plus excluded offence and court plus serious offence categories, again reflecting the similar survival rates for these two groups of offenders.

Figure 44   **Survival function based on time to second apprehension for juveniles who had received a diversion or made a court appearance by location of the first apprehension**
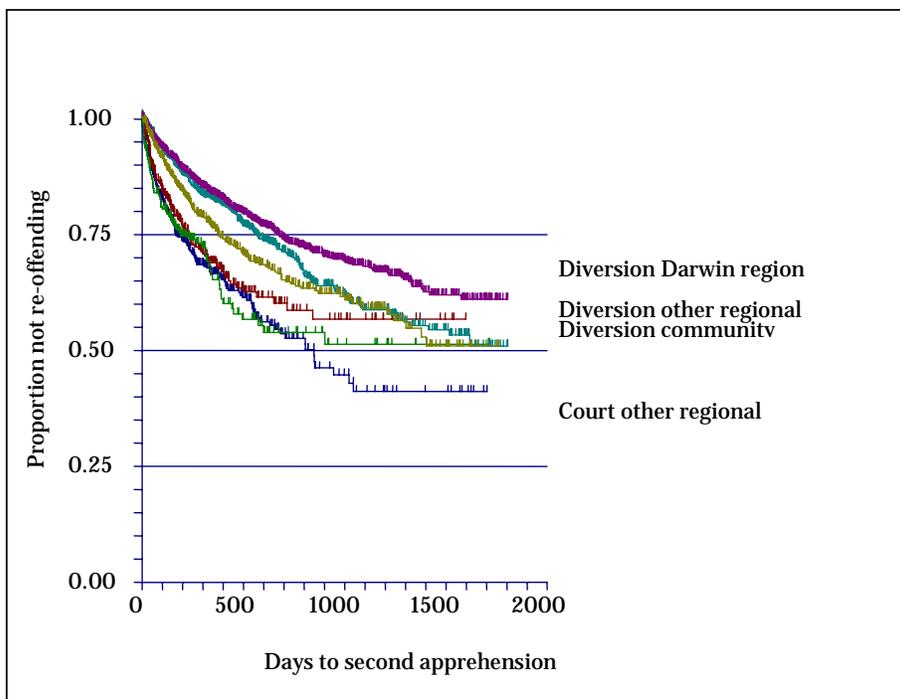

Derived from PROMIS August 2000-2005

The survival function for days to second apprehension by location of first apprehension was significant ($\chi2$=106.095, df=5, p<.000) (Figure 44). As shown in the figure above the proportion of juveniles who did not re-offend was lowest for those who had been to court for all locations. Of those who had received a diversion the proportion of those surviving, ie not re-offending was highest for juveniles apprehended in the Darwin region.

Of the court groups those juveniles apprehended in an Other Regional centre re-offended to the greatest extent, with only 41 per cent surviving by the end of the study period. This is compared to between 50-55 per cent of juveniles in the other locations, with the exception of juveniles apprehended in Darwin who were given a diversion, where 60 per cent would not re-offended by the end of the study period. In fact the probability of re-offending for juveniles apprehended in other regional centres who had been to court was 55 per cent higher than, for example, those juveniles apprehended in Darwin who received a diversion (CMHR=.45, p<.000). The probability was also higher for those juveniles apprehended in a community who had been to court in that they were 53 per cent more likely to have re-offended than those juveniles receiving a diversion in Darwin (CMHR=.47, p<.000).   These findings are reflected in the fact that the Other Regional and Community offenders who had been to court also re-offended more quickly than other groups. At 700 days, only half of these two groups had not re-offended compared with nearly three quarters (73 per cent) of those juveniles apprehended in Darwin and given a diversion, 70 per cent of those apprehended in an other regional centre who had been given a diversion and 65 per cent of those juveniles apprehended in a community and given a diversion.

Discussion

The Survival Analysis has provided a number of important findings in relation to the extent of re-offending, how long it would have taken different groups of juveniles to re-offend, and therefore who was at greatest risk of re-offending.

As shown in the analyses, those at greatest risk of re-offending were juvenile offenders who were 10-14 years old and who had made a court appearance as a result of their first apprehension. Additionally, Indigenous males who had been to court for a serious offence, would have re-offended to a greater extent, and would have re-offended more quickly, than other groups of offenders. It appeared that location of the <u>first</u> apprehension was also of

some importance as those at greatest risk of re-offending had been apprehended in an "other regional" centre, rather than in Darwin or on a community.

The analysis of the data has concluded that those juveniles who would have been at greatest risk of re-offending were:
▪ Indigenous males;
▪ 10-14 years of age;
▪ Apprehended in an "other regional" centre;
▪ Had committed a serious offence; and
▪ Had a court appearance as a result of their first apprehension,

A typical juvenile at risk of re-offending was an Indigenous male aged 10-14 years who lived in Katherine, Tennant Creek or Alice Springs. He would have committed a serious property offence, which involved amounts of property worth over $100, and would have been sent to court for that offence. The analysis therefore provided a fairly clear picture of which juveniles need to be targeted in relation to providing diversion from the court process and ultimately from the criminal justice system.

These findings suggest several areas where pre-court diversion scheme could be further developed in order to better address the needs of juvenile offenders and those affected by their offending behaviour. The findings support providing greater access to diversion and developing further initiatives around it. Given that juveniles who went to court were at risk of re-offending to a greater extent than those given a diversion it would appear that diversion should be made available for a greater range of offences, including what are classed as excluded offences. This would need to be considered carefully and sensitively by policy makers as the public response to implementation of this initiative could be very negative. Preventing younger (10-14 year old) offenders from going through the court process and providing them with support through the diversionary process may halt the

cycle of offending and re-offending which particularly occurs when offending commences at an early age.

As the literature and previous research highlights, the problems experienced by juveniles entering the criminal justice system can severely undermine the ability of a juvenile offender to develop and contribute in a meaningful way to their community. This outcome is one of a number of significant social issues which have been evident in the Northern Territory for many years. Chapter 6 will discuss policy options and recommendations for the further development and implementation of restorative justice practices to address some of the issues mentioned above. The final section of this chapter will focus on the qualitative aspect of the analysis.

Qualitative Analysis Results

It is of vital importance that practitioners receive government resources and support necessary to successfully implement and manage new policy initiatives, especially if these initiatives are contradictory to those policies already in place. For the purposes of this thesis, practitioners were represented by interview respondents, a group of people who had extensive experience in the criminal justice systems, and particularly juvenile justice. They represent a group who have been required at the implementation of the Juvenile Pre-Court Diversion Scheme, to put into place policies and processes which were, in many ways, contradictory to those processes already in place for addressing juvenile offending. As detailed in Chapter 1 and Chapter 3 this was because the values and aims of restorative justice, as represented by the Scheme, were diametrically opposite to those of the mandatory sentencing regime.

An aim of this analysis was first, to explore whether people involved in the working with juvenile offenders thought the Scheme was a relevant and realistic response to offending and second, whether they thought the Scheme had a positive impact on offending behaviour. The interviews were used as a means to determine whether the findings from the statistical analysis were

confirmed by people at the forefront of developing and implementing the Scheme in the Northern Territory.

A further justification for the interviews was to examine characteristics of juvenile offenders which could not be ascertained from the quantitative data. For example, one important issue not discernable from the statistics, was the extent to which parenting and family background impacted on the ability of juveniles to respond positively to diversion. As discussed below, this issue emerged at the forefront of interviewee responses. In addition, the interviews also provided a number of reasons why diversion was more successful at preventing re-offending than the court process, also discussed below.

The analysis of the interview responses revealed four main areas of concern to interviewees. These areas focused on the levels of responsibility which government, communities, families and individuals should have in addressing juvenile offending and re-offending behaviour. The analysis begins with the responses which related to a need for a whole of government responsibility to addressing juvenile offending.

> ### Diversion outcomes
> After breaking into a business an offender was apprehended and a condition of the diversion was that he spent several weekends working for that business. At the end of his diversion the owner of the business offered him an apprenticeship which he accepted and successfully completed (Senior Police Officer)

State Responsibility

Respondents identified two ways in which the state had responsibility for addressing juvenile offending. The first of these was to adopt a whole of government approach to finding solutions to this problem. The second, embedded in the whole of government approach, related to the responsibilities of the criminal justice system to provide processes to address the issue.

Whole-of-Government Approach

Respondents emphasised that it was not possible for one sector of the criminal justice system, in this case the police, to adequately address juvenile offending and provide solutions to the problems surrounding that behaviour. In the words of one police officer,

> ... while diversion is clearly a better option than Court in dealing with juveniles, it is limited in its success because it often stands alone as a response to criminal and anti social behaviour by juveniles (Senior Police Officer).

Respondents agreed that police should be involved in the process but that positive outcomes were only possible where there was a holistic approach to offending which included all levels of government in conjunction with the community,

> ... diversion is just one of the tools to bring about change in criminal behaviour. In many cases it can not accomplish it on its own due to the myriad of other social problems existing with youth. In circumstances where diversion is combined with a holistic approach to the overall problems with the young person and the community as a whole it achieves even greater levels of success (Senior Police Officer).

Therefore, in order to reduce offending and re-offending, respondents suggested that the solution must include contributions from health departments, education, community services and non-government agencies. The argument for the need for a holistic approach was that restorative justice processes could not, by themselves, provide the means to improve outcomes for offenders. For example, a practitioner of restorative justice commented that, in relation to education

Comment [DS5]: Who is this speaking now Teresa? You need to introduce them if they are not a respondent – try to keep the narrative flowing ….

> ... I believe that educational use of RJ has much to offer the criminal justice system, in particular working with young offenders. What schools come to understand is that a restorative process in isolation will rarely change behaviour. We need to look at the student in a context of the environments in which they live and are schooled within. Otherwise, we may take them through a great process (that does impact them in a positive and emotional way) only to find that the environment undoes all the good work that has been done ... Schools are beginning to understand that there is a lot of support and processes they need to put into place around a young

person who has done the wrong thing, in order to effect that behaviour change. Definitely worth looking at in the bigger scheme of juvenile justice. (Peta Blood, Director Circle Speak, personal email, 12 January, 2007)

The ways in which these outcomes could be achieved are discussed in greater depth in Chapter 6. These interview findings support the statistical analysis to the extent that juveniles who were exposed to a more holistic response to their offending behaviour, in the terms of receiving a diversion, were less likely to re-offend than those who went to court. This was also the impression of respondents who were very positive about the JDS and what it was achieving, but also that it should be seen as only part of the solution to offending and should not put the responsibility for juvenile offending only on the shoulders of the criminal justice system.

The Role of the Criminal Justice System

Respondents outlined several areas where the criminal justice system had a responsibility in providing the basis for a process which was relevant to juvenile offenders and which helped others affected by offending. These areas related to the need for flexibility and inclusion of all those affected by the offending in the diversionary process and making the process more transparent and understandable for juveniles.

Respondents agreed that it was extremely important that the system of juvenile diversion was flexible enough to take into account the diverse needs of offenders, and which used programs which had a meaningful context within their individual environments. As one respondent, a juvenile caseworker explained, juvenile offenders "... need programs that are meaningful and tangible in their setting ... it is not useful to have programs which people can't link to their lives ... programs are not always good because they are not always relevant".

It was suggested that this was particularly the case in locations where there were few or no resources to provide programs. This situation was

problematic because, as one Senior Police Officer stated "the Scheme is very flexible; it is however, on occasions, limited by the resources available within police, agencies and the community. Additionally, there are greater difficulties in remote areas where suitable programs and support are often not available" (Senior Police Officer).

Flexibility was also addressed in relation to the availability of diversion for adult offenders. Opinion was somewhat divided on whether or not the diversionary process should be made available for adults, however generally it was thought that they would benefit from the process,

> ... there is no good reason why an adult offender (often young in any case) wouldn't benefit from the opportunity to make restitution or to undertake a program. If the offender is willing to undertake a Victim/Offender Conference and program and completes the obligations it must demonstrate some degree of acceptance that the behaviour was wrong and a commitment not to continue with the behaviour (Police Auxiliary).

However, one police officer contended that because adult offenders have a better idea of what is "right and wrong" and the moral implications of what they have done, they should not be treated in the same way as juvenile offenders, who are sometimes less able to understand the implications of their behaviour until it is explained to them. Providing adults with diversion would mean an even more inclusive process because it would provide offenders with an opportunity to address the needs of their victims and others affected by their behaviour. As a prison program manager commented, this could provide a more positive means of providing a solution to offending than incarceration.

In relation to timeliness, the court process was considered to fail because a court appearance could take place many months after the offence had occurred. One respondent stated that there was a need for matters to be resolved as quickly as possible after the offence for it to have maximum impact on further offending behaviour. This was best achieved by linking the offending with the court process (Probation and Parole officer).

Respondents agreed that outcomes of the criminal justice system are more successful where those people impacted on by juvenile offending are included in the process of providing a response to that behaviour. This is an important aspect of the restorative process between the offender and their victim which is not part of the court process. A failure of the court process to deal successfully with offending is that it does not provide the offender with the opportunity to take responsibility for their behaviour, instead it is

> ... a passive experience as decisions are made "for" and "to" offenders. I believe this promotes a victim mentality among offenders as they feel the imposition of others' will and are not required to actively "do" anything themselves to repair the harm their offending caused (Police Auxiliary).

This astute observation sees the offender also as a victim of the process because they have no control over what is happening to them, much as the victim of a crime does not. One interviewee said that the lack of impact of the court process is also related to the fact that,

> ... courts are generally not seen by juveniles as a threat to their activities. They often reinforce with juveniles that there are no consequences for their behaviour. Diversion is often the first time they see the consequences of their actions and the harm they have caused to victims (Police Officer).

This aspect of how courts were perceived not to have "teeth" and to exacerbate the need for juveniles to re-offend was expressed by another respondent who said

> ... in my experience young offenders who go to court seem to have a few things in common:
> - the experience is something to brag about (it builds a false sense of bravado) and gives them a standing within the delinquent and criminal community
> - they have gained no understanding about how their behaviour has had hurt people or how to do things differently
> - they have a sense of being treated unfairly, misunderstood, unconvinced and that they haven't done anything very wrong (Police Officer)

Courts were therefore often perceived by offenders as being ineffectual and having no relevance to them. This had repercussions for victims as they also perceived that the court process excluded them from making decisions and did not address their needs. Therefore, from the victim's perspective, unlike the court process, the inclusive aspect of the restorative process provided victims with a means to express their pain and anger to the offender and therefore heal the harm created by the offence. As one respondent said

> ... I do believe the Scheme offers a platform for victims that the courts cannot. The restorative justice conference allows victims to regain their voice, speak about the affects of a crime. A conference can let them feel compassion and empathy from others (including the offenders) but most importantly victims can have their feelings validated without the need for any justification—they are just angry, hurt, annoyed, scared, betrayed, disgusted or whatever (Probation and Parole Officer)

As a Prisoner Program Manager stated, respondents thought that the lack of inclusion of offenders or victims in the process resulted in a high level of frustration with the system and feelings of alienation from it.

From another viewpoint one respondent considered that the diversionary process provided a much better opportunity for revealing the underlying causes of offending behaviour than the court process (Probation and Parole Officer). Identifying these causes was seen as an integral aspect of the healing process for the offender and the conference process provided an opportunity for offenders to discuss the issues surrounding their offending and, in response, to have some control over what happened to them. Therefore the inherent flexibility of the diversionary process meant that the offender, victim and other community members had the opportunity to discuss what led to the offending behaviour and to decide on the most appropriate ways in which to address this behaviour.

A further weakness of the court system was identified by respondents as relating to the fact that juvenile offenders lacked understanding of the court process in relation to why they were going through it and what was

happening to them. Several respondents reiterated that offenders have to be confronted with how their behaviour has affected the victim and others and that they need to understand this in order to take responsibility for their behaviour. However, in their experience, the court process was not able to provide this level of understanding.

In addition, particularly for many Indigenous offenders, English was a second language, further inhibiting their ability to understand what was happening to them. Therefore, respondents identified a number of factors, inclusiveness, timeliness and understanding of the process which contributed to the failure of the court process to address re-offending and to why diversion was more successful at doing this. These findings supported the quantitative results indicating that juveniles who received diversion were less likely to re-offend than those who attended court. An important thread running through the interviews was that there was the need for inclusion of those affected by offending at all levels of the process.

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Diversion outcomes

In a remote Indigenous community a Victim/Offender Conference was held with family, victims and community members. The offender was not present as he had committed the offence within his own community and had been sent to another community by his father. The father attended the conference with teachers, police and elders and explained why he had sent his son away and that he wouldn't be allowed back into the community until he had changed his attitude. The conference members agreed with this solution and accepted the juvenile back into the community and worked with him to address his offending behaviour (Police Officer)

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Community Responsibility

The recognition by policy makers of the need for community responsibility in the relation to governance and the recognition of rights of offenders, their victims and others, was seen by respondents as integral to providing an effective response to juvenile offenders and to preventing re-offending.

One respondent, a juvenile justice case worker, stated that in his experience often community members had made decisions only to have these overturned by the police, thereby disempowering community members. It was seen that community responsibility was very much related to the ability of families to take responsibility for their children and to make their own decisions about how this should be achieved. An important aspect of the way in which a sense of community could be promoted through restorative processes was described by one respondent as follows,

> ... each successful conference will build links with the community. Each person will enter a conference with their own agenda, their own stories, but once those agenda's and emotions are shared the participants will exit a conference as a small community with a shared understanding. A successful conference will have a ripple effect and the ideal would be that restorative justice thinking will be shared with peers (Probation and Parole Officer).

From this perspective the restorative process was seen as a community building process within itself as it allowed people to be involved in what happened to them and to develop a sympathetic, and possibly empathetic view, of why the juvenile offended and ways in which future offending could be prevented. Further discussion of the role of the community is provided in Chapter 6.

Family and Parental Responsibility
As discussed in Chapter 2, a basic need for all children in their development is that they have parents, or significant others, who provide them with a supportive, caring and nurturing environment in which to grow.

For the purposes of this research statistical data was not available to determine the level to which juvenile offenders were given this level of support. However, this was an extremely important issue for interviewees and what they considered a key element in preventing offending. As mentioned above, several interviewees emphasised that a holistic approach was needed to addressing juvenile crime, a vital component of which was to teach people good parenting skills and to build strong families. This was

because, as emphasised by several respondents, children need to be taught "right from wrong" at a very early age, because the earlier the onset of offending the more likely it was to persist. A major concern of police officers who were interviewed was that the age range for diversion. One Senior Police Officer explained that this was because

> ... the age for diversion was not low enough and anti-social behaviour should be addressed when it starts, which for some juveniles is as young as 5 years of age. The idea is to teach children boundaries as soon as possible and deal with their anti-social behaviour as soon as possible. For example, if a 5 year old is breaking street lights or involved in stealing parents should be made accountable for the child's actions'.

He went on to say that this response was "not about punishment but rather about consequences and support in changing behaviour at the earliest opportunity" because the longer this behaviour was allowed to occur the harder it was to change, and that the lack of consequences only reinforced anti-social behaviour. Other respondents also stated that early intervention was one of the most important ways in which to prevent the continuation of offending and that children and their parents should be made accountable for and take responsibility for offending behaviour irrespective of the age of the child.

The need for good parenting skills and the evident lack of these skills was powerfully illustrated by one respondent, an Indigenous elder in a remote community, who explained that in his community, "kids were having kids", as many early teenage Indigenous girls were having babies themselves, having never developed any parenting skills because their parents had none. He said that the opportunity for these parents to develop good parenting skills was minimal as they were isolated from any support network which could teach them these skills on a consistent basis. Education was again seen as integral to breaking the cycle of dysfunction. A practical response to this, suggested by the community elder, was to provide better education at a basic level because there were "real issues" about juveniles having their own children when they had very little education themselves producing a cycle of

"non-education". The respondent went on to say that the only educational input a lot of fathers in his community had was to help their children fill out "dole" forms. Poignantly, one police officer described these people as "parents without parents", a situation which produced generation after generation of dysfunctional families.

Respondents recognised that the problem was ongoing because offending became the norm in many communities, particularly for juveniles. Therefore, they argued that it was crucial to provide a means of breaking the cycle of crime, of preventing the detrimental impacts of social disadvantage and providing an environment where juveniles could live safely. Again, respondents returned to the concept of a holistic approach to offending, reiterating that restorative justice is at its most successful when other factors are taken into account as

> ... in many cases a child who attends a conference and later partakes in a program may genuinely want to change their behaviour. Unfortunately when they return home after a program activity they are often faced with an overpowering environment in which they are subjected to physical, sexual and mental abuse, overcrowding, limited or no schooling, little affection or support and the need to assimilate with their peers who are also engaged in unacceptable behaviour (Senior Police Officer).

Good parenting was seen as a major factor in providing positive role models for children and a crucial factor in addressing anti-social behaviour. This may seem self-evident but it appeared that this was not always taken into account by decision makers in providing a solution to offenders. This was identified by one respondent as a specific area which needed to be addressed because of "the lack of accountability by those people having some responsibility for either preventing the behaviour of the juvenile or for dealing with the behaviour of the juvenile" (Probation and Parole officer).

Another respondent suggested that addressing this issue involved the recognition that offenders and their parents are part of the problem and that they should be recognised as such and, as a result, they should be part of the

solution to that problem (Senior Police Officer). Additionally, an integral part of developing this level of accountability was by empowering parents through giving them ownership, responsibility and understanding of their children and the consequences of their behaviour (Senior Police Officer).

In Chapter 4 a limitation of this research outlined that it was not possible to determine from the statistical data the extent to which offenders did or did not live in strong families with good parenting skills. It would, however, seem self-evident that not providing this type of environment would be more likely to produce dysfunctional community members than a more positive family environment. This crucial issue of developing strong families and providing them with the skills to rear children, who understand their rights and responsibilities as human beings, is at the core of the debate relating to the Federal Government intervention into the control of Indigenous communities. It was evident from the respondents interviewed for this study that they thought the situation would continue to deteriorate unless some basic principles were put in place. These principles included giving people control over their own lives, allowing them to take responsibility for their behaviour, being treated as full members of society, being given the right to speak and to have their voice heard, and most importantly, that governments and decision makers listened to that voice. Respondents highlighted that in communities that government only paid "lip service" to decisions made by community members as many of the decisions made by community members were either ignored, or if implemented, overturned. As a consequence, people surrendered their right to take responsibility for making decisions about their own lives, as they perceived it was a pointless exercise (Probation and Parole Officer, Senior Police Officers).

All respondents focused on the situation for Indigenous communities. However, it should not be forgotten that, as evidenced by number of juvenile offenders throughout the Northern Territory, dysfunctional families are not confined to Indigenous communities, who in many ways represent a

microcosm of larger society, and that these problems occur in all groups in society.

Individual Responsibility

At the core of the restorative justice process was the need for the offender to take responsibility for their offending behaviour. In fact the offender could take part in the process unless this occurred. This basic requirement ensured that offenders saw themselves as not just part of the problem but also as part of the solution (Senior Police Officer). One aspect of the court process which impacted on re-offending was mentioned by several respondents and related to situation that "courts are generally not seen by juveniles as a threat to their activities. They often reinforce with juveniles that there are no consequences for their behaviour" (Senior Police Officer). Whereas, in comparison to the court process, another respondent stated that diversion reinforced the need for the offender to become responsible for his or her behaviour. This was because

> ...diversion is often the first time they see the consequences of their actions and the harm they have caused to victims. For example, they are able to see that breaking into a person's house can have effects they would otherwise have been unaware of, particularly when they attend a Victim/Offender Conference. A victims (sic) offender conference or Family Conference will often result in the juvenile understanding they are also hurting their family in committing these offences. Additionally, the requirement to complete a program or restoration for victims is applying consequences to their actions (Senior Police Officer)

A Police Auxiliary who had been a participant in many conferences said that the experience for the offender was often extremely emotional and a powerful representation of the negative impact which their behaviour had had on their families and victims,

> ... often during conferences I have witnessed the harshness of young offenders melt away when their parents have cried—perhaps for the first time truly experiencing the pain their behaviour has caused. I have also witnessed angry victims feel empathy for the offenders—and for most young offenders this creates an environment of acceptance (Police Auxiliary)

It was found that this situation provided a way in which the offender can become once more a person in their own right. The following example provided by a respondent demonstrated this,

> once as a result of a conference following an unlawful entry the young offenders worked for the victim in his backyard. Prior to the conference the victim's child was terrified of the offenders and equated them to "bogey men" wondering when they might return. From meeting the offenders, the victim's child understood that these were just people and began to recover from the offence (Police Auxiliary)

Respondents stated that detention should remain an option for the minority offenders who refuse to take responsibility for their behaviour. Additionally it should be used in cases where, as one police officer explained, detention was one of the few situations that provided these offenders with some stability, security and discipline in their lives. This depressing situation, he said, again reiterated the need for developing strong families and communities because detention only provided a short term safe haven and that the offender would eventually go back to the environment which provided a basis for offending.

In summary, respondents were of the strong opinion that the responsibility for preventing offending and providing solutions to crime not only lay with individual government agencies, families or communities, but with a joint responsibility for all of them, the most important of which was to develop families who provided effective role models and a supportive environment for their children. However, in order to achieve this, interviewees emphasised that families had to be allowed to have control, accountability and responsibility for their own children. Furthermore, there had to be a commitment by government to allow community members to make their own decisions and for the government to take those decisions into consideration and consult with communities when making decisions affecting peoples' lives.

The results from the statistical analysis were supported by the respondents in that juvenile offenders who are given the opportunity to take responsibility for their own behaviour were less likely to repeat that behaviour. Respondents were supportive of the continuation and further development of the Scheme in order to ensure this process could become even more successful, but within the environment of a holistic approach that focused on building both families and communities.

<u>Diversion outcomes</u>

I also witnessed a number of victims in one large conference (involving approximately 35 people in total) cross the centre of the circle at the conclusion to embrace the offenders and families. Nearly all the victims were negative toward the offenders prior to the conference, ranging from annoyance to outrage. Following the conference there were still some victims who remained unconvinced of the young offenders apologies and commitment but they were willing to embrace them as part of their community (Probation and Parole Officer)

In concluding this section, a comment from one police officer that "the solution to juvenile offending lies in the old cliché 'prevention is better than cure'" is important. From his experience, in order to prevent the offending cycle, children needed to be provided with strong support and nurturing from their parents from the time they were born. This he argued, was only achievable through the development of strong communities and realistic and appropriate government policy. This is obviously not relevant only to Indigenous communities but is a basic requirement for all sections of society.

The final Chapter will now discuss the findings in relation to how they support previous research and how policy can be formulated in order to address the issues which have been raised by the analyses.

CHAPTER 6   **CONCLUSION**

Introduction

This final chapter will begin with the contribution of the current research to the understanding of the impact of restorative justice practices on the re-offending of juveniles in the Northern Territory. Then the aim of the current research will be reiterated. Thirdly, theoretical implications emanating from the current research will demonstrate support for the theory of restorative justice as discussed in Chapter 2. Policy recommendations will be discussed relating to the further development of restorative justice practices in the Northern Territory, as a means of providing a more equitable and effective response to juvenile offending. The fourth section describes the key findings from the thesis and the chapter concludes with methodological considerations, limitations of the current research and possibilities for future research.

Contributions of the Research

The analysis of juvenile offenders in this study is the first of its kind to be undertaken in relation to the initial five years of the Juvenile Pre-court Diversion Scheme in the Northern Territory. It is the only study of Northern Territory juvenile offenders to use statistical techniques such as Cox Regression and Survival Analysis to examine re-offending patterns over a five year period. It also provides the first comprehensive account of characteristics of juvenile offenders in the Northern Territory over a five year period, and the extent to which offenders were diverted, or made a court appearance, and then re-offended during this time. Therefore this research provides an important contribution to the body of knowledge relating to juvenile offending and re-offending behaviour in the Northern Territory, and the impact of restorative justice practices, in the form of pre-court diversion, on that behaviour.

Aim of the research

The current research examined the offending and re-offending behaviour of juveniles in the Northern Territory over a five year period from the introduction of the Juvenile Pre-Court Diversion Scheme in August 2000, to

August 2005. The Scheme was designed to incorporate restorative justice practices into a pre-court diversion process.   The intention of the Scheme was to divert juveniles from the court process wherever possible by using a Verbal Warning or a Written Warning or a Family Conference or Victim/Offender Conference. As discussed in Chapter 2, one of the major objectives of the Scheme was to change the behaviour of juveniles in order to prevent re-offending. The major focus of this thesis was to examine whether or not the restorative nature of the Scheme had an impact on re-offending of the juveniles who were apprehended over the first five years of the Scheme.

Support for Prior Research

The findings from the research confirmed several expectations from the extant literature as examined in Chapter 2. In relation to the descriptive analysis of offender characteristics, these were:

- the majority of offenders were Indigenous males, indicating the level of over-representation of this group of juveniles in the criminal justice system;
- the majority of juveniles committed property offences rather than more violent offences;
- the majority of juveniles were 14 years or older at their first apprehension;
- the majority of offenders did not re-offend; and
- those juveniles who did re-offend were again Indigenous males who committed property crime.

In relation to the impact of restorative justice practices on re-offending behaviour, the quantitative analysis found that:

- Juveniles who received a diversion re-offended to a lesser extent than those who made a court appearance in the first 12 months after their initial apprehension;
- Juveniles who re-offended after receiving a diversion took longer to re-offend than those who made a court appearance;

- Younger juveniles who made a court appearance for their first event were at greatest risk of re-offending of any group of juveniles.

Qualitative analysis confirmed the findings of the quantitative analysis in relation to the above points. Additionally, it provided the following findings supporting previous research as reviewed in Chapter 2:

- social policy needs to be developed in accordance with a whole-of-government approach;
- offending behaviour of children has to be addressed as soon as it occurs and there should be no age limit to this;
- families need to develop good parenting skills in order to enable their children to become responsible members of their community and of society;
- good governance has to be an integral part of community life, to develop the decision-making capacity of community members as they are best situated to understand the needs of their community.

These findings will now be discussed.

Findings and Discussion

There were several key findings from the research. First, the demographic and geographic and offence characteristics of offenders, as described in Chapter 5 showed that majority of offenders were younger Indigenous males who committed a property offence and were apprehended in regional centres or on remote communities. This finding is indicative of the level of over-representation of Indigenous juveniles in the criminal justice system in the Northern Territory, and is consistent with research from elsewhere in Australia which has also found this level of over-representation as discussed in Chapter 2 (e.g. Gale et al., 1990; Cunneen 2001; Hayes and Daly, 2003; White, 2003; Hayes and Daly 2004; Snowball and Weatherburn, 2006).

Location of the offence was included in the current analysis as the hypothesis linked the issue to place. This current analysis found that the majority of juvenile offenders were located outside of the Darwin area, an indication of the over-representation of Indigenous offenders who are apprehended, the majority of whom lived in regional centres or on remote communities. This finding also correlates with the fact that offenders who reside in smaller population localities are more "visible" to police, are more likely to be known by police, and are therefore easier to detect and apprehend, than those juveniles who offend within a location with a larger population. This finding supports previous research, as discussed in Chapter 2, indicating a significant over-representation in the criminal justice system of Indigenous juveniles from rural and remote areas of Australia (Cunneen and Robb, 1987; Carrington, 1990; Hogg and Carrington, 1998, 2003, 2006; Barclay and Donnermeyer, 2007).

At the time of the study there were communities with no permanent police presence and visited by police on only a weekly or less basis. There are implications for this disparate level of policing in relation to the extent to which Indigenous juveniles are apprehended in that, it would be expected, increased police presence would result in greater over-representation of Indigenous youth in the justice system. Further examination of this finding should include research into the different policing levels in remote Indigenous communities in the NT and the affect these have on the number of juveniles apprehended. Additionally, policing in regional centres such as Katherine, Tennant Creek and Alice Springs has focused on the apprehension of Indigenous people in the town centre and other public places regarded as the province of non-Indigenous residents. Legislation has been enacted to address this issue, particularly in relation to the prevention of alcohol consumption in public places, and as a result of a perceived level of criminal behaviour by Indigenous people in these locales. The findings support those of earlier research (Cunneen, 2001; Hogg and Carrington, 2003, 2006; Cunneen and White, 2007) which indicate that the image of the Indigenous juvenile as a troublemaker who is disruptive to the running of the

community is a continuing perception in these communities. The level of re-offending which occurred in relation to location is discussed below.

The research found that the majority of offences committed were in the serious category but related to property offences. A much smaller percentage of offences included assault, or other offences against the person. There are implications for this finding relating to the further implementation of pre-court diversion for more serious offences which were previously excluded from diversion. At the time of implementation of the Scheme the Northern Territory Government legislated that all violent offences would be excluded from diversion, however, as discussed below the findings suggest that—in accordance with Sherman et al. (1999)—pre-court diversion could also be successful in preventing re-offending by violent offenders.

Second, over three quarters of juveniles did <u>not</u> re-offend within the first 12 months after their initial event. An important conclusion to be drawn from this finding is that, given the great majority of juveniles did not re-offend, exposing them to a court process would have been an unnecessary and damaging experience for them as well as a needless expenditure of resources and time for the legal system. This research supports the findings of Vignaedra and Fitzgerald (2006) who stated that, for the offenders they studied in New South Wales, "it was neither necessary nor desirable to respond harshly or intrusively to young offenders who have not committed serious offences or shown any tendency to persist in crime" (Vignaendra and Fitzgerald, 2006: 1). The extent of re-offending found in this study is also consistent with levels found in research undertaken in South Australia, (Sherman et al., 1999; Daly, 2002; Hayes, 2005), Victoria (Griffith, 1999), and the Northern Territory (Wilczynski et al., 2004) which concluded that the majority of offenders did not have any further contact with police up to 12 months after the initial event.

Findings regarding the extent of re-offending after a diversion or court appearance were consistent with those from other research. Of those

juveniles who re-offended within the first 12 months of their initial event, over one third had made a court appearance—compared with less than one fifth of juveniles who were diverted. A number of studies both in Australia and overseas had similar results (Latimer and Dowden, 2001; McCold, 2002; Hayes and Daly, 2004; Luke et al., 2002) and they concluded that juveniles were less likely to have re-offended after a conference than after other interventions. In the Northern Territory, previous research has shown that over a two year period, it was also found that re-offending was more common for those juveniles who went to court than for those who were given a diversion (Wilczynski et al., 2004).

Third, over the five year period, offenders who had been given diversion were less at risk of re-offending than those who had an initial court appearance. Dennison, Stewart and Hurren (2006) also concluded that, in Queensland, juveniles who had a court appearance at initial contact were more likely to have re-contact with police, and to do so sooner, than were those offenders who received other interventions. This current research has concluded that, in the Northern Territory, juveniles who were at greatest risk of re-offending were those who went to court, and that, for some demographic groups, these offenders were at twice the risk of re-offending than those who received a diversion, particularly if they were younger Indigenous males. Additionally, juveniles who had been diverted and re-offended, took longer to re-offend than those who went through the court process. This finding identifies a group of offenders who, although they may be at risk of re-offending, could be defined in Hayes and Daly's terms (2004) as "drifters", who had only re-offended once, but who in this case, may have been at greater risk of re-offending than were "reformed" offenders. This categorisation therefore provides a focus for developing interventions to prevent further offending for particular groups of offenders who may be at risk of re-offending at different stages of the diversionary process.

The fourth important finding of this research was that, of all the variables which were examined, age had the greatest impact on increasing the risk of

re-offending over the five year period. Although in the Northern Territory, a greater percentage of juvenile offenders were 15-17 years of age, the research discovered that the younger group of juveniles re-offended to a greater extent and more quickly than the older group, particularly those who had made a court appearance. This finding supports earlier research indicating that the earlier the age of onset of offending the more persistent offending behaviour becomes (Luke and Lind, 2002; Hayes and Daly, 2004). This indicates the importance of identifying children at risk of offending from an early age and, for some children, certainly before the age of 10 years. As Homel et al. (2006) found (see Chapter 2) the causes of this early onset of offending behaviour have been linked to a number of factors including poor health and low educational attainment, and, as discussed in Chapter 3, these problems are evident for Indigenous people in the Northern Territory. As will be discussed in a later section of this Chapter, these findings indicate the need for a whole of government approach to addressing these issues. Therefore, an important outcome of this research is that early offending behaviour needs to be addressed as soon as it becomes apparent that the child is at risk in order to prevent offending behaviour becoming entrenched and an accepted part of the child's lifestyle.

Finally the qualitative analysis provided evidence supporting the statistical analysis. Respondents emphasised that, for the majority of juvenile offenders, diversion was an appropriate and much preferred way of reacting to their behaviour than court action, particularly given that the majority of offenders did not re-offend. They qualified this by saying that, unfortunately, for a small minority of offenders, court and detention was probably a preferred option to diversion. This was because detention provided the offender with a safer and more positive environment than what they may have come from, which, in some cases, would have been an abusive family situation. They highlighted a major problem in that detention was only a short term option, as the juvenile often had to go back into that abusive situation. As discussed in Chapter 5, a number of major concerns identified by interviewees related to the need to address offending behaviour

as soon as it was recognised, to develop good parenting skills in dysfunctional families, or at least providing them with a means to develop these skills in future generations, and to provide communities with the ability to make their own decisions and to become accountable and responsible entities. These findings will be discussed in relation to policy development and implementation later in this Chapter.

In summary, this research concluded, that diversion had a positive effect on juvenile offenders in the Northern Territory, at best in preventing re-offending, and at the least in delaying the onset of re-offending. The latter finding may be useful in providing an indication of at which time further restorative interventions should be provided for juveniles in order to prevent further re-offending. The findings indicate that there is a timeframe or a "window of opportunity" where juveniles at risk of re-offending can be placed on programs or provided with resources which prevent further re-offending.

These approaches should include processes which are restorative in nature and will be discussed later in this Chapter.

Conclusions about the research problem

The research provided important contributions to the impact of restorative justice on juvenile re-offending and its implementation in the Northern Territory. However, there are a number of areas which need to be further examined in order to provide a more comprehensive understanding of juvenile offending and re-offending behaviour. These include:

- collecting and analysing quantitative data regarding family, education and health issues of offenders;
- identifying specific factors which make juveniles continue to re-offend, why are they "persisters", or conversely, why are they "desisters" as identified by desistance theorists in relation to the psychological and sociological factors impacting on offending behaviour (Uggen and

Kruttschnitt, 1998; Uggen and Piliavin, 1998; Uggen, 2000; Bushway et al., 2003; Maruna, 2004; Kazemian, 2007; LeBel et al., 2008);

- identifying the characteristics of juveniles who do not offend and compare them with those who continue to re-offend as adults;
- ascertaining if there is an escalation in the type of offences committed, for example, from non-violent offending to violent crime; and
- determining which programs are most successful in the Northern Territory in preventing juvenile re-offending.

The data set analysed and the interviews conducted as part of this research provide a robust statistical foundation for this type of research and establishes an important baseline for future research. In addition, the inclusion of qualitative analysis in the form of interviews, although small in number, presents a balance to the quantitative analysis, providing a sound basis on which to interpret the findings. The thesis therefore makes an significant contribution to research relating to juvenile re-offending in the Northern Territory and in Australia.

Implications for theory

The theoretical basis of this thesis was restorative justice and, in particular, reintegrative shaming. This justice paradigm is based on principles and practices which promote the restoration of harm done to the victim and the reintegration of the offender back into the community. This process is achieved through the process of reintegrative shaming. The theoretical premise of the process is that the ultimate aim of restorative justice is to place responsibility for offending behaviour on the offender themselves and, as a result, prevent further anti-social behaviour. This thesis demonstrates support for this theory in that diversionary processes prevented juveniles from re-offending, or at the least, delaying the onset of re-offending. Given this outcome, implications which these findings have for the theories discussed in Chapter 2 can be linked to the following concepts:

Reintegration and Restoration vs Stigmitisation and Retribution

As evidenced by the findings juveniles at the greatest risk of re-offending were younger and had made a court appearance for their first event. From this perspective the findings provide support for the use of restorative justice and reintegrative shaming as a means to prevent the harm caused to offenders by formal criminal justice processes (Gale et al., 1990; Cunneen, 2001, 2007, 2008; Gray, 2005; Cunneen and White, 2007). Restorative justice practices also provide a way in which to positively manage shame and in doing so prevent an aggressive response to offending behaviour (Braithwaite and Braithwaite, 2001; Robinson and Shapland, 2008).

A key way in which restorative justice promotes reintegration is because the offender is not further alienated from their community through detention or other forms of punishment. These forms of punishment are particularly problematic for Indigenous offenders as a detention centre may be hundreds, if not thousands, of kilometers from their home community. Therefore reintegration of an offender back into his or her community, through conferencing or other forms of diversion can prevent feelings of alienation, thereby promoting feelings of attachment to that community. The concept of attachment is an integral aspect of preventing further offending.

Attachment vs Alienation

This dichotomy is an important factor in determining whether or not the norms and the moral and legal aspects of community and civic life are maintained. If an individual does not feel attached to, or part of their family and community, then there is a greater propensity for them not to adhere to the norms of that community, and to therefore engage in criminal activity. The current research would suggest that those juveniles who were given diversion were more able to reintegrate into their community and form attachment to it, than those who had been through a court process, and that these juveniles were therefore less likely to re-offend. Restorative justice, which leads an offender to form greater attachment with significant others, is part of the *consequential* approach to criminal justice.

Consequential Justice vs Deontological Justice

The consequential concept of justice has, as its focus, a target for the criminal justice system to meet. This objective is to respond to offending behaviour in a holistic way and this is achieved by treating the individual as a person who offends as a result of the environment in which they live. This approach is unlike the deontological concept which focuses on the constraints in the criminal justice system and consequently punishes the offender according to their "just deserts", an approach does not take into account the wider environment in which the offending behaviour occurred. The findings in this study would support the former consequentialist approach to diversion, by taking the factors which result in offending behaviour into account when responding to that behaviour. As such this finding accords with the further development of the Balanced Approach to restorative justice (Bazemore, 1997; Bilchik, 1997).

Substantive Equality vs "Just Deserts"

Given the similar but disparate circumstances in which juvenile offending occurs, response to that behaviour should also be able to adapt to those circumstances. In the Northern Territory similarities in juvenile offenders have been demonstrated by the findings in that they tend to be young Indigenous males from either communities or regional centres. Similarities in the situation of these offenders relate to lack of resources, low socio-economic status and dysfunction within the families and communities in which they live. Evident from this is the need to provide a response for offending behaviour which, instead of punishing these offenders and consequently further depleting their often limited resources through fines or detention, gives them opportunities to break the cycle of dysfunction in which they live. There are also disparities across social groups in the Territory in relation to levels of health, educational ability and other social and psychological characteristics, which have also been found to influence offending behaviour (Uggen and Kruttschnitt, 1998; Uggen and Piliavin, 1998; Uggen, 2000; Maruna, 2004; Kazemian, 2007; LeBel et al., 2008).

The concept of substantive equality is relevant in order to promote individual freedom for the offender and consequently their significant others, their victim and the wider community. Furthermore, at a broader level the current findings support the republican theory of criminal justice.

Each of the above dichotomies are elements which are contained in either a restorative or retributive theory of criminal justice and, as discussed, the findings from this thesis support the proposition that restorative justice has the propensity to have a more positive impact on preventing re-offending behaviour than the retributive process. The implementation of these theoretical constructs in policy formulation will now be examined.

Implications for Policy and Practice

Based on the evidence gathered, and the analysis of data in this study, this section now provides a number of suggestions for the justification and development of policy in relation to the further implementation of restorative justice practices in the Northern Territory. The focus of development of social policy will be examined on three levels, namely the offender, the community and government and non-government agencies.

The Offender

In the current research it was found that young Indigenous males were at the greatest risk of offending and of re-offending. This group of juveniles was over-represented in the population of juvenile offenders, as 60 per cent of juveniles who were apprehended were Indigenous, while only representing 38 per cent of the juvenile population of the NT (ABS, 2001c).

The research found that the majority of Indigenous males lived on Indigenous communities or in regional centres and that juveniles from these locations re-offended to a greater extent, and re-offended more quickly, than non-Indigenous juveniles who lived in Darwin. Interviewees indicated that this level of persistent offending was in part due to the lack of resources available to juveniles in these locations, such as access to programs which

could assist offenders to change their behaviour. Responses from the interviewees suggested that, even when an offender attended a conference and genuinely wanted to change their behaviour, they could be sent back to an environment which did not support this process.

Policies therefore need to identify much more specifically the types of resources required in different locations to address the needs of the offender and their community. For example, juvenile offenders who live in town camps in regional centres may require a different type of intervention than those who live in Darwin, or on remote communities. A further reason for this level of over-representation of Indigenous juvenile offenders from communities is that, in smaller populations which are geographically isolated, offenders are more visible to police, are more likely to be known to police and are therefore more likely to be apprehended. Consequently they are more likely to be caught re-offending, more likely to be excluded from diversion and therefore to go through the court process. This results in the cycle of dysfunction continuing.

In addition to Indigenous status and gender, the findings also conclude that the younger the age at which a juvenile commenced offending, the more likely they were to re-offend. Several police officers who were interviewed stated that they had contact with, or knowledge of, children as young as five years of age who had offended and who continued to do so, but that police had no little or no power to deal with this behaviour. They stated that it was imperative that these children be given support as soon as they were seen to be at risk of offending, and well before this behaviour becomes entrenched. The perception was that, for some children, it was too late to start diversionary processes at 10 years of age, and that the extent and type of offences they were committing by that age automatically excluded them from diversion, made them eligible for court and therefore continued the offending cycle. Policy therefore needs to be developed in order to address this very fundamental problem which is discussed further below.

Restorative justice practices have the flexibility to include the concept of substantive equality in their processes. As discussed in Chapter 2, this concept promotes the relative equality of all citizens. That is, that people with equal resources should be treated equally and that people with unequal resources should also be treated accordingly (International Court of Justice, 1996). The literature examined in the Northern Territory Setting (Chapter 3) demonstrates that some groups of juveniles in the Territory do not have equal access to either education, health or other social and economic resources. The findings support this in that many of those juveniles who lack resources are Indigenous males with low educational attainment. The findings therefore support introducing the concept of substantive equality into Northern Territory policy in recognition that not all people have equal access to opportunities, and that, even though the same rules are applicable to all citizens, they result in unequal outcomes. The main aim of this process is to achieve equitable outcomes and opportunities for all citizens (Government of Western Australia, 2006).

The concept of substantive equality should be incorporated into policy within the Northern Territory in order to assist those groups at the periphery of mainstream society who have little access to legal, economic and social resources. In many cases juveniles who become enmeshed in the criminal justice system have neither the skills nor the resources to help themselves, nor to extricate themselves from ongoing anti-social behaviour. Lack of resources begins a cycle of offending behaviour from which offenders often cannot extricate themselves. That is not to say that the needs of other, less "at risk" groups of juveniles, should not be addressed, but that this focus provides a way in which policy directives can be prioritised, given the conclusions from the research findings. It also indicates that a small group of juveniles use the greatest proportion of resources because of the extent of their need for social, economic and community support.

The findings from this study show that social control, in the form of the diversionary process, positively affected the behaviour of offenders as

evidenced by their decreased rate of re-offending. The role of the family is of vital importance in this process. Braithwaite emphasised that, in relation to the republican ideal, the family is fundamental to building social capital, and that restorative justice strengthens families and therefore builds strong democracies (Braithwaite, 2004: 2). Attachment to family is an integral factor in determining the extent to which the offender feels responsible for their behaviour (Braithwaite and Braithwaite, 2001; Blagg, 2002b; Zehr, 2005). The current findings therefore support Snowball and Weatherburn who affirm that family opinion often has a much greater influence with offenders than more alienating and formal social controls such as apprehension and prosecution (Snowball and Weatherburn, 2006: 16).

This individual approach also needs to incorporate local and community decision-making in order that solutions are seen to be a realistic response to criminal behaviour. One interviewee reiterated that solutions to offending need to be seen to be addressing the needs of the offender, victim and others, and that this can only be done if they feel they are involved in the process.

The Community

At a more systemic level, inability to change offending behaviour could relate to a dysfunctional family environment, poor education, health, and generally a lack of community support in deterring or preventing further offending. Interviewees stated that in some communities offending was the norm rather than the exception, was actually encouraged by community members and was accepted as part of the culture of that community.   These issues have been problematic for many years and millions of dollars of funding, at both the Territory and Federal level, have been allocated to providing solutions to the issues of Indigenous people. As discussed in Chapter 2, a major factor which prevents the effective functioning of communities is lack of good governance—one of the most important determinants in promoting development and addressing dysfunctional communities. This research highlighted that, given that the extent to which Indigenous juveniles were apprehended is a reflection of the dysfunction of many of the communities

and town camps in which they resided, development of good governance in Indigenous communities across the Northern Territory should be a priority.

As depicted in the findings from this research, the ongoing over-representation of Indigenous juveniles in the criminal justice system point to a lack of good governance in the social environments in which these juveniles live. The findings therefore support the need for a greater commitment by government to developing both social and economic resources, and for communities to initiate and maintain this commitment. As discussed in Chapter 2, initiatives have to be based on the needs of individual communities and what is perceived as good governance in that community, according to their traditional laws and customs. Government has an important support role to play in attaining this goal and the context in which both substantive equality and good governance should be developed will now be examined.

The State

Given the extent and deep-seated nature of the issues surrounding the offending behaviour of juveniles, it is evident that the social action approach, as suggested by Colebatch (2006), should be the primary approach to adopt in developing a social policy for juvenile offending in the Northern Territory. As discussed in Chapter 2, his approach sees policy development in terms of authorised choice, structured interaction and social construction. Therefore, in terms of implementation, all elements of the criminal justice system, plus education, health, welfare and Indigenous organisations should be incorporated to address issues. There needs to be commitment by all of those involved to an equal and realistic dialogue between these entities in relation to developing policy which is truly based on a social action approach, encompassing social interaction and social construction, and focusing on the needs of those "at risk". This commitment needs to be made to counteract the often unwieldy and self-defeating bureaucracy which becomes the focus of the process to the detriment of achieving the original aim of the policy. This outcome can be the result of an inadvertent, or deliberate, derailing of

the process by those involved. As a consequence initiatives should be put in place in order to prevent this happening.

As discussed in Chapter 3, the *Six Point Plan on Crime Prevention* implemented by the Northern Territory Government addressed some of these issues and indicated the need for a whole of government approach to crime. This plan contained broad statements in relation to providing a just sentencing system and supporting families and youth, but explained this would be done concurrently with government policy which would be "tough" on offenders. As a result of these contradictory policies, the analysis from this research suggested that the Juvenile Diversion Scheme had not been able to achieve its full potential. For example, in order to address the "tough" aspect of their policy, over the first five years of the Juvenile Diversion Pre-Court Diversion Scheme, offences which were initially eligible for diversion became excluded offences. This resulted in a decrease in the number of diversions and a consequent increase in the number of juveniles who went to court. The aim of the Scheme, to divert juveniles from the court process, was consequently diluted by this policy initiative. Therefore, in attempting to implement contradictory and therefore unclear policy, the initial aims of that policy, in relation to maintaining a fair and just system, were undermined. In approaching the problem in this way the Northern Territory Government gave a clear message to the community in relation to the priority they placed on the needs of juvenile offenders, which was not on the well-being and reintegration of juvenile offenders into the community. Cynically it could be argued that the basis of this decision was that more votes were to be gained by focusing on the short term needs of the electorate than the longer term needs of juveniles.

The findings from this research support the argument that strong democracy is developed by involving community members in decision-making processes which affect them, and through the implementation of good governance at the community level. In order to implement these structures effectively it is important to understand the relationships between community, society and

government, and promoting partnerships between these groups (Walgrave, 1999). One such important relationship, in terms of the Juvenile Pre-Court Diversion Scheme, was between community members and police. As several interviewees stated, communities were strengthened by building partnerships between them and delivery services such as police, and other government, non-government and private sector agencies. Partnerships between these agencies result in greater effects than they are able to achieve as individual entities (Adamson, 2004).   This aspect of communication and interaction between government agencies and communities was highlighted in the interviews with police. Comments were made which related to the absolute necessity of interaction between police and other government and non-government agencies, as police could not be held solely responsible for preventing crime and managing offenders. Additionally, as discussed in Chapter 2, developing positive relationships between police and community members, particularly in rural and remote locations, is an important factor in addressing offending behaviour in those communities and in preventing discriminatory law enforcement (Carrington, 1993; Cunneen, 2001, 2007; Cunneen and White, 2007).

Several interviewees stressed the importance of this consultation and communication and the need, particularly in Indigenous communities, of including community members in conferences and discussions of other initiatives designed to provide solutions to juvenile offending. They argued that this was very important in relation to acknowledging the familial and inter-community relationships of community members and possible conflicts in these which could prevent the success of restorative justice practices. As an Elder of an Indigenous community said, he would prefer to have "one-on-one" conferences which were held in a physically confined location rather than a gathering of many community members in an open environment, as the latter would often result in verbal and physical assaults between community members. Such local knowledge is an essential aspect of providing the setting for the success or otherwise of diversionary processes, and can only be integrated if policy enables the inclusion.

The inclusion of stakeholders, such as community members, in these discussions is important for good governance. The process should include the establishment of practices within governments and other organisations, that maximise the public good, which promote accountability, transparency, effectiveness, support for the weaker members of society and acceptance of diversity (Manor, Robinson and White, 1999). This ideal of true democracy is related to the concept of dominion as discussed by Braithwaite and Pettit (1990) in Chapter 2 who argued that the most important aim of criminal justice is to promote dominion through guaranteeing the rights and freedoms of all citizens.

Therefore, providing communities with ability to achieve good governance gives the members of a community greater ownership in decision-making in their community and develops a basis for self-determination (Broadhurst, 2002). The JDS enables such governance and builds individual capacity across the community which can then be utilised to address other issues. This process is integral to providing a strong basis for developing and implementing self-sustainable outcomes for communities. This research concludes that the absence of such a basis for community decision-making, and the resulting lack of community involvement, will only address the symptoms of the problem and are unlikely to examine and provide solutions for its underlying causes. Members of a community are those who best understand the needs of the community and will therefore be best placed to know how to address those needs (Adams and Hess, 2001).

Restorative justice also recognises that the community itself is a victim of offending and that there is a therefore a need to "restore the community as much as possible by allowing people to participate in denunciation and sentencing" (Miller and Schacter, 2000). From a policy perspective this means that it is essential for a community to be consulted in relation to decisions made on its behalf by governments and other agencies. This

approach has been adopted in other countries in relation to justice. For example, in the UK it was found that

> Effective youth crime reduction requires the community to work with a strong multi-agency team to target problems. Community representatives should not be required to become experts but to take advantage of the expertise of professionals. Their contribution should provide the essential dimension of local knowledge, the legitimacy of a wider sense of ownership and ensure that outcomes are attuned to local needs (Adamson, 2004: 20).

This principle should be incorporated into Northern Territory social policy to provide, what Colebatch (2006) termed, a "social action" approach to policy development. This approach would address a number of problems which have been caused by the focus on an economic rationalist approach to policy making, as adopted by the Northern Territory Government in dealing with social issues such as juvenile offending. This approach has made economic considerations the focus of policy development undermining the achievement of positive outcomes in addressing community issues at the social level. As a consequence restrictions have been placed on community members on their ability to make decisions for their community and to bring these decisions to fruition (Grimshaw, 2004: 7). Therefore, although the solution to problems faced by the criminal justice system lie in improving social factors, such as education and health care, it would appear that, in reality, these issues have become secondary to economic political priorities.

A social action approach to policy development would dilute economic considerations through the inclusion of a number of stakeholders whose focus encompasses the broader needs of the community in the policy process. Furthermore, the social action approach to policy development would foster more inclusive public institutions. The findings from this research indicate that the Northern Territory Government, and other institutions need to adopt this approach to address the "participation gap" and the "feeling that traditional decision-making processes will not allow young people to make a difference in things they care about and their participation reflects this" (Institute On Governance, 2005: 5).

If citizens feel they are not being heard by government, the resulting atmosphere of cynicism when communities deal with government agencies, and the resulting lack of confidence in government, undermine any development of meaningful dialogue between these groups and ultimately of community building. Again this points to the need for communities to be given the ability to develop good governance through strong democracy and dominion. This could be achieved in the Northern Territory by even greater involvement of community members in looking at solutions to offending, by taking into account the needs of communities according to their particular situation, and by taking a long term strategic approach to addressing community needs. To encourage the development of community governance, communities need to be provided with the resources, such as community law support programs, which educate community members in how to administer justice and prevent crime in an equitable, systematic and just way (Grimshaw, 2004: 12).

The Northern Territory Government should be encouraged to develop a long term approach and commitment to addressing juvenile offending as crime prevention projects and programs can often take some time to produce the desired outcomes (Adamson, 2004). Policy which is focused on short term crime prevention, as evidenced by the introduction of mandatory sentencing in the NT, has provided little evidence to demonstrate that these initiatives actually deter offending or prevent re-offending. This type of reaction by government can therefore result in policy which is flawed by political expediency (Buttrum, 1997: 63).

This thesis concludes that, a systemic approach is required in which politicians maintain a consistent and credible application of the evaluation of the practices and processes as a response to juvenile offending. This approach is an essential element in achieving the ongoing improvement of these practices and to demonstrate accountability in the allocation and use of resources, both to those agencies which provide resources, and to the wider

community. Evaluation must be done on a consistent basis to promote restorative justice to the public. In order to demonstrate the success, or otherwise, of adopted practices goals must be clearly and carefully articulated from the outset, implementation monitored and a process of re-evaluation established (Bright 1997: 1). Snowball and Weatherburn (2006) suggest more evaluation should be undertaken in relation to restorative justice practices. They discussed this in relation to examining those programs which use informal social controls, such as restorative justice practices, as a means of preventing anti-social behaviour. An important contribution of the analysis undertaken for this thesis is that, apart from the current research, there has been little evaluation of the Northern Territory Scheme. The next stage of policy development should therefore include an evaluation plan for the Scheme as a whole the development of a more strategic approach to juvenile offending than has been apparent to date. A structured, relevant and well considered evaluation plan needs to be developed for the Scheme as part of the ongoing development and implementation of restorative justice practices in the Northern Territory. Any evaluation process needs to include detailed and ethnographic research of the communities affected by dysfunctional behaviour. Establishing credibility and accountability of this process will also provide benefits in relation to further promoting the positive aspects of the Scheme, by demonstrating to the wider community that these practices are positively contributing to a reduction in offending and re-offending.

Each of these developments and policy initiatives need to be addressed at a systemic, whole of government, level. This thesis concludes that the Northern Territory Government should focus its policy on community capacity building as a comprehensive way in which to work with "at risk" children and their families. The approach needs to incorporate government and non-government agencies, including justice agencies, social welfare agencies, offender advocates, politicians, leaders in victims rights, and be bipartisan in its approach to developing solutions (Barter, 2006). The findings from the current research support the implementation of many of

the aspects of community capacity building, including early intervention, developing a comprehensive system for meeting basic needs, providing culturally appropriate services and implementing more services to connect children and families with their communities.

In Chapter 2 the review of previous research found that the all sectors of government are responsible for promoting a healing process which benefits, victims, offenders and other affected by the offending behaviour. As commentators have argued, restorative justice in the criminal context is only part of a much wider and more encompassing model of *social* restorative justice which includes other public and civic institutions (Bazemore, 1997; Miller and Schacter, 2000; White, 2003; Cunneen and White, 2007). These institutions include the education system, health system, welfare system and others that provide social and economic support and resources for individuals. However, none of these can, in isolation, provide the solution to offending and cannot be made responsible for, or hope to achieve, a change in individual behaviour. There is a need to provide a positive environment for changing behaviour within an integrated and communicative environment where agencies such as police, health, education and others work in conjunction with and support each other.

Again a holistic approach should be implemented to providing a positive environment for children. For example, education should be based on more than just formal schooling, as for Indigenous children this can be another environment from which they feel alienated. An example of providing a more realistic and appropriate educational experience for Indigenous youth was developed in Darwin. At the basis of this program were the theoretical underpinnings of reintegrative shaming, as discussed in Chapter 2, which focused on addressing the feelings of lack of connection to, and attachment with, significant others, which juvenile offenders often experience. The program took the approach that a lack of connection produced an environment for children where they felt alienated and were therefore more likely to resort to crime. As the founder of the program reported,

> We have many youth within the community who have no connection to their true identity ... They are lost and disengaged from their families and the community. Many of them have no—or poor—role models and are in need of guidance to develop into strong and proud Indigenous people (Cole, *Sunday Territorian*, May 13 2007: 7)

This program provided a means for Indigenous youth to take part in traditional cultural activities which enabled them to "reconnect" with their culture. The results of the program were, anecdotally, extremely positive, and was awaiting funding from the Northern Territory Government or Federal Government to further develop the program. This initiative would be one important way in which to provide for positive educational outcomes, not just for Indigenous youth, but for all juveniles offenders.

Schemes such as these could be integrated as partners in a "whole of government" approach to assisting "at risk" children. This approach would be better able to recognise and address problems associated with anti-social behaviour than one which is piecemeal and inwardly focused, which often occurs as a result of the lack of integration in relationships between government agencies (Buttrum, 1997). A situation which promotes communication and problem-solving, not segregation and blaming, will provide a much stronger basis for recognising problem behaviour in children from a young age and consequently providing parents with skills to look after their children in a supportive and nurturing environment. The research concludes that such a whole of government approach is a vital part of addressing anti-social behaviour and provides a strong basis for responding to offending behaviour, and also of preventing it by addressing dysfunctional behaviour in its early stages.

This study has highlighted that future solutions are not the responsibility of just government agencies, or police, or any one entity responsible for preventing and changing the behaviour of juvenile offenders. Families and communities need to be empowered to do this with support provided by a government approach which provides citizens with the means to solve their

own problems in a positive way, and where the criminal justice system plays a subsidiary role. This outcome will be achieved by using restorative justice processes to allow people affected by crime to make decisions about how to deal with anti-social behaviour by including them in the process. This will provide them with ownership of what happens to them and to their lives.

There has to be a commitment by government to provide the means for Northern Territorians to make their own decisions and in taking those decisions seriously. However, as one respondent commented, in his experience, often community members had made decisions only to have these overturned by the police. He said that the solution lay in making the offender, parents and community responsible and accountable for their behaviour. Another respondent commented that the only way in which to make community members accountable was to empower parents and the community to develop solutions to these problems. He stressed that parents have to be part of the process and have to be part of the solution.   It was also recognised that this has to be done in conjunction with state authorities who provide resources and support to achieve these aims.

In summary, the defining principle of democracy is that all citizens have equal rights and an equal say in public decision-making through participation in government and civil society (Braithwaite and Petit, 1990; Braithwaite, 2004; Clatworthy and Delisle, 2004; Colebatch, 2006). The section discussed the theoretical implications of the findings and the way in which these could be implemented in the policy arena. The following section will examine how restorative justice practices can be further developed.

Future Development of Restorative Justice Practices in the Northern Territory

This section examines ways in which restorative justice can be expanded in order to better respond to offending in the Northern Territory. These initiatives relate to providing diversion for a greater range of offences and providing diversion for adult offenders. In order to successfully implement these initiatives, suggestions are made on how such information should be

disseminated to the public and the consequent legitimisation of the system. The four key areas are:

- Broaden the range of offences which are eligible for pre-court diversion.
- Public education in relation to restorative justice and its successes.
- Legitimise the criminal justice system.
- Provide diversion for adult offenders.

Broaden the Range of Offences which are Eligible for Pre-court Diversion

In order for restorative justice to be taken as a serious response to juvenile crime it should be able to deal with all types of crime and should do so in a way in which all of those involved in the process are satisfied with both the process and the outcome (Bazemore and Walgrave, 1999). This would include making provision for responding to serious violent crime as well as minor property offences. One important way of developing and expanding the use of restorative justice is by providing diversion for more serious offences and previous research has provided evidence for doing so. For example, Sherman and Strang (2007) found that after examining practices across the world, restorative justice was often at its most successful when dealing with offenders who committed more serious, rather than minor, offences,

> ...for major crimes RJ has succeeded better than CJ in reducing repeat offending among felony defendants in New York City, violent white people under 30 in Canberra, and violent white girls under 18 in Northumbria. Banning RJ for serious crimes would destroy the chance to prevent many thousands more such offences. Nor is it clear that there is any principled basis for selectively allowing, or banning, RJ—other than the principle of harm reduction, which indicates its use with serious crime (Sherman and Strang, 2007:21)

Policy implications should therefore focus on providing diversions for a greater range of offences, not just for property offences, but also for more serious violent offences. The implementation of this policy initiative would require sensitive handling by the NT government which would need to

substantiate its actions by providing sound evidence from randomised trials that restorative justice practices in other jurisdictions prevent this type of crime. These trials allocate offenders randomly to either the court or diversionary process and provide an indication of the extent to which court and diversion impacts on re-offending (Sherman et al., 2005).

In support of such an initiative, this study has highlighted that in the Northern Territory over a five year period, the majority of juveniles committed serious property crime for which diversion was an option, and far fewer juveniles committed violent crime. However, the research found that the extent of re-offending for those who committed violent crime was similar to that for those who committed property crime, supporting the use of diversion for violent crime, as court did not prove to be a sufficient deterrent for offenders who committed this type of offence.

Additionally, over the five years of operation several offences, including those most committed by juveniles and which were originally eligible for diversion, became excluded from diversion and as a consequence an increasing number of offenders made court appearances. This initiative defeated one of the major objectives of the Scheme—to provide offenders with the opportunity to admit responsibility for their behaviour, and to address the harm they had done and be reintegrated into the community. The re-designation of offences to the excluded category appears to have occurred because the government perceived that the community wanted juveniles who committed certain offences to be incarcerated, although this perception was not based on any sound information or data. For example, politicians in the Northern Territory often stated that the public wanted the criminal justice system to "get tough" on juvenile crime, to punish offenders harshly, to "lock them up and throw away the key" and that diversion was "soft sentencing" (*Northern Territory News*, 18 October 2001: 6).

The current research supports policy which provides an offender, who shows remorse and demonstrates that they will take responsibility for their

behaviour, with the opportunity for diversion from a formal court process. The argument against this initiative would be that it could be difficult to prove remorse on the part of someone who had committed a violent crime, and that the public backlash where a violent offender re-offended, would be politically disastrous. However, these findings suggest that serious consideration should be given to determining how a genuine demonstration of remorse could be assessed. This could include undertaking any reasonable request made by the victim for reparation, or undergoing psychological counselling or substance abuse programs. Data analysed for this study found that the seriousness of the offence was not as great a predictor of re-offending as an offender who was willing to make amends for their behaviour. The research concludes that the determining factor in giving diversion should be the extent of remorse expressed by the offender, rather than the type of offence committed. However, expressing remorse may be hardest for those offenders who are most socially and psychologically damaged. As discussed in Chapter 2, the extent to which shame is managed successfully by the offender is dependant on the extent to which remorse is understood and is able to be expressed in an effective way (Braithwaite and Braithwaite, 2001). This requirement suggests the need for other factors to be considered before allowing remorse to take precedence in determining how the offender is treated. Issues such as family and community dysfunction and, integral to these, the negative life experiences of the offender, need to be addressed in order to provide the individual with a positive basis from which to express remorse (Cunneen, 2001; White, 2003). At present, the justification for not allowing serious offenders access to pre-court diversion is related to what is perceived by the Northern Territory Government as acceptable to the community, rather than what may actually make reparation for current offending and reduce further offending behaviour.

***Increase Public Education and Awareness in Relation to
Restorative Justice and its Successes***

There is enough evidence over the past two decades of research to provide positive feedback to the public as to what restorative justice is able to achieve, including a more equitable and just process for addressing offending behaviour, and how it is part of a much wider solution in developing safer communities. As discussed in Chapter 3, although the public in the Northern Territory were not fearful of being victimised by crime and also experienced similar rates of victimisation of personal crime and household crime to other states and territories in Australia media and politicians continued to create further fear of victimisation in the community. This situation requires that all of those who make public comment, such as politicians and the media, provide better information to the public about restorative justice and its aims and possibilities. The public needs to have information which educates them that restorative justice has, at the least, been found to do no worse than retributive processes, and in fact has the potential to do much better.

An unintended outcome of public misinformation, which has occurred in the Darwin area in the past two to three years, was the development of a "vigilante" culture (e.g. *Northern Territory News*, 4 May, 2003: 1; *Northern Territory News*, 12 May 2003: 5; *Sunday Territorian*, November 19, 2006: 8). This has led to situations where community members have taken the law into their own hands, not in a positive restorative fashion, but in the development of groups of community members who patrol certain suburbs at night to apprehend juveniles they think have committed an offence. The formation of such groups has serious implications for the protection of individual rights, of fairness and justice, and indicates a real need for the public to be properly informed on appropriate ways in which to respond to this situation. In order to achieve this objective there is a need for greater dissemination of information to the public, both statistically and anecdotally, in relation to what restorative justice practices attempt to achieve, the principles and values involved and the proven successes of these practices in preventing re-offending, both in Australia and overseas.

Furthermore, the public also needs to understand that the pre-court diversion scheme is not a "soft option" for offenders and be told of ways in which victims and ultimately the wider community will benefit from these initiatives. Greater public consultation in relation to further developing the Scheme would be a useful strategy to adopt in providing this type of information. Another approach to establish public credibility for the Scheme for the public is through independent evaluation. In doing so the community and wider society need to be convinced that this new paradigm of justice will not expose them to "dangerous" people and that it is not an irresponsible and careless way of responding to crime (Gabbay, 2005). Methods to introduce this information to the public could be through statistics and "good news" stories about the outcomes of diversionary practices, both in Australia and overseas. The accompanying discussion should be focused on clear, concise and practical marketing of restorative practices, not only within the criminal justice system but in relation to broader applications, such as educational institutions, where much work has been done in the application of restorative justice in recent years.

The issue of providing information to the public about restorative justice processes and the positive impact it can have on the crime rate is very much related to legitimising the system. This is important for the wider community and for those who become part of the process, including offenders, victims and other stakeholders. The following section will examine ways in which this could be achieved.

Legitimise the Criminal Justice System for all People in the Community

The perception of lack of legitimacy in the criminal justice system is greatest for those who do not understand the system, or who do not feel they are included in it. These groups tend to again be those at the lower end of the socio-economic scale, who have low incomes and low educational attainment. This situation has implications for the effective functioning of

the system, as there is little trust, faith or confidence in a system which does not take into account the needs of the majority of people who come into contact with it, as is often the case with minority groups (Gabby, 2005). As discussed in Chapter 2, the implementation of BARJ in the USA was in response to a perceived inability of the criminal justice system to adequately address juvenile offending (Bazemore, 1997; Bilchik, 1997). In Australia restorative justice practices were also introduced as a means to better legitimise the system for victims and offenders and particularly for minority groups of citizens such as Indigenous youth (Watchel, 1997; Waite, 2003; Blagg, 1997, 2002a; Daly, 2002; White, 2003; Chan, 2005).

This study has argued that restorative justice practices are seen as a means to provide the criminal justice system with some legitimacy for these groups of citizens. In the Northern Territory there is some acknowledgement that legitimising the system is an important aspect of providing an effective criminal justice system, however there are no directions provided on how to actually implement this. For example, legitimisation of the system is partly addressed by a stated goal of the Northern Territory court system to promote public trust and confidence, however there are no specific ways defined to do this in any court documentation (Hough and Roberts, 2004).

In attempting to further legitimise the system, and in order to assist Indigenous offenders to better understand its processes, the Northern Territory Government introduced a court interpreter service for Indigenous offenders. The application of this initiative was often problematic because interpreters with knowledge of the relevant language group were not always available because of the hundreds of Indigenous dialects which are spoken within the Northern Territory. The legal system could also remain an enigma for many of those juveniles for whom English is a <u>first</u> language, including the non-Indigenous juvenile offenders in the Territory. These offenders also need support in attempting to understand such a system, and restorative justice practices provide a much more humane and realistic way of confronting them with their behaviour and providing a solution to it.

Provide Diversion for Adult Offenders

The research concludes that a further area in which restorative justice practices could be expanded in the Northern Territory is by giving adult offenders the opportunity for diversion. Interviewees were supportive of providing diversion for some adult offenders. However, as stated earlier, one police officer remarked that because adults would usually have a clearer understanding of what was "right" and "wrong" they should not necessarily have all the options available to them which were available to juveniles. But, given the positive outcomes in this research, the findings would support the proposition that adult offenders should be considered for diversion. This may be of particular relevance to the recent interventions in Indigenous communities by the Federal Government undertaken as a result of the findings from the Anderson and Wild (2007) report. An expected consequence of these interventions is that more Indigenous people, particularly adult males, will be imprisoned, as reflected in the comments made by the Northern Territory Government in relation to building a third prison in the Territory in the near future (*Northern Territory News*, 23 August, 2007: 5). In response to these interventions Marion Scrymgour, Child Protection Minister in the NT Government, emphasised that "anyone who thinks a solution can rest with just a bit of juggling of a budget here or there, or jailing people for a bit longer, is kidding themselves" (*Northern Territory News*, 25 August, 2007: 22). This research also supports this view and demonstrates that providing diversion and associated programs for offenders is a more effective, humane and long term solution than imprisonment.

In implementing such an initiative it would be necessary to first determine the characteristics of adult offenders in relation to whether a similar percentage of adults to juveniles re-offend and the types of offences which they commit. It may well be that the pattern of offending for the majority of adults is similar to that for juveniles and this finding would further support the introduction of diversion for adult offenders.

Summary

The findings from this thesis indicate the need to provide a system which better addresses the needs of juvenile offenders by further implementing restorative justice practices. This system should be developed in the context of a social action approach which develops community building capacity. This would promote a whole of government approach to policy development in relation to juvenile crime and how to address its causes. It would therefore address the needs of the offender, the victim and ultimately the wider community. A number of initiatives were discussed in this chapter which identified factors that need to be taken into account when developing policy. These are:

1. Providing restorative processes which allow offenders to take responsibility for their behaviour;

2. Using pre-court diversion for juveniles and adults where remorse is shown by the offender, independently of the offence,;

3. Assisting from an early age, children at risk of offending, recognising that offending behaviour can be entrenched for some children before 10 years of age;

4. Assisting families to develop good parenting skills and breaking the cycle of generational dysfunction;

5. Evaluating restorative justice processes to provide credibility, transparency and fairness of the processes;

6. Providing consistent and accurate information to the public in relation to what these processes are achieving;

7. Providing built-in flexibility into the processes so that they become relevant to the offender, victim and other stakeholders;

8. Recognising the role of the community in determining how it should address offending behaviour in relation to the needs of the offender, victim and community;

9. Taking a social action approach to policy development which encompasses government and non-government agencies and communities; and

10. Determining ways in which restorative justice can be further utilised in relation to more serious offences and adult as well as juvenile offenders.

The research findings, literature review and data analysis conclude that these policies should aim to achieve the goals of:

1. Developing the individual and preventing offending and re-offending through the promotion of responsible behaviour, allowing offenders to show remorse and repair harm;
2. Empowering victims by allowing them to be part of the process;
3. Empowering families by developing their strength through better parenting skills;
4. Empowering the community through good governance;
5. Developing strong democracy through governments which allow for substantive equality and which have a long term commitment to real dialogue and commitment of resources.

All these factors are integral to the development of policies which provide a strong basis on which to build better and stronger communities which are able to address and provide solutions to juvenile offending behaviour in a meaningful and effective way.

Limitations of the Current Research

The current study examined the whole population of juvenile offenders who were apprehended over a five year period in the Northern Territory. This precluded any problems relating to sample bias. The thesis also employed several statistical methods to provide a robust analysis of the characteristics of juvenile offenders and their re-offending behaviour. There were three limitations of the quantitative research: its lack of comparison with offending prior to the implementation of the Scheme; its limited analysis of re-offending patterns in relation to recalcitrant juveniles; and not following the pattern of re-offending into adulthood.

The first limitation of the study was that it did not provide a comparison of the extent of re-offending prior to implementation of the Scheme with that which occurred during the five years covered by this research. Such a comparison would have provided further important evidence of how well diversion prevented re-offending. Second, the current study did not examine in any greater depth why the more intractable juveniles continued re-offending. Such questions are left for future research, particularly in relation to the level of responsibility which juveniles felt in relation to their offence and whether they showed any remorse for their victims. It was possible that there were juveniles who were not eligible for diversion but who felt responsible and remorseful for their offending behaviour, but who were precluded from expressing this because they were excluded from diversion. This raises the issue of making diversion available for all offenders who express remorse for their actions, whatever their offence. Third, offending into adulthood was not taken into account, resulting in possible underreporting of re-offending for some groups of offenders. This could have important implications for the types of policies which should be developed to address offending behaviour.

A possible methodological limitation in relation to the qualitative analysis related to the selection of interviewees and the number of interviews which were conducted. The sample of interviewees was not random and therefore not necessarily a representative sample of the population and could therefore be seen to have produced biased results. There was, however, methodological justification provided in Chapter 3 for the selection of respondents in this way. The interviews were used to support the quantitative analysis, which took some time, and was undertaken in order to establish a statistically reliable understanding of the population of juvenile offenders. More robust and in-depth qualitative analysis would be a preferred option for future research.

Implications for Methodology

One aspect of the learning process of undertaking this type of research related to determining the correct statistical methodology to use. This was because the data involved examining a population of cases over a period of time, which inherently meant that censored observations had to be taken into consideration in order to take the time factor into account. The initial descriptive statistics which examined re-offending addressed this issue to a limited extent by only including re-offending within the first 12 months of the initial event. However, in order to provide analysis which included as many cases as possible, that is all censored cases, Cox Regression and Survival Analysis were used. Incorrect statistical techniques would have caused the findings to be flawed at best and completely misleading at worst.

Future Research

There are a number of areas which are of importance for future research. This mainly requires more evaluation of the processes, practices and programs to promote credibility of and accountability for the outcomes of restorative justice practices. These evaluations should include more in-depth analysis of the offenders themselves. Questions and methods could include:

1. Interviewing offenders in relation to what they thought caused their offending behaviour, how they perceived the criminal justice system, and whether exposure to the system was a meaningful experience for them;

2. Evaluating re-offending behaviour of those juveniles who attended court and those who were diverted, and examining the impacts of these processes on re-offending behaviour using randomised trials;

3. Evaluating the different ways in which conferences are structured, where they are held, who attends them, who facilitates them, how they are adapted to the situation or locality in which they are held;

4. Determining the perceptions and level of satisfaction of those who attend conferences in relation to what they considered were the positive

and negative aspects of the experience. "What did victims think of the process?".

This thesis concludes that future research should further examine the extent to which young children offend, as the current research did not examine offending patterns of juveniles prior to the age of 10 years because this information was not recorded by police. This research should be undertaken using information available in schools, social services or other agencies, and using a whole of government approach to addressing the issues.

In relation to offending into adulthood, further research should also attempt to determine the extent to which juveniles who have received diversion re-offend into their adult years. There should be a follow-up study in relation to what happened to juveniles when they became adults, that is, after the age of 17 years. Questions to be addressed include—did juvenile offenders continue offending as adults? Was there an escalation in the type of offences committed, for example, from property to violent crime? Were certain groups of juveniles who were more likely to re-offend as adults? These questions need to be addressed in order to understand more fully the impact of restorative justice practices on re-offending behaviour both for juveniles and as adults. It is important that further research examine other factors which have been found to impact on the offending behaviour of juveniles in the NT, such as family background, education and other socio-economic factors which previous research has found have an impact on offending behaviour.

Overall, the findings from this thesis support the proposition that, in the Northern Territory, government policy, in conjunction with family and community involvement should focus on more effectively identifying children, from an early age, who are at risk of developing anti-social behaviour. Given the level of over-representation of young Indigenous males in the criminal justice system, particular care should be taken to address the needs of this group of children. Policy development of this type needs to be

addressed in the context of, not just the criminal justice system, but as a holistic approach which includes government and non-government sectors and the wider community.

Final comment

This thesis commenced with discussion of the Federal Government intervention into the political and legislative affairs of the Northern Territory. As a result of the intervention it has been argued that there has been further erosion of the rights of Indigenous people in the NT. Commentators have also stated that the intervention provides a means by which Indigenous people can regain their self-governance but, as demonstrated by this research, the process needs to be inclusive and to provide people with the opportunity for their own voice to be heard and, importantly, for that voice to truly "heard" and respected by government. A fundamental requirement in achieving these objectives is the empowerment of marginalised citizens by allowing them to take responsibility for their own lives in an environment of consultation and trust.

In conclusion, it would seem appropriate to quote the United Nations, which was one of the major opponents of mandatory sentencing and one of the major supporters of the implementation of restorative justice practices in the Northern Territory. They stated that restorative justice is "a response to crime that respects the dignity and equality of each person, builds understanding and promotes social harmony through the healing of victims, offenders and communities" (United Nations Office on Drugs and Crime, 2006: 7). Findings from this thesis support this declaration and provide a foundation for further promoting restorative justice and all of its benefits in the Northern Territory. This is what we should be hoping to achieve so that there will be a better future for all of our young people and ultimately for society as a whole.

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ACRONYMS AND ABBREVIATIONS

ACPO	Aboriginal Community Police Officer
ACT	Australian Capital Territory
ABS	Australian Bureau of Statistics
ALP	Australian Labor Party
ARIA	Accessibility and Remoteness Index of Australia
CAEPR	Centre for Aboriginal Economic Policy Research
CLP	Country Liberal Party (Northern Territory)
CYDU	Community Youth Development Unit
DEET	Department of Employment Education and Training (NT)
HEROC	Human Rights and Equal Opportunity Commission
JDD	Juvenile Diversion Division
JDS	Juvenile Pre-Court Diversion Scheme
JDU	Juvenile Diversion Unit
MAP	Multi-level Assessment Program
NSW	New South Wales
NT	Northern Territory
NTDE	Northern Territory Department of Education
NTNERL	Northern Territory National Emergency Response Legislation
NSSC	National School Statistics Collection
NZ	New Zealand
PROMIS	Police Realtime Online Management Information System
Qld	Queensland
RCIADC	Royal Commission into Aboriginal Deaths in Custody
SA	South Australia
SCRGSP	Steering Committee for the Review of Government Service Provision
SCRCSSP	Steering Committee for the Review of Commonwealth/State Service Provision
Tas	Tasmania
UEWI	Unlawful Entry with Intent
Vic	Victoria
WA	Western Australia

APPENDICES

APPENDIX 1: AUSTRALIAN STANDARD OFFENCE CLASSIFICATIONS (ASOC) OFFENCE DIVISIONS AND SUBDIVISIONS

01   Homicide and related offences

011   Murder

012   Conspiracies and Attempts to Murder

013   Manslaughter and Driving Causing Death

02   Acts intended to cause injury

021   Assault

029   Other Acts Intended to Cause Injury

03   Sexual assault and related offences

031   Sexual Assault

032   Non-Assault Sexual Offences

04   Dangerous or negligent acts endangering persons

041   Dangerous or Negligent Operation of a Vehicle

049   Other Dangerous or Negligent Acts Endangering Persons

05   Abduction and related offences

051   Abduction and Kidnapping

052   Deprivation of Liberty/False Imprisonment

06   Robbery, extortion and related offences

061   Robbery

062   Blackmail and Extortion

07   Unlawful entry with intent/burglary, break and enter

071   Unlawful Entry with Intent/Burglary, Break and Enter

08   Theft and related offences

081   Motor Vehicle Theft and Related Offences

082   Theft (Except Motor Vehicles)

083   Receiving or Handling Proceeds of Crime

084   Illegal Use of Property (Except Motor Vehicles)

09   Deception and related offences

163   Commercial/Industry/Financial Regulation

169   Other Miscellaneous Offences

APPENDIX 2: INFORMATION SHEET AND CONSENT FORM

INFORMATION SHEET

Dear participant:

Thank you for your interest in this research project. This project is looking at the ways in which the Juvenile Diversion Scheme is helping juveniles to stop reoffending, if indeed it is. The project title is: *Restorative Justice in the Northern Territory*: *The impact of the Juvenile Diversion Scheme on the reoffending of juveniles.*

The Juvenile Diversion Scheme, which began in 2000, was designed to provide a way of dealing with juvenile offenders which does not include a formal court process. I would like to ask you about your knowledge and experience of the Juvenile Diversion Scheme and what you think about it. For example, do you think it has made a difference to offending behaviour of juveniles? Do you think there are better ways to do this? What might these be? These are some of the questions which will be included in the questionnaire.

I will be interviewing about 20 people from around the NT who have had some exposure to the scheme, I will also be talking to police who have been involved in the scheme. Interviews may be recorded on audio-cassette tape, and then transcribed. Interviewees can request a copy of the transcript of their own interview but apart from that only myself and my academic supervisors will have access to the tapes and transcripts. The interview may take up to an hour. When the research report is written up, pseudonyms for persons and places will be used as necessary to protect participants' privacy.

If you agree to participate, please read the attached Consent Form which you are asked to complete before commencing the interview. Please note also that if you do agree to participate you have the right to withdraw at any time without penalty or loss of benefit to yourself, including any effect on your employment standing. The data will be stored in a secure environment for a period of 5 years in accordance with CQU policy. The research will only be published using de-identified data in a report for a journal article or conference paper and of course as a PhD thesis. Please contact Central Queensland University's Office of Research on (07) 49 232 607 should there be any concerns about the nature and/or conduct of this research.

Thank you for your assistance
Teresa Cunningham,
PhD Candidate Central Queensland University

Phone: (08) 89 88 2681 (home)
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Institutional Ethical Clearance Number: H04_11-129

CONSENT FORM

Research Project:
Restorative Justice in the Northern Territory: *The impact of the Juvenile Diversion Scheme on the reoffending of juveniles*

Researcher: Teresa Cunningham, PhD Candidate, Central Queensland University

Please put a ring around your answer:

1. An Information Sheet has been provided to me; it provides details about the nature and purpose of the study.
     Yes No

2. I also understand that I can obtain a copy of the detailed research proposal should I desire.
     Yes No

3. I understand that I have the right to withdraw from the project at any time.
     Yes No

4. I understand that, when the researcher is quoting from or analysing interview or other material gathered in this research, he will remove information that could reveal participants' or other people's identities.
     Yes No

5. I am aware that I may ask to examine the transcripts of my interview to ensure they are an accurate reflection of my statements and can change these if deemed warranted.
     Yes No

6. I agree to have my words used as data for the purpose of this research.
     Yes No

7. I wish a copy of a summary of the outcomes of the research to be posted/emailed to me at the address listed below.
     Yes No

Signature: .... Date: ....

Name (please print): ....

Contact details if you wish to have a summary of the outcomes of the research posted to you:
(Postal or Email address) ....

Appendix

INTERVIEW QUESTIONNAIRE

I would just like to ask you some general questions about the Juvenile Diversion Scheme and your thoughts about it and what it may have achieved. Firstly I'll start with some information about yourself and your involvement with the scheme.

11. How long have you been involved with/known about the scheme?

12. What involvement have you had with the scheme? For example, have you worked in the Juvenile Diversion Unit or as a police officer who has diverted juveniles, or as a member of the community who has assisted in conferences?

13. Have you been involved with/know about the scheme in both urban and remote areas?

14. In a general sense do you think the scheme is achieving its objectives of:

   (d) Providing a better way of dealing with juvenile offenders by making them more responsible for their actions and preventing reoffending
   (e) providing victims of crime with a more supportive environment for dealing with the offending behaviour
   (f) and through these mechanisms fostering positive social change in the community

15. Without naming individuals or specific places can you give me any examples of why you think these positive outcomes have occurred

16. Is the scheme flexible enough to accommodate the needs of the juveniles you have seen?

17. Do you think more options, such as programs, should be made available to the diversionary process?

18. What other options or programs, if any, do you think should be made available to juveniles?

19. Do you think the scheme would be useful for adult offenders?

20. Any other comments you would like to make?

Thank you for your participation