

# YOUR STORY AND THEIRS: THE YOUTH JUSTICE GROUP CONFERENCING PROGRAM

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*This article provides a small-scale empirical study which interrogates the restorative justice dialogue underpinning the Youth Justice Group Conferencing Program (YJGCP) in Victoria. Personal reflections collected from interviews suggest that participants in the YJGCP should be provided with information giving them a realistic understanding of the outcomes which restorative processes might deliver. The article argues that the YJGCP would be well served by a common narrative that is comprehensively understood by all service-providers and stakeholders to ensure that participants are given a meaningful understanding of the program, its goals and likely outcomes.*

## I INTRODUCTION

It is widely recognised that responding to youth crime requires an approach which is sensitive to the differences between young and adult offenders.<sup>1</sup> In deference to this need, Australian and international jurisdictions have developed programs and policies which specifically target young offenders.<sup>2</sup> These programs aim to address the underlying causes of offending behaviour and reduce the likelihood that young people will continue with anti-social conduct.<sup>3</sup>

Many of these projects are grounded in the theory of adversarial approaches to justice and aim to adjust some aspects of the traditional court system in order to deliver more therapeutic solutions to crime.<sup>4</sup> Indeed, it has been recognised for some time that criminal justice systems aimed solely at retribution and punishment whilst doing little to address the behavioural, social, cultural and

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1 Kelly Richards, 'What Makes Juvenile Offenders Different from Adult Offenders?' (Research Paper No 409, Australian Institute of Criminology, February 2011).

2 See generally Kelly Richards, 'Police-Referred Restorative Justice for Juveniles in Australia' (Research Paper No 398, Australian Institute of Criminology, August 2010); United Nations Office on Drugs and Crime, 'Handbook on Restorative Justice Programmes' (Criminal Justice Handbook Series Report, United Nations, 2006) 26–9.

3 David B Wexler, 'Some Reflections on Therapeutic Jurisprudence and the Practice of Criminal Law' (2002) 38 *Criminal Law Bulletin* 205, 206–8.

4 See generally Arie Freiberg, 'Non-Adversarial Approaches to Criminal Justice' (2007) 16 *Journal of Judicial Administration* 205.

economic causes of crime are ill-suited to addressing offending behaviour in any real sense.<sup>5</sup>

One example of a program based on these principles is the Victorian Youth Justice Group Conferencing Program (YJGCP), a referral-based program operating out of the Children's Court.<sup>6</sup> The conference element of the program aims to bring together the people who have been affected by a crime in order to discuss the impacts it has had on them and how the situation might best be remedied.<sup>7</sup>

This paper presents empirical research based on personal reflections gathered from nine participants who are involved in the implementation, development or evaluation of the YJGCP. The data collected is used to critically examine the YJGCP insofar as it represents an example of a less adversarial approach to crime and restorative justice in action. It will ask how the program is understood by service-providers and stakeholders, as well as considering how their understanding influences the way in which it is communicated and explained to participants.

To date, the YJGCP has been the subject of six independent reviews since its inception, all of which have demonstrated the efficacy of the program in meeting many of its key performance indicators.<sup>8</sup> However, few of these studies have questioned how the mechanics of the program are understood by service-providers and considered the interaction between this understanding and the overall impression of the program imparted to participants prior to the conference.

In light of this, this article presents new research and suggests that, on the basis of a small number of interviews, there is a need to systematise a common understanding of the YJGCP and its capacity to meet the multifaceted needs of participants arising out of the instant offence. This would allow participants to go into the conference with a clear understanding of its operation, the outcomes which can be expected and whether their individual needs will be met. It is argued that this would offer the distinct advantage of improving both the overall

- 5 See generally David B Wexler, 'An Orientation to Therapeutic Jurisprudence' (1994) 20 *New England Journal on Criminal & Civil Confinement* 259; Chris Trotter and Phillipa Evans, 'An Analysis of Supervision Skills in Youth Probation' (2012) 45 *Australian & New Zealand Journal of Criminology* 255.
- 6 Department of Human Services (Vic), *Youth Justice Group Conferencing: General Group Conference Fact Sheet* (2011) <[http://www.dhs.vic.gov.au/\\_data/assets/pdf\\_file/0005/660272/General-group-conference-factsheet.pdf](http://www.dhs.vic.gov.au/_data/assets/pdf_file/0005/660272/General-group-conference-factsheet.pdf)>. Similar programs exist at different stages of the youth justice systems in all Australian states and territories: Department of Human Services (Vic), 'Review of the Youth Justice Group Conferencing Program' (Final Report, Victorian Government, September 2010) 12–13. See also Kathleen Daly and Hennessey Hayes, 'Restorative Justice and Conferencing' in Adam Graycar and Peter Grabosky (eds), *The Cambridge Handbook of Australian Criminology* (Cambridge University Press, 2002) 294, 297–300.
- 7 See *Children, Youth and Families Act 2005* (Vic) ss 415(6)–(7); David B Moore, *Conferencing Convenors' Manual* (2003).
- 8 See generally Anne Markiewicz et al, *Juvenile Justice Group Conferencing in Victoria: An Evaluation of a Pilot Program* (University of Melbourne, 1997) ('Phase 1 Report'); Anne Markiewicz et al, *Juvenile Justice Group Conferencing in Victoria: An Evaluation of a Pilot Program Phase 2* (University of Melbourne, 1997); *Juvenile Justice Group Conferencing Project Evaluation* (Success Works Pty Ltd, 1999); Clare Keating and Debra Barrow, *Report on the Juvenile Justice Group Conferencing Program* (Effective Change Pty Ltd, 2006); Law Reform Committee, Parliament of Victoria, *Inquiry into Alternative Dispute Resolution and Restorative Justice* (2009); Department of Human Services (Vic), 'Review of the Youth Justice Group Conferencing Program', above n 6.

operation of the YJGCP and participation rates by people who have been affected by the crime in question.

What follows is a brief outline of the YJGCP and its history to aid in conceptualising the program. This framework is then used as the basis for a discussion of how the program is currently explained to participants and what might amount to best practice in this respect. It is submitted that the YJGCP requires a common narrative that is comprehensively understood by all service-providers and matched by their practical skills to consistently convey that message to participants in the conferencing process. It concludes with a series of recommendations as to possible directions for further research in this field.

## II METHODOLOGY

This section was informed by a reading of the relevant methodology sections of a number of sources.<sup>9</sup> However, the content and information provided in the following is original.

This paper presents a small-scale exploratory study of the narrative processes utilised by service-providers and stakeholders involved in the development, implementation and evaluation of the YJGCP. I examine how the attitudes and concerns of each research participant might impact on the story they tell people involved as service users of the YJGCP, and how the interaction might affect the ability of the program to meet the needs of the participants arising out of the instant offence. As a piece of formative work, it gathers qualitative data based on the individual experiences of participants and does not seek to represent the opinions or policies of any organisation or group.

For the purposes of this research, ‘service-providers’ include non-government organisations that employ convenors to facilitate the group conferences. The relevant stakeholders are individuals and organisations involved either in the development or evaluation of the program, such as the Victorian Department of Human Services (DHS) and Mr David Moore (an architect of the YJGCP as it currently exists), or those who provide services in connection with the YJGCP. These service-providers include Victoria Legal Aid (VLA) and victims’ support agencies.

9 See Anthony Cornell Hooper, *Australian Philanthropy: Benevolent Gift to Strategic Investment?* (PhD Thesis, Deakin University, 2003) 256–64; Becky Batagol, *Bargaining in the Shadow of the Law? The Case of Family Mediation* (PhD Thesis, Monash University, 2007); Ross Hyams, ‘Where Will the Children Live? Arrangements for Separated Families in Australia’ (2010) 35 *Alternative Law Journal* 89, 89–90; Terry Hutchinson, *Research and Writing in Law* (Lawbook, 3<sup>rd</sup> ed, 2010) 106–16.

Participants were initially selected based on their inclusion in the program reviews, and then based on recommendations from those initial participants utilising snowball research techniques.<sup>10</sup>

With the one exception, all participants requested to be identified only by their occupation or position in this research. The participants were as follows:

- Mr David Moore. He is the author of the *Convenors' Manual* for the YJGCP and a private consultant employed by the Department of Human Services (Vic) to design training programs for conference convenors.
- One senior program and policy advisor and one policy manager from the Youth Justice branch of the Department of Human Services (Vic). The two individuals were interviewed together.
- A lawyer from Victoria Legal Aid.
- Six conference convenors employed by Jesuit Social Services, who were interviewed together.
- A Youth Justice Court Advice Worker employed by the Department of Human Services (Vic).

All participants were asked to speak to the following topics:

1. The goals of the conferencing process;
2. The restorative values delivered by the conferencing process;
3. The needs of different parties involved in the conferencing process;
4. Limitations of the YJGCP and the conferencing process;
5. Information given to the parties prior to a conference;
6. The roles played by each organisation/party in service-delivery and how they interact; and
7. The relationship between preparation of the conference and the process itself.

As this study involved only a small number of participants, the conclusions and recommendations put forward are tentative and should not be taken as necessarily reflecting practice across the YJGCP as a whole. The research records the individual experiences of participants in order to engage in a formative exploration of the YJGCP in the context outlined above. I hope that this work will prove useful in elucidating some issues in the delivery of the YJGCP which might go on to form the basis of further research in this field.

10 See generally Rowland Atkinson and John Flint, 'Accessing Hard-to-Reach Populations: Snowball Research Strategies' (2001) 33 *Social Research Update* <<http://sru.soc.surrey.ac.uk/SRU33.pdf>>. All interviewees were first contacted by telephone and invited to take part in the study, before formal recruitment took place in accordance with the policies set down by the Monash University Human Research Ethics Committee

### III OVERVIEW OF THE YOUTH JUSTICE GROUP CONFERENCING PROGRAM

#### A Program History

This section traces the origins of the YJGCP to New Zealand, which, following the Carney Review in 1982–84,<sup>11</sup> became the first country to provide a legislative basis for conferencing. This inspired a police-referred conferencing program which commenced in 1991 in Wagga Wagga, New South Wales.<sup>12</sup> South Australia followed suit and became the first Australian jurisdiction to pass conferencing legislation.<sup>13</sup> In Victoria, the *Children and Young Persons Act 1989* (Vic) (as it then was) was amended in 1992 to enable pre-hearing conferences in the Family Division of the Children’s Court.<sup>14</sup> Prior to this, the program operated without a legislative framework and was limited in its geographical application.<sup>15</sup> Its relative informality is demonstrated by the fact that a review of the diversionary programs in Victoria at the time made no reference to group conferencing.<sup>16</sup>

Following a successful pilot program in April 1995 which was funded by a philanthropic trust,<sup>17</sup> fiscal responsibility for the program shifted first to the Department of Justice and then to the Department of Human Services (Vic) as part of the *Juvenile Justice Reform Strategy* in 2000.<sup>18</sup> The YJGCP expanded to a state-wide operation in October 2006 and was formally brought within the *Children, Youth and Families Act 2005* (Vic) (‘the Act’) on 23 April 2007.<sup>19</sup> An additional \$5.15 million in funding over four years was announced on 3 May

11 See generally Terry R Carney, ‘Child Welfare Practice and Legislation Review’ (Report, Child Welfare Practice and Legislation Review Committee, Parliament of Victoria, 1984).

12 See generally David Moore, Lubica Forsythe and Terry O’Connell, *A New Approach to Juvenile Justice: An Evaluation of Family Conferencing in Wagga Wagga* (Centre for Rural Social Research, Charles Sturt University, 1995) <<http://pandora.nla.gov.au/pan/33871/20030328-0000/www.aic.gov.au/rjustice/jjustice/index.html>>; Gabrielle Maxwell and Hennessey Hayes, ‘Restorative Justice Developments in the Pacific Region: A Comprehensive Survey’ (2006) 9 *Contemporary Justice Review* 127, 135; Jenny Bargon, ‘Kids, Cops, Courts, Conferencing and Children’s Rights — A Note on Perspectives’ (1996) 2 *Australian Journal of Human Rights* 209, 218–19.

13 Hennessey Hayes and Kathleen Daly, ‘Youth Justice Conferencing and Reoffending’ (2003) 20 *Justice Quarterly* 725, 726.

14 *Phase I Report*, above n 8, 14.

15 Richards, ‘What Makes Juvenile Offenders Different from Adult Offenders?’, above n 1.

16 See Vaughan Duggan, ‘Diversionary Programs in Operation in Victoria’ in Lynn Atkinson and Sally-Anne Gerull (eds), *National Conference on Juvenile Justice* (Australian Institute of Criminology, 1993) 437, 440–4.

17 *Phase I Report*, above n 8, 34–6; Law Reform Committee, above n 8, 202; Mark Griffiths, ‘The Implementation of Group Conferencing in Juvenile Justice in Victoria’ (Paper presented at the Restoration of Victims of Crime Conference, Melbourne, September 1999) 3.

18 Victoria, *Parliamentary Debates*, Legislative Assembly, 17 August 2000, 138–45 (Christine Campbell).

19 Victoria, *Victoria Government Gazette*, No G 16, 19 April 2007, 672. In 2009 the Drugs and Crime Prevention Committee recommended that YJGC be expanded and run across all areas of the state: Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into Strategies to Prevent High Volume Offending and Recidivism by Young People* (2009) 216.

2011,<sup>20</sup> part of which will be used to allow service-providers to run a greater number of conferences.<sup>21</sup>

## B Program Overview

Participation in the YJGCP is open to young people who have been convicted of a criminal offence (whether they pled guilty or, were found guilty of the offence), for which the Magistrates' Court of Victoria is considering imposing Probation or a Youth Supervision Order.<sup>22</sup>

In these circumstances, the Magistrate may stand the matter down in order for the Youth Justice Court Advice Worker (YJ worker) to conduct an assessment about whether the young person is suitable for conferencing.<sup>23</sup> An assessment document is submitted to the Court outlining the YJ worker's opinion.<sup>24</sup>

Based on this recommendation and a number of other considerations,<sup>25</sup> the Court may defer the sentencing of the young person for up to four months to allow them to take part in a group conference.<sup>26</sup> If this is done, the court must order the preparation of a group conference report.<sup>27</sup> The YJ worker will then complete a conference Suitability Assessment and send it, along with all other required documentation,<sup>28</sup> to the appropriate group conferencing service-provider.<sup>29</sup>

Once this is done, the convenor assigned to the matter is required to make initial contact with the people most closely associated with the crime.<sup>30</sup> The *Program Guidelines* and *Convenors' Manual* require convenors to carry out certain tasks

20 Department of Human Services (Vic), *Expansion of Successful Diversion Program for Young Offenders* (21 December 2011) DHS Internet <<http://www.dhs.vic.gov.au/about-the-department/news-and-events/news/general-news/case-management-reform-a-key-step-in-the-reform-of-service-deliv>>.

21 Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012).

22 *Children, Youth and Families Act 2005* (Vic) s 415(1). Relevant offences include robbery, assault (aggravated and non-aggravated) or the theft of a motor vehicle: Department of Human Services (Vic), 'Review of the Youth Justice Group Conferencing Program', above n 6, 72–3. It does not include homicide, manslaughter or sex offences: Law Reform Committee, above n 8, 204.

23 Department of Human Services (Vic), *Youth Justice Group Conferencing Program Guidelines* (June 2010) 6–7 <[http://www.dhs.vic.gov.au/\\_data/assets/pdf\\_file/0018/720306/Group-conferencing-program-guidelines-June-2010.pdf](http://www.dhs.vic.gov.au/_data/assets/pdf_file/0018/720306/Group-conferencing-program-guidelines-June-2010.pdf)>.

24 *Ibid* 7.

25 As the Youth Worker is the delegate of the secretary, a reading of the report constitutes 'consultation with the Secretary' as required by section s 414(1)(c)(ii) of the Act: Law Reform Committee, above n 8, 204. See generally *Children, Youth and Families Act 2005* (Vic) s 414(1).

26 *Children, Youth and Families Act 2005* (Vic) s 414(1)(c)(ii).

27 *Ibid* s 414(2)(c).

28 *Department of Human Services* (Vic), *Program Guidelines*, above n 23, 8.

29 In Victoria, Youth Justice Group Conferencing is provided across six regions by agencies approved by the Department of Human Services (Vic) under the *Children, Youth and Families Act 2005* (Vic) s 480.

30 Department of Human Services (Vic), *Program Guidelines*, above n 23, 10; Moore, *Convenors' Manual*, above n 7, 3. These people are listed in *Children, Youth and Families Act 2005* (Vic) ss 415(6)–(7).

in the preparation of a conference.<sup>31</sup> These documents also outline the convenor's primary role in running the actual conference.<sup>32</sup>

During the conference all parties affected by the offence come together to hear about what has happened and how everyone has been affected in order to determine together how the situation might be improved.<sup>33</sup> The Act requires that the young person, their legal practitioner, the informant (or other member of Victoria Police) and the convenor all attend the conference.<sup>34</sup> The victim, members of the victim's family and other relevant parties may, but are not required to, attend.<sup>35</sup>

At the conclusion of the conference the convenor is required to complete a group conference report which is lodged with the Court and contains the outcome plan.<sup>36</sup> The report contains information about the events which took place at the conference while the outcome plan sets out what the young person has agreed to do in order to make reparations for the harm caused by their conduct.<sup>37</sup> These reports are subject to the confidentiality requirements in s 552 of the Act.<sup>38</sup> Following this, the matter will be re-listed in the Children's Court.<sup>39</sup> During this hearing, the Magistrate will determine the appropriate sentence for the young person after considering factors such as their participation in the group conference<sup>40</sup> and the contents of the group conference report.<sup>41</sup> The outcome plan is a factor which the Magistrate must consider in determining the appropriate sentence, rather than necessarily forming the basis of the final order of the Court.<sup>42</sup>

The Act provides a sentencing discount for young people who participate in a conference and agree to the terms of the outcome plan.<sup>43</sup> It also precludes the imposition of a harsher sentence where a young person fails to participate in a conference following a referral by the court.<sup>44</sup>

### **C Theoretical Underpinnings**

Since its inception the YJGCP has sought to deliver a preventative and rehabilitative approach to youth crime with a strong diversionary focus.<sup>45</sup> This is reflected in

31 See, respectively, Department of Human Services (Vic), *Program Guidelines*, above n 23, 10; Moore, *Convenors' Manual*, above n 7, 3.

32 Department of Human Services (Vic), *Program Guidelines*, above n 23, 17–23; Moore, *Convenors' Manual*, above n 7.

33 Moore, *Convenors' Manual*, above n 7, 3.

34 *Children, Youth and Families Act 2005* (Vic) s 415(6).

35 *Ibid* s 415(7).

36 *Ibid* s 415(8); Department of Human Services (Vic), *Program Guidelines*, above n 23, 24.

37 *Children, Youth and Families Act 2005* (Vic) s 415(5).

38 *Ibid* s 547(g).

39 *Ibid* s 416(1).

40 *Ibid* ss 358(b), 416(3)(c).

41 *Ibid* s 416(3)(d).

42 *Ibid* ss 358(b), 362(3)–(4).

43 *Ibid* s 362(3).

44 *Ibid* s 362(4).

45 *Ibid* s 362; *Phase 1 Report*, above n 8, 2–3.

the purposes of group conferencing set out in the applicable legislation.<sup>46</sup> These goals exist alongside the objectives set out in the *Program Guidelines*.<sup>47</sup> They state that the primary aim of the program is to offer a ‘community rehabilitation intervention’ which addresses the root causes of offending and diverts young people from progressing further into the criminal justice system.<sup>48</sup> A secondary goal centres on involving people who have been affected by the offence in the decision-making process on how best to respond to the offence, and thereby enhancing their satisfaction with the justice system.<sup>49</sup>

In order to achieve these aims, the YJGCP draws on the tenets of restorative justice, setting out a number of benchmarks required in order for the program to be a restorative process.<sup>50</sup> This article proposes to accept, for the purposes of argument, that conferencing generally<sup>51</sup> and the YJGCP specifically is capable of being regarded as an example of restorative justice in action.

Understanding what is meant by a restorative process requires an explanation of restorative justice. It is a paradigm with a somewhat complex pedigree and a capacity for conceptual uncertainty.<sup>52</sup> This may be attributed in part to the fact that many of the developments in this area of law have been practice-driven<sup>53</sup> and the reality that there are numerous ways in which restorative justice has been deployed both in Australia and across the world.<sup>54</sup> Significant diversity exists across various programs, requiring the academics and commentators who analyse this phenomenon to engage in a degree of definitional flexibility. This is shown not only by the different approaches to restorative justice explained below, but also in the different ways in which youth conferencing programs have manifested across various Australian jurisdictions.

It is important, therefore, for those who use terms such as restorative justice to have a clear appreciation of the assumptions underlying restorative justice. This is especially crucial in formulating a common understanding of the YJGCP and what it is capable of achieving.

46 *Children, Youth and Families Act 2005* (Vic) s 415(4).

47 Department of Human Services (Vic), *Program Guidelines*, above n 23, 2–3.

48 *Ibid.*

49 *Ibid.*

50 *Ibid* 1–2.

51 Gabrielle Maxwell, Allison Morris and Hennessey Hayes, ‘Conferencing and Restorative Justice’ in Dennis Sullivan and Larry Tifft (eds), *Handbook of Restorative Justice: A Global Perspective* (Routledge, 2006) 91, 91–2; Law Reform Committee, above n 8, 201.

52 Howard Zehr and Harry Mika, ‘Fundamental Concepts of Restorative Justice’ (1997) 1 *Contemporary Justice Review* 47, 48; Law Reform Committee, above n 8, 195–6.

53 See Michael King et al, *Non-Adversarial Justice* (Federation Press, 2009) 43–4.

54 See, eg, Richards, ‘Police-Referral Restorative Justice’, above n 2; United Nations Office on Drugs and Crime, above n 2, 13–14.

In deference to this, and for the avoidance of doubt, the researcher adopts a definition of restorative justice which casts it as a voluntary<sup>55</sup> process whereby all the 'parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future'.<sup>56</sup> This definition accords with the language used in the documentation underpinning the YJGCP which stresses that participation in the program must be voluntary.<sup>57</sup> It also bears a marked resemblance to the way in which convenors are expected to explain the program to participants.<sup>58</sup>

This, however, only tells part of the story. It is argued that in casting itself as an example of a restorative process,<sup>59</sup> the YJGCP makes certain assumptions about the nature of restorative justice which, although not problematic from an operational perspective, require discussion if the program is to be properly understood by both service-providers and service-users. It is submitted that the YJGCP is trying to draw on a particular understanding of restorative justice and that this has implications for the kinds of outcomes it can deliver and the sorts of needs participants should expect it to meet.

The YJGCP should be understood as drawing on a clearly demarcated version of restorative justice. Firstly, the program must be contrasted with conceptions of restorative justice that would cast it as seeking to actively replace the traditional criminal justice system with restorative justice institutions.<sup>60</sup> The YJGCP is 'complementary'<sup>61</sup> to the criminal justice system and cannot be viewed as trying to 'civilise'<sup>62</sup> it beyond the stated goal of improving community satisfaction with the justice system by involving stakeholders in the decision-making process on what should happen as a consequence of an offence *in addition to* the final disposition of the court.

Further doctrinal clarity is given by the relationship between the government bureaucracy, the courts and the non-government sector in delivering the

55 Paul McCold, 'Towards a Holistic Vision of Restorative Juvenile Justice: A Reply to the Maximalist Model' (2000) 3 *Contemporary Justice Review* 357, 382 *contra* Gordon Bazemore and Lode Walgrave, 'Restorative Juvenile Justice: In Search of Fundamentals and an Outline for Systematic Reform' in Gordon Bazemore and Lode Walgrave (eds), *Restorative Justice: Repairing the Harm of Youth Crime* (Criminal Justice Press, 1999) 48.

56 Tony F Marshall, 'Restorative Justice: An Overview' (Report, Home Office Research Development and Statistics Directorate, 1999) 5 (emphasis altered). This echoes the definition of the YJGCP which conference convenors are trained to impart to participants: see Moore, *Convenors' Manual*, above n 7, 3; John Braithwaite, 'Restorative Justice and Therapeutic Jurisprudence' (2002) 38 *Criminal Law Bulletin* 244, 246.

57 See, eg, Department of Human Services (Vic), *Program Guidelines*, above n 23, 8.

58 Moore, *Convenors' Manual*, above n 7, 3.

59 Department of Human Services (Vic), *Program Guidelines*, above n 23, 2.

60 Braithwaite, 'Restorative Justice and Therapeutic Jurisprudence', above n 56, 253–4.

61 Department of Human Services (Vic), *Program Guidelines*, above n 23, 2.

62 See Anthony Bottoms, 'Some Sociological Reflections on Restorative Justice' in Andrew von Hirsch, Julian V Roberts and Anthony Bottoms (eds), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (Hart Publishing, 2003) 79, 84–7; Daniel W Van Ness, 'New Wine and Old Wineskins: Four Challenges of Restorative Justice' (1993) 4 *Criminal Law Forum* 251.

program.<sup>63</sup> In this respect, Braithwaite's concept of the 'new regulatory State' is quite useful.<sup>64</sup> On this analysis, the State Government through the DHS provides the funding, oversight and training for conference convenors who are employed by non-governmental organisations. These groups then provide the conferencing facilities and run the conference itself, delivering the program.<sup>65</sup>

The Children's Court is the final actor and controls entry to the YJGCP.<sup>66</sup> Its role shows that, as explained in interview, the program is a tool of the existing criminal justice system rather than a challenge to it.<sup>67</sup>

#### IV CONCEPTUALISING THE CONFERENCING PROCESS

It is common for restorative processes such as conferencing to be understood with reference to a series of values which they seek to embody.<sup>68</sup> This not only aids in promoting definitional and conceptual consistency but also compels service-providers to maintain a clear appreciation of what the process itself is trying to achieve, thereby promoting consistency in the way that the YJGCP is explained to and understood by participants.

The YJGCP *Program Guidelines*<sup>69</sup> set out a series of components that its designers believe each conference must achieve to be viewed as a restorative process.<sup>70</sup> Several authors have already attempted to create a taxonomy of the values underpinning restorative justice processes, and it is not the intention of this article to recite these efforts or comment on their cogency.<sup>71</sup> Rather, this article considers that the values which the YJGCP tries to deliver, when read as conditions precedent to it meeting its goals, require a particular understanding of what the process of conferencing can hope to achieve in this context and how this impacts on service delivery.

63 Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012).

64 John Braithwaite, 'The New Regulatory State and the Transformation of Criminology' (2000) 40 *British Journal of Criminology* 222; Bottoms, above n 62, 84; Van Ness, 'New Wine and Old Wineskins', above n 62, 251–76.

65 Braithwaite, 'Restorative Justice and Therapeutic Jurisprudence', above n 56, 246.

66 *Children, Youth and Families Act 2005* (Vic) s 414.

67 Cf Bottoms, above n 62, 107.

68 Howard Zehr, *The Little Book of Restorative Justice* (Good Books, 2002) 19; Daniel Van Ness, Allison Morris and Gabrielle Maxwell, 'Introducing Restorative Justice' in Allison Morris and Gabrielle Maxwell (eds), *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (Hart Publishing, 2001) 3, 5–6; Maxwell, Morris and Hayes, 'Conferencing and Restorative Justice', above n 51, 93.

69 Department of Human Services (Vic), *Program Guidelines*, above n 23, 1–3.

70 Interview with David Moore (Melbourne, 21 July 2012).

71 See, eg, Zehr, *The Little Book of Restorative Justice*, above n 68, 19; Van Ness, Morris and Maxwell, 'Introducing Restorative Justice', above n 68. See also Kathleen Daly, 'The Limits of Restorative Justice' in Dennis Sullivan and Larry Tiffit (eds), *Handbook of Restorative Justice: A Global Perspective* (Routledge, 2006) 134, 135–6.

For the purposes of this article, I adopt Braithwaite's taxonomy of restorative values.<sup>72</sup> Braithwaite and Daly make two important points about conferencing: (1) all parties concerned must have a realistic appreciation of what conferencing can achieve as a restorative process; and (2) if the process is to realise any of its goals, certain minimum needs must be met in order to lay the groundwork for some of those more complex values.<sup>73</sup> Braithwaite's taxonomy provides a neat framework for understanding how the YJGCP may usefully be conceptualised and as such communicated.

Priority List of Values 1	Priority List of Values 2	Priority List of Values 3
Non-domination	Restoration of human dignity	Remorse over injustice
Empowerment	Restoration of property loss	Apology
Honouring legally specific upper limits on sanctions	Restoration of safety	Censure of the act
Respectful listening	Restoration of damaged human relationships	Forgiveness of the person
Equal concern for all stakeholders	Restoration of communities	
Accountability and means of appeal	Restoration of the environment	
Respect for fundamental Human Rights	Emotional restoration	
	Restoration of freedom	
	Restoration of compassion or caring	
	Restoration of peace	
	Restoration of a sense of duty as a citizen	
	Provision of social support to develop human capabilities to the fullest	
	Prevention of future injustice	

**Table 1: Adapted from John Braithwaite, 'Restorative Justice and Therapeutic Jurisprudence' (2002) 38 *Criminal Law Bulletin* 244, 247, 250, 252.**

72 See Braithwaite, 'Restorative Justice and Therapeutic Jurisprudence', above n 56, 247–53.

73 See Daly, 'The Limits of Restorative Justice', above n 71, 66–7; Braithwaite, 'Restorative Justice and Therapeutic Jurisprudence', above n 56, 252–3.

As shown in Table 1, Braithwaite divides his restorative values into three tiers and clarifies that achievement on each successive tier is conditional on the existence of the values in the one before it.<sup>74</sup> However, the third set of values does not appear in the goals set out for the YJGCP. Although values like remorse, apology, forgiveness and mercy are cast as the highest order of values by Braithwaite,<sup>75</sup> the *Program Guidelines* and comments made in interviews suggest that while these ideas may be thought of as positive outcomes, they are not necessarily what the YJGCP process is trying to achieve.<sup>76</sup> This approach is in line with Braithwaite's argument that these values ought not be actively encouraged or stressed by the convenor. This is because they are 'gifts'<sup>77</sup> and only valuable when freely given based on an emotional transition in the relevant party from a position of hostility to one of empathy.<sup>78</sup>

Braithwaite has argued that every conference must secure certain priority or 'first tier' values, which provide basic procedural safeguards.<sup>79</sup> I suggest that certain values set out in the *Program Guidelines* exist as conditions precedent to delivery on other values which appear in the same document. In the interests of clarity, every conference should aim to be an inclusive, collaborative experience which allows participants, rather than professionals, to determine the outcome.<sup>80</sup> This seems to reflect Braithwaite's concern that conferences ensure 'non-domination' by allowing any person with a stake in the matter to attend.<sup>81</sup> It also touches on the need for respectful listening and equal concern for all stakeholders.<sup>82</sup>

Furthermore, the *Program Guidelines* provide that the process must focus on needs and on how people have been affected by the offending, especially through clarifying the harm that has been caused and acknowledging the needs that have arisen as a result.<sup>83</sup> Participants should therefore be empowered to realise and articulate their needs which, provided they comply with basic human rights requirements, must not be 'ruled out of order'.<sup>84</sup> This feeds into the importance of ensuring that the victim's experience is validated.<sup>85</sup>

Every conference must also exhibit genuine respect for all parties even where, in the case of the young person, their prior behaviour has been condemned.<sup>86</sup>

74 Braithwaite, 'Restorative Justice and Therapeutic Jurisprudence', above n 56, 247–53.

75 Ibid 252.

76 Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012).

77 Braithwaite, 'Restorative Justice and Therapeutic Jurisprudence', above n 56, 252.

78 Ibid; David B Moore, 'Shame, Forgiveness and Juvenile Justice' (1993) 12 *Criminal Justice Ethics* 3.

79 Braithwaite, 'Restorative Justice and Therapeutic Jurisprudence', above n 56, 252–3.

80 Department of Human Services (Vic), *Program Guidelines*, above n 23, 1; Moore, *Convenors' Manual*, above n 7; Interview with Youth Justice Court Advice Worker, Department of Human Services (Vic) (Dandenong, 27 August 2012).

81 Braithwaite, 'Restorative Justice and Therapeutic Jurisprudence', above n 56, 248; Moore, *Convenors' Manual*, above n 7, 4–5.

82 Braithwaite, 'Restorative Justice and Therapeutic Jurisprudence', above n 56, 247.

83 Department of Human Services (Vic), *Program Guidelines*, above n 23, 1.

84 Braithwaite, 'Restorative Justice and Therapeutic Jurisprudence', above n 56, 247, 249.

85 Department of Human Services (Vic), *Program Guidelines*, above n 23, 2.

86 Ibid 1.

This requires that all participants be accorded the benefits of respectful listening and equal concern.<sup>87</sup> It also touches on non-domination and the need to properly prepare the conference to ensure that power imbalances are avoided and the offender is not confronted with a ‘room full of adults’.<sup>88</sup> Similarly, the victim should not be re-victimised or intimidated by supporters of the offender.<sup>89</sup> This all requires that the conference is ‘[g]uided by competent, neutral, impartial and trusted facilitators’ who clearly explain the process to participants so that they understand who will be in attendance (ie anyone who has been affected by the offence).<sup>90</sup> It also requires effective preparation to ensure that there is an appropriate balance of participants so that no one person or group can dominate any other.<sup>91</sup>

The importance of balancing these at-times competing needs was illustrated during interviews with individual convenors. In these interviews, some convenors made reference to isolated cases where they expressed concern over court reports containing prejudicial information against the young person’s conduct being produced at the conclusion of a conference.<sup>92</sup> The reports included overly critical language or information about offences for which they had not been charged, raising the potential of violating the privilege against self-incrimination.<sup>93</sup> Comment obtained in interview suggests that this issue was resolved in favour of the young person and the concerns raised by their legal representatives.<sup>94</sup> Standard practice set out in the *Program Guidelines* indicates that the court reports are completed in collaboration with the young person and their legal representative.<sup>95</sup> There is also provision to ensure that, so far as it is practicable, the conference process and the contents of the outcome plans remain confidential.<sup>96</sup> Conference convenors stressed that a great deal of effort is put into ensuring that the contents of the court report and outcome plans are unbiased and objective.<sup>97</sup> Indeed, the resolution of matters such as this shows the kind of systematic learning required to create a foundation for the formulation of a common narrative for the YJGCP. Issues of this nature ought to be identified and given appropriate responses in order to strengthen the YJGCP rather than being the basis for criticism of the program itself.

87 Braithwaite, ‘Restorative Justice and Therapeutic Jurisprudence’, above n 56, 247.

88 Kevin Haines, ‘Some Principled Objections to a Restorative Justice Approach to Working with Juvenile Offenders’ in Lode Walgrave (ed), *Restorative Justice for Juveniles: Potentialities, Risks and Problems* (Leuven University Press, 1998) 93, 99.

89 Braithwaite, ‘Restorative Justice and Therapeutic Jurisprudence’, above n 56, 248.

90 Department of Human Services (Vic), *Program Guidelines*, above n 23, 1.

91 Braithwaite, ‘Restorative Justice and Therapeutic Jurisprudence’, above n 56, 248.

92 Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012); Interview with Victoria Legal Aid lawyer (Melbourne, 1 August 2012).

93 *Evidence Act 2008* (Vic) s 128(1); Interview with Victoria Legal Aid lawyer (Melbourne, 1 August 2012).

94 Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012); Interview with Victoria Legal Aid lawyer (Melbourne, 1 August 2012).

95 Department of Human Services (Vic), *Program Guidelines*, above n 23, 24.

96 *Ibid* 1; *Children, Youth and Families Act 2005* (Vic) s 580.

97 Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012).

Only once these basic procedural safeguards are ensured can the conferencing process hope to deliver on more complex restorative values which Braithwaite has suggested are capable of being ‘trumped’ by the need to ensure empowerment and non-domination for participants.<sup>98</sup>

These more complex ‘second tier’ values touch on the emotional experience of participants and the process which the conference adopts in order to encourage ‘transformative outcomes’ that promote the ‘healing of the victim’ and the ‘reintegration of the offender’.<sup>99</sup> Braithwaite might equate this with the restoration of things like human dignity, damaged human relationships and communities.<sup>100</sup>

In the course of the interviews, a number of participants touched on this issue.<sup>101</sup> They explained that the group as a whole may move from a point of conflict to cooperation, complicating traditional understandings of ‘reintegrative shaming’, a key concept underlying the YJGCP.<sup>102</sup> Traditionally, re-integrative shaming was understood as applying only to the emotional development of the young person or offender.<sup>103</sup> The theory posits that societies will experience a reduction in crime rates if the behaviour which constitutes the physical element of the offence is considered by society as shameful.

Shaming, however, must not descend into stigmatisation and should instead be expressed in a way which encourages the offender to refrain from such behaviour in the future.<sup>104</sup> The offender should be treated as an otherwise good person who has done the wrong thing in this instance. The ‘reintegration’ inherent in this theory occurs when the offender gains insight into his or her own behaviour.<sup>105</sup>

However, David Moore explained in interview that, for want of a better phrase, participants sometimes experience a kind of ‘emotional contagion’.<sup>106</sup> This can be harnessed by a skilful convenor to facilitate a common experience of reintegration where the participants collectively experience an emotional shift from conflict to cooperation.<sup>107</sup>

This ‘co-evolution of theory and practice’ shows that while the goals of reintegration and rehabilitation are noble ones, they are not necessarily achievable in every conference.<sup>108</sup> Service-providers therefore must be aware of the conditions

98 Braithwaite, ‘Restorative Justice and Therapeutic Jurisprudence’, above n 56, 250.

99 Department of Human Services (Vic), *Program Guidelines*, above n 23, 2.

100 Braithwaite, ‘Restorative Justice and Therapeutic Jurisprudence’, above n 56, 250.

101 Interview with David Moore (Melbourne, 21 July 2012); Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012).

102 See generally John Braithwaite, *Crime, Shame and Reintegration* (Cambridge University Press, 1989); Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012).

103 Interview with David Moore (Melbourne, 21 July 2012); Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012).

104 See generally Trotter and Evans, above n 5, 255.

105 See generally Braithwaite, *Crime, Shame and Reintegration*, above n 102.

106 Interview with David Moore (Melbourne, 21 July 2012).

107 Interview with David Moore (Melbourne, 21 July 2012); Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012).

108 Interview with David Moore (Melbourne, 21 July 2012).

precedent to achieving these outcomes as well as being in a position to explain the process to participants in a way which makes them aware of the conditions and of the outcomes that the conference can be expected to generate.

An important point here is the need to avoid falling prey to the “nirvana” story<sup>109</sup> of group conferencing — a rosy perception of a meeting between all affected parties in which a genuine apology is given and received, and the relationship between victim and offender is restored. In developing a narrative for the YJGCP, it is vital that all parties involved are telling the same story to participants and that story must give a realistic appraisal of the process. Indeed, Daly has suggested that ‘[w]ith respect to youth justice conferencing,<sup>110</sup> extraordinary tales of repair and goodwill may occur, but we should not expect them to occur as frequently as [some of] the advocates would have us think’.<sup>111</sup>

This is arguably reflected in the modest goals set for the YJGCP in its governing legislation.<sup>112</sup> At a departmental level, the need to give participants a realistic understanding of what the process will or may achieve is also recognised.<sup>113</sup> Participants need to understand that because of the nature of the YJGCP as a diversionary program for the young person, it is a tool in the armoury of the court to address the young person’s offending behaviour. This point was regularly raised in interviews.<sup>114</sup>

While facilities are present to support victims, and the conferencing *process* may sometimes have the effect of meeting some of Braithwaite’s restorative goals, DHS management staff emphasised that the YJGC *program* itself is oriented towards the young person with a view to helping them develop insight into their own behaviour and discourage further, or more serious, offending in the future.<sup>115</sup> This is a vital distinction and one which must be understood by all service-providers and stakeholders so it can be communicated effectively to participants.

This does nothing to undermine this article’s earlier reflections concerning the emotional experience of participants in the YJGCP. Rather, it emphasises the need for a common and consistent narrative. This sets the scene for more frequent delivery on restorative values by ensuring that no participant has their expectations disappointed. It may also boost the ordinarily low participation by

109 Kathleen Daly, ‘Restorative Justice: The Real Story’ (2002) 4 *Punishment & Society* 55, 70.

110 This is not a direct reference to the YJGCP.

111 Daly, ‘Restorative Justice: The Real Story’, above n 109, 72.

112 *Children, Youth and Families Act 2005* (Vic) s 415(4). See further Daly’s comment that ‘we should expect modest results’ from restorative justice initiatives: Daly, ‘The Limits of Restorative Justice’, above n 71, 142–3.

113 Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012).

114 Ibid; Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012).

115 Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012); Interview with Youth Justice Court Advice Worker, Department of Human Services (Vic) (Dandenong, 27 August 2012); Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012).

victims and their families.<sup>116</sup> Research<sup>117</sup> and comments made in interviews by various participants<sup>118</sup> suggests that this is partially attributable to negative or incomplete explanations of the program from police informants in previous years of the YJGCP's operation.

Conference convenors explained in interviews that the presence of the victim, or at least their involvement through the medium of victim support agencies, is a key factor in the process meeting its goals.<sup>119</sup> However, while victim participation overall has remained very high over much of the life of the program, participation through the actual presence of the victim is significantly lower. Between 2003 and 2005, overall victim participation in the Metro region dropped from 100 per cent to 91 per cent.<sup>120</sup> In 2009 overall participation stood at around 80 per cent<sup>121</sup> and rose to 86 per cent in 2010.<sup>122</sup> However, where available, the data shows that the percentage of conferences physically attended by victims, as opposed to a victim representative, was 52 per cent in 2009<sup>123</sup> and 2010.<sup>124</sup>

## V GIVING VOICE TO RESTORATIVE VALUES

It is vital for the service-provider to have a clear appreciation of the specific needs of each participant, as this enables them to ensure that all parties enter the conference with a common understanding of what the YJGCP might be able to achieve in relation to meeting these needs. As mentioned above, the *Program Guidelines* mandate a process which '[f]ocuses on [the] needs' that have arisen as a result of the 'emotional, material and consequential harm' caused by the offence.<sup>125</sup> However, the *Guidelines* also posit that the conferencing process 'cannot be expected to meet all the personal and collective needs of those engaged in it'.<sup>126</sup>

This last qualification has two components. The first and most obvious is that, as a process which is complementary to the criminal justice system, the YJGCP

116 See, eg, *Phase 1 Report*, above n 8, 102–3; Law Reform Committee, above n 8, 281–7; Department of Human Services (Vic), 'Review of the Youth Justice Group Conferencing Program', above n 6, 33.

117 *Phase 1 Report*, above n 8, 98; Law Reform Committee, above n 8, 284; Department of Human Services (Vic), 'Review of the Youth Justice Group Conferencing Program', above n 6, 67.

118 Interview with David Moore (Melbourne, 21 July 2012); Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012); Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012).

119 Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012).

120 Keating and Barrow, above n 8, 34.

121 Law Reform Committee, above n 8, 281.

122 Department of Human Services (Vic), 'Review of the Youth Justice Group Conferencing Program', above n 6, 34.

123 Law Reform Committee, above n 8, 281.

124 Department of Human Services (Vic), 'Review of the Youth Justice Group Conferencing Program', above n 6, 34.

125 Department of Human Services (Vic), *Program Guidelines*, above n 23, 1.

126 *Ibid* 2.

cannot meet the retributive needs of the victim.<sup>127</sup> Nor can it be expected to resolve the whole dispute or to completely restore the relationship between the parties.<sup>128</sup> This is a consequence of the symbiotic relationship between the YJGCP and the court system. The Children's Court controls entry into the program, which is designed to work alongside judicial mechanisms as a pre-sentence option.

The second component to the needs of the participants is more basic. It relates to the needs arising out of the commission of the offence. These may range from a victim's need for vindication or recovery of compensation, to the need of a young person's family to understand why their child is behaving in the way they are.<sup>129</sup> Many interview participants explained, however, that the needs of each participant are multifaceted and dependent on the individual.<sup>130</sup> It is the task of the convenor to meet with participants and identify these needs with respect to each conference they run.<sup>131</sup>

It is vital for participants to be given a realistic appraisal about which (if any) of the needs identified are likely to be addressed in the conference. They must also be aware of its emotionally challenging nature. In the case of the young offender, several interview participants highlighted that being placed in a situation where one is called upon to explain one's actions, to confront the victim and to hear how the offence affected them is often trying.<sup>132</sup> This complicates perspectives of the YJGCP as a 'soft option'.

The process may be particularly taxing for young people with more complex backgrounds. Comment was made in interviews that the process may be ill-equipped to address the often multifaceted needs underlying the offence.<sup>133</sup> Indeed, one participant suggested that for such individuals, conferencing may simply be inappropriate.<sup>134</sup> One convenor raised the same issue in relation to cases involving 'family violence or long term domestic issues', and this comment was echoed by another.<sup>135</sup> In such cases the restorative values outlined above may be more difficult to realise. However, it is important to note that the YJGCP is not

127 Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Herald Press, 3<sup>rd</sup> ed, 2005) 210.

128 Cf Braithwaite, 'Restorative Justice and Therapeutic Jurisprudence', above n 56, 252 *contra* Daly, 'The Limits of Restorative Justice', above n 71.

129 Interview with Youth Justice Court Advice Worker, Department of Human Services (Vic) (Dandenong, 27 August 2012).

130 *Ibid*; Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012); Interview with David Moore (Melbourne, 21 July 2012).

131 Interview with Youth Justice Court Advice Worker, Department of Human Services (Vic) (Dandenong, 27 August 2012); Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012).

132 Interview with Youth Justice Court Advice Worker, Department of Human Services (Vic) (Dandenong, 27 August 2012); Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012); Interview with David Moore (Melbourne, 21 July 2012).

133 Interview with Victoria Legal Aid lawyer (Melbourne, 1 August 2012); Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012).

134 Interview with Victoria Legal Aid lawyer (Melbourne, 1 August 2012).

135 Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012).

designed as a panacea. This article acknowledges that the program is one of many tools available for dealing with complex cases such as these.

However, the comments above highlight the importance of identifying the needs of participants early so as to determine which of them, if any, can be met by the conferencing process and whether participation in the YJGCP is advisable.<sup>136</sup> This occurs in the context of a program which is designed primarily to address the offending behaviour of the young person. That focus must be clearly explained to all participants insofar as it impacts on the YJGCP's ability to meet their individual needs.

Based on the foregoing discussion, we can see that while the YJGCP seeks to meet certain goals as a restorative process, we can expect only some of these to be achieved in any given conference. In order to meet some of those more complex outcomes, several interview participants<sup>137</sup> felt that certain minimum goals must be achieved — such as non-domination and empowerment<sup>138</sup> — in the conference process in order to generate the sort of restorative outcomes that are set out for it. Conference participants must be told that while these basic 'first tier' values can be largely guaranteed, not all of their needs arising from the offence will be met. The presence of such explanatory mechanisms may help increase participation levels and allow for some of the more complex values to be achieved because it avoids the frustration arising from a late realisation that one's expectations will not be met. In interview, a member of DHS management staff noted the possibility of this frustration, particularly on the part of a victim who expects proportionate financial compensation for the harm caused to them.<sup>139</sup>

This explanation is delivered to participants from a number of service-providers: a police informant contacts victims, while the young offender deals mainly with their legal representative, the YJ worker and the conference convenor.<sup>140</sup> In order for participants to have a realistic appreciation of the operation of the YJGCP, the needs on which the conferencing process might deliver and the consequent limitations of that process, each service-provider must be telling the same story about the program. While each party may give a different emphasis,<sup>141</sup> the message to participants should be consistent.

136 Interview with Victoria Legal Aid lawyer (Melbourne, 1 August 2012); Interview with Youth Justice Court Advice Worker, Department of Human Services (Vic) (Dandenong, 27 August 2012).

137 Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012); Interview with David Moore (Melbourne, 21 July 2012).

138 See generally Braithwaite, 'Restorative Justice and Therapeutic Jurisprudence', above n 56.

139 Interview with David Moore (Melbourne, 21 July 2012); Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012).

140 Law Reform Committee, above n 8, 202–7.

141 Interview with Youth Justice Court Advice Worker, Department of Human Services (Vic) (Dandenong, 27 August 2012); Interview with Victoria Legal Aid lawyer (Melbourne, 1 August 2012); Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012).

## **A Results of Previous Studies and Findings from Interviews**

The need for a consistent message delivered by all service-providers has not been directly investigated in the six reviews of the YJGCP which have been conducted since its inception. However, a number of their findings weigh on some of the issues identified above. The following section sets out these as background to the tentative conclusions which the researcher seeks to draw from the interviews conducted. It is argued that the findings enunciated below can be understood as bolstering the case for a common narrative in the YJGCP.

### **1 First Contact with Participants**

The suitability assessment conducted by the YJ worker is, aside from any informal meeting between the YJ worker and the young person, their family or their legal representative,<sup>142</sup> commonly the first time that these participants are told about the YJGCP. DHS management staff explained in interview that this meeting plays a key role in generating referrals to the program by raising it in circumstances where it might not otherwise have been considered.<sup>143</sup> In interview a YJ worker explained that she envisaged her role here as ensuring that the young person gives informed consent to participate and understands what will be required of them if they choose to take part in the conference.<sup>144</sup>

All reviews of the YJGCP have recommended increased recognition and formalisation of the role played by the YJ workers in this sense.<sup>145</sup> A 2006 review specifically recommended that increased support be given to YJ workers.<sup>146</sup> These resources should include adequate training and hand-over procedures to ensure a commonality of program and process knowledge among YJ workers.<sup>147</sup> This seems to have been recognised at a departmental level,<sup>148</sup> with YJ workers taking part in the yearly convenor training.<sup>149</sup>

The young person's legal representative also has a key role to play at this stage in providing legal advice to their client about how the YJGCP interacts with the ordinary court processes and the legal consequences of participation and non-participation.<sup>150</sup> In interview, a lawyer from VLA explained that, for him, the role of the solicitor related to the provision of this information and, where appropriate, required stepping in if the conferencing process became unfair. Lawyers should

142 Department of Human Services (Vic), *Program Guidelines*, above n 23, 6.

143 Interview with Youth Justice Court Advice Worker, Department of Human Services (Vic) (Dandenong, 27 August 2012).

144 Ibid. See also Keating and Barrow, above n 8, 7.

145 See, eg, *Phase 1 Report*, above n 8, 111; Law Reform Committee, above n 8, 269.

146 Keating and Barrow, above n 8, 5.

147 *Phase 1 Report*, above n 8, 100.

148 Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012).

149 Interview with David Moore (Melbourne, 21 July 2012); Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012).

150 Interview with Victoria Legal Aid lawyer (Melbourne, 1 August 2012).

also be ‘active in contributing to the outcome plan’ in terms of ensuring its contents are not prejudicial to the client.<sup>151</sup>

Because legal representatives are generally the primary source of legal advice and information for the young person, the need for them to receive training in the YJGCP is well documented.<sup>152</sup> Research suggests that although VLA takes part in the State-Wide Advisory Committee, which sets policy objectives and guidelines for the YJGCP and gives presentations at the yearly training provided by DHS for convenors,<sup>153</sup> no direct training in the YJGCP is provided to lawyers.<sup>154</sup>

A final key party in the initial stages of the YJGCP is the police informant who has the responsibility of contacting the victim to ask if they wish to participate in a conference. Reflections obtained during interviews and a 1997 review of the YJGCP<sup>155</sup> suggest that the way police characterise and explain the program to victims is of great importance. Several interview participants felt that if a police informant makes cynical suggestions about the process to victims, there is a real risk that victim participation in the conferencing process will decline.<sup>156</sup> This has been shown to limit the restorative potential of the conferencing process.<sup>157</sup>

It appears that this issue is currently being addressed through a partnership between Victoria Police and various victim support agencies who will take up the responsibility of making first contact with victims.<sup>158</sup> This is just one of many ways in which Victoria Police is seeking to improve relations with young people.<sup>159</sup>

## 2 Adjudgment and Referral

The willingness of a Magistrate to refer a matter to conferencing depends to a large extent on their attitude to the YJGCP. Indeed, the central importance of an appropriate level of understanding about the YJGCP among the judiciary and

151 Ibid.

152 *Phase 1 Report*, above n 8, 111–12; Law Reform Committee, above n 8, 268–9; Department of Human Services (Vic), ‘Review of the Youth Justice Group Conferencing Program’, above n 6, 66.

153 Interview with David Moore (Melbourne, 21 July 2012); Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012); Interview with Victoria Legal Aid lawyer (Melbourne, 1 August 2012).

154 Interview with Victoria Legal Aid lawyer (Melbourne, 1 August 2012).

155 Interview with David Moore (Melbourne, 21 July 2012); Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012); Interview with Youth Justice Court Advice Worker, Department of Human Services (Vic) (Dandenong, 27 August 2012); Markiewicz et al, *Phase 1 Report*, above n 8.

156 Interview with David Moore (Melbourne, 21 June 2012); Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012); Interview with Victoria Legal Aid lawyer (Melbourne, 1 August 2012); Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012); Interview with Youth Justice Court Advice Worker, Department of Human Services (Vic) (Dandenong, 27 August 2012).

157 Law Reform Committee, above n 8, 281–3.

158 Ibid.

159 See, eg, Farah Farouque, ‘McGorry Guides Police on Youth’, *The Age* (Melbourne), 6 March 2012, 7.

magistracy at the Children's Court has been extensively documented.<sup>160</sup> While comments made in two interviews suggest that some have great appreciation for it, others appear to be more sceptical.<sup>161</sup>

It has been previously recommended that the Judicial College of Victoria work in collaboration with DHS to deliver a training module to all Children's Court Magistrates.<sup>162</sup> This is important as the judiciary effectively controls access to the YJGCP<sup>163</sup> and any lack of awareness of its characteristics and utility may have deleterious consequences for its continued operation.<sup>164</sup> At the time of writing, this remains a live issue and no such training has yet been provided.

In the event that the Magistrate does give approval for the young person to take part in the YJGCP,<sup>165</sup> the matter will be referred to one of the six agencies in Victoria who are recognised as approved conferencing service providers.<sup>166</sup>

### **3 Interactions between Participants and Conference Convenor**

The importance of the convenor's role in working with participants to prepare for the conference was recognised in interview.<sup>167</sup> The convenor is responsible for providing information about how the process will operate and serves an important function in preparing people for the emotional experience of conferencing. David Moore noted in interview that the work carried out by conference convenors is central to the capacity of restorative processes to deliver on their goals.<sup>168</sup> This has prompted calls for a recognised accreditation process.<sup>169</sup> It has also been suggested that all convenors should have appropriate formal training and experience in youth justice prior to commencing their work with the YJGCP.<sup>170</sup>

Furthermore, the Victorian Parliamentary Law Reform Committee has noted that the *Program Guidelines* make no provision for post-conference follow-up with victims aside from recommending a referral to a victim support agency in certain

160 *Phase 1 Report*, above n 8, 110–12; Keating and Barrow, above n 8, 5; Law Reform Committee, above n 8, 265.

161 Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012); Interview with Youth Justice Court Advice Worker, Department of Human Services (Vic) (Dandenong, 27 August 2012).

162 Law Reform Committee, above n 8, 265; see also Department of Human Services (Vic), 'Review of the Youth Justice Group Conferencing Program', above n 6, 66.

163 *Children, Youth and Families Act 2005* (Vic) s 414.

164 *Phase 1 Report*, above n 8, 110–11.

165 *Children, Youth and Families Act 2005* (Vic) s 414(1)(c).

166 *Ibid* s 480; Law Reform Committee, above n 8, 203, Figure 18. See also Department of Human Services (Vic), *Program Guidelines*, above n 23, 8.

167 Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012).

168 Interview with David Moore (Melbourne, 21 June 2012). See also Braithwaite, 'Restorative Justice and Therapeutic Jurisprudence', above n 56, 248.

169 Department of Human Services (Vic), 'Review of the Youth Justice Group Conferencing Program', above n 6, 65, 79; Law Reform Committee, above n 8, 12.

170 *Phase 1 Report*, above n 8, 100.

circumstances.<sup>171</sup> It was suggested that convenors be funded to make contact with victims after the conference to, among other things, identify and address any needs or concerns and seek feedback.<sup>172</sup> In interview, several participants noted that a proportion of the recent funding increase provided to the YJGCP will be used to address this by providing for a victim support agency to carry out follow-up contact with victims.<sup>173</sup>

## VI DEVELOPING A NARRATIVE FOR THE YJGCP

The selected results from previous reviews of the program highlight some important ways in which a consistent narrative might be developed for the YJGCP. They demonstrate the need for consistency of knowledge among all service-providers and stakeholders on the mechanics of the program as well as the strengths and limitations of the conferencing process. This was confirmed in interview with several participants.<sup>174</sup>

Indeed, a key drawback in the implementation of the YJGCP appears to be a lack of ‘systematised’ knowledge around these issues.<sup>175</sup> In interview, David Moore used this term to refer to the need for system learning: making a routine out of the years of experience which the conferencing process has generated so that key skills are not lost through staff attrition.<sup>176</sup> This distinction between the broader ‘program’ (from initial referral to the handing down of the sentence by the Magistrate) and the actual conferencing ‘process’ (as an element of the ‘program’) developed in interview with largely all participants.<sup>177</sup>

It is submitted that this distinction is useful conceptually in allowing reference to clear elements of the YJGCP. However, it obscures the fact that the workability of the conferencing process is inextricably linked to the functionality of the YJGCP in a program sense. This was highlighted in interview with DHS management

171 Law Reform Committee, above n 8, 286. See also Department of Human Services (Vic), *Program Guidelines*, above n 23, 24–5.

172 Law Reform Committee, above n 8, 287.

173 Interview with David Moore (Melbourne, 21 June 2012); Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012); Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012). See also Department of Human Services (Vic), *Diversion Program for Young Offenders*, above n 20.

174 Interview with David Moore (Melbourne, 21 June 2012); Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012); Interview with Victoria Legal Aid lawyer (Melbourne, 1 August 2012); Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012); Interview with Youth Justice Court Advice Worker, Department of Human Services (Dandenong, 27 August 2012).

175 Interview with David Moore (Melbourne, 21 June 2012).

176 *Ibid.*

177 *Ibid.*; Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012); Interview with Victoria Legal Aid lawyer (Melbourne, 1 August 2012); Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012); Interview with Youth Justice Court Advice Worker, Department of Human Services (Vic) (Dandenong, 27 August 2012).

staff.<sup>178</sup> The ability of the conference to operate as a restorative process will be significantly undermined if participants are not given a realistic appraisal of the operation of the process, its limitations and the needs on which it can be expected to deliver, as required by the *Program Guidelines*.<sup>179</sup>

At a more basic level, if a Magistrate believes that conferencing is inappropriate for certain categories of offences based on a misconception about its nature and operation,<sup>180</sup> the number of referrals is likely to decline.<sup>181</sup> The same might be said of the role played by police informants.

It is plain from these reflections that the ability of the YJGCP to achieve its aims may be significantly undermined without a minimum degree of system knowledge about the program and its conferencing process. It is suggested that this would allow service-providers and stakeholders to comprehend the connection between the impact of pre-conference practices on the mental state of participants and the ability of the conferencing process to be restorative in the limited sense in which that term is used in the *Program Guidelines*. When raised directly in interview, this issue was described as ‘problematic’<sup>182</sup> and, to a certain extent, it is beyond the expertise of the researcher to provide a definitive solution. However, identifying the root of some of these conflicting perspectives and suggesting a foundation for a common narrative may go some way towards generating much needed further discussion.

## A Perspectives on YJGCP

A key issue expressed by a number of participants centred on a lack of organisational awareness of the YJGCP’s existence and the mechanics of the conferencing process.<sup>183</sup> A majority of conference convenors interviewed by the researcher expressed the view that, while some progress has been made in increasing awareness of the YJGCP, more needs to be done.<sup>184</sup> This comment highlights that, with staff attrition and the state-wide nature of the program, it is difficult to ensure that all service-providers and participants are aware of

178 Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012).

179 Department of Human Services (Vic), *Program Guidelines*, above n 23, 2.

180 As suggested in: Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012); Interview with Victoria Legal Aid lawyer (Melbourne, 1 August 2012); Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012); Interview with Youth Justice Court Advice Worker, Department of Human Services (Vic) (Dandenong, 27 August 2012).

181 *Phase 1 Report*, above n 8, 98; Law Reform Committee, above n 8, 284; Department of Human Services (Vic), ‘Review of the Youth Justice Group Conferencing Program’, above n 6, 67.

182 Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012).

183 *Ibid*; Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012); Interview with Youth Justice Court Advice Worker, Department of Human Services (Vic) (Dandenong, 27 August 2012).

184 Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012).

the YJGCP and have an understanding of how it works in order to effectively explain it.<sup>185</sup> One DHS manager explained it as being akin to working on ‘shifting sands’.<sup>186</sup> Even among those stakeholders who are aware of the program, research suggests that there is a significant divergence of attitudes towards it.<sup>187</sup>

Strong anecdotal evidence indicates a widely held perception that police informants tend to hold negative views of the YJGCP, seeing it as a ‘soft option’ for young offenders who lack sincerity and take part only in order to receive a lighter sentence.<sup>188</sup> Representatives of Victoria Police were not interviewed for this article and so I cannot express an opinion on this point. There was also a perception that some Magistrates sitting in the Children’s Court may lack a sufficient appreciation of the program and the types of cases for which it is suitable.<sup>189</sup> As with Victoria Police, it was not possible for me to interview members of the magistracy, so similarly no position on this matter will be expressed here.

These comments do however raise an important issue which came out of many of the interviews — a divergence of opinion as to the best way to define the appropriate target group for the YJGCP.<sup>190</sup> None of the interview participants said that the target group for the YJGCP should remain static, especially given the rise in the number of more serious offences<sup>191</sup> and crimes involving multiple co-offenders.<sup>192</sup>

However, there is divergence of opinion about the appropriateness of conferencing for young people with complex backgrounds and for young people with a disability.<sup>193</sup> This appeared to stem from the attitude that the relevant individual

185 Ibid.

186 Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012).

187 Ibid; Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012); Interview with Youth Justice Court Advice Worker, Department of Human Services (Vic) (Dandenong, 27 August 2012).

188 Interview with David Moore (Melbourne, 21 June 2012); Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012); Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012); Interview with Victoria Legal Aid lawyer (Melbourne, 1 August 2012); Interview with Youth Justice Court Advice Worker, Department of Human Services (Vic) (Dandenong, 27 August 2012).

189 Interview with Victoria Legal Aid lawyer (Melbourne, 1 August 2012); Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012); Interview with Youth Justice Court Advice Worker, Department of Human Services (Vic) (Dandenong, 27 August 2012); Law Reform Committee, above n 8, 263–5.

190 Interview with Youth Justice Court Advice Worker, Department of Human Services (Vic) (Dandenong, 27 August 2012). This has been an issue since the YJGCP’s inception: *Phase 1 Report*, above n 8, 112–14.

191 Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012); Interview with Group Conference Convenorss, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012); Interview with Youth Justice Court Advice Worker, Department of Human Services (Vic) (Dandenong, 27 August 2012).

192 Law Reform Committee, above n 8, 315–33; Department of Human Services (Vic), ‘Review of the Youth Justice Group Conferencing Program’, above n 6, 71–2; Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012); Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012).

193 Interview with Victoria Legal Aid lawyer (Melbourne, 1 August 2012). Cf Interview with Youth Justice Court Advice Worker, Department of Human Services (Vic) (Dandenong, 27 August 2012).

took to suitability matters. One may take an expansive approach and assume that all eligible young people are suitable absent sufficient evidence to the contrary.<sup>194</sup> Conversely, one may approach the issue from a perspective which views certain young people as *prima facie* unsuitable.<sup>195</sup>

This issue is perhaps more important than one might first think, as it goes to the assumptions which an individual makes as to what counts as a restorative process and the limitations of such a process. It is suggested that an expansive attitude to suitability suggests a view which casts the ‘process’ as encompassing not only the conference, but also the program elements which surround it, such as the pre-conference preparation with the convenor. It may be that simply going through the process of preparing for a conference and having to talk about the offence, explain one’s behaviour and so on, can be viewed as delivering some of the restorative goals outlined above such as insight. This is so even if the conference is ultimately cancelled because the young person is found to be uncooperative or uncommunicative. This was also noted in interview.<sup>196</sup>

This expansive approach may be open to criticism on the basis that it increases the burden on service-providers who employ convenors by requiring them to spend time preparing for an ultimately futile conference. This may stretch resources without the benefit of increased funding, which is allocated based on the number of conferences completed. The consequence of this may be that administrative demands undermine the ability of convenors to put appropriate resources into preparing for other conferences and, in so doing, undermine the potential for the process to meet restorative goals.<sup>197</sup>

Conversely, a more restricted approach to suitability suggests that a condition precedent to the conferencing process being restorative is that the young person is willing and able to participate — as emphasised in interview by a VLA lawyer.<sup>198</sup> This in turn touches on the concern which some interview participants expressed about a failure to engage with some young people.<sup>199</sup> In interview, a VLA lawyer explained that while participation by such a young person may be beneficial in a police sense, in that it may mean that they are less likely to re-offend, or may offend less seriously in the future, it will not be restorative in any real sense for the victim or other participants.<sup>200</sup> This would then undermine David Moore’s hope for a collective emotional transformation through the conference.<sup>201</sup> However,

194 See, eg. Interview with Youth Justice Court Advice Worker, Department of Human Services (Vic) (Dandenong, 27 August 2012).

195 See, eg. Interview with Victoria Legal Aid lawyer (Melbourne, 1 August 2012).

196 Interview with Youth Justice Court Advice Worker, Department of Human Services (Vic) (Dandenong, 27 August 2012).

197 Kathleen Daly, ‘Mind the Gap: Restorative Justice in Theory and Practice’ in Andrew von Hirsch et al (eds), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (Hart Publishing, 2003) 219, 232.

198 Interview with Victoria Legal Aid lawyer (Melbourne, 1 August 2012).

199 Ibid; Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012).

200 Interview with Victoria Legal Aid lawyer (Melbourne, 1 August 2012).

201 Interview with David Moore (Melbourne, 21 July 2012); Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012).

there may be a concern that decisions based on value judgements such as this are subjective and may be made differently by different people.

These attitudinal subtleties are material for the purposes of this article because they go to the heart of the foundation upon which service-providers and stakeholders base their explanation of the program. Inconsistencies in attitude on the type of people who are suitable for conferencing may limit the restorative potential of the process. In turn, this may contribute to the problem concerning the negative perceptions existing in the community and among stakeholders about the utility of the YJGCP. The call for a common narrative is predicated upon a common understanding of what the program is trying to achieve and the people for whom it is best suited.

## **B Perspectives on YJGCP**

With these potential disagreements in outlook and narrative established, it is the intention of this article to make brief and tentative recommendation as to how these seemingly contrary approaches might be reconciled. The trend in referrals shows that the YJGCP is being deployed in response to increasingly complex matters involving more serious offences<sup>202</sup> and multiple offenders.<sup>203</sup> These circumstances throw the need for a consistent narrative into sharp focus.

Although DHS provides documentation specific to each type of participant (eg lawyers, victims etc),<sup>204</sup> it is unlikely that these are read by all participants and some convenors commented that these materials did not adequately explain the process.<sup>205</sup> Indeed, it has been argued that bureaucratic forms make certain assumptions about the relationship between the service user and the service-provider.<sup>206</sup> Although this discourse analysis argument cannot be pursued here, it draws attention to the point raised in interview by some convenors that restorative processes such as this often require individualised explanation, given that each participant is likely to have very specific needs arising out of the offence.<sup>207</sup> Convenors also noted that conference participants' ethnic and cultural

202 Law Reform Committee, above n 8, 321–7; Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012); Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012); Interview with Youth Justice Court Advice Worker, Department of Human Services (Vic) (Dandenong, 27 August 2012). Service activity has increased in recent years: Department of Human Services (Vic), 'Review of the Youth Justice Group Conferencing Program', above n 6, 33.

203 Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012); Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012).

204 Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012).

205 Ibid; Department of Human Services (Vic), *Conference Fact Sheet*, above n 6.

206 Norman Fairclough, 'Critical Discourse Analysis: The Critical Study of Language' (Longman, 1941) 211–22.

207 Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012).

backgrounds must also be recognised insofar as this consideration might call for different needs and attitudes.<sup>208</sup>

This common narrative, in whatever form it takes, must be based on a consistent understanding of the theoretical foundations of the program. It must also go hand-in-hand with the practical ability to explain, in accessible terms, the conferencing process and how the program interacts with the criminal justice system. David Moore has suggested that this requires fundamental principles to be abstracted down to key points of learning in a manner that allows service-providers and stakeholders to give a succinct and consistent explanation of the YJGCP.<sup>209</sup>

A separate, but equally important, issue relates to how the YJGCP is presented in the media by non-parties such as politicians. Some interview participants expressed concern that the 'nirvana story'<sup>210</sup> described above may creep into the discourse employed by some individuals who represent the YJGCP to the public.<sup>211</sup> This is important because such representations may influence the pre-conceptions which members of the public bring to the program as potential participants. This all begs the question: what should this common narrative look like? Here, I suggest that certain considerations would be appropriate in formulating such a story.

In interview, a number of participants<sup>212</sup> made reference to the definition of the YJGCP conferences as set out in the *Convenors' Manual*.<sup>213</sup> It was suggested that this phraseology, coupled with an approach to dealing with potential participants on the basis of a two-way discussion about the program, rather than a defensive exercise in persuasion, forms the foundation for best practice. Those aware of it referred to this as defining the process in response to questions, rather than merely defending it.<sup>214</sup> David Moore suggested that if all service-providers were given some training in this exercise, many of the issues outlined above may be overcome.<sup>215</sup>

This proposal would be highly beneficial in many respects but would leave unanswered the equally fundamental issue of the attitudes which different stakeholders and service-providers bring to the YJGCP. Some interview participants suggested that a key means of redressing this is a combination of informal conversations between convenors, youth justice workers and other

208 Ibid.

209 Interview with David Moore (Melbourne, 21 July 2012).

210 Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012).

211 See, eg. Celine Foenander, *Young Offenders Face up to Crime Impact* (1 December 2011) ABC Gippsland <<http://www.abc.net.au/local/stories/2011/12/01/3381420.htm>>.

212 Interview with David Moore (Melbourne, 21 July 2012); Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012); Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012).

213 Moore, *Convenors' Manual*, above n 7, 3.

214 Interview with David Moore (Melbourne, 21 July 2012); Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012); Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012).

215 Interview with David Moore (Melbourne, 21 July 2012).

stakeholders such as legal representatives and police.<sup>216</sup> Experience suggests that this, coupled with actual participation, is the most effective way of disseminating a nuanced understanding of the YJGCP.<sup>217</sup>

It is suggested that these two mechanisms working in unison would go a long way towards redressing the problem, although one in the absence of the other is likely to be ineffective. Several interview participants<sup>218</sup> explained that informal normative discussions with stakeholders are ineffective given the high turnover rate of staff and the sheer scale of the YJGCP's operation across the state. Several reports into the YJGCP have indicated the need for sector-specific training to be provided particularly to Magistrates,<sup>219</sup> legal representatives and police informants,<sup>220</sup> and I agree with these recommendations. This need not necessarily be an expensive or overly time-consuming exercise.

Information could be included in the ongoing training provided to Magistrates by the Judicial College of Victoria.<sup>221</sup> Equally, a module could be included as part of legal representatives' continuing professional development requirements. Finally, entrenching a permanent victim support worker or Youth Resource Officer in police stations has been suggested as one way of redressing perceived bias against the YJGCP among the police force.<sup>222</sup> Such a proposal is already in the process of being rolled out.<sup>223</sup> These mechanisms, while dependent on funding, are realistic means of supporting the invocation of a common narrative for the YJGCP.

## VII CONCLUSION AND RECOMMENDATIONS

Whatever form the narrative for the YJGCP takes, it should be based on a common understanding of the roles played by each service-provider and stakeholder as well as a clear enunciation of what the program can be expected to deliver. There must also be an understanding of the types of young person and offences which are suitable for conferencing. For example, some interview participants indicated that the guidelines in their current form give no indication as to how conferences

216 Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012); Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012).

217 Interview with David Moore (Melbourne, 21 July 2012).

218 Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012); Interview with Group Conference Convenors, Jesuit Social Services (Brunswick, Melbourne, 15 August 2012).

219 Law Reform Committee, above n 8, 263–7.

220 *Ibid* 267–9.

221 *Ibid* 265.

222 Interview with David Moore (Melbourne, 21 July 2012); Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012).

223 Interview with David Moore (Melbourne, 21 July 2012); Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012).

with multiple co-offenders should be handled.<sup>224</sup> This too is currently being addressed.<sup>225</sup>

With these fundamentals cleared up, it is suggested that the common narrative for the YJGCP ought to focus on the fact that restorative processes such as conferencing can be expected to deliver on a set of minimum values. These values ensure all participants are empowered to articulate their needs insofar as they arose out of the relevant offence, and experience the conferencing process as one where they are not dominated by other participants.

In these circumstances, participants should be told that the conference may lead them to experience an understanding of the perspectives of other people involved in the offence and, in some cases, to a mending of relationships through open and honest dialogue facilitated by an experienced conference convenor. However, this may not be achieved in every case.

Parties need to be informed that, in general, the process is not about apology or forgiveness. Rather, it exists in the context of a program which is designed to divert the young person from progressing further into the criminal justice system. It aims to help to rehabilitate them so that they are less likely to re-offend, or at least re-offend in a less serious manner in the future. Therefore, particularly in the case of victims, while they are supported to participate in the conference, the YJGC program is oriented towards the offender.

If participants are given this information in a more professional and coherent form than that just stated, they might be more likely to go into the conference with a clear appreciation of what to expect and are less likely to have preconceived notions disappointed. This in turn may allow the conference to meet some of those more complex restorative aims. An added bonus is that this may boost participation rates by victims and other non-mandated parties.

Following consultation with all interested parties, I have argued that the enunciation of a common narrative for the YJGCP will allow it to better meet its aims and address a number of remaining inconsistencies in the delivery of the program. Given the recent and continuing success of the YJGCP, such an exercise would add to an already highly beneficial program.

224 Interview with Management Staff, Department of Human Services (Vic) (50 Lonsdale St, Melbourne, 26 July 2012).

225 Ibid.