

THE PROCESS AND DYNAMICS OF RESTORATIVE JUSTICE: RESEARCH ON FORUM SENTENCING

Dr Meredith Rossner

Dr Jasmine Bruce

Ms Mythily Meher

THE PROCESS AND DYNAMICS OF RESTORATIVE JUSTICE: RESEARCH ON FORUM SENTENCING

Dr Meredith Rossner
Justice Research Group
University of Western Sydney

Dr Jasmine Bruce
School of Law
University of New South Wales

Ms Mythily Meher
Justice Research Group
University of Western Sydney

July 2013

Published in Sydney by the:

University of Western Sydney

Suggested Citation:

Rossner, M., J. Bruce and M. Meher (2013)
*The Process and Dynamics of Restorative
Justice: Research on Forum Sentencing.*
Sydney: University of Western Sydney.

ISBN: 978-1-74108-277-7

This report was commissioned by the New
South Wales Department of Attorney General
and Justice, Tender DJAG 2011/21.



ACKNOWLEDGEMENTS

The researchers would like to thank all the participants who agreed to be part of the study. We are especially grateful to all the forum participants who allowed us to observe their forums which were at times difficult, challenging and rewarding experiences. We would also like to thank the facilitators who generously gave up their time to be interviewed after the forum. This research would not have been possible without the support of the local Program Administrators and Program Managers who assisted the researchers throughout the project. We thank them for their support and assistance.

TABLE OF CONTENTS	IV
LIST OF TABLES	VII
Executive Summary.....	1
Aims and Methods	1
Profile of Forums	1
Key Findings – Successful Processes	1
Emerging Issues	2
Future Research	4
Chapter 1. Introduction.....	5
Research Aims	5
Background.....	5
Defining Successful Restorative Justice Processes	5
Review of Restorative Justice Programs	7
About Forum Sentencing	7
Description of the process	8
Program administration and training	9
Previous Research on Forum Sentencing	9
Structure of the Report	9
Chapter 2. Methodology	10
Research Questions	10
Research Design and Methods.....	10
Part 1. Stakeholder Interviews	10
Part 2. Case Census	10
Part 3. Case Studies.....	10
Forum observations	11
Facilitator interviews	11
Participant interviews.....	11
Research Context and Sampling	11
Data Triangulation	12
How Representative was the Sample?.....	12
Offences	12
Offenders	12
Victims	13
Chapter 3. Profile of Forums.....	14
Characteristics of Forums	14

Type of offences	14
Number of participants	14
Offenders	15
Offender supporters	15
Victim participation	16
Cases without a direct victim	16
Victim supporters	16
Respected community members	17
Police attendance	17
Probation officer	17
Legal representatives	17
Facilitators	18
Forum observers	18
Summary	18

Chapter 4. Referrals and Preparation of Forums 19

Case Referral and Selection	19
What makes a case eligible for Forum Sentencing?	19
What makes a case suitable for Forum Sentencing?	20
Criminogenic needs assessment	20
Appointing a Facilitator	20
Forum Preparation	21
How many participants?	21
Identifying participants	21
Preparing participants	22
Managing forum logistics	25
Confirming final forum preparations	26
How long does preparation take?	26
Summary	26
Key issues and areas for improvement or follow-up	27

Chapter 5. Forum Discussion and Dynamics 28

Trajectories of Stages One and Two	28
Success in Stages One and Two: Consensus	28
Divisive Forums	29
Beginning The Forum: Managing Arrivals and Introductions	30
Taking Responsibility	30
Exploration of Harm	31
Victims	31

Victim representatives.....	32
Supporters	33
Respected community members.....	34
Police	34
Facilitation and Using the Script.....	35
Summary.....	36
Key issues and areas for improvement and follow-up	36
Chapter 6. What is included in the Draft Intervention Plan.....	38
Transitioning to Stage Three	38
Overview of Stage Three Dynamics	38
Storybook model.....	39
Polite model	40
Draining model	40
Salvaged model.....	41
Divisive model.....	42
Managing Stage Three: Facilitator Concerns and Strategies	42
Encouraging engaged and active participation.....	42
Experienced forum attendees as ‘co-facilitators’	43
Facilitator experience and training.....	43
Facilitator knowledge.....	43
Breaks.....	44
Closing the Forum	44
Length of Forums	44
What is Included in the Draft Intervention Plan?	45
Voluntary work.....	45
Counselling.....	46
Drug-related items	46
Apology.....	47
Personal development	47
Other items.....	48
Financial compensation	48
Intervention Plans and Sentencing	49
Supervision of Intervention Plans	49
Amendments to Intervention Plans	50
Intervention Plan breaches.....	50
Summary.....	50
Key issues and areas for improvement or follow-up	50

Chapter 7. Conclusion.....	52
Profile of Forums	52
Successful Processes.....	52
Referrals and forum preparation	52
Developing Positive Trajectories in Stages One and Two.....	53
Developing an Intervention Plan.....	54
Future Research	55
References.....	56

List of Tables

Table 1.1 Components of successful processes	7
Table 2.1 Number of interviews.....	11
Table 2.2 Number of cases	12
Table 2.3 Offence type.....	12
Table 2.4 Offender gender	13
Table 2.5 Number of forums with a victim present.....	13
Table 3.1 Offence types	14
Table 3.2 Offence types by regional location	14
Table 3.3 Number of participants at forums	15
Table 3.4 Offender gender	15
Table 3.5 Offender age	15
Table 3.6 Offender age by region	15
Table 3.7 Offender supporters at forums.....	15
Table 3.8 Victim attendance at forums	16
Table 3.9 Types of victim representatives	16
Table 3.10 Victim supporters attendance at forums (in cases where victim is present).....	16
Table 3.11 Community member attendance at forums.....	17
Table 3.12 Community member relationship to offender.....	17
Table 3.13 Police attendance at forums	17
Table 4.1 Referral to forum sentencing.....	19
Table 4.2 Reasons given for unsuitability.....	20
Table 4.3. Key steps in forum preparation by the facilitator.....	21
Table 4.4 Topics covered in preparation	22
Table 4.5 Forum preparation times.....	26
Table 5.1 Elements of consensus or division in forums.....	28
Table 6.1 Typology of stage three dynamics.....	39
Table 6.2. Length of forums	44
Table 6.3. Number of items included in intervention plan.....	45
Table 6.4. Frequency and types of items included on intervention plans.....	45
Table 6.5. Hours of voluntary work specified in intervention plans	45
Table 6.6. Types of counselling items in intervention plans	46
Table 6.7. Types of drug treatment-related items on intervention plans.....	47
Table 6.8. Types of personal development items included in intervention plans	47

EXECUTIVE SUMMARY

This research report presents findings from a study of Forum Sentencing in NSW. Forum Sentencing is a restorative justice program operating within the local court jurisdiction. It provides an alternative sentencing option, which allows offenders to meet with victims and other community members to repair harm and reduce reoffending. The University of Western Sydney and University of New South Wales were commissioned to complete the research for the Attorney General's and Justice Department.

Previous studies on Forum Sentencing (formally Community Conferencing for Young Adults) have focused on program outputs and outcomes such as participant satisfaction (People and Trimboli 2007) and an evaluation of reoffending (Jones 2009).

Aims and Methods

The aim of the current research is to document the process and dynamics of Forum Sentencing to identify what contributes to a 'successful' forum, and how the process can be improved. This definition of 'success' is based on a review of the restorative justice literature and the stated aims of Forum Sentencing. The study focused on three key questions:

1. How does the process of Forum Sentencing work?
2. What are the factors that contribute to the 'success' of a forum?
3. How could the forum process be improved?

The research had three main components: (a) consultation with stakeholders, (b) a census of all cases over a six month period, and (c) cases studies of a sample of forums. This mixed method approach included interviews with program stakeholders, observation of forums, interviews with forum participants, and analysis of program data.

Profile of Forums

Chapter 3 presents a profile of the characteristics of forums and participants. The main findings are detailed below.

- » The most common offences included in the program were for dangerous driving offences (mostly high-range Prescribed Concentration of Alcohol, or PCA), assault, and theft. The majority of offenders were male (75%), and over half were over the age of 25.
- » While most offenders had at least one supporter present, only a minority of victims who attended brought a supporter with them. The Case Studies revealed that in practice other

participants took on this role.

- » A direct victim was present in over half of the forums (56.7% in the Case Census and 64.7% in the Case Studies).
- » When there was no direct victim present, a victim representative usually attended. In most of these instances, the victim representative was from a victims' organisation.
- » The majority of forums had a community member present. According to the Case Studies, most community members were from a local organisation identified to meet specific needs of the offender, and had not met with the offender beforehand.
- » Police were a regular presence at forums, attending 90% of the time.
- » Most forums had between six and eight participants.

Key Findings – Successful Processes

The definition of what constitutes an effective or 'successful' restorative justice practice is contested (see Daly 2002; Robinson and Shapland 2008). A model of the forum and its dynamics were documented by analysing the features of forums that worked well and those that worked less well. While each restorative justice encounter is unique, certain trajectories can be identified that develop in the early stages of a forum, and emerge and change in the final stages, impacting on the overall quality of the forum. The five models presented across Chapters 5 and 6 are briefly described below.

In a forum, two main trajectories can be identified in the early stages (Chapter 5). These are characterised by a shift towards **consensus** among the forum participants at successful forums, or towards increasing **division** among participants at less successful ones. The main elements that contribute to the development of these trajectories are whether the offender is upfront and willing to take **responsibility** (and is perceived to be sincere), and whether the victim and other participants can articulate the **harm** of the offence in a meaningful way.

If consensus about the offence and its impact emerges in the early stages of a forum, there is a good chance that the main issues will be resolved, with the participants on a pathway towards developing an agreed outcome. Based on these early trajectories, a number of forum dynamics can be broadly identified by the end of the forum. These dynamics are storybook, polite, drained, salvaged or divisive (Chapter 6).

The **storybook** forum is one where participants begin negotiations on the draft Intervention Plan from a starting point

of consensus. They tend to actively work together to develop a plan that everybody appears happy with, and are marked by an exceptional level of shared understanding and feeling of goodwill. **Polite** forums do not achieve these high emotional resolutions – rather they are typically marked by a respectful dynamic, where participants are amicable and accept the plan. **Drained** forums are characterised in the following way: the goodwill generated in the early stages disintegrates as participants endlessly negotiate the fine points of the Intervention Plan. The forum loses momentum as participants become bored and restless.

Forums that are marked by division in the early stage can result in two typologies (**salvaged and divisive** forums). **Salvaged** forums allow for a new focus away from arguments and towards a shared common goal of developing a workable plan, although some divisions remain. **Divisive** forums are characterised as ones where volatility and unresolved issues continue into stage three, often resulting in unsatisfied participants. Features contributing to divisiveness at forums include: the offender's attitude at the forum frustrating other participants, disagreements about the charges laid, and the dominating behaviour of participants at the forum.

Emerging Issues

These emerging issues highlight the particular challenges of implementing restorative justice forums in a local court setting as part of the sentencing process. The research identifies a number of key issues and offers several recommendations to inform future development of the program.

1. Case selection and preparation

Issues that contribute to the identification of suitable cases and participants and their preparation prior to the forum include:

Referral of cases. A challenge the program faces in the long-term is establishing an active referral pathway by magistrates, rather than a 'case extraction' pathway, where Program Administrators spend considerable time in court recruiting eligible cases for the program. The former would enable Program Administrators to focus on program management.

Eligibility and suitability. Most of the cases referred to Forum Sentencing meet the eligibility criteria and were assessed as suitable. In divisive forums, the suitability of some participants was questionable. If a facilitator believes that a participant may be unsuitable in the preparatory process (or at the forum), they should feel that they can exclude

participants at any stage if necessary.

Consent. It is important to ensure that all participants give informed consent, are aware of the voluntary nature of the process, and do not feel obligated to participate.

Number of participants. Facilitators are expected to invite approximately ten people to the forum. This includes the victim (or victim representative) and their supporters, the offender and their supporters, the arresting officer, and respected community members. It is expected that these participants represent the people who are most affected by the incident and have a stake in the outcome. Even so, it is preferable to have less than ten participants than to invite additional community members and other participants solely to increase numbers.

Victims. The processes of making contact and gaining victim consent could be streamlined.

Victim representatives. Because victim representatives can be invited on behalf of victims who do not consent to attend, this has led to strong links between victim's rights and advocacy groups. This can result, however, in the same representative attending numerous forums, exercising significant influence.

Police preparation. Some police were more supportive of Forum Sentencing than others. Strengthening relationships between police and Forum Sentencing remains a continuing priority.

'Respected community members'. The role of 'respected community members' (hereafter community members) encapsulates a diverse range of participants. It is important that facilitators identify community members who have some connection to the participants or the case.

Facilitator training and experience. Facilitators indicated that training and the Program Administrator's support were helpful before their first forum, and mentoring by an experienced facilitator would be beneficial.

2. Forum dynamic

Chapter 5 found that successful forums develop a dynamic of consensus in the early and middle stages when the offender effectively takes responsibility for the offence at the encouragement of all participants, and the harm of the offence is communicated in a meaningful way.

Issues for consideration and follow-up include:

- When an **offender** sincerely takes responsibility for what they have done, this puts the dynamic on a path towards consensus. It is imperative that participants perceive that the offender is taking responsibility for a feeling of consensus to be reached.
- **Community members** can help draw out the story, encourage the offender to take responsibility, and contribute to the development of appropriate Intervention Plan items. They can, however, be detrimental when there is a lack of rapport between the offender and community member, the offender resents their presence, or they have not met the offender beforehand, or the community member has not been briefed on the case. Any one of these can contribute to a divisive forum dynamic.
- In successful forms, **victims** effectively communicate the harm of the offence to the offender and the other participants. To reach consensus, all participants develop an understanding and agreement about the impact of the offence. When a victim was not present, victim representatives used a number of strategies to discuss the likely harm caused, the most effective of which was to describe what the victim may have felt. Victim representatives, who can represent the views of the primary victim may be the most effective.
- **Supporters** can help draw out the story and provide a context for the offending behaviour or acknowledge the extent of the victim's harm. Too many supporters on the offender's 'side' can contribute to division and, at times, re-victimisation. Where offender supporters become domineering or aggressive at the forum, this needs to be carefully managed by facilitators.
- **Police** effectively contributed to forums when personal reflections about the nature of the harm were offered. Forum Sentencing can clarify the role of the investigating officer at the forum and explain what information, such as the offender's history and details of the case, can be discussed at the forum.
- **Additional elements** that may impact on how participants communicate with each other and their capacity to reach consensus include the use of the forum script and note-taking by facilitators for the forum report. When scripted questions that have already been answered are asked it disrupts the conversation. Additionally, when facilitators take detailed notes it decreases their ability to keep track of forum dynamics and effectively manage conflict.

3. Intervention Plan development

During the negotiations over the Intervention Plan, the forum dynamics either shift towards further consensus or towards increasing division. As described above, this stage can be categorised by five dynamics (storybook, police, drained, salvaged, and divisive). Elements contributing to these dynamics during the negotiation of agreements are briefly outlined below.

Length of forums. While forums vary in length, the duration of stage three was particularly onerous in some cases. As a result, these forums risked becoming drained. Limiting the discussion of the length and duration of proposals for counselling and drug treatment is one way this can be managed. Another is to ensure participants and facilitators are aware of the role and existence of Intervention Plan Supervisors. Finally, the program could consider setting a time limit on stage three. This could be achieved by a revision of the forum script.

Breaks. Many conferences were run over several hours without a break and this appeared to create discomfort for some participants. Forum Sentencing can look to other conferencing models to consider ways of structuring in breaks. The enforcing of a 'no breaks' policy can have a negative impact on the forum dynamic.

Items in Plans. While participants are asked to make recommendations they see fit for the specific case and offender, common items in Intervention Plans are voluntary work, counselling or personal development. Facilitators can encourage participants to suggest and develop items that are personalised for each case. However, there can be a tension around including creative and unique items as they may have punitive elements in addition to restorative or rehabilitative elements. During the stage three negotiations, the forum participants generally regulate items that are perceived as too severe but this needs to be carefully managed by facilitators.

Financial compensation. Greater awareness of the potential capacity for financial reparations at forums and subsequently at court, as well as of the limitations, could help to manage expectations relating to monetary compensation.

Facilitation tasks. Managing the development of Intervention Plans is one of the most challenging facilitation tasks. Training on court processes related to Forum Sentencing could assist facilitators when answering the questions from participants. Another way of supporting new facilitators is to engage more experience facilitators to mentor them as a part of their initial training.

Future Research

The current study has documented the different elements that contribute to achieving 'successful' restorative justice processes and suggests several ways in which the process and operation of Forum Sentencing can be improved. Building on this, future research could consider a more longitudinal perspective on forum trajectories and typologies. This research can examine longer-term outcomes for participants whose forums fell into different typologies, including long term perspectives on the forum, the sentencing process and reoffending.

CHAPTER 1

INTRODUCTION

This report presents key findings from research on Forum Sentencing; a restorative justice option for adult offenders who are being sentenced in local courts in NSW.

Research Aims

This research aims to document the process and dynamics of Forum Sentencing in order to analyse what contributes to a 'successful' forum, and how the process can be improved.

The study focused on three key aims:

1. To describe the current operating practices of forums
2. To identify the factors that contribute to successful forums
3. To provide recommendations to increase the effectiveness of forums

Background

Restorative justice schemes have been evaluated in a number of contexts across the world, particularly for juvenile offenders (see Meirs et al 2001; Braithwaite 2002; Sherman and Strang 2007). These evaluations tend to compare restorative justice to 'traditional' justice (such as court), and focus on outcomes such as victim and offender satisfaction, restoration, and reduced reoffending. A recent meta-analysis of restorative justice programs finds that restorative justice outperforms court on measures of victim and offender satisfaction, restitution compliance, and reductions in recidivism (see Latimer et al 2005).

While research on restorative justice has largely focused on juvenile offending (Luke and Lind 2002; Hayes and Daly 2003, 2004; Doak and O'Mahoney 2011), a few evaluations have examined its implications for adults (Shapland et al 2007, 2008; Sherman and Strang 2007). These studies suggest that the process may be most effective for adults, particularly for more serious crimes (Sherman and Strang 2007). In New South Wales, early evaluations of the pilot phase of Forum Sentencing report high satisfaction levels for conference participants and other stakeholders (People and Trimboli 2007). Indeed, most stakeholders suggested that the program be expanded to include more offenders and offences. A later analysis comparing offending patterns between offenders who had been through the Forum Sentencing program with comparable offenders going to court indicated no difference in offending behaviour (Jones 2009). However, like most court-conference comparisons, this evaluation was unable to capture the variety and complexity within forums, and how within-conference variations can influence offending (for a more thorough discussion, see Braithwaite 2002: 69; Hayes and Daly 2004).

Although reducing reoffending may be one of the longer-term benefits of restorative justice processes, other benefits are its potential to address the emotional impact of crime, particularly for victims of crime (see Strang 2002). Rossner (forthcoming 2013) examines this relationship between the emotional, interactional dynamics of conferences and future offending. She finds that conferences that were emotionally and ritually 'successful' resulted in significantly less offending (over five years) than conferences that were emotionally 'bland'. This finding suggests that the dynamics of the event matter, and future evaluations of the effectiveness of forums need to take this into account.

Quality facilitation is an important aspect of restorative justice practice as facilitators contribute to achieving effective restorative justice processes (see Bruce 2008). Facilitators play a vital role in providing the foundations for restorative processes as well as managing group dynamics and negotiating agreements.

Taken together, the research on restorative justice reveals that in some cases it is a successful alternative to other processes and, in other cases, it is not (Sherman and Strang 2007). However, since much of this research neglects to account for variation between forums or the facilitator's role, it contributes little towards explaining these differences. Some exceptions to this are Bolitho's (2005) finding that while many conferences can include best practice principles, a variety of situational factors impacted on the 'success' of the process. Additionally, Rossner (2011) has examined in-depth conditions under which restorative justice processes are more or less likely to succeed. The current study therefore recognises that, in order to fully understand how forums can be a successful criminal justice intervention, in-depth and systematic data that captures the dynamics of the process is needed.

Defining Successful Restorative Justice Processes

Defining what constitutes an effective or 'successful' restorative justice practice is contested (see Daly 2002; Robinson and Shapland 2008). This is partly due to the fact that there is no widely agreed definition of restorative justice, making the task of defining the conditions of its success particularly difficult.

This study aims to describe the key elements that contribute to a successful process. It presents a framework for defining success in the context of this study and identifies elements that supports a successful Forum Sentencing process.

From the outset, it is important to acknowledge that the

effectiveness of a restorative justice intervention can be conceived of in terms of its outcome and its process. Assessments of restorative justice impacts commonly focus on reoffending rates (Jones 2009) and participant satisfaction (People and Trimboli 2007), although some studies have attempted to measure elements of 'restorativeness' (See Daly 1998). Other scholars have conceptualised different elements of the restorative justice process which are reviewed and described below.

Some researchers focus on the event's characteristics: number of participants present, who they are, where they sit, etc. The elements Bolitho identifies as positive include: the presence of a victim or a victim representative, the presence of a community member, the presence of supporters for an offender, the active participation of all participants, and an outcome plan that acknowledges and repairs harm to both victim and offender (Bolitho 2005: 125).

Braithwaite and Mugford (1994) offer a list of the key elements of a successful restorative justice intervention that focuses mainly on procedural elements, including: actions that result in fairness and respect (such as decoupling the perpetrator from the criminal event), ensuring supporters are present, empowering victims (while at the same time preventing power imbalances), minimising distance, and encouraging respect. Hayes and Daly (2003) also identify a number of elements that contribute to success, including whether everyone had a say, if the process was fair, if the offender took responsibility and felt remorse, and an agreement was formulated that attempted to repair harm to victims and/or prevent future offending.

Harris and Maruna (2006) suggest that the narrative and storytelling elements of a conference are key to its success, arguing that the space for participants to tell their story enables the reparation of harm and resolution of shame. Restorative justice can provide a context where this narrative can commence and develop, and may be especially relevant for adult offenders, such as the ones in this study.

Braithwaite and Mugford (1994) also emphasise the ritual nature of restorative justice, suggesting that such rituals of inclusion, when flexible and culturally plural, can bring people together to produce a common purpose and set of values. Similarly, Rossner (2011, forthcoming 2013) argues that the micro-level dynamics of a conference determine its success, linking success to the development of a positive ritual. In a successful conference, solidarity and group cohesion develops, and there are increased levels of emotional energy (participants experience a 'high'). The extent to which facilitators are able to

empower participants and effectively manage group dynamics is also an important ingredient here (Bruce 2008).

A final dimension of restorative justice is its symbolic value. Presser and Van Voorhis (2002) suggest that a successful restorative dialogue communicates moral values to the offender, victim, and larger community. An example of symbolic success is the exchange of genuine apology and forgiveness Rossner (forthcoming 2013). Daly points to measures of 'restorativeness', such as feelings of goodwill, as an indicator of symbolic success, while at the same time acknowledging that it is often easier to achieve a sense of fairness rather than 'restorativeness' (Daly 2006: 138).

Based on some of the literature reviewed above, the stated goals of the Forum Sentencing Program, and the data collected for this study, pathways to a successful restorative process can be identified.

It is useful to first acknowledge that forums are not static events that can be easily identified as 'good' or 'bad'. Rather, they are dynamic encounters with multiple aims and layers. In this study, a model of the forum and its dynamics were documented by analysing the features of forums that worked well and those worked less well. Each restorative justice encounter is unique, however, one can identify certain trajectories that develop in the early stages of a forum, and document the ways those trajectories emerge and change by the end of the forum, impacting on the overall quality of the forum.

Table 1.1 identifies several elements that can be operationalised and measured at three stages during the restorative process: in the preparatory stage, during the encounter, and in the immediate outcomes.

It is worth noting that the elements listed range from: the very practical that can be easily put in place (such as finding an appropriate venue); through more procedural features of the process that are continuous and dynamic (such as participant consent, suitability, and the development of an agreed-upon narrative.); to ritual and symbolic characteristics (such as whether an offender's account is perceived to be genuine, the way harm is expressed, and the overall emotional tone of the encounter). While this list is not exhaustive, it does provide a preliminary snapshot of the different elements of success in restorative justice that may be measured or analysed. As a framework, it offers a foundation to explore these and other elements that may be essential to the success of Forum Sentencing.

Table 1.1 Components of successful processes

Preparation

- Streamlined referrals process
- Eligible cases (identified harm)
- Suitability assessment of offender
- Identification of appropriate participants
- Consent and preparation of participants
- Finding appropriate venues
- Facilitator training

Stages 1 and 2

- Primary participants present
- Active participation
- Sincere expression of responsibility
- Meaningful expression of harm
- Narrative or story that everyone agrees with
- Non-domination
- Facilitator management
- Scripted questions and prompts

Stage 3

- Apology and symbolic reparation
- Agreement is made to repair harm
- Agreement is made to address reoffending
- Agreement is effectively negotiated
- Balanced negotiations and non-domination
- Active participation and empowerment
- Forum length

Review of Restorative Justice Programs

Restorative justice is a process that has been implemented in criminal justice and other settings such as schools and workplaces. Within the criminal justice system, restorative justice approaches have been widely used for young offenders, particularly in the form of youth justice conferencing, but less commonly for adults (Bruce et al 2012). When it has been offered to adult offenders and victims of crime, it has been at different stages of the criminal justice system. For example, Shapland's UK study included programs operating at both the pre-sentencing and post-sentencing stages (Shapland et al 2004). In New Zealand, conferencing for adults currently operates as a pre-sentencing option for magistrates.

In New South Wales, post-sentencing conferencing for adults is run by the Restorative Justice Unit at Corrective Services. This program deals with serious crimes, such as murder, manslaughter, armed robbery and some sexual offences.

With the exception of Tasmania, circle sentencing operates in all Australian jurisdictions for Indigenous adult offenders. It aims to address the over-representation of Indigenous people amongst offenders, enable greater participation of Indigenous people in justice processes, and complement Justice Agreements that have been entered into in some Australian states and territories' (Marchetti 2009). In New South Wales, Circle Sentencing operates under the same Act as Forum Sentencing.

About Forum Sentencing

In New South Wales, Forum Sentencing provides magistrates with the option to refer local court matters to a restorative justice meeting prior to sentencing the offender. The Forum Sentencing model is based on a conferencing model for young adults, but has since expanded to include all eligible offenders regardless of age. Some distinctive features of Forum Sentencing compared with other restorative justice initiatives are that it uses court referrals, there is no time constraint on forums, and it is facilitated by contracted facilitators. The objectives of Forum Sentencing include:

- to provide for greater participation in the justice process for offenders and victims and the families and support persons of offenders and victims,
- to increase offenders' awareness of the consequences of their offences for their victims and the community,
- to promote the reintegration of offenders into the community,
- to increase the satisfaction of victims with the justice process,
- to increase the confidence of the community in the justice process,
- to provide a participating Court with an additional sentencing option,
- to reduce reoffending. (Forum Sentencing Operating Procedures 2011: 2).

In forum preparation and during the forum process, the aims of **repairing harm** and **reducing reoffending** are emphasised over others. Both are incorporated into the forum script, and are placed before the forum on a laminated card. These become the primary objectives for Forum Sentencing amongst forum participants and, more broadly, other stakeholders.

Forum Sentencing has a legislative basis. It operates under the Criminal Procedure Regulation 2010 as part of the Criminal Procedure Act 1986 NSW. Eligible offences include theft, assault, property damage, some deception and fraud offences, some offences against police. The program does not accept referrals for more serious crimes involving firearms, some drug offences, and intimate partner violence offences.

Forum Sentencing is described as a restorative justice program although this term is not widely used in the Operating Procedures. As well as the above objectives, the program is guided by a number of core principles which are often associated with restorative justice principles such as active participation and empowerment and involving victims and the community in justice process. These cover issues around forum participation and Intervention Plans. In relation to the promotion of participation in the justice process, the program should: (a) enhance the rights and place of victims in the justice process with regard to their interests; (b) promote the active participation and empowerment of offenders and their victims, and the families and support persons; (c) take into account the rights, needs, capacities, gender, sexuality and cultural and linguistic diversity of all participants, including Aboriginality and disability; and (d) assist offenders to take responsibility for the offences. In relation to the development of Intervention Plans, the program should (e) recognise the harm done to any victims and the community and; (f) take account of the rights,

needs, capacities, gender, sexuality, culture of, and language spoken by, the offender including Aboriginality and; (g) any needs arising from a disability (Forum Sentencing Operating Procedures 2011: 2-3).

The pilot program for young adults (18-24 years) commenced in 2005 in two local courts in New South Wales: one Sydney metropolitan court (Liverpool) and one non-metropolitan local court (Tweed Heads, which included Murwillumbah, Byron Bay and Mullumbimby). After the pilot, the name of the program was changed from 'Community Conferencing for Young Adults' to 'Forum Sentencing' (Hart and Pirc 2012). Following People and Trimboli's (2007) research on participant satisfaction, a number of changes were made to the program in 2008, including lifting the age restriction and expanding the eligibility criteria to encompass some offences against the police and other offences such as riot and affray (Hart and Pirc 2012). As a result, some other offences such as dangerous driving offences where there is no direct victim were made ineligible (Hart and Pirc 2012: 73-4).

Forum Sentencing currently operates in 13 sites in NSW, accepting referrals from magistrates across 52 local courts. It is anticipated that the program will eventually be offered in all local courts as new sites are established.

Description of the Process

A forum aims to provide the offender, victim, support people, a police officer and other participants with the opportunity to:

- hear what happened
- find out about how people have been affected by the offence
- develop an Intervention Plan for the offender to repair the harm.

Forum Sentencing aims to repair the harm to the victim and the community, and to reduce the likelihood of reoffending. It provides an opportunity for victims of crime and other stakeholders to directly participate in the justice process. Because Forum Sentencing is a court referred program the process involves a number of key steps:

- Step 1. The court refers eligible offenders to the program.
- Step 2. A suitability assessment takes place to see if offenders are suitable and victims are interested in participating.
- Step 3. The court completes a Forum Participation Order.
- Step 4. Program staff assess criminological risk factors to inform the development of an Intervention Plan.
- Step 5. A facilitator organises and facilitates a forum, which includes the development of an Intervention Plan addressing the key aims of the process.
- Step 6. At sentencing, the Intervention Plan is considered by the sentencing magistrate who can accept, reject, or seek to amend the Intervention Plan. The ratified plan then becomes a condition of bond or bail.
- Step 7. Program staff supervise the completion of the Intervention Plan. Any non-compliance is reported to the court. (Forum Sentencing Operating Procedures 2011: Chapter 2)

This broad overview of the steps involved from court referral to forum to sentencing and completion of the Intervention Plan by offenders provides a context for the research findings presented in this report. Each stage will be discussed in the following chapters.

Program Administration and Training

Forum Sentencing is managed by the Attorney General's and Justice Department. Local office staff include a Program Administrator, Office Coordinator and Intervention Plan Supervisor (IPS). Forum facilitators prepare and facilitate forums with the Program Administrator's supervision. Unlike other Forum Sentencing staff, facilitators do not work in the Forum Sentencing office. Rather, they are casual contractors who run forums on a case-by-case basis. Currently, facilitators submit timesheets after each case and are paid \$40.33 per hour (Facilitator Engagement Policy 2011). Facilitators are provided with four days of training before they start.

Previous Research on Forum Sentencing

Previous research on Forum Sentencing includes an evaluation of the Forum Sentencing pilot (previously known as Community

Conferencing for Young Adults), which reported on participant satisfaction (People and Trimboli 2007). An outcome evaluation of reoffending was also completed by the Bureau of Crime Statistics and Research New South Wales in 2009 (Jones 2009).

Structure of the Report

Chapter 2. Methodology. Presents an overview of the research methods used in the study. This includes a brief description of the sample of forums and characteristics of participants included in the study.

Chapter 3. Profile of Forums. Presents an overview of the type of cases referred to forum and their characteristics.

Chapter 4. Referrals and Preparation of Forums. Reports on the referral process, eligibility and suitability. Discusses the nature of forum preparation.

Chapter 5. Forum Discussion and Dynamics. Presents an analysis of the process and dynamics of stages one and two of the forum.

Chapter 6. Developing an Intervention Plan. Presents an analysis of the processes of forum decision-making: how Draft Intervention Plans are developed and the types of outcomes they include. Provides a brief discussion of how Forum Sentencing is integrated within the sentencing process at court and how Intervention Plans are monitored once the magistrate has approved them as a condition of the sentence.

Chapter 7. Conclusion. Presents an overview of the main findings.

CHAPTER 2 METHODOLOGY

Research Questions

This project examines the process of Forum Sentencing from the court referral stage to sentencing, identifying the features that result in successful restorative justice processes.

The study focuses on three key research questions:

1. How does the process of Forum Sentencing operate?
2. What are the factors that contribute to the success of a forum?
3. How could the forum process be improved?

Research Design and Methods

The research design included three components:

- **Stakeholder Interviews** These were conducted with Forum Sentencing staff, solicitors, police, community members and a magistrate to provide a multi-perspective overview of the various aspects and stages of the Forum Sentencing process.
- **Case Census** An analysis of relevant program data was carried out on all forums from the sites in our sample over a six-month period from November 2011 until April 2012.
- **Case Studies** Data was collected from 34 Case Studies. It ranged from observation of forums and post-forum interviews with the facilitator, to, in a subsample of cases, in-depth interviews with offenders, victims, and other participants.

Methodologies in the three parts of the study included **observations of forums, in-depth interviews** with the facilitator, forum participants and program stakeholders, **qualitative analysis** of observations and interviews, and **statistical analysis** of program data.

Part 1. Stakeholder Interviews

At the commencement of the research, interviews were conducted with a variety of stakeholders involved in Forum Sentencing. Both internal program stakeholders (Program Managers, Program Administrators and Intervention Plan Supervisors) and external program stakeholders (magistrates, police, solicitors and community members) were interviewed. The purpose of the interviews was to explore the various stages of the process from a variety of perspectives. A total of 24 interviews were conducted (eight with external program stakeholders, and 16 with internal program stakeholders). Further interviews were conducted with police, community

members, and Program Administrators in Part 3 of the study, as part of the Case Studies (see below), and these could also be drawn on to understand the broader process.

Key participants were first identified in consultation with Forum Sentencing, who then provided an introduction or referral to additional interviewees. In the interviews, the interviewers sought elaboration of processes, services, roles, and relationships. The interview guide invited stakeholders to share their experiences, knowledge and insight in relation to their own professional background, the structure and experience of the Forum Sentencing program, and their notion of successful and unsuccessful cases. Specific questions for internal stakeholders also sought feedback on issues relation to suitability, supervision, monitoring, facilitation and management of Intervention Plans. Specific questions for external stakeholders invited their thoughts on how Forum Sentencing worked with the aims and goals of their organisation or profession.

Key documents about the program were also collected during stakeholder interviews, including operating procedures, training manuals, the facilitator script, and other material about the program.

Part 2. Case Census

The Case Census provided a representative snapshot of the broad features of forums across New South Wales. The Case Census analysed data for all sites included in the study (Burwood, Campbelltown, Coffs Harbour, Downing centre, Gosford, Newcastle, Lismore, Liverpool, and Tweed Heads) for all forums run by these sites in the six months between November 2011 and April 2012. During this period, 203 forums took place.

Program Administrators and facilitators collect administrative data on each offender and forum, including demographic details, details of who was at the forum, forum duration, and the Intervention Plan outcomes. This information is entered into a central database which is maintained by the Judicial Commission of New South Wales. The Judicial commission supplied the researchers with the data used in the study¹.

¹ An additional source of data considered was participant feedback surveys distributed to participants at the conclusion of forum. This consists of several questions to measure participant experience and satisfaction. This data was not used in this study due to discrepancies in the surveys. Specifically, the number of offenders and victims completing the survey during the case census period exceeded the number of offenders and victims who were recorded as having participated in a forum. This may be because participants are asked to self select their role when completing the survey. Researchers regularly observed participant confusion during this stage, (for example, an offender supporter circling 'offender' because he was on the offenders 'side', or a victim's partner circling 'victim' because they also felt victimised). The collection of participant feedback should be improved for future research and evaluation.

Part 3. Case Studies

The Program Administrator at each site referred cases to the researcher for the Case Studies. Initially, a targeted sample was proposed that would capture variety based on offence type, location, offender characteristics and victim characteristics. However, the nature of the referral process from the courts and the availability of research team members resulted in researchers capturing nearly every case they were notified of. The exception was in non-metropolitan areas, where data was collected over a number of research trips. Altogether, 34 Case Studies were collected over a six-month period.

Forum observations

Each of these Case Studies centred on the in-depth observation of a forum by a member of the research team. Researchers observed 34 cases covering a range of offences, locations, and offender and victim characteristics.

For the observations, the researchers attended forums after gaining verbal consent from all the participants via the facilitator, and subsequently sought written consent from offenders and direct victims. In order to remain unobtrusive, researchers positioned themselves outside the forum circle, facing the facilitator while at the same time having visual access to the other participants. Notes were made during the forum and immediately after, and were then written up into detailed fieldnotes. These fieldnotes document the stages of the forum, how the forum transitioned to the next stage, ways participants did or did not engage with each other and the facilitator, the tensions around the competing aims and narratives of the participants, and the way they negotiated different outcomes.

Facilitator interviews

Facilitators were interviewed as part of the Case Study component of the research to learn how they prepared for the forum, their perception of the forum, and their views on what makes a forum 'successful'.

After observing a forum, the researcher would first meet the facilitator for a debriefing interview. Sometimes this happened directly after the forum, other times within a week or so of the forum, depending on the facilitator's availability. Interviews were recorded with the facilitator's consent, and lasted 30-90 minutes. Facilitators from a total of 29 forums agreed to an interview. In some cases, the same facilitator was interviewed twice to discuss different forums.

Participant interviews

In a subsample of forums, researchers also conducted in-depth interviews with conference participants, including offenders, victims, police officers, supporters, and community members.

Participant interviews were designed to draw out each participant's experience of their forum, and their perception of its unique features. In addition, questions were asked about their personal experience of and views on the program, including why they decided to participate and how they were prepared. Police officers and community members were also prompted to discuss the program in relation to their respective aims and interests. A total of 100 interviews were conducted (including stakeholder interviews), ranging from 15 minute telephone interviews to 90 minute in-person interviews. Interviews with other participants were mostly 30-60 minutes long. All were recorded with the participants' consent.

Table 2.1 Number of interviews

	Stakeholder interviews	Facilitator interviews	Participant interviews	Follow-up interviews	Total
Total	24	29	40	7	100

Source: Case Studies

Research Context and Sampling

Forum Sentencing is currently operating at 13 sites across New South Wales. Of these, six are in the Sydney metropolitan area: Bankstown, Burwood, Campbelltown, Downing Centre, Liverpool and Parramatta. The other sites are Coffs Harbour, Gosford, Lismore, Maitland, Newcastle, Port Macquarie and Tweed Heads.

Forum Sentencing provides an option for magistrates in the local courts and, therefore, is part of the broader sentencing and court process. This study consists of a process evaluation, not an evaluation of the implementation of a new program. For this reason, in consultation with the Department, only sites that had been in operation for more than two years – Liverpool, Tweed Heads, Burwood, Campbelltown, Newcastle, and Gosford – were initially selected for the study. At the same time, in an effort to maximise case flow and to capture the diversity of forums across the State, the newer programs that were fully operational at Downing Centre, Coffs Harbour and Lismore were also included. Because the research focused on sites that were established, rather than those in their implementation stage, nine of the 13 sites currently operating were included

in the study. For the purposes of comparison by location, this study groups the nine sites as: Sydney metropolitan (encompassing Liverpool, Burwood, Campbelltown, and Downing Centre), Central Coast (encompassing Gosford, Coffs Harbour and Newcastle) and Northern New South Wales (encompassing Tweed Heads and Lismore).

Data Triangulation

A unique component of this research is the triangulation of the data on the same forum from a number of different sources. Each case includes detailed notes observing the process and dynamics developed at each forum; most also include facilitator interviews and, at times, participant interviews. Triangulating the observations and interviews from the Case Studies enables a multifaceted examination of forums that will aid in identifying the key features of a successful forum from a range of perspectives.

How Representative was the Sample?

The Case Census component provides a snapshot of all cases referred to Forum Sentencing during a six-month period. The characteristics of the two main samples are described below.

Table 2.2 Number of cases

	Case Census		Case Studies	
	No.	%	No.	%
Sydney metropolitan	82	40.4	28	82.4
Central coast	50	24.6	3	8.8
Northern NSW	71	35	3	8.8
Total	203	100	34	100

Source: Case Census

Offences

Across the program, forums were most commonly held for dangerous driving related offences, assault, theft/property, property damage and fraud related offences. In the Case Studies, dangerous driving offences were under-represented (12% compared to 22.2%), fraud offences were over-represented (21% compared to 10.3%), and assault offences were fairly representative of the Case Census sample (21% compared to 21.2%). The discrepancy in representation of dangerous driving offences may be due to the small number of regional cases sampled, as dangerous driving offences predominated in regional areas. The proportion of theft/property (24% compared to 19%) and property damage offences (15% compared to 11.8%) was also slightly over-represented in the Case Study sample.

Table 2.3 Offence type

	Case Census		Case Studies	
	No.	%	No.	%
Dangerous driving	45	22.2	4	11.7
Assault	43	21.2	7	20.6
Theft	40	19.7	8	23.5
Property damage	24	11.8	5	14.7
Fraud/deception	21	10.3	7	20.6
Shoplifting	16	7.9	2	5.9
Offence against police	12	5.9	1	2.9
Other	2	1	0	
Total	203	100	34	100

Source: Case Census

Offenders

Across the Case Census, there was a higher proportion of males (76.4%) than females (24.6%). The Case Study had a similar result, with 22.9% of offenders being female. All of the female offenders referred to Forum Sentencing in the Case Studies were referred for cases of fraud or theft.

Table 2.4 Offender gender

	Case Census		Case Studies	
	No.	%	No.	%
Female	50	24.6	8	22.9
Male	153	75.4	27	77.1
Total	203	100	35	100

Source: Case Census

Note: 34 forums were observed, with 35 offenders participating

Victims

In the Case Census, 56.9% forums have a victim present. In the Case Studies, however, the forums observed had a slightly higher percentage of victims participating (64.7%). This figure included victims of corporate offences such as fraud, as well as victims of personal offences such as assault and property damage.

Table 2.5 Number of forums with a victim present

	Case Census		Case Studies	
	No.	%	No.	%
No	87	43.1	12	35.3
Yes	115	56.9	22	64.7
Total	202	100	34	100

Source: Case Census

Note: These totals combine corporate and personal victims into one category. In addition, one case missing from Case Census as participant information not supplied.

Chapter 3 will present a profile of the cases included in the Case Census for this study.

CHAPTER 3

PROFILE OF FORUMS

This chapter presents an overview of the Forum Sentencing cases that comprise the data for this study. This profile is based primarily on the Case Census. Some of the features of the 34 Case Studies are also discussed to contextualise the Case Census data. Profiled features presented here include: offence type, participant characteristics, types of participants making up each forum, and the involvement of victims or victim representatives.

Characteristics of Forums

Type of offences

The main offence types eligible for Forum Sentencing are assault, theft, fraud, property damage, some dangerous driving offences, and offences against police (see Chapter 1). Some offences heard at court are not eligible for Forum Sentencing including firearm offences, stalking and intimidation, domestic violence offences as well as certain driving and drug offences and offences against police (see Hart and Pirc 2012). The research identified eight types of offences for which forums are commonly held².

Table 3.1 Offence types

	No.	%
Dangerous driving	45	22.2
Assault	43	21.2
Theft	40	19.7
Property damage	24	11.8
Fraud/deception	21	10.3
Shoplifting	16	7.9
Offence against police	12	5.9
Other	2	1
Total	203	100

Source: Case Census

² Dangerous Driving offences are largely made up of high-range PCA offences, but can include other forms of dangerous driving. Assault cases include common assault and assault occasioning actual bodily harm, but exclude assault occasioning grievous bodily harm. Theft cases cover a range of property crimes, such as burglary, larceny, theft, break and enter, etc. Property damage consists of 'nuisance' offences such as damage to property and affray. The fraud/deception category includes many forms of fraud or embezzlement, such as dishonestly obtaining a financial advantage, deception, embezzlement, using false documents and stealing as a clerk or servant. Most of these cases concern some type of theft involving an employee. Shoplifting is corporate theft where the offender was not an employee. Cases were coded as an Offence against police when the only charge was assault, resist, or hinder police. Other cases were ones that could not be coded in any other category. The two offences in the Case Census that fell under this category were a weapons offence and using carriage service to menace/harass/offend. In cases with multiple charges, offences were coded by the most serious charge.

As table 3.1 shows, in the Case Census data the most common offences for which forums are organised are assault, theft, and dangerous driving offences. The latter are most often associated with high-range Prescribed Concentration of Alcohol (PCA). Their over-representation in the Case Census is largely driven by a dominance of such cases in the northern part of the State, where almost half of all forums are for these offences. In 2010, however, a change to the eligibility criteria has deemed certain offences with no identified victim ineligible for the program (Hart and Pirc, 2012: 75). The current study shows that despite the exclusion of driving with a mid-range PCA, driving with high-range PCA continues to be a common offence referred to Forum Sentencing even though there is no identifiable victim. Table 3.2 compares the types of cases by region. While northern New South Wales has a higher proportion of dangerous driving cases compared with other regions, the proportion of fraud, theft, and shoplifting cases was much greater in the Sydney Metropolitan and Central Coast region.

Table 3.2 Offence types by regional location

Offence type	Sydney Metro (%)	Central Coast (%)	Northern NSW (%)	Total (%)
Dangerous driving	7 (8.5)	5 (10.0)	33 (46.5)	45 (22.2)
Assault	15 (18.3)	13 (26.0)	15 (21.1)	43 (21.2)
Theft	22 (26.8)	11 (22.0)	7 (9.9)	40 (19.7)
Property damage	11 (13.4)	7 (14.0)	6 (8.5)	24 (11.8)
Fraud/deception	14 (17.1)	5 (10.0)	2 (2.8)	21 (10.3)
Shoplifting	9 (11.0)	3 (6.0)	4 (5.6)	16 (7.9)
Offence against police	4 (4.9)	5 (10.0)	3 (4.2)	12 (5.9)
Other	0 (0.0)	1 (2.0)	1 (1.4)	2 (1.0)
Total	82 (100)	50 (100)	71 (100)	203 (100)

Source: Case Census

Number of participants

Most forums had between six and eight participants (61% of cases), not including the facilitator. The smallest forum in the Case Census had three participants and the largest had 17 participants. In the forums observed for the Case Studies, there was an average of eight participants and a maximum of 15.

Table 3.3 Number of participants at forums

Age group	No.	%
5 and under	38	18.8
6 to 8	123	60.9
9 to 11	32	15.8
12 and over	9	4.5
Total	202	100

Source: Case Census

Offenders

All forums included at least one identified 'offender' (the program data does not distinguish between co-offenders). Consistent with the New South Wales offending population as a whole, roughly three quarters of forum offenders were male (Table 3.4).

Table 3.4 Offender gender

Gender	No.	%
Female	50	24.6
Male	153	75.4
Total	203	100

Source: Case Census

About half of offenders were 25 years old and younger (Table 3.5). The initial age-restriction for 18-24 years was removed in 2008 (Hart and Pirc, 2012: 71). Given that around half of offenders were older than 25 years, this suggests that the age-restriction has been lifted in practice too, and that Forum Sentencing is providing older offenders with an opportunity to participate in a restorative justice process. The mean age for all offenders in the Case Census was 29.8 years, with little variation by region (Table 3.6).

Table 3.5 Offender age

Age group	No.	%
25 and under	97	47.8
26-35	56	27.6
36-45	33	16.3
over 45	17	8.4
Total	203	100

Source: Case Census

Table 3.6 Offender age by region

Region	Mean age	No.	Std. deviation
Sydney Metropolitan	30.5	82	10.5
Central Coast	27.8	50	10.3
Northern NSW	30.4	71	10.2
Total	29.8	203	10.3

Source: Case Census

Offender supporters

According to the Case Census, most offenders had someone at the forum who was acting as a supporter, with some having upwards of eight offender supporters present (Table 3.7). Most offenders had between one and three supporters present.

Offenders are encouraged to bring along support people, who are often close friends or family members. Others did not wish to have such close relations at the forum. In some of the Case Studies, for example, a probation and parole officer or a solicitor played this role. In two instances observed, facilitators asked the attending community member (a psychologist and a Salvation Army representative, respectively) to support the offender. In both forums, they were introduced as 'representatives from the community' at the start of the forum although, in practice, much of their participation involved supporting the offender. This suggests that the 'role' assigned a participant prior to the forum may not actually accord with the role they actively play during the forum.

Table 3.7 Offender supporters at forums

No. of supporters	No.	%
0	14	6.9
1	39	19.3
2	58	28.7
3	47	23.3
4	24	11.9
5	12	5.9
6	4	2.0
7	1	0.5
8	3	1.5
Total	202	100

Source: Case Census

Victim participation

A victim was present in over half the forums in the Case Census (table 3.8). Most of these forums had one or two victims and the most number of direct victims present at any one forum was eight. While the data recorded by Forum Sentencing does not distinguish between a personal victim and a corporate victim, the data from the Case Studies explored this in more detail.

Table 3.8 Victim attendance at forums

	No.	%
No victim present	87	43.1
Victim present	115	56.9
Total	202	100

Source: Case Census

Out of 34 cases observed in the Case Studies, 22 forums had a direct victim present (64.7%). Of these, there were 16 forums with personal victims and eight attended by corporate victims³.

Of the 16 forums with personal victims, two included 'police victims' who were referred to as 'persons most affected' rather than 'victims'. This label of 'persons most affected' is used for police victims exclusively, but some other participants reject the 'victim' label might also prefer to be referred to as 'person most affected'.

Corporate victims might be representatives from businesses affected by shoplifting or other corporate offences, such as fraud. Some examples include representatives of a community church organisation, a bank, a postal service, and an RSL club.

Cases without a direct victim

In the Case Census, 43% of forums did not have a direct victim present. When a victim does not wish to participate, or one could not be identified, a facilitator invites someone nominated by the victim to act as a personal representative or a victim representative from a professional organisation such as an advocacy organisation for victims. In the Case Census, 16% of forums had a personal victim representative present. While there is no direct category in the Case Census for a victim representative from a professional organisation, there is a category for 'victim related' participants. This is likely to encompass victim representatives, although there seems to be some inconsistencies in the way this is recorded.

³ The total does not equal 22 due to the fact that two forums had both personal and corporate victims present.

Table 3.9 Types of victim representatives

	No.	% of all forums (n=202)
Personal victim representative	33	16.3
Victim related	37	18.3
No recorded victim presence	17	8.4
Total	87	43.1

Source: Case Census

In the Case Studies that did not have a direct victim present, 10 out of 12 had victim representatives from victim organisations. None involved a representative nominated by the victim. The large discrepancies between the Case Census and the Case Studies suggest inconsistencies in the way victim representatives are coded.

Additionally, two forums in the Case Studies had both a direct personal victim and a victim representative present. In a further two forums there was neither victim nor victim representative – both of these were cases of high-range PCA. In eight forums, there were multiple victims in attendance (more than one victim or corporate victim). Of all the forums observed, two included police attending as 'persons most affected'.

Victim supporters

Just over 60% of forums in the Case Census did not have a designated victim supporter (Table 3.10). However, the Case Studies reveal that often, even in forums without official victim supporters, there were other members supporting the victim, for example, fellow victims, corporate victim supporters, community members, or police officers.

Table 3.10 Victim supporters attendance at forums (in cases where victim is present)

No. of supporters	No.	%
0	70	60.9
1	27	3.5
2	8	7.0
3	2	1.7
4	6	5.2
5	1	0.9
6	1	0.9
Total	115	100

Source: Case Census

Of the Case Studies with a personal victim present (16), 11 had supporters at the forum. Of the eight cases with a corporate victim present, four had supporters. The maximum number of victim supporters present in a forum was five (this was a case where two victims attended).

Respected community members

Over half of the forums in the Case Census had a community member present, with nearly 20% having two or more. The term 'respected community member' (hereafter 'community members') encompasses a range of people including local service providers, counsellors, local cultural or religious leaders and, sometimes, representatives from victim's advocacy and support organisations.

Table 3.11 Community member attendance at forums

Number of community members present	No.	%
0	85	42.1
1	81	40.1
2 or more	36	17.8
Total	202	100

Source: Case Census

In the Case Studies, 24 out of 34 (70.6%) forums had one or more community member present. Twelve of these had multiple community members, with one having four present. While the Operating Procedures advises that respected community members should meet with an offender prior to the forum, this had happened in only six out of 24 forums. In five out of the six, this was because the offender had an ongoing relationship with this person, for instance, they were a counsellor currently treating them. Community members might also be supporting the offender in these instances.

Of the Case Studies, 17 out of the 34 involved a community member who had not previously met the offender, but was a representative from a service provider and had been invited so that they could link the offender into specific services to address needs identified during preparation. Six did not meet the offender beforehand and were not invited with the intention of connecting the offender to services. They may have been local religious or cultural representatives, or from victims' organisations. Four had never met the offender, but were invited to 'share their story,' for example in one case the community member was someone who had driven drunk

and killed someone and, in another, they were a recovering alcoholic.

Table 3.12 Community member relationship to offender

Status of community member	No.	%
Previously met offender	6	17.6
Not met, but service representative	17	50.0
Not met, no connection	6	17.6
Not met, there to 'share their story'	4	11.8

Source: Case Studies

Police attendance

Police were a regular presence at forums, both in the Case Census and the Case Studies. In most cases, the arresting officer was present, but, in some, a supervisor, detective, or an officer not related to the case attended. All the observed forums included a member of the police force (an arresting or investigating officer, a detective, or another police officer representative).

Table 3.13 Police attendance at forums

No. of police present	No.	%
0	24	11.9
1	158	78.2
2	19	9.4
3	1	0.5
Total	202	100

Source: Case Census

Probation officer

Probation officers are entitled to attend forums, but the Case Census analysis showed that very few forums included them (eight out of 202, or 4%). Only one forum in the Case Studies included the participation of a probation and parole officer who attended as an offender supporter.

Legal representatives

Although legal representatives are entitled to attend forums, the results from the Case Census analysis show that very few forums include legal representatives (11 out of 202, or 0.54%). The Case Census does not include the involvement

of legal representatives that sit outside the circle, so even though they are not actively participating in the forum, they may still be involved in the process. It is possible that legal practitioners may be slightly under represented and be more involved in Forum Sentencing than the Case Census indicates. For example, in the Case Studies there were two forums with solicitors present. In one, the solicitor sat inside the circle as an offender supporter. In the other, two solicitors sat directly outside the circle close to the offender, and did not participate directly in the discussion and decision-making.

Facilitators

Forum Sentencing employs around 210 facilitators, with varying amounts of experience. Forums observed ranged from of a facilitator's first forum to forums run by very experienced facilitators. While most facilitators were observed once, in a few instances, facilitators were observed multiple times in different forums.

Forum observers

Other participants can observe forums with permission. At one forum there were nearly as many observers as forum participants. In this six-person forum there were four observers (a researcher, a Program Administrator, a police officer and a new community representative). While observers cannot participate in the forum, at times Program Administrators intervened to help the facilitator clarify a point when participants were becoming confused.

Summary

This chapter has provided a profile of the characteristics of forums and forum participation. The main findings are:

- The most common offences included in the program are for dangerous driving offences (mostly high-range PCA), assault, and theft. Seventy-five per cent of offenders are male, and over half are over the age of 25, suggesting that since the initial age-restriction for 18-24 years was removed in 2008 (Hart and Pirc, 2012: 71), Forum Sentencing is providing an opportunity for older offenders to participate in a restorative justice process.
- Most forums have between six and eight participants.
- While most offenders had at least one supporter present, only a minority of victims who attended brought a supporter with them. The Case Studies revealed, however, that in practice other participants took on this role.
- A direct victim was present in 56.9% of forums in the Case Census (and 64.7% in the Case Studies). This data makes no distinction between personal and corporate victims, however, the Case Studies suggest that the majority of victims who attend are personal victims (16 out of 22).
- It is unclear from the Case Census how many victim representatives attend forums. However, the Case Studies suggest that when there is no direct victim present, a victim representative usually attends. In most instances, the victim representative is a representative from a victims' organisation.
- Just over half of the forums in the Case Census and 70% in the Case Studies had a community member present. In most cases the community member was from a local organisation and had been identified to meet the specific needs of the offender. They had usually not met with the offender beforehand.
- Nearly 90% of forums had a police officer present. The preference was for the arresting officer to attend but, at times, this was not possible and other police attended instead.

While this analysis of the Case Census provides a snapshot of the type of people attending forums, in practice the Case Studies revealed that the role of participants can blur in forums, such as when community members see it as their role to support an offender or a police officer to support a victim.

In chapter 4, Referrals and Preparation of Forums, we consider referral processes, eligibility issues, and the key elements in preparing for a forum.

CHAPTER 4

REFERRALS AND PREPARATION OF FORUMS

This chapter examines the type of cases that are referred to the program, and describes the key elements involved in preparing for a forum. It identifies some emerging issues and areas for follow-up.

Case Referral and Selection

Forum Sentencing provides an alternative option for magistrates to consider before an offender is sentenced in the local court. This section discusses the program's eligibility and suitability criteria.

What makes a case eligible for Forum Sentencing?

An offender pleading guilty at local court is eligible to be referred to the program if they meet the criteria set out in the Criminal Procedures Regulation (2010). Among others, the eligibility criterion stipulates three main conditions. One, the court considers it is likely that the offender will be required to serve a sentence of imprisonment (based on the facts, along with the person's history and any other information available). Two, that the offender has no prior record of conviction (for offences such as murder, manslaughter, personal violence offences, drug offences, firearms or weapons offences). Three, the court considers it to be likely that the offender will agree to participate in the program.

The main offence types eligible for Forum Sentencing are assault, theft, fraud, property damage, some dangerous driving offences, and offences against police (see Chapter 1). Some offences heard at local court are not eligible for Forum Sentencing, including firearm offences, stalking and intimidation, domestic violence offences as well as certain dangerous driving and drug offences and offences against police (see Dean and Pirc 2012).

Initially the pilot program was targeted at offenders aged 25 years and less. Since then the age restrictions have been removed and all offenders, regardless of their age, are eligible if they meet the above conditions. The current study found that more than half of offenders who were referred to Forum Sentencing and participated in a forum were over 25 years (see Chapter 3). Offenders who decide not to participate in Forum Sentencing at this stage will be sentenced in court in the usual manner. After the Forum Participation Order is made, and if the offender consents, the case is adjourned for a week. Most cases that were referred to Forum Sentencing were eligible (See Table 4.1)

One of the earlier recommendations from People and Trimboli's research was to 'ensure magistrates consistently apply the program's eligibility criteria' (2007: 57). In the current study, program staff also raised this concern. Over the six-month Case Census period, 334 cases were referred to Forum Sentencing by local court magistrates, and 327 were eligible. In other words, across the nine sites, on average each site received six referrals a month with some receiving more and some less. It appeared that forum offices with good relationships with local court staff and magistrates received regular referrals. One Program Administrator reported an increase in referrals in the month following magistrate training sessions or meetings hosted by Forum Sentencing, which suggests that reminders of the program and its existence are integral to referrals.

Table 4.1 Referral to forum sentencing

	No.	%
Referrals	334	-
Eligible referrals	327	97.9
Suitable referrals	292	87.4

Source: Case Census

'Court referrals' imply that eligible cases are actively referred from the court to the program when in fact considerable resources are spent by staff being present in court on list days. There is pressure on local Program Administrators 'to bring in the referrals' and they are therefore proactive in identifying eligible cases. They employ a range of procedures in different courts, depending on the magistrate's preference. Examples include: stamping the court lists before each hearing, informing the offender's lawyer of their client's eligibility so they may request a referral from the magistrate, or by providing magistrates with a separate document listing eligible offenders. Program Administrators worked consistently to maintain professional relationships with magistrates and other legal staff at the local courts.

In the short term, it is important for Program Administrators to maintain Forum Sentencing's public presence in the courts. In the longer term, Forum Sentencing can improve its presence by creating a place for itself alongside other sentencing options. This would allow Program Administrators to focus their attention on program management. It is vital, however, to continue prioritising the building of 'sympathetic interpretive communities' (see Chan 2005) by developing and maintaining good working relationships with magistrates.

What makes a case suitable for Forum Sentencing?

To assess an offender's suitability for Forum Sentencing, the Program Administrator needs to consider whether: the offender accepts responsibility for the offence and accepts the facts of the case; the offender understands the process and is willing to consider how they can repair the harm caused by their offending at the forum; the offender understands that the Forum is part of the sentencing process and; whether there is any known relationship between offender and victim, which could be potentially assisted or harmed by the Forum process (see Forum Sentencing Operating Procedures, 2011: 9).

Most cases were considered suitable. Of the 327 eligible cases, 35 were deemed unsuitable by the Program Administrator following their initial interview with the offender/s. In 14 cases, the offender was unsuitable because they did not meet one of the key criteria. Either they did not consent to take part in a forum, they disagreed with the facts of the case, did not accept responsibility, or the case involved an ongoing domestic dispute. For the 21 remaining unsuitable cases, however, the reason for the offender's unsuitability was not recorded. While the suitability criteria were applied in these cases, this is a data-entry issue that could be addressed.

If the Program Administrator assesses the offender as unsuitable, then they will be sentenced in the usual manner.

Table 4.2 Reasons given for unsuitability

	No.	%
Offender did not consent	9	25.7
Offender disagreed with the facts	4	11.4
Domestic dispute	1	2.9
Reason not given	21	60.0
Total	35	100

Source: Case Census

Despite meeting the program's suitability criteria during the initial assessment, in some of the forums observed in the Case Study suitability was questionable, for example, when participants did not agree with the police charges or disagreed over what happened. This may have been because participants misrepresented themselves, were uninformed, or had a change of heart. While the facilitators are able to exclude participants at these later stages, they are often reluctant to.

Criminogenic needs assessment

Suitable offenders undergo a 'criminogenic needs assessment'. The template for conducting these was developed and adapted from a similar assessment tool used in the Court Referral into Treatment (CREDIT) program (Hart and Pirc 2012: 76). The assessment can identify areas of 'need' with regard to an offender's relationships, employment, education, housing, financial, disability, health, mental illness, alcohol and drugs, gambling or other needs⁵.

The rationale for identifying 'needs' is that the facilitator can identify relevant service providers and invite them to the forum as community members. The assumption is that focusing on 'criminogenic needs' prior to the forum will assist in the development of an Intervention Plan at the forum. For example, in cases of fraud where a large amount of money is stolen, the Program Administrator can assess the offender's financial situation before the forum – are they employed, are they in debt, are they gambling? However, according to program management, when a 'need' is identified before the forum, it does not automatically follow that this need should be addressed as part of the Intervention Plan – this is for the forum participants to decide. This is one of the tensions caused by using a needs assessment tool within a restorative justice program.

Appointing a facilitator

Once a case is selected as eligible and suitable, the Program Administrator allocates a facilitator to prepare the case for forum. Facilitators are contracted by the Attorney General's Department to organise and run forums on a case by case basis. They are supervised by Program Administrators.

There are several criteria according to which cases should be allocated to facilitators. They include proximity and availability, an equitable spread of the workload among available facilitators, conflicts of interest, culture and gender, and other special skills or experience. This can encompass both professional experience concerning specific issues or personal qualities.

⁴ Another option for offenders in the local court.

⁵ Information from the needs assessment is not only used to help facilitators prepare cases, it is also recorded for program monitoring and evaluation. However, at the time of the research this information was not systematically recorded and was not analysed for this report.

In practice, Program Administrators suggested that the allocation of facilitators was most commonly based on availability. If availability was less of a priority, then other criteria described above are considered. In regional areas, the proximity of the facilitator appeared to play an important role, partly because it was not efficient to have a facilitator travelling large distances to prepare participants if another facilitator was closer. In cases with obvious issues such as drug and alcohol, Program Administrators tried to allocate the case to a facilitator with experience in the drug and alcohol field. Another important factor not mentioned in the above criteria was the allocation of work between new and experienced facilitators. Program Administrators preferred to allocate complicated cases to more experienced facilitators. Sometimes new facilitators were matched with a more experienced facilitator to mentor them. New facilitators found this helpful although mentoring did not seem to be consistently available to all new facilitators.

Forum Preparation

An important part of the Forum Sentencing process involves facilitators preparing participants for the forum. In accordance with the regulations, forums are expected to be held within a 6-8 week period from the point of referral.

Stakeholders such as Program Managers, Program Administrators, Intervention Plan Supervisors and facilitators strongly emphasised the importance of thorough preparation. Table 4.3 provides an overview of five key steps involved in forum preparation.

Table 4.3. Key steps in forum preparation by the facilitator

Step One	Identify participants to attend the forum
Step Two	Prepare participants for the forum (explain the purpose and process of the forum, and roles and rights of participants)
Step Three	Manage forum logistics in consultation with participants
Step Four	Manage forum dynamics
Step Five	Confirm final forum preparations

Source: Forum Sentencing Operating Procedures, 2011

How many participants?

The essential participants required at the forum are the facilitator, the offender, offender support person, the victim (or representative) and the victim's support person. However,

the procedures manual also states that 'the more successful Forums are those with more rather than fewer participants' (Forum Sentencing Operating Procedures, 2011: 21). As such, 'there is no maximum number of people who may attend a Forum' (2011: 22). This principle is attributed to restorative justice advocates and trainers such as John McDonald who claim that the more people at a conference or forum, the better (see McDonald 2012: 140-1). It can be challenging for facilitators to find willing participants who are connected to the case or the participants in a meaningful way.

Facilitators are trained to identify and invite approximately 10 people to the forum. According to program management this is an 'aspirational number,' not a target; it is an ideal that should be strived for. In other words, facilitators need to balance quantity and quality of participation. As one Program Manager stated: 'I think it's really important to think who needs to be there, and not just numbers.' One of the downsides of having an aspirational number of forum participants is that it can result in inappropriate parties being invited in order to 'make up the numbers.'

Many of the stakeholders interviewed consistently emphasised that Forum Sentencing works well if you've 'got the right people at the forum'. By 'right people' it was implied that these were people who had a 'stake' in the incident or knew the offender or victim and could support them through the process or 'balance' out the group if 'one side' (offender's) had more people than the 'other side' (the victim's).

This highlights a common tension faced by facilitators between ensuring a suitable number of participants but also making sure that 'the right people' attend. This tension is especially clear when facilitators are struggling to find appropriate support people and 'respected community members' to attend.

Identifying participants

After a case is allocated, the facilitator is given the contact details for the offender, victim, arresting officer and the offender's legal representative. They also receive other information like the charge sheet and statement of facts to help them prepare for the forum (Forum Sentencing Operating Procedures 2011: 15). Additional information may include the Program Administrator's notes on the offender's suitability and their needs assessment. Facilitators are not currently provided with additional information about an offender's criminal history. This limited their knowledge of the offender's background and could sometimes strain the facilitator's working relationship with police when they were ill-informed about the case.

Victim and offender supporters are identified at a later stage, after the facilitator has met with and gained the consent of both parties. At this stage, the facilitator may also identify potential individuals from the community or specific services that could address the offender's needs.

Preparing participants

Facilitators initially contact participants by telephone and then meet with them in person at least once prior to the forum, but more than once if necessary (Forum Sentencing Operating Procedures 2011: 19). The facilitator meets with all potential participants to go through the aims of the forum and explain the process and their role in it. Table 4.4 outlines the key topics facilitators are required to cover during the preparation meetings with each participant.

Table 4.4 Topics covered in preparation

Key topics	Description
General Information	<ul style="list-style-type: none"> • Explain information already sent by the Program
Administrator	<ul style="list-style-type: none"> • Explain the purpose of the forum • Explain the forum process and Intervention Plans
Consider facts of the case	<ul style="list-style-type: none"> • Discuss the facts of the case with the offender and the victim and address any inconsistencies (with the aim of avoiding any disagreement about facts at the Forum)
Legal advice	<ul style="list-style-type: none"> • Provide information about how to obtain legal advice • Explain the advisory role of the lawyer at the forum (not as a representative of the offender)
Police	<ul style="list-style-type: none"> • Explain the role of a police Officer at the Forum as an information provider or victim, not as a prosecutor or co-facilitator
Offender support	<ul style="list-style-type: none"> • Ascertain from the offender the appropriate support persons to attend the Forum; • Ascertain specific needs of the offender, victim, family members and other Participants (e.g. impairments and disabilities, cultural issues, interpreters, travel assistance to the Forum, etc.)
AVOs	<ul style="list-style-type: none"> • Contact Program Administrator if there is an Apprehended Violence Order in place

Confidentiality	<ul style="list-style-type: none"> • Explain that Forum participants may not disclose the name or identifying information about any offender or victim obtained during the Program to anyone outside the Forum. However participants may discuss with others outside the Forum what happened at the Forum generally • Explain to participants (particularly the offender and the victim) that evidence of anything said, or any admission made or document produced in a Forum about the offender is not admissible in any future criminal or civil proceedings
Other ways to contribute	<ul style="list-style-type: none"> • Encourage those who are unable to attend to present their views in writing, on audiotape or other appropriate means
Evaluation	<ul style="list-style-type: none"> • Explain that the program is evaluated by the Attorney General's Department and they will be asked to complete a questionnaire after the forum
Identify relevant services	<ul style="list-style-type: none"> • Discuss relevant programs/services/ activities for the offender (based on needs identified by the Assessment Tool) and if appropriate introduce the offender to an appropriate worker from a relevant service and invite them to participate in the Forum
Interpreters	<ul style="list-style-type: none"> • If necessary, use an interpreter and translated materials
Impairment	<ul style="list-style-type: none"> • Provide support for people with hearing and sight impairments (ensuring access to information and that they understand what will happen at the forum).

Source: Forum Sentencing Operating Procedures, 2011: 22-23.

Offenders: consent and preparation

By the time the case is allocated to a facilitator, the offender has already given the Program Administrator their initial consent to participate. To some offenders, however, participation may not be seen as voluntary when they are referred to the program by the sentencing magistrate. It is important to acknowledge that offenders may feel an element of coercion to agree to participate.

Facilitators report general cooperation with offenders. However, in some cases, initial meetings are far from straightforward and facilitators report that some offenders are hard to contact, often miss appointments or are late.

Facilitators considered face-to-face meetings with offenders to be essential before the forum. This was not only to explain the process, set expectations, and clarify questions, but also to build rapport with the offender so that they felt comfortable explaining the offence to the facilitator. Facilitators consistently said in interviews that this was important for priming the

offender for their role in the forum but also so they could identify potential support people and community members to assist with the development of Intervention Plans.

In their initial meetings, the facilitator's main job is to explain to the offender his/her role at the forum and to identify potential support people. In a forum, offenders will be asked to provide a statement about the offence and also explain who they think has been affected by the incident. An important part of the facilitator's role is explaining the purpose of Forum Sentencing, clarifying how it fits in with the current criminal justice system, and making sure offenders are aware of both their rights and responsibilities if they decide to go ahead with the forum, and consequences if they decide not to proceed.

At this stage facilitators also ask offenders to suggest supporters to come along with them. Facilitators encourage offenders to nominate as many supporters as they can think of. It is also part of the facilitator's role to discuss how they might repair the harm and identify any relevant programs/services/ activities that the offender might consider proposing at the forum.

Victims: consent and preparation

The Forum Sentencing Operating Procedures explicitly states that forums with a direct victim present are preferred:

The key to the forum lies in the offender and the other participants understanding the nature and extent of the harm suffered by the victim. It is through the recognition of that harm, as expressed by the victim that an offender can learn to accept responsibility for the offence (Forum Sentencing Operating Procedures 2011: 18).

This point was emphasised in interviews with Program Administrators and facilitators, who suggested that forums where a direct victim is present are more 'successful' than those without a primary victim. The victim refers to a person who, as a direct result of a criminal offence, suffers physical or emotional harm, or loss or damage to property⁶. Program Administrators make initial phone contact with victims at the referral stage. The Department also sends them a letter informing them that the case has been referred to Forum Sentencing and that a facilitator will contact them with more information. The facilitator then sets up a meeting to describe the process in more detail and seek consent.

⁶ This is the same definition as a victim of crime in the Victims Rights Act 1994.

Facilitators report mixed views on the process of contacting victims and gaining victim consent. On the one hand, having the Program Administrator make initial contact by phone provides a useful introduction to the program, and screens out victims who do not wish to participate. On the other hand, some facilitators perceived that this initial phone contact, with little detail about the process given, could discourage victim participation.

When the identified victim is a 'corporate victim' they can occasionally play an important role in describing the broader context and impact of the offence. In other cases when they do attend they do not necessarily play a large role in discussing the harm caused by the offence. 'Corporate' victims are sometimes reluctant to attend a forum when they do not consider the offence to have had a substantial impact on their business.

Occasionally, facilitators suggested that some direct victims were very reluctant to meet with them, particularly in cases where the victim was alleged to be involved in illegal or questionable activities surrounding the offence. For example, during the preparation for one case the facilitator discovered that though the offender had assaulted the victim, the victim had allegedly stolen the goods they sold to the offender. The victim had decided not to attend the forum.

Victim representatives

If a victim decides not to participate in the forum, they can nominate someone to attend on their behalf, or to present their views by letter, tape or video. In the observed forums, victims were more commonly represented by a victim representative than by letter or audio recording. While a representative directly nominated by the victim (such as a family member or friend) is most desirable, this seldom happens in practice. This raises the question as to how victim representatives who have not been nominated by the direct victim can give 'due regard to their interests' (Forum Sentencing Operating Procedures 2011: 2).

Victim representatives are most commonly drawn from victim advocacy and support organisations. The program has developed strong relationships with these organisations and this is recognised by the resources that are expended to support the involvement of victim representatives. For example, victim's representatives are reimbursed for the costs associated with their participation in the forum – some organisations get paid and other organisations receive a gift voucher for \$100. While this ensures the availability of victim representatives, this can result in representatives participating in multiple forums. The role of victim representatives is discussed in more detail in Chapter 5.

Supporters

Facilitators ask offenders and victims to nominate supporters to attend the forum with them. These can include family, friends, mentors, employers, or anyone else that the offender or victim deem appropriate. Facilitators report that an ideal offender supporter is someone the offender knows and respects who can support the offender but also acknowledge the harm they have caused, especially if the offender is downplaying the impact of the offence. They suggest that offender supporters are vital in helping 'round out the story' and perhaps provide some context in which the offending behaviour occurred.

A common example of this is when the facilitator finds out more information about a relevant issue through the offender's supporters. For instance, in one case the offender supporters identified a gambling problem not disclosed during the 'criminogenic needs assessment' or in the offender's initial interview with the facilitator. As a result, a gambling counsellor was invited to attend the forum as a community member.

Facilitators report that while it may sometimes be difficult to convince offenders to nominate supporters, it is often more of a challenge with victims, who often choose to attend on their own. This is complicated by the fact that victim and victim supporter can be a blurry distinction when spouses and family members, technically identified as supporters by the program staff, see themselves as victims. At other times, victims do not want others to learn about the offence due to embarrassment or shame. In one case of theft, for instance, the victim's wife attended as a 'supporter', however, she and her husband both considered her to be a victim. They refused to have any other supporters present, as they felt deeply ashamed, and would not allow an interpreter to be present (even though they had poor English). They did not want anyone from their local community to find out about what happened. In other cases without victim supporters, facilitators may turn to community members or the police to act as 'surrogate supporters' for victims.

Facilitators have the authority to exclude a participant before or during the forum. While it is suggested that 'good preparation' can help identify unsuitable supporters, facilitators face a tension around 'getting the right people' and respecting an offender's or victim's wishes. In one such case, the offender came from a large family, and requested that many of them attend as supporters. The facilitator was concerned that it was already a rather large forum and would take too long. Furthermore, repetitious material from different family members could exacerbate existing frustrations, and the forum would be 'unbalanced'. The facilitator was relieved when some family

members were unable to attend at the last minute as, having already met and prepared them, she felt unable to exclude them herself.

Police

While People and Trimboli (2007) found that the majority of police in an area they studied did not support conferencing for adult offenders, in this research, police seemed to have a more positive, if sometimes mixed, attitude towards the program. When it was positive, there was a view that Forum Sentencing worked well for some offenders, although they had specific concerns about forums being offered to offenders with extensive criminal histories. Police interviewed suggested that more work needs to be done to raise the profile and the credibility of the program among rank and file police. They also acknowledge that police culture can be resistant to new initiatives and some officers assume that it is time consuming and too 'soft'. Some police suggest that relations could be improved with more follow-up, and those who were kept informed about the case reported that it made attendance worthwhile. At present, police are notified with a letter when an offender completes their Intervention Plan, but not at the sentencing stage.

Facilitators who were interviewed for the research were generally positive about the involvement of police. Police were considered important for filling in details about the offence that may not have been raised by other participants, but also providing support for victims to ensure they felt safe at the forum. There was a perception among some stakeholders, including facilitators and police, that some police consider Forum Sentencing peripheral to their work. As a result, facilitators expeditiously prepare police.

The current research found that the role of police in the overall program was working well, especially when there was a designated contact person at the Local Area Command who could play a coordinating role so that if the investigating officer was not available another officer could attend on their behalf.

Continuing to build relationships between police stakeholders and Forum Sentencing needs to occur on two fronts – at the local level by strengthening ties between investigating officers (who attend forums) and facilitators (including police observing forums as non-participants), and at the organisational level by providing opportunities for training and feedback sessions. Both approaches are already employed by Forum Sentencing staff, and are demonstrably important to the program's continuing relationship with local police.

Respected community members

According to the Forum Sentencing Operating Procedures, a 'respected community member' can also be invited to participate. In practice, these participants are referred to as 'community reps'. This encompasses a diverse range of people including representatives of cultural or religious groups, victims' organisations, psychologists or counsellors (who are usually not treating the offender), representatives from specific services or organisations such as the Salvation Army or PCYC, witnesses, or any other participant that does not fit any other participant role.

Facilitators, sometimes with advice from Program Administrators or Intervention Plan Supervisors, commonly identify and invite professionals from local services they consider relevant to act as respected community members so they can contribute ideas towards the outcome.

Some stakeholders suggested that one of the challenges facing the program is in identifying respected community members who have some connection to the participants or the case. As a program manager who was interviewed explained:

What we don't want is a generic community representative that the facilitator has conjured up, that has nothing to do with anyone else in the room, that they just invite to come to make up the numbers.' This is what I really am strongly against. The key principle here is there should be no one in the room that doesn't have some stake in what's going on, or some involvement.

In one case, the facilitator explained some of the challenges around finding 'the right people'. She first contacted 'someone from the Vietnamese community' to act as a community member. While this person would have attended, and on paper they met the criteria of 'respected community member', they did not have any relationship to the case or the people involved. It was only through further probing that they identified someone from a local religious community who had a direct connection to the offender. In other words, it can take time for facilitators to identify key people who are connected in a meaningful way to the offender or the case more broadly.

While it can prove difficult to find appropriate services or program representatives, facilitators suggested that they had developed good working relationships with some local service providers and would regularly invite them to forums. Program Administrators said they often encouraged facilitators not to use the same people too readily, 'We try not to overuse people ... because we just don't want to lose them as participants'.

One of the benefits of involving service providers was that they are knowledgeable about local services, time frames, and the general workability of participants' suggestions to help create a realistic intervention plan. There was an expectation within the program, however, that service providers should meet with offenders before the forum. In practice this is often difficult to arrange in the weeks leading up to the forum.

One of the strategies facilitators described in preparing for the forum was to identify community members to neutralise any potential 'imbalance'. For example, if the victim or offender had a large number of support people wishing to attend, adding community members was one way to 're-balance' the forum numbers.

A final issue concerns the overlapping role of community members and victims' representatives. At times, representatives from victims' organisations will attend a forum as a community member. During the preparation of one forum, a victim representative from one of the facilitator's forums was invited to another forum to participate as a community member and 'surrogate victim supporter'. The purpose and role of community members at forums is discussed further in Chapters 5 and 6.

Managing forum logistics

Part of the facilitator's role is to also discuss with the participants when and where the forum should take place. Ideally, the primary consideration should be to determine a suitable date around the victim, however many facilitators suggested that early contact and organisation of the forum date around police was vital in order to fit in around police roster/other duties. Once the police are confirmed, then they juggle everybody else's schedule.

According to the Forum Sentencing Operating Procedures, forums can be held in any location except a police station. Facilitators are requested to identify locations that are suitable (meaning that they are neutral, safe, appropriately sized, comfortable, accessible to public transport, and with kitchen and toilet amenities). Additionally, facilitators need to ask the Program Administrator to approve any associated costs with holding the forum such as venue hire and the provision of refreshments. On some occasions, facilitators may need to make additional arrangements such as organise interpreters, travel assistance or accommodation.

Of the forums observed as part of the research, all were held in community based venues (and none were held in a police station or court). Some facilitators suggested they would often make a special trip to inspect the venue before a forum to make sure there was enough space and it was comfortable.

While most venues were largely suitable, there were some issues with space. For example, where venues only had one entrance it was sometimes difficult to manage the arrival of offenders and victims, who could sometimes be anxious about meeting prior to the forum. There were occasionally issues around size, noise, heating and cooling. Some facilitators felt impeded by the limited budget to pay for a venue. One of the challenges for facilitators is that they cannot necessarily predict how long the forum will go for but they need to make sure they book (and pay for) the venue for a long enough period. While many facilitators said they managed this by booking the venue for at least four hours, it meant they had to find venues that charged an affordable fee. Some facilitators reported feeling rushed to finish a forum because their booking would soon end.

Confirming final forum preparations

Prior to the forum, the facilitator will usually ring each participant to reconfirm their attendance, the date, time and location, and to inform them of any other details of which they may not have previously been aware. If the facilitator finds out that someone is unable to attend, they are encouraged to try to get their views (in writing or on audiotape). They prepare the tea, coffee, and biscuit refreshments, make a 'mud map' of seating arrangements so that when participants arrive at the forum they know where their seat is in the circle. Facilitators are also required to give participants written confirmation of the date, time and place of the forum (at least five days prior) (Forum Sentencing Operating Procedures 2011: 25). It is common to have last minute changes to the time or number of participants, and facilitators have to be prepared to deal with the uncertainty of hard-to-reach offenders and victims who are often late.

How long does preparation take?

Forums take around 18 hours for facilitators to prepare including meeting in person with participants. The time taken to prepare was slightly less in the northern region, which is surprising given that facilitators often have to travel longer distances.

Table 4.5 Forum preparation times

Location	Mean
Sydney Metropolitan (n=78)	19.47
Central Coast (n=49)	19.45
Northern NSW (n=70)	17.19
Total (197)	18.70

Source: Case Census

The time facilitators spend preparing for a forum involves a wide range of tasks but also requires problem-solving skills. For example, one facilitator described the role as 'detective work' where the facilitator is trying to 'piece together all the pieces of the puzzle.' Another facilitator described the importance of preparation in the following way:

If people have been prepared well they know what their role is, they know what everyone else's role is, they have an idea of what to expect so they ... have some realistic expectations, so I think it removes any big surprises and it will hopefully help people make kind of valuable contributions and not say things that are sort of way off the mark, so I think preparing people well, it's worth all the effort.

Once the forum starts, the facilitator follows a carefully worded script so there is little opportunity for intervention. As such, the preparation stage is vital for identifying and preparing appropriate participants who can contribute in a meaningful way.

Summary

The selection of cases depends on whether magistrates consider Forum Sentencing as an option and the case is eligible. The majority of cases being referred are eligible.

Once a case is referred by the court to Forum Sentencing, it is the responsibility of the local Program Administrator to determine whether the case and the offender are indeed suitable for the program. The study found that most cases referred to the program are assessed as suitable.

Facilitators and other program stakeholders strongly emphasised the importance of preparation. Part of the facilitator's role was to identify the 'right people' for the forum, invite the people most affected, and encourage participants to think about what they would like to contribute to the Intervention Plan beforehand. Furthermore, it is during the preparation phase that facilitators can identify community members who can contribute to the development of Intervention Plans.

The research found that, on average, forums take around 18 hours to prepare. This includes identifying the people most affected, identifying potential support people and community members, finding a suitable venue, meeting in person with participants, and preparing participants for their role at the forum. Forums depend on good preparation; therefore the time taken in this stage is vital. Because most participants have not been to a forum before, facilitators need to spend time preparing

each participant for their role in the forum. While the process of preparing participants for forums is generally working well, there are a number of emerging issues which need to be considered to improve the way participants are prepared.

Key issues and areas for improvement or follow-up

Referral of cases. One of the emerging issues that the program faces in the long-term is to develop an active referral pathway by magistrates, rather than a 'case extraction' pathway. This would allow Program Administrators to focus on program management. A similar issue was raised in a UK evaluation in which much time was spent by program staff on 'case extraction' rather than 'active referral' from the courts (Shapland et al 2004: 49).

Suitability. When a case is deemed unsuitable, the reason was not provided in the database 60% of the time. Improved record keeping could help the program determine why cases are not suitable for forum.

Criminogenic Needs Assessment. Identifying an offenders 'needs' in advance can prepare for the development of a suitable Intervention Plan. However, because participants at the forum ultimately decide on the plan, there are tensions associated with using a needs assessment tool. Additionally, improved record keeping would enhance the program's ability to track the range of needs identified before each forum.

Numbers of participants. Facilitators are expected to invite approximately ten people to the forum. This is an aspirational number, though some facilitators interpreted this as a requirement of the Program. The study found it can be difficult for facilitators to find 'appropriate' participants who have a 'stake' in the matter including community members, professionals and service providers. Even so, it is preferable to have less than ten participants than to invite additional community members and other participants solely to increase numbers.

Offender consent. It is important to acknowledge that since Forum Sentencing is a pre-sentencing process, offenders may feel obligated to comply with the magistrate's Forum Participation Order.

Victim consent and preparation. Direct victim participation is preferred by the program. Facilitators report mixed views on the process of contacting victims and gaining victim consent, which is currently shared with Program Administrators. 'Corporate' victims can be reluctant to attend a forum when they do not consider the harm to their business to be

substantial. Direct victims were reluctant to attend when they were also alleged to be involved in illegal activities surrounding the offence.

Victim representatives. Victims do not necessarily nominate someone to attend on their behalf, in which case the facilitator or Program Administrator identifies a representative. This has led to strong links between victims' rights and advocacy groups and Forum Sentencing as it can result in the same representative attending numerous forums. As discussed in the next section, this can lead to victim representatives exercising significant influence in the forum.

Supporters. While most offenders nominate supporters, many victims choose to attend without supporters. When victim supporters do attend, the distinction between victim and victim supporter can be blurred, as spouses and family members, technically identified as supporters by the program staff, often see themselves as secondary victims.

Police preparation. Some police were more supportive of Forum Sentencing than others. Program Administrators and facilitators viewed police involvement in Forum Sentencing as important for filling in details about the offence that may not have been raised by other participants as well as providing support for victims. Strengthening relationships between police and Forum Sentencing remains a continuing priority.

Community Members. Community members encompass a diverse range of participants but it is important that facilitators identify those who have some connection to the participants or the case. Identifying appropriate community members, including professionals and service providers, to attend forums remains an ongoing challenge.

Facilitator training and experience. Training for facilitators is important for ensuring that they understand the tasks they are expected to carry out as part of their role. Interviews with facilitators indicated that while they found the training and the Program Administrator's support helpful before their first forum, some had benefited from being mentored by an experienced facilitator when they first started.

Chapter 5, Forum Discussion and Dynamics, will consider what happens at forums, some of the features that contribute to effective forums, and the challenges that can emerge during the initial stages.

CHAPTER 5

FORUM DISCUSSION AND DYNAMICS

After preparing participants for the forum and securing a venue, time and date, the facilitator is responsible for guiding participants through the process at the forum by following a carefully worded script. The focus of this chapter is on stages one and two of the forum. It discusses the different directions the forum process can take and the ways in which facilitators manage the issues that arise. It explores the role of different participants in contributing to successful forums.

Trajectories of Stages One and Two

The main goals of stages one and two are for the offender to take responsibility for his/her actions and for the victim and other participants to systematically explore the harm of the incident. Amidst the variety of trajectories that forums take, there are two main trajectories that emerge from the Case Studies. When the above goals are largely met, a degree of consensus arises which is marked by feelings of goodwill. When they are not, the participants conclude stage two divided. Table 5.1 details some of the elements that contribute to consensus or division.

Table 5.1 Elements of consensus or division in forums

Consensus	Division
Offenders clearly and articulately describe the incident, acknowledging their role	The offender is unable to describe events in a logical and consistent narrative format, either due to anxiety, poor communication skills, poor memory, or lack of remorse
Offenders express a sense of remorse and take responsibility by demonstrating an understanding that their actions and decisions were harmful and damaging	The offender is not explicit in his expression of remorse
Other participants, particularly offender supporters, condemn the offender's actions while at the same time allowing for complexities in the narrative to be raised and discussed	Other participants, particularly offender supporters, aggressively defend or make excuses for the offender's actions, or do not allow him/her to take responsibility
The victim, or a participant who directly represents them, is able to articulate the harm the incident caused	The victim does not express harm or the participants understate or overstate the harm
That harm is acknowledged by all present	Community members don't develop a direct relationship with the offender

These trajectories of consensus or division can manifest early in the forum. However, it is important to note that all the participants contribute to the success of these two stages. The roles the participants play, the way they relate (or don't relate)

to each other, and their attitude and orientation have an impact on whether the goals of these stages are met. While facilitators use a number of strategies to manage participants, at times certain dynamics are unforeseen and cannot be resolved.

Success in Stages One and Two: Consensus

When forums work well in the early stages, a new level of understanding develops between offender, victims and other participants, akin to what Daly (2002) refers to as the 'restorative' element of a forum. In such forums, the participants come to a consensus about the offender's responsibility and the extent of the victim's harm.

A feeling of community and healing can be felt during instances of such engagement between participants. The shared emotions and frank discussion allow for a sense of cohesion to develop. Case Study 5.1 is an example of a forum in which stage two resulted in a sense of consensus within the group.

Case Study 5.1 Consensus in a forum

The offence: Jocelyn⁷ was charged with fraud when she was caught using her colleagues' credit cards. Jocelyn and the two victims, Lucy and Suzanne, had worked together until this incident, when Jocelyn was dismissed from her job.

At the forum, Jocelyn appears nervous and very ashamed. Her head is bowed as she talks about having had financial difficulties at the time. She tells her former colleagues she had taken their credit cards from their handbags, spent their money, and not given it too much thought until she was caught. She describes her actions in detail, including her initial denial of her crime, and subsequent confession upon seeing the CCTV footage. She acknowledges the hurtful effects on the victims, her workplace, and the investigating police.

The impact on Lucy had been one of inconvenience and has generated the feeling that she 'can't trust anyone anymore'. For Suzanne, the experience had added repercussions, and she spoke angrily about having confronted Jocelyn at work, and asking her if she had taken the card. Jocelyn's reaction to this was so calm that later, when she was caught, Suzanne could hardly believe it had been her. She was not only upset that someone she knew and liked would steal from her, but this experience triggered painful memories from her past when she had been a victim of serious crime.

⁷ Throughout this report, the names of participants have been changed.

The police officer spoke sternly about how Jocelyn's actions created a distrustful workplace. Jocelyn's solicitor spoke of her surprise that an educated woman like Jocelyn would steal, and of how she felt sorry for her. She explained that Jocelyn had not told her family or friends about what happened due to shame. Jocelyn's other support person raised her family's debt problems. The community member was from a financial counselling service, and offered to help her deal with them.

With her head still bowed, Jocelyn said again, 'I'm so sorry,' emphasising how she wished she could change what had happened. She told Lucy and Suzanne that she was prepared to 'do anything' to make up for what she had done. Suzanne told Jocelyn she hoped she would learn from this, and added, 'I accept your apology'.

Jocelyn seemed shaken and ashamed by the whole experience, her face blotchy from crying. She appeared willing and prepared to do what was asked of her.

Although the charge seemed minor in this offence, it had powerful implications for the offender and the victims (especially Suzanne), all of whom spoke openly and emotionally. Further, this forum represented a sound balance between an exploration of the harm caused by Jocelyn's theft at multiple levels, from personal to organisational, and an exploration of the personal difficulties surrounding Jocelyn at the time. Jocelyn's difficulties provided a background but did not dominate, and notably, they did not come from her but from her support person and the community member who knew of her situation. Importantly, Jocelyn's account of stealing and being charged was very sincere.

Divisive Forums

While the above example demonstrates the positive outcomes that can emerge during a forum, the process does not always achieve restorative outcomes, shared understanding or resolution. This was apparent where the forum seemed to generate feelings of frustration, anger, and unresolved conflict and was marked by a sense of division. See Case Study 5.2.

Case Study 5.2 A divisive forum

The offence: The offender, Shona, was stopped by transport police at a train station during a ticket check. In searching her bag, they found stolen goods and tools (house breaking implements), and she was charged. Shona attended the forum with her partner, friend and cousin. Also present were Abby and Ryan whose house was broken into and whose possessions were stolen. The arresting officer, and two community members, also attended.

The details of the offence were unclear throughout the forum. Shona could not explain how the victim's possessions got inside her backpack and claimed the tools were not hers. She was adamant that she was being blamed for something she had not done. Amanda, despite being the arresting officer, she was a transport cop, and could not comment on the burglary. Amanda later revealed to the researcher that she knew of other personal relevant information that, if revealed, would have dramatically altered the 'facts' Shona was presenting. However, she felt that raising this information was inappropriate and she was unsure of her role.

Abby and Ryan appeared upset and disappointed by Shona's denial. Both had made time to attend the forum to learn more about what happened. The harm they described was extensive and personal. Abby talked about the challenge of replacing necessary items like bankcards and prescription sunglasses, their family's anxiety, and the loss of a camera full of photographs of their children. Her narrative was matter-of-fact and evocative, but were dismissed by Shona and her supports. Shona continued to deny breaking into their house, and when Ryan tried to question her, one of her supporters raised her voice aggressively in Shona's defence. Later, Shona's supports accused Ryan and Abby of exaggerating their harm and not trying hard enough to follow up on the burglary, saying 'If you really cared about getting your stuff back you would have tried harder to get the CCTV footage'. The community members played minor roles in this forum. Neither had any prior contact with Shona nor fully understood her issues. One of them, a psychologist, said she was uncomfortable making recommendations about somebody she was not treating and had not met before.

In stage three, Shona expressed reluctance with most of the Intervention Plan items suggested by the group, conceding easily only to items that would benefit her. She was asked to write a letter of apology demonstrating her understanding of how victims are affected by crime, which she deemed

'bullshit and too much for me to do'. She also commented that: 'I just want this to end, this is bullshit, I'm here today to repair the harm'. The contradiction inherent in this statement demonstrates how some participants superficially appropriate the forum's goals to display commitment.

This was a long forum, drawn out by contentious discussions over the offence, the harm caused, and the Draft Intervention Plan suggestions. There was a distinct lack of understanding between Shona and her supporters, and the rest of the group. It seemed that Ryan and Abby had taken pains to make a considered contribution to this forum, taking time off work and preparing a heartfelt letter to read out. By the end, however, they seemed disappointed and frustrated. All participants had grown impatient and restless.

Case Studies 5.1 and 5.2 demonstrate the potential and challenges of achieving consensus in Forum Sentencing. The following sections detail the final preparations that go into facilitating a forum, the way a narrative of responsibility and accountability begins to develop, and how harm is expressed and discussed.

Beginning the Forum: Managing Arrivals and Introductions

Facilitators arrive early to prepare the venue for the participants – a final and important stage of preparation. They arrange the chairs in a circle, assign seats, and set out refreshments. An important part of the facilitator role is to welcome each participant as they arrive and answer any questions they may have. This also helps to soothe any anxieties that the participants may be having. Many of the facilitators displayed warm and compassionate demeanours when greeting participants, chatting easily to them as they arrive. While they slip into a more 'professional' formal role once the forum begins, these initial greetings seem to remove tension from the atmosphere. If time allows and they feel it necessary, some facilitators also use this period to casually and gently prime offenders or other participants about their role in the forum.

As the forum begins, the facilitator introduces the participants and outlines some housekeeping information. They follow a script which some facilitators read directly, some refer to, and others recite by heart. In most introductions, the facilitator introduces everyone at the forum, saying, for example 'This is John, the offender, next is Clara, John's mum, the offender support,' all the way around the circle. Notably, when the police are present as a

victim (for instance, when the offence is an assault on police), they are introduced as 'the person most affected,' rather than 'victim.' These introductions make it clear to the participants what each person's 'role' will be during the forum.

Taking Responsibility

It is a requirement that offenders plead guilty to the offence, are in general agreement with the police facts, and accept responsibility for the offence. The purpose of stage one is to find out about the offence. This is prompted by the facilitator asking the offender, 'Can you tell us what happened?'. Offenders are prepared before the forum to give a full and detailed narrative of what led up to the offence and how it happened.

The offender's acceptance of responsibility is key to reaching consensus. Indeed, in some cases, the offender took responsibility from the beginning and gave a detailed account of what they had done. In these situations, the offender needed little prompting from the facilitator. However, offenders can find it hard to articulate what they did in detail. This may be due to embarrassment, anxiety, or poor language or communication skills. When this happens it can appear that they have not accepted responsibility so facilitators who are aware of this possibility, despite their best efforts to avoid it, will use different techniques to try and draw out the offender's statement about what happened. Some strategies listed on the script include asking 'what happened then?', echoing the last thing the offender said, and leaving a silence whilst looking at them, giving them room to say more if they want to. Other participants can also help to draw out the story from the offender, and can actively contribute to a clearer picture emerging of what happened.

There were some cases where the offender's sympathetic framing of themselves irked other participants, and laid the grounds for critique that the offender was treating the forum as a 'soft option' or was not taking responsibility for their actions. In others, participants felt the offender's story – though verbose – was lacking in the kind of frankness they sought.

At a number of forums, other participants (usually community members) entered into a conversation with the offender during this stage to clarify the offender's account of what happened or ask personal questions. Facilitators tended to feel this was ideal, as it shifted the forum from a question and answer format between the facilitator and offender to a conversation between the forum participants.

In the forums observed, various participants made efforts to hold offenders accountable by, for example, recognising contributing factors like drugs, anger and alcohol, but not letting these excuse the offending behaviour. Case Study 5.3 illustrates this point.

Case Study 5.3. Offender takes responsibility

This offence was a break and enter that was motivated by the offender wanting money for drugs. At one stage the victim, Paula, addressed Jack, the offender, saying she still did not understand why he did what he did, and were there not alternatives? Lynette, who worked at a Drug and Alcohol Clinic, spoke up.

Lynette to Paula: 'Can I answer your question? I work at the clinic where Jack is. Addiction takes over your ... it's that in-the-moment, 'I need the money for drugs', a total lack of concern for common sense, for other people's property'.

Jack: 'But that's no excuse either, you know?'

Lynette: 'No.'

Jack: 'That's the reason, it's no excuse for what I've done though.'

Lynette: 'No, and sorry if I made that sound defensive.'

This case study demonstrates the fine balance involved in holding the offender accountable for their actions, while also understanding their personal circumstances. Lynette's initial response to Paula could have been interpreted as patronising or flippant, but Jack does not allow this, stressing that his addiction is no excuse. In forums such as these, where the offender readily 'takes ownership' of the offence, the group tends towards consensus, making a natural progression towards recognising the offender as distinct from the offence and supporting them in addressing underlying concerns. In forums where offenders were not readily 'taking responsibility' for the offence, the ensuing conversation in stage three tends towards hostility and divisiveness (this is discussed further in Chapter 6).

One challenge to forum dynamics concerns close-knit families who attend as supporters. At times, they may be seen as overprotective. This was observed in cases where siblings or parents would aggressively defend their brother/sister/son, 'letting them off the hook', as described by one facilitator. In a similar vein some parents took responsibility in the forum for their child's behaviour, even though all the offenders in

the study were adults. This worked to 'free' the offender from taking full responsibility, and was a barrier to holding the offender accountable.

According to the Forum Sentencing Operating Procedures, it is desirable to reach agreement about what happened before moving on to the next stage. While general agreement was reached in most cases, the cases where this did not happen often resulted in the issues continuing to be raised and disputed throughout the forum. In stage two, participants have another opportunity to address such disagreements and, depending on how participants and facilitators manage this stage, such issues can be resolved.

Exploration of Harm

Immediately following the offender's account of their actions, the facilitator will ask, 'And who do you think was affected by this?'. The offender will commonly mention the victim, his/her family, or themselves, or respond that they do not know. The facilitator then says, 'Let's find out'. This signals that stage two has begun. The facilitator will then ask the victim, corporate victim, or victim representative to discuss the incident and describe its impact on them and/or the community. Overall, the victim supporters, offender supporters, respected community members, and attending police will all also contribute to the greater narrative of the harm.

Victims

In forums attended by a direct victim, there is an opportunity for the offender to hear first-hand from the person most affected by the incident about its impact on their lives. In most cases where direct victims are present, the victims and/or their supporters are able to passionately and articulately describe the aftermath of the offence in their lives. Such descriptions detail, for example:

- Difficulties caused by a broken windshield for the victim in a very busy working week immediately after the offence
- The enduring pain and difficulty of eating and speaking for a victim whose jaw was broken in an assault case
- A victim's distress that, as a result of the theft, the trauma associated with a previous experience of victimisation reemerged
- A victim's sadness on behalf of their little brother who had saved for a year to buy an iPod that was taken in a forced entry burglary

- A victim's concern that, as a result of the assault, his little brother was having ongoing nightmares.

These descriptions of harm from direct personal victims were different in nature to the more abstract and general descriptions of harm concerning insurance policies (from corporate victims) or general fear in communities (from victim representatives). Instances with a direct personal victim who could clearly articulate the harm evoked the strongest response from the offender.

In some cases, victims did not wish to disclose the full impact of the offence as they did not want the offender to know the difficulties they had been experiencing. There was also a pattern of underplaying emotional and physical harm, particularly among young male victims of assault.

It can be difficult to strike a balance and appropriately acknowledge the impact of the offence. Participants' personalities and attitudes can be a factor in this, such as if the offender and their supporters are vocal and defensive while the victim is more reticent and lacking strong support. Even well prepared victims may feel compelled to behave meekly in such contexts. Further, the script only allows the facilitator very specific ways to draw out the 'harm' caused by the offence.

On the other hand, in some forums the participants overstated the harm, for example, by exaggerating the possible harm of speeding using hyperbole ('You could have killed me!') as opposed to detailing a real and personal story about serious accidents caused by speeding. Overdramatizing can seem to make a mockery of the process.

For forums where the victim decided not to attend, the Forum Sentencing Operating Procedures states that the facilitator can obtain a written statement or audio recording of the victim statement. One forum observed had a recorded statement, and three had written statements.

Victim representatives

In cases where a direct victim may choose not to attend, victim representatives can play an important role in holding the offender accountable and prompting them to think about the impact of their actions on other people. However, the role of victim representatives was not always clearly or consistently defined (see Chapters 4 and 6 for further discussion of this). In the forums observed, there were no 'personal victim representatives' who were directly nominated by the victim to attend on their behalf. Instead, all the victim representatives were from advocacy organisations, with several attending more than one forum.

In forums, the victim representatives tended to use a number of approaches, including:

- To channel the sentiments of the direct victim (for example by reading a letter or statement from them), and represent that sentiment consistently throughout
- To make sure that the offender understands the harm and takes responsibility (representing the direct victim but without a letter or statement to read)
- To describe the harm that they experienced as a victim and how this has impacted them
- To take broader view, focusing on the harm to the community or general 'fear of crime' in the community as a result of offending behaviour

Forum participants tended to be more responsive to victim representatives who used the first two approaches. For example, in Case Study 5.4, the victim representative saw it as their role to make sure the offender understood the harm caused to the victim and to other witnesses and took responsibility for it.

Case Study 5.4 Participation of victim representative

Offence: A glassing committed one morning at a local bar. The victim was himself a police suspect and was difficult to track down for the forum. The offender described the offence as being motivated by alcohol and annoyance towards the victim, who was making derogatory comments to the waitress.

When the facilitator initially asked the offender how he thought others had been affected, he replied that the victim was hurt, but it was a bar and other people present were accustomed to brawls, besides which 'nobody really looked'. The victim representative interrupted and asked, 'How do you think they were affected?' In a confrontational tone she described how people at work then had to deal with a person whose face was cut open and bleeding. She added that: 'I think everyone here knows that what the victim did was not good, he was not behaving properly, but how you reacted was too much. People in the bar had to deal with someone bleeding, their face cut open from glass, and that's frightening'. In a more gentle tone, then, she asked the offender if he could see how his behaviour had affected numerous people, not just the victim. In this

way the victim representative played an important role in prompting the offender to put himself in the shoes of people at the scene. A particular strength of her contribution was that she acknowledged the disturbance the victim was creating prior to the offence, and the cause for the offender's anger, but made it clear that the issue was with the offender's extreme reaction to it.

Following the victim or victim representative's contribution, the facilitator invites other participants to speak about how they and/or others were affected or, in the case of respected community members, if they have anything to add. The more experienced facilitators observed that the script does not compel the facilitator to introduce remaining participants in any particular order, although it is suggested that they be invited in order from most to least affected. Facilitators explained, however, that they may invite participants to contribute when they feel it would best serve proceedings thus far. For example, if both the offender and victim have underplayed the extent of the harm, the facilitator may invite the arresting officer to describe the incident, thus contextualising the seriousness of the offence. This flexibility enables the story and the harm to emerge.

The following sections elaborate on the roles of supporters, respected community members and police.

Supporters

The input of supporters can vary greatly depending on the offender, victim, the offence, and the harm done, but they can add a great deal to a forum. Two forums in the Case Studies featured an offender who chose not to bring any supporters, despite the facilitator advising otherwise. Both indicate in interviews after the respective forums that they regretted not heeding the facilitator's advice.

The attitudes of offender supporters seemed particularly relevant to forum dynamics. Some also made powerful contributions to the group's engagement with and understanding of the offender's background. For example:

- An offender's mother provided a powerful context for her son's aggressive intervention into a domestic violence situation by giving an honest and emotional account of her own background of abuse, which her son had witnessed as a child
- The brother of an offender with a long history of drug addiction was supportive of his sister but having seen her

try and fail to 'go clean' so many times, contributed realistic details to the items discussed for her Draft Intervention Plan.

Others also defended the offender from criticisms they deemed unfair, for example:

- An offender with a heroin addiction who broke into and robbed a family home was being accused by the upset teenage victim attending of 'not knowing what an honest day's work means, how most people acquire things'. The offender's father had acknowledged the victims' suffering and expressed his admiration of them for attending the forum, but at this stage he gently intervened and explained that his son had been working since a very young age, but the field he trained in was being replaced by digital technology, thus rendering his skills obsolete.

While the types of support described above can contribute to a full story of what happened and promote understanding, some offender supporters were detrimental to group dynamics. This most often happened when overprotective supporters would make excuses for the offender, deny the victim's harm or accuse them of over-reacting. Some examples of this include:

- The offender was charged with possessing illegal explosive devices (firecrackers), and at the forum, his father lamented that police were not doing a better job keeping such items off the streets. The arresting officer, however, took issue with this as it stripped the offender of responsibility for his actions.
- The offender supporters at a forum for an assault matter dwelt on the offender's anger management issues and accused the victim of being 'greedy' for seeking compensation for medical expenses and income lost due to being out of work.

A theme common to the above examples, as well as to other cases in which offender supporters were disruptive, is the lack of recognition of the offender's responsibility. Such overprotective offender supporters are a unique challenge to facilitators. They are seldom screened for their own acknowledgement of the offender's responsibility even though they are briefed on the stages of the forum. Similarly, the balance of offender supporters to victim supporters is an important feature of forum dynamics. The offenders in both of the above cases came from large families, many members of which attended the forum. This resulted in two to three times more individuals on the offender's 'side' than on the victim's.

In the Case Studies, few direct victims who attended forums

brought their own supporters. When they did not, other participants sometimes took on these victim support roles if the dynamic called for it.

Respected community members

Community members can broaden the perspective by talking about how the local community has been affected by the crime or by discussing how they have been affected by similar issues to offenders (such as drugs or alcohol).

Case Study 5.5. Respected community members

The offence: *This case involved Dale, a young man in his early 20s, who had been out all night drinking heavily with his friends, and refused to move away from a licenced premise when asked to by the security guards. When police arrived he was uncooperative and was arrested.*

At the forum, the attendees were: Dale, his girlfriend, mother and grandmother, two police officers ('persons most affected'), a community member from Alcoholics Anonymous, and another community member from a local group. During the forum it became apparent that binge drinking was a problem for Dale and that he had used alcohol as a way of coping with painful experiences. Responding to this, the community member from Alcoholics Anonymous, spoke openly about his life long struggle with alcohol addiction and the impact it had had on his life and his health. He framed his experiences in a way that drew comparisons to Dale's own life and grief, while also demonstrating the damage alcohol can bring to bear on a person. He encouraged Dale to attend AA as that is what helped him most. While this was not included in the Draft Intervention Plan, it was listed as a Recommendation.

The items in the plan addressed Dale's need for: alternative methods of coping with emotional pain by seeing a psychologist, and consulting a doctor for alcohol related conditions and a counselling referral.

This case describes how a community member can share a personal experience of addiction as a cautionary tale. Even though the community member had not met with the offender beforehand, his presence at the forum was significant in introducing issues about the long-term impacts of alcohol use, as well as the help offered by support groups such as AA.

In other less positive instances, the sharing of such stories created a distance between offender and community member.

This tended to happen in cases where the community member did not establish any rapport with the offender before sharing their story. For example, in one forum observed, the community member was from a local support service. When he tried to share his experience about the long-term impacts of drug use he had observed in others, the offender resisted, telling the group, 'He doesn't know me. He doesn't know my issues'.

When community members are not fully briefed there is a risk that they will have a negative impact on forum dynamics. This was observed in cases where the community member has attended previous forums (either as a community member or as a victim representative) and said they did not need to be briefed. In one case the community member, without knowing the facts of the case, aggressively challenged the victim. In another, they would not accept the offender's account and repeatedly criticised his attitude. The victim in the first case reported feeling re-victimised. In the other, the community member polarised the other participants, creating a palpable tension. These incidents reinforce the importance of the preparatory steps to a forum (see also Chapter 4 for discussion).

Police

Facilitators and Program Administrators emphasised that one of the key benefits of police participation is that they are capable of filling out 'the story' of what happened in a way the offender(s), victim(s), and their supporters might be unable to. When an attending police representative was the arresting or investigating officer, they brought a unique perspective to the forum. Facilitators use their insight to better enable offenders to take responsibility for the offence. In one case, this involved the facilitator and arresting officer organising to screen CCTV footage of the assault in the forum. In several other instances, the attending officer was able to objectively describe, for example, the severity of an assault that the offender's supporters were downplaying.

Other times, when asked how they were affected by the offence, police were reluctant to reveal any harm, instead describing the amount of paperwork the offence created. In such cases, this tended not to generate a meaningful response from the group. When police did engage at a personal level, however, this seemed to strike a chord with forum participants.

There are occasionally cases where police will challenge an offender's story because they have knowledge of concurrent charges or cases under investigation. Police express uncertainty and frustration about how much they can say in

these instances. On the one hand, they want all the details of the case and the offender to come out in the forum, while on the other they remain acutely aware that if some details would never be able to be raised in court, they shouldn't bring them up in the forum. There were also instances where the police participant was unsure of their right to speak about an offender's past offences, or whether to do so would be a breach of the offender's rights in the forum. When faced with this, they indicated that ultimately 'it's not your place to say in the forum "you're a criminal", it's not appropriate'. This suggests that facilitators could clarify such issues with police during the preparation stage including about what kind of information can be discussed at the forum about the offender and the offence.

Facilitation and Using the Script

Facilitators follow a scripted sequence that provides a template to consistently guide participants through each step of the forum process. The purpose of the script is to draw out the story of what happened and who was affected. A speaking order is suggested as well as a series of prompts for facilitators to use. The script works well when facilitators use the script to draw out the story of 'what happened' and 'who was affected', paying careful attention to what is said by each participant, what remains unsaid and also the body language of participants. It provides a standard language with which facilitators may maintain neutrality, for example, in one case of a heated outburst from participants the facilitator's pause, and subsequent calm continuation with the script, helped dissipate tension.

When facilitators ask scripted questions that have already been answered in the forum, however, the script becomes visible and can disrupt and stilt the conversation. The most common instance of this concerns the question sequence 'Who do you think has been affected?' followed by 'How were others affected?'. Asking the second question can seem awkward and repetitive if the offender has already answered the question when responding to the first. Although facilitators are trained to skip redundant questions, they also report a pressure not to deviate from the script. Such instances can disrupt the flow, and participants occasionally display irritation in response. Many facilitators and office staff suggested, however, that even when participants were prompted to speak about things that they had already discussed, the scripted question sometimes elicited new material. In order to retain this value and the use of a standard script, whilst also avoiding the disruptiveness described above, perhaps the script could include additional

prompts that acknowledge participants' prior contributions while giving them room to say more. For example, 'How else were they affected?' or 'Who else was affected?'. Facilitators need to be flexible in their use of the script to facilitate dialogue between participants and not necessarily read every prompted question in the sequence it is written.

Some forums were managed better than others. Facilitators are trained to use the script and use different techniques to encourage participation and manage domineering behaviour, but it can be difficult for new facilitators to interpret when they should stick to the script and let the participants talk, and when they should intervene to manage disrespectful or domineering behaviour. For example, in one case run by an experienced facilitator, the offender's father absolved his son of responsibility by blaming inadequate policing for the illegal activity his son was involved with. The attending detective began to say something, but stopped herself.

As the script suggests, at the end of stage two, the facilitator asked the group if anybody had anything they wanted to say. They then specifically asked the detective if she wanted to add anything. At this prompt, the detective responded to the offender's father's earlier comment, which then opened up the discussion about the responsibility of the offender. This took confidence on the facilitator's part. However, some newer facilitators did not display such confidence. In a contrasting example, the disagreement between the victim's support person and the offender's support person escalated heatedly, and resulted in the offender's and victim's own voices being drowned out. This overwhelmed the facilitator who did not feel confident to manage this. While initial training is important some facilitators commented that they had also benefited from being mentored by an experienced facilitator when they first started.

One of the tasks that can be distracting for facilitators in the forum is note taking. In many of the forums observed, facilitators wrote copious notes to inform the forum report. This written record of the forum by the facilitator accompanies the Draft Intervention Plan when it is submitted to the magistrate. Facilitators take notes from the forum to write an accurate report, but writing notes can prevent them from effectively managing issues that may arise during the forum. For instance, they may miss important non-verbal cues or body language or fail to hear comments made. Facilitators and Program Administrators also raised this as an issue that has to be carefully managed, perhaps by further training in note taking and report writing once a facilitator has gained experience in forum facilitation.

By following the general sequence of the forum, and paying attention to what is being said and what remains unsaid, facilitators can call on forum participants in stage one and two, to hold offenders accountable and acknowledge the harm caused, which can lead the forum group towards a new common understanding of the situation.

Summary

This chapter has explored the elements of stage one and two that can result in consensus or division in a forum. The two elements that contribute to consensus are the offender taking responsibility and the group adequately exploring the harm. Sometimes offenders take responsibility readily and forums progress smoothly. On other occasions this happens more gradually as the facilitator and other participants (notably the police and community members) draw the story out from the offender. Sometimes, offenders resist this responsibility, especially when they have overprotective supporters.

The harm of the incident is successfully explored when victims are able to articulate the different ways that the offence has impacted on them personally. In some cases, where the victim or other participants over-dramatize the harm, it can work to the detriment of the forum.

When those present in a forum agree on the story of what happened and who was affected, this results in a feeling of consensus. It can be marked by a gesture of symbolic reparation, often through the exchange of apology and forgiveness, which is then explored further as participants move to the development of an Intervention Plan (see Chapter 6).

Key issues and areas for improvement and follow-up

Some key issues around achieving consensus in the early stages of the forum are:

- **Offenders** engage and take responsibility in a variety of ways and to varying effects. Some are better communicators than others, and those who are articulate have an advantage. When offenders are defensive or don't appear sincere, however, this puts the other participants off.
- Forums with a **direct personal victim** who can clearly articulate the harm evoke the strongest response from the offender. At the same time, victims and victim representatives can sometimes understate or overstate the harm.

- When a victim is not present, **victim representatives** used a number of strategies to explore harm, the most effective being an informed attempt to represent the views of the primary victim.
- **Community members** can be detrimental when there is a lack of rapport between the offender and community member, or the offender resents their presence. Their presence is most effective if they have communicated with the offender prior to the forum and developed rapport. There is an additional barrier to consensus when community members are not fully briefed about the case, or do not have a direct connection to the offender. This was most often the case for representatives who were 'regular' forum attendees and did not want to be briefed beforehand. Community members, even if they have attended forums before, should be briefed beforehand about the details of the case by the facilitator, and should have communicated with the offender.
- **Supporters** can help draw out the story and provide a context for the offending behaviour or acknowledge the extent of the victim's harm. They can also cause imbalance and division, such as when offender supporters challenge a victim or question the harm they have experienced as a result of the offence. Victims, in particular, often do not have supporters present. Although other participants can play a support role, too many supporters on the offender's 'side' can have a negative impact on the forum dynamic, and even result in re-victimisation. Where offender supporters are domineering or aggressive this needs to be carefully managed by facilitators.
- **Police** effectively contribute to stage two when personal reflections about the nature of the harm caused are offered (as opposed to general complaints about 'the paperwork' that an arrest caused). Some police are unsure about the legal implications of providing additional information about an offender or an offence in a forum. Forum Sentencing can clarify the role of the investigating officer at the forum and explain what information, such as the offender's history and details of the case, can be discussed at the forum.
- With regard to **facilitation**, two elements may affect the rhythm and 'flow' of a forum. The first concerns awkward moments due to facilitators asking scripted questions that have already been answered, thus disrupting the conversation and giving the impression that s/he has not been 'listening'. Facilitators should have the discretion to follow the script in a way that facilitates dialogue between

participants and not feel they need to read every prompt in the sequence it is written. The second problem is the requirement for facilitators to take detailed notes in order to write the forum report. This lessens their ability to keep track of forum dynamics (verbal and non verbal) and effectively and sensitively manage conflict before it arises.

The above elements all work together to either develop a shared understanding and consensus or, in some cases, to cause conflict and division.

In Chapter 6, Developing An Intervention Plan, we will discuss how forums transition from stage two to stage three, and focus in detail on the development of Intervention Plans.

CHAPTER 6

DEVELOPING AN INTERVENTION PLAN

In the final stage of the forum actions are decided upon that may become a part of the sentence in the form of a Draft Intervention Plan (DIP).

This chapter analyses what happens to the dynamics of forums as participants negotiate a Draft Intervention Plan. It identifies common characteristics of forums that contribute to successful dynamics.

Transitioning to Stage Three

The transition from stage two to three shifts the focus of the forum as the group is guided towards creating the DIP. This transition is commonly marked by the facilitator moving to a whiteboard, where a laminated sheet lists the program's two main goals: 'repairing the harm' and 'reducing reoffending'.

What happens in stage 3?

The facilitator begins by asking the victim, corporate victim, or victim's representative what they would like to see happen as a result of the forum. This question is then posed to the rest of the group one by one and the facilitator notes their suggestions on the board. Finally the facilitator asks the offender what they would like to offer to 'make things better and address your offending behaviour'.

When suggestions have been collected from the group, the facilitator 'reality tests' them. To do this, the facilitator prompts the group to refine and elaborate on their suggestions. The scripted prompts for drawing this out of the group include: 'Can you tell us more about that?', 'Does this repair harm or reduce reoffending?', 'How can it be done?', 'When can it start and finish?' and 'Is it fair?'. This process aims to shape the collection of initial suggestions on the board into clear, measurable and achievable outcomes.

In developing the DIP, the forum's interpersonal dynamic often alters. Participants shift their focus of attention away from the circle and towards the whiteboard. The board becomes the centre of the interaction, as participants negotiate each item that is written down.

In some forums the shared understanding developed in stage two of the forum continues into stage three. This can be described as the **storybook** model, where participants actively work together with high levels of participation, engagement and affirmation to develop the DIP. These conferences generally conclude with an organic revisiting of the harm caused, a sense of community amongst participants, and optimism about the offender's future.

In contrast, participants in the **polite** model interact with general politeness and amicability, but these forums are not the dramatic emotional encounters that mark the storybook dynamics.

Other forums are quite successful at achieving cohesion in stage two, but this dynamic disintegrates as stage three unfolds. This is most common in large forums that take a long time and where participants become restless. Participants lose the emotional restoration reached in stage two and move to a place of instrumental negotiation as they go around the circle, haggling over the details of the plan. These forums are characterised as **draining**.

Forums that are marked by division in stages one and two have two common trajectories. In some, the process of developing a DIP can **salvage** the forum by allowing for a new focus away from the disputes and arguments and towards a shared common goal of developing a good plan. In these, participants shelve their disagreements and develop a temporary sense of cohesion or satisfaction through working together.

In others, the volatility and unresolved issues in stage two can continue into stage three, resulting in unsatisfied participants and a **divisive** forum.

Out of the 34 forums in the case study, 8 reflected the storybook model, 13 the polite model, 4 were draining, 4 were salvaged, and 5 were divisive (see Table 6.1). Case studies of each type are presented below along with an analysis of factors contributing to the dynamic they represent.

Overview of Stage Three Dynamics

While certain trajectories emerge in stage one and two, stage three defines the overall quality of the forum. This section describes five types of dynamics identified in the research which emerged in the decision making stage (see Table 6.1).

Table 6.1 Typology of stage three dynamics

	Stage 3 Consensus.	Stage 3 Divisive
Stage 2 Consensus	Storybook (n=8) <ul style="list-style-type: none"> Engaged and active Invested in creating a meaningful outcome Offenders develop a new understanding of harm Polite (n=13) <ul style="list-style-type: none"> Polite agreement Compliant offender 'Going through the motions' 	Draining (n=4) <ul style="list-style-type: none"> Lost momentum and cohesion Bored, antsy, deflated
Stage 2 Divisive	Salvaged (n=4) <ul style="list-style-type: none"> Teamwork Distracts from differences 	Divisive (n=5) <ul style="list-style-type: none"> Unresolved issues keep arising Unable to agree on outcomes.

Storybook model

Case Study 6.1 illustrates the storybook model, where the group effectively works towards consensus. It stands out as having a strong reconciliatory effect. In this forum, the participants revisited the harm at the end of the forum, and discussed it in new ways. As with the other forums whose features align with the 'storybook' model, the participants displayed a positive attitude from the beginning. While the facilitator prepared and guided them through the process, the participants spoke freely and articulately of their own accord, and managed any tensions that arose among themselves.

Case Study 6.1 Storybook forum

The offence: Joel, the offender, is a 19-year-old male charged with property damage. On the night of the incident, he was heavily inebriated after a fight with his ex-girlfriend and he punched and smashed the windscreen of a neighbour's car. He was confronted by the victim's neighbour at the time, and ran away, swearing. He was arrested later that night.

Joel attended the forum with his mother, stepfather, and two family friends. Other participants include the arresting officer, the victim, and two community members – one from the Salvation Army and another from a youth program for young males. At the beginning of the forum, Joel fidgets and appears unsettled. He reads from prepared notes. His

memory of the night is poor and he relays what people told him, and how he felt afterwards, how his actions upset his mother, disrespected the victim and inconvenienced everybody attending. The facilitator moves to Andrea, the victim. She calmly describes how a broken windscreen inconvenienced her erratic work schedule and caused her car to become waterlogged after rain, costing expensive repair. Her statement is detailed, clear and matter-of-fact. She says she attended as a mother, because she wanted to help Joel set things straight for himself.

Joel's mother reveals that Joel had recently discovered that his girlfriend was cheating on him, and 'he just lost it'. This contextualises the offence for the others. The group also learns that Joel's father passed away the previous year. Other participants focus on effective ways of coping with difficult emotions. Andrea tells Joel: 'You were clearly very drunk on the night ... if alcohol has that effect on you maybe you shouldn't drink.' Later, one of the community members reiterates this, saying 'Your decision to drink earlier that day is much more significant to me than the decision to punch the car ... that's the decision I want you to think about'.

A subtle turning point occurs when Joel smiles at Andrea and tells her he encountered her neighbour in the park and apologised to him. At the end of stage two, Joel walks across the circle to Andrea, shakes her hand smiling and tells her he is sorry. It appears heartfelt and Andrea accepts his hand.

Joel seems comfortable and relaxed as they move into stage three. The main points discussed for the DIP are volunteer work for Joel and repaying Andrea for the windscreen, both of which Joel is enthusiastic about. Someone suggests that Joel volunteer with Andrea's neighbour's youth crafts group. The group remains comfortable and engaged, and when arguments erupt between Joel and his stepfather, these are neutralised by other parties. After finalising the terms on the DIP, the group remains in a circle, chatting openly.

Seven of the eight forums aligned with this typology included victims. This suggests that forums with victims present may be more likely to result in positive forum dynamics. All the cases in this category also involved higher stakes – sometimes in terms of the nature of the offence, sometimes in the offender's personal life – than those in some of the other categories. For the most part, these were discussed without inhibition. When disagreements arose around 'what happened' and 'how everyone was affected' participants discussed them fully, and resolved them before moving on. Furthermore, police officers,

victim representatives and community members at these forums seldom over-dramatized the harm, dealt in clichés or dominated. The experience levels of facilitators in this group varied from first-time to very experienced.

Polite model

In the polite model, stage two easily flows into stage three but participants 'go through the motions' without the same emotional investment in the outcome as other forums. Case Study 6.2 is an example of how some forums of this nature can be a vehicle for settling a charge and resolving a dispute in a practical way when the offender is perceived by the other forum participants to show empathy and be sincere.

Case Study 6.2 Polite forum

The offence: *One morning while intoxicated Jimmy, 30 year-old with a drinking problem, glassed another customer at a pub. He was charged with Assault Occasioning Actual Bodily Harm.*

The facilitator described Jimmy as somebody who was committed to the program. He arrived early to all meetings and to the forum. By the time the forum took place, he was already involved in voluntary work at a local Buddhist temple and had stopped drinking. The forum was attended by Jimmy, his mother and father, an interpreter for his parents who sat behind them and outside the circle, his brother, a victim representative, and a police officer. His doctor submitted a written statement commenting on his health, and his younger sister came along at the last minute, and sat quietly outside the circle playing games on her phone. The victim could not be contacted to attend the forum.

Jimmy described the victim's behaviour that morning as unruly and racist. Claire, the victim representative, prompted Jimmy to recognise the extent of the harm he caused not only to the victim, but also to the bar staff and patrons who were confronted by a bleeding person in the aftermath of the attack. When she was satisfied that he had acknowledged this harm, she changed tack, and was supportive of the efforts he had already made to address his behaviour. Likewise, the police officer praised him for turning himself in at the station. Jimmy had already begun 'repair the harm' and address his behaviour, and the terms of the DIP required him to more or less continue as he was. Jimmy's family did not contribute much, and there were no strong turning points. Although Jimmy seemed gracious and

well-liked by the other participants, the forum itself rolled through the motions, through a tidy but thorough reality testing, and came to a swift close.

Forums end up 'polite' for a range of reasons. In seven out of twelve 'polite' forums, the offence did not involve a direct victim, and often the offender might inspire sympathy from the other participants. In some, offenders are amenable, while other participants are complacent or somewhat disengaged. In these forums, they easily reach a resolution, but mostly because no one has a stake in the outcome. In others, participants appear to accept the offender's account at face value within the forum and do not probe for details or question any ambiguities. In some of these cases, particularly with corporate victims, victims expressed in interviews that they were unsatisfied with the offender's story but did not challenge it at the time.

Draining model

As Case Study 6.3 illustrates, in draining forums, the shift to pragmatically shaping a DIP (particularly in the reality testing phase) disengages participants from the cohesion reached at the end of stage two.

Case Study 6.3 Draining forum

The offence: *A \$10,000 deposit owed to Fasi, the victim, was accidentally put into Monty's account. Monty noticed it in his account and, knowing it was not his, was under the impression the bank would withdraw it. Over time he began 'dipping into it' and eventually used it up. He claimed to have not heard from the bank even though the bank personnel said they had sent Monty three letters. The bank said they could do no more beyond that.*

At the forum, Monty was nervous and very apologetic. He was especially upset to learn that Fasi had suffered a loss in his family shortly after the mislaid deposit, which was why he had not followed up with the police sooner. Prior to the forum, Fasi seemed disgruntled and wanted his money back, but did not think it would be possible as the offender was 'a young guy with nothing to his name'. However, at the end of stage two Monty tearfully apologised to Fasi and offered to pay back the full amount, telling him he had already saved \$2,000. Fasi noted that Monty was 'not the kind of person who'd do this again'.

During stage three everybody agreed that the money ought to be repaid. The facilitator explained that compensation orders were for the court to decide, but other suggestions were sought for the DIP. She made the process transparent by explaining what was happening at every stage. As a result, the process was very clear but grew tedious. When the group became confused about how many hours to suggest for voluntary work, she could not offer suggestions, and instead gave examples of the kinds of frameworks they could consider, saying 'You could choose x hours per week, or x hours per month – there is no standard'. The participants seemed to be making arbitrary choices about voluntary work hours in order to see the plan through. Fasi appeared anxious to return to work and he picked up his folder from under his chair, holding it high under one arm while sitting alertly. His tone grew curt. They were silent while the facilitator checked start and finish dates of various items, and silent while details were written onto the board. The facilitator announced a break to write up the DIP and everybody sighed. The police officer swung his arms down by his chair and the victim looked at him, eyebrows raised. They both leaned forward in their chairs and checked their phones. The offender and his supporters left the room for a cigarette. At the very end, Monty apologised to Fasi once more, and he replied 'It's alright, mate'. Fasi and the police officer shook Monty's hand on their way out. Everyone was keen to leave, and no one stayed for tea.

In Case Study 6.3, there is a distinct shift from the sense of goodwill developed in stage two to one of 'sentencing', and of working to make the DIP look appropriate to the magistrate. Participants can find this tiring, and the goodwill soon evaporates. The tone of the conference shifts from an emotional sense of restoration to a tedious task of negotiation. By the end of the forum, they are deflated.

In some of the forums in this category, participants desired a simple and straightforward DIP involving counselling and/or voluntary work for the offender. However, the level of detail required on the plan soon tires them. In some other forums, stage three was prolonged by one participant's obstinance.

Salvaged model

Case Study 6.4 demonstrates how moving away from the group towards the whiteboard can sometimes salvage the forum from further division.

Case Study 6.4 Salvaged forum

The offence: *Peter, the offender, is a middle-aged male. He was driving in peak hour traffic when he hit Jonathan, the victim, a 21-year-old male on his bike. Jonathan had fractured his knee. As Peter drove away, a witness had recorded his licence plate. The police located Peter and charged him with Negligent driving occasioning grievous bodily harm.*

This forum was marked by numerous points of conflict. First, Peter revealed that he had deliberately swerved into Jonathan 'to scare him'. Second, Jonathan and his parents contested the charge of Negligent Driving, arguing that this understated the harm. They believed this was a hit and run and not suitable for Forum Sentencing. There was a palpable sense of 'sides' during stages one and two. One side consisted of Jonathan, his father David, his mother Claire, and the two witnesses (who attended as community members). On the other side there was Peter, his wife, his colleague and a community member. Peter's daughter, Stephanie, was upset with her father and seemed to be on the Jonathan's side. The police officer and one other community member took more neutral roles, sitting between the two sides and facing the facilitator. Peter's supporters all favoured Forum Sentencing as a way of dealing with this offence/offender, while the other side thought that the offence warranted a more 'serious' response.

This was a complex forum, partly due to its very engaged, passionate and articulate participants. Despite a lengthy stage three, they remained vigorous and engaged. Jonathan and Craig (the offender's colleague) seem to strike a good rapport, and shared a few jokes and light banter. At another point, the group tried to refine a plan item in which Peter paid for driving lessons for Jonathan. A community member suggested Peter bring receipts of this payment to court. Peter wondered if it would be easier to just give Jonathan the cash so he might organise it himself. Jane (Peter's wife) objected, saying 'It's good for the magistrate to see how the money is used', and offered that the lessons be paid for through Forum so Jonathan need not contact Peter directly. This stage was collaborative and interspersed with jokes and compassionate discussion about Jonathan's lingering anger. The exception to this collaborative spirit was David, who seemed withdrawn and requested: 'Just—it's not going to happen, but for the crime to be seen as what it is. I want the correct sentence served'.

Jonathan, Claire and David did not reconcile with Peter, but other initial differences within the group had transformed by the end.

In this forum, certain tensions and disputes remained unresolved at the end of the forum, however, the participants developed a sense of working 'on the same team,' despite their unsettled differences. In all four of the salvaged forums observed, participants either did not agree with the offender's account or the police charges. Even though participants agreed upon a plan, earlier disagreements remained unresolved, and the victims who were interviewed felt that, overall, the process was unfair for them.

Divisive model

In divisive forums, stages one and two did not result in shared understanding of the harm and unresolved issues lingered for both the victim and offender. This unease persisted into stage three as participants continued to raise grievances that had not yet been put to rest.

Case Study 6.5 Divisive forum

The offence: *While drunk one night in the city, Jim assaulted Abdul, a cab driver. He had pulled Abdul from his vehicle at a traffic light and punched his face repeatedly.*

Jim attended the forum with five supporters (all family members and friends). As well as Abdul, there was Abdul's employer (Rakhim), the police officer, and three community members. At the forum, Jim was meek and mild-mannered. He explained that the assault came after night of drinking and mounting frustration at being unable to hail a cab at the end of the night. During the discussion of harm in stage two, Rakhim suggested that the assault was motivated by racism. He said: 'Look, I've been a cabby and if it was an Australian behind the wheel, 98% of the time such a thing wouldn't happen'. Jim and all his supporters erupted in passionate objection to this. The room's dynamic was altered and this was a turning point of the forum, with Jim and his family becoming increasingly hostile towards everyone else. Abdul and one of the community members (a representative from the local Indian community) tried to smooth things over, stating that they believed racism had nothing to do with Jim assaulting Abdul. But Rakhim's accusation has already affronted Jim and his family, and their attitudes were antagonistic after this point.

During stage three, Abdul's main request was to be compensated for damages to his cab and related loss of income. This was aggressively protested by Jim's supporters. They accused Abdul of being greedy, of

'double-dipping' when including both vehicle rent and loss of income in his quoted figure, and argued that 'A cheque won't make the pain go away'. Over the two and a half hours this took, their resistance dominated the exchange and lead the conversation in heated circles. The group eventually agreed to a plan with some compensation recommended, but at the forum's end, they were still divided.

In this case, even though a plan was made, participants carried on bickering about the unresolved issues, and the conference ended with a general sense of dissatisfaction.

In some forums in this category, divisiveness rested on the lack of responsibility taken by the offender, which frustrated other participants, particularly victims and the attending officers. This raised questions about whether the case was suitable. In other cases, divisiveness was exacerbated by dominant offender supports who protected and/or prevented the offender from taking responsibility for the offence, and insisted upon less severe DIP items than other participants would have preferred.

As the above case studies demonstrate, different typologies in forums can be identified when moving from stage two to stage three. These highlight the importance of having an agreed set of facts prior to the forum to avoid spending unnecessary time discussing points of difference in stage two, before transitioning into stage three. If unsettled differences are not resolved or participants 'agree to disagree' and move on, then it can be difficult for facilitators to manage and guide stage three, or for a forum outcome to emerge that leaves all participants satisfied.

Managing Stage Three: Facilitator Concerns and Strategies

Several facilitators cite stage three as being the most challenging aspect of the forum, and the one they felt least confident with. Staff widely reported that it was in this stage that a skilled facilitator really stood out. This section compiles issues that emerged or were reported as facilitator concerns in stage three, and discusses ways that they could be or have been managed.

Encouraging engaged and active participation

One of the aims of Forum Sentencing is to empower victims, offender and communities to come up with an alternative option for the magistrate to consider at the sentencing hearing. While the rhetoric of Forum Sentencing stressed this

empowerment, participants seem reluctant to use that power for various reasons:

- They assume the magistrate will modify the DIP if is perceived to be too lenient or too severe.
- They defer to other authorities like the police, community member ‘experts’, the facilitator, and participants who claimed previous forum experience.
- They invoke the magistrate as an authority figure in order to resist or endorse particular items, for example when an offender says ‘I could walk out of here and get less from a magistrate,’ or other participants tell offenders and their supporters that a magistrate would look at their lenient suggestion ‘and laugh’.
- They seek a benchmark or rule of thumb, even though plans can be customised to the offender and case. That is, they seek consistency, and ask questions such as: ‘What would you get for this in court?’, ‘What is standard?’, and ‘Is this more than what a magistrate would sentence?’.

There are two issues here. The first is the potential for community members or other participants to situate themselves as ‘experts’ and dominate the interaction (see Chapter 5). Facilitators can address the former when they prepare participants for their role in the forum. The second issue is the perceived authority of and deference to the magistrate. The expectations that participants have about the magistrate can and should be managed by facilitators (both during preparation and at the forum) emphasising that the magistrate is looking to the group to make an independent decision about the outcome and recommend this to the court.

Experienced forum attendees as ‘co-facilitators’

Members of some victim and community organisations were regularly invited to attend forums. Experienced participants like this can play a significant role in stage three as they are familiar with the process and confident shaping the terms of the DIP. In this sense, they can take on a role of co-facilitator, helping to drive the dialogue and refine items. Experienced participants can quickly identify the type of details needed, for example when they prompt discussion of exactly how a proposed item will be undertaken.

One risk with this is that these participants can assume a dominating role in stage three, leading the group towards outcomes that they think are appropriate or have seen in

previous forums. At times in this research, it was observed that victim’s and offender’s voices were subsumed by dominant community and victim representatives. In such instances, it may be that these representatives have too much influence and this is disempowering for other stakeholders in the process.

Facilitator experience and training

Several facilitators who participated in the research were new to Forum Sentencing. While they spoke highly of the training, some felt that the skills needed to effectively managing stage three were difficult to cover in training. As one facilitator commented:

I think we’d all say that the bit that’s least well done and probably can’t be well done is training for this last stage. It’s so tricky, so you sort of learn as you go along really, and ask questions and watch some other forums but to me ... this is the really tricky spot ... ‘cause the rest of it you are just hopefully asking your script questions and letting it flow to an extent, but this bit’s difficult and I don’t know how you train [for] that.

Newer facilitators in particular articulated a desire for more examples of how to effectively facilitate this stage, namely with regard to taking notes while writing and editing items on the whiteboard and managing ‘reality testing’. More experienced facilitators have developed different ways of managing stage three to help make the process run smoothly. One facilitator’s strategy was to begin reality testing the most straightforward plan suggestion, and leave more contentious issues (like compensation) till last. By first discussing the items that most people agree on, the group can be eased into an effective negotiation.

The lack of ease of new facilitators can be addressed by expanding the mentoring program between new and experienced facilitators. Currently, facilitators can request a mentor, but this is not compulsory, and there is no financial incentive for more experienced facilitators to act as mentors.

Facilitator knowledge

Facilitators vary in terms of their knowledge of court and sentencing processes outside the forum. A challenge experienced by some facilitators in the Case Studies was answering participants’ legal questions about sentencing and monetary compensation orders (while participants tried to pin down the details of repayment by percentage of income). On the one hand, this could be addressed by ensuring that facilitators are fully briefed on the processes of sentencing,

bonds, and compensation. At the same time, Forum Sentencing staff are concerned that when facilitators offer too much information on the court process it can be construed as ‘legal advice’, which is not their role and needs to be avoided.

In some forums, participants and facilitators were unsure of the role, or even existence, of Intervention Plan Supervisors, raising questions about how plans would be monitored. Participants’ concerns could be easily resolved if the facilitator explained the Intervention Plan Supervisor’s role as a part of preparation. Facilitators are trained to follow the script and tended not to offer additional information during the forum about what happens at court or how the plan would be supervised. One way this is resolved by some facilitators is by simply stating that ‘their office would handle it’ whenever a supervision issue arose.

In a few instances, Intervention Plan Supervisors were working as facilitators for other offices and this meant they had ‘insider knowledge’ into the workings of the court and the supervision of Intervention Plans, which they were able to share with participants. This made the process more efficient and interviews with them also suggested that this knowledge gave them confidence in facilitating stage three.

Breaks

In lengthy forums, participants often asked the facilitator for a break and, on some occasions, facilitators would inform participants that this was not part of the process. This created discomfort and impatience for some participants. In other instances where participants requested a break, a short break would be granted, during which facilitators would request that the group halt the forum-related discussion until missing members returned. This proved more conducive to harmonious group dynamics.

While not mandatory, in lengthy forums facilitators could suggest a break between stage two and three to give participants the opportunity to use the toilet or have refreshments. This time could also be used for offenders (and their supporters) and victims (and supporters) to reflect on what has been said during the forum, and to take stock before moving onto the final stage.

Closing the Forum

While the final preparations, managing arrivals, and introducing the forum serve an important function of ‘opening’ the forum and marking it as a serious event, the forum’s formal ‘closing’ can also add a sense of ceremony. Other research has

documented the value of ‘closing’ rituals that give participants space in which to relax and continue engaging more informally (Rossner 2011). This can help ensure that participants leave with a sense that they have achieved something positive. The Forum Sentencing process recognises this – facilitators thank participants and invite them to tea and refreshments when they break to write the DIP and once more after it has been signed. Spontaneous outpourings of goodwill such as handshaking, smiling, and laughing were observed in a number of forums, particularly among those that took the ‘storybook,’ ‘polite,’ or ‘salvaged’ pathway. In lengthy forums with ‘drained goodwill’ or a continued sense of division, participants largely ignored the formal and informal closing of the conference and mingled only with their own or neutral parties, or were keen to leave as soon as possible.

Length of Forums

The length of forums in the Case Census range from one hour and 15 minutes up to six hours and 57 minutes, with the average forum lasting approximately two hours and 43 minutes. The Case Studies collected more detailed data on how long forums take, revealing that stage three often takes longer than stage one and two combined (Table 6.2). Forums observed for this study ranged from 50 minutes to five hours and 21 minutes in length. On average, stages one and two lasted almost an hour, and stage three lasted one hours and 20 minutes, with the average forum lasting two hours and 22 minutes.

Table 6.2. Length of forums

	Min	Max	Average
Stages one and two	24	2:02	1:02
Stage three	26	3:19	1:20
Total	50	5:21	2:22

Source: Case Studies

Some participants, including police and victim representatives, became anxious when forums went longer than anticipated, and on occasion would leave during stage three in order to get to other appointments. Others commented in interviews that stage three was too long, which reduced some of the positive feelings that arose in stage two. The following quote from a police officer at a ‘drained’ forum attests to this:

Just that it went for too long and you kind of ... by the end of it you're like oh thank God, it's over rather than if it ended earlier when we were all kind of on the roll like yeah, this is a good

idea, and this is a good idea, and we all felt positive about it. I think it would have ended on a more positive note rather than going 'this is two hours of my life, three hours of my life, I'm never going to get back'. Even though at one stage during the forum I was like, 'This isn't too bad,' I'd kind of lost that feeling by the time we were just going over and over and over again of the really small details towards the end.

While the DIP is an important document there is a danger that the amount of time spent negotiating each item can frustrate participants. It is worth considering whether there are ways to alter the script in order to more efficiently manage stage three and potentially shorten the process. Perhaps a time limit could be set on stage three.

What is Included in the Draft Intervention Plan?

The purpose of the DIP is to provide an additional sentencing option to the magistrate. Once ratified by the magistrate, the DIP becomes the Intervention Plan. This section looks closely at the types of items included in the Intervention Plans and draws on data from the Case Census as well as the Case Studies. It also considers the context in which these types of items are negotiated. Table 6.3 indicates that most Intervention Plans contained between two and five items.

Table 6.3. Number of items included in Intervention Plan

	No.	%
1	5	2.6
2	35	18.1
3	42	21.8
4	48	24.9
5	39	20.2
6	12	6.2
7	8	4.1
8	4	2.1
Total	193	100

Source: Case Census.

Table 6.4 displays the frequencies of the different types of items, along with the percentages of plans that contain that item⁸. The most common items are related to counselling and voluntary work, with over half of the plans containing something relating to these topics⁹.

Table 6.4. Frequency and types of items included on Intervention Plans

	No.	% of plans with item
Voluntary work	108	56.0
Counselling	108	56.0
Apology	97	50.3
Drug-related	85	44.0
Personal development	85	44.0
Other	39	20.2
Employment	33	17.1
Education	22	11.4
Public accounting	17	8.8
Banned from premise	13	6.7
Follow-up meeting or letter	11	5.7
Compensation	9	4.7
Medical	9	4.7
Gambling-related	8	4.1
Good behaviour	6	3.1

Source: Case Census

Voluntary work

Voluntary work was the most common plan item. Perhaps this is such a common item because the idea of 'community service' as a sentence is familiar to most participants. Hours specified for voluntary work were evenly distributed, ranging from three hours to over 600 hours.

Table 6.5. Hours of voluntary work specified in Intervention Plans

	No.	% of all voluntary items	% of plans with item (N=193)
20 hours or under	24	18.6	12.4
21 to 50 hours	45	34.9	23.3
51 to 100 hours	21	16.3	10.9
Over 100 hours	28	21.7	14.5
Unspecified	11	8.5	5.7

Source: Case Census

⁸ When plans contained multiple items about one topic, this was recoded as one item to avoid inflation of the frequencies.

⁹ Counselling here refers to general counselling for mental health issues or unspecified issues. Where the plan specifies counselling for drug issues, this is coded under drug-related.

In the observed forums, participants commonly suggested voluntary work as an item. 'Giving back' or 'paying back' to the community were phrases used to justify this suggestion. Community members also emphasise that voluntary work can have benefits for offenders too. For example, by engaging in voluntary work the offender might gain perspective on their own life, participate in their community like a 'model citizen', or boost their resume and therefore employment prospects. Participants were generally enthusiastic about voluntary work, but they regularly deferred to the police or other participants with forum experience when deciding on how many hours work to recommend.

Participants sometimes considered whether voluntary work should be concurrent to other plan items, before or after them. For example, in instances where an offender has underlying addiction issues, participants agreed that voluntary work should follow counselling or drug and alcohol interventions. In one such forum, the group unanimously agreed that giving back to the community was important, but the offender needed to get assistance to recover from their addiction first.

Counselling

In the forums included in this study, counselling was suggested primarily as a therapeutic and rehabilitative measure. In some forums where a counsellor was present, the first appointment was made on the spot. This can provide momentum for offenders, and smooth the transition from forum to Intervention Plan. Participants in several forums also noted that beginning counselling sessions before reappearing in court 'looks good' to the magistrate. There were also several instances in which the offender was seeing a psychologist or counsellor prior to forum, and the plan required that they continue with appointments.

Counselling is frequently included as an Intervention Plan item. Proposals for counselling take three forms: (a) an assessment for counselling (11% of all counselling item); (b) attendance at counselling where the hours are determined by a professional (59% of all counselling items); and (c) attendance at counselling where the hours are determined by the group (30% of all counselling items).

Table 6.6. Types of counselling items in Intervention Plans

	No.	% of counselling items	% of plans with item (N=193)
Counselling assessment only	13	11	6.7
Counselling amount determined by professional	68	59	35.2
Counselling amount determined by group	35	30	18.1
Total	116	100	

Source: Case Census

Forum participants often struggle with deciding counselling duration and details, with confusion about whether this is the responsibility of the forum, the magistrate, or the counsellor treating the offender. This can create lengthy discussions in stage three. Facilitators can be pulled in two directions here. On the one hand, specificity is required to allow for adequate follow-up by the Intervention Plan Supervisor. On the other, facilitators are expected to allow the group to determine the details of the plan.

One way to shorten this stage is for facilitators to play a more active role in managing the drafting of these items, for example by suggesting appropriate wording for this item before participants try and determine duration and details on their own.

Drug-related items

The drug treatment-related items included: (a) assessment only; (b) drug counselling or treatment to be determined by a professional; or (c) drug counselling or treatment to be determined by the group. Drug testing was also an item featured in the Case Census, with five plans requiring drug testing (2.6%), and eight plans requiring an assessment only (4.1%). Most Intervention Plan items relating to drugs (53.4%) are for drug counselling or drug treatment where an amount may be recommended or suggested by the group, but the actual treatment will be determined by a professional who works with the offender. Again, as with the counselling items, about 32% of the drug-related items specified the amount of drug counselling or treatment.

Table 6.7. Types of drug treatment-related items on Intervention Plans

	No.	% of drug treatment items	% of plans with item (N=193)
Drug testing	5	5.7	2.6
Drug treatment assessment only	8	9.1	4.1
Drug treatment amount TBD	47	53	24.4
Drug treatment amount specified	28	31.8	14.5
Total	88	100	

Source: Case Census

As with items relating to counselling, participants struggle with how specific items relating to drug treatment should be. The process would be expedited more efficiently if facilitators offered participants an appropriate wording at the outset.

Apology

While items requiring a gesture of apology from the offender occurred in half (50.3%) the forums in the Case Census, this was not a common Intervention Plan item in the forums observed, where most offenders apologised in person instead.¹⁰

The end of stage two involves a scripted opportunity for apology which the offenders almost always offer. The tone and delivery of these varied, as did their impact on other participants. Many offenders, especially those who are articulate and remorseful, apologise almost immediately in stage one. This apology may be unacknowledged by the group and often, it is not until the end of stage two that the other participants feel ready to respond to an apology, or perceive it as genuine.

In their interviews, many offenders cited the opportunity to personally apologise to the victim as one of the best things about the forum, and the main reason they wanted to attend. While the importance of a personal apology cannot go amiss, several participants pointed out that saying sorry did not carry the same impact and conviction as showing that you were sorry. Participants would routinely say that saying 'sorry' does not on its own 'mean' anything. 'Showing' one was sorry could be demonstrated, for example, by agreeing to attend rehabilitation or by 'putting their money where their mouth was'. This idea of apology through compensation

¹⁰ The reason for the discrepancy between the Case Census and the sample of cases in the Case Studies may be because of the over-representation of forums with a direct victim the latter. Because a victim was more often present in the latter, there was less need for a letter of apology.

demonstrates the symbolic meaning many groups attached to material transactions.

When offenders apologise, it is sometimes recorded on the Intervention Plan as a 'verbal apology'. Most often, apologies in Intervention Plans take the form of written letters to the victim. This is especially true when victims are not present at the forum and the participants are often driven by a sense that such a symbolic gesture will show the victim that the offender understands the harm caused and feels remorseful. Facilitators prompt participants to determine the length and content of the letter, even down to the finer details such as whether it should be typed or handwritten ('more sincere' according to several participants).

In addition to framing the written apology as a gesture toward repairing the harm, offenders were frequently advised by other participants to write the letter prior to reappearing in court because it makes a 'good impression' on the magistrate. This attitude can detract from the offender's efforts at repairing the harm, by shifting the focus to creating a positive image in the face of an impending sentence.

Personal development

Personal development refers to items that specify a course or personal development training for the offender. The most frequent was the 'traffic offenders program' or similar driving course. Due to the concentration of dangerous driving offences, personal development items related to driving were more common in Intervention Plans in Northern NSW. The second most frequent was anger management courses.

Table 6.8. Types of personal development items included in Intervention Plans

	No.	% of personal development items	% of plans with item (N=193)
Driving	34	34.7	17.6
Anger	12	12.2	6.2
Sport	11	11.2	5.7
First aid	10	10.2	5.2
Lifestyle	9	9.2	4.7
Other	9	9.2	4.7
Family and relationships	5	5.1	2.6
Financial	4	4.1	2.1
Religious	4	4.1	2.1
Total	98	100	

Source: Case Census

Other items

'Other' items were those that fell outside the standard categories listed in Table 6.1. Examples include: providing more evidence to the police, writing a journal, visiting brain injury units at the hospital and giving blood. These items which can not be categorised anywhere else suggest a certain creativity and, because they are very specific to the case and group they relate to, can perhaps 'repair the harm' more directly. At the same time, they are not necessarily always restorative, and may even have rehabilitative or punitive aspects.

The following are some examples of such items, from the Case Studies:

- The offender, a high-ranking member of a local volunteer organisation, was charged with embezzling funds. One item on her plan was that she should step down from her other positions of authority within the community, including her position training new recruits and making speeches at events.
- The offender drove into the victim, breaking his elbow, then drove away. An Intervention Plan item unanimously agreed on by the forum participants was that he lose his licence for a period of 12 months.
- Ten years before the forum, the offender had stolen from the company she worked at to support a drug addiction and repay debts. Since then she has attended extensive rehabilitation and is married with a young family, is working part-time, and is no longer involved with drugs. In stage three, the arresting officer said: '... from a policing point of view, we don't meet a lot of people with a past as bad as that who've turned themselves around'. She suggested the offender write up her life story, focusing on the bad and good choices she made along the way, as a resource police could use to help influence young at-risk people.

Intervention Plan items such as these take on a mythic status amongst Forum Sentencing staff. In the initial stages of the research numerous stories from staff were repeated about forum outcomes as apt and inspiring. While these do seem to represent a restorative justice ideal of more personal and creative outcomes that are closely tailored to the offence, the harm, and the people/communities directly involved, they are relatively infrequent, with most forums yielding plans with more 'standard' outcomes.

Stakeholders interviewed as part of the study were asked their views on what makes a good Intervention Plan. Some

responses focused on procedural issues, such as making sure the facilitator remained neutral in the discussion, or that the 'right people' are present, or that the item actively repairs harm and reduces reoffending. Others gave examples of a good outcome that echo the ones described above. For example:

- An offender who had damaged the victim's house agreed to paint this house as a result of the forum.
- The offender had punched a security guard and, at the forum, he agreed to sit in on a shift with this guard to see the behaviour he dealt with at work.
- The victim and offender had a fight at their children's school, frightening both sets of kids. At the forum, they agreed to have their families meet socially over a meal so their kids could see them 'hanging out as friends'.
- At the forum for an offender who had committed a dangerous driving offence, they agreed to participate in a 'walkthrough' at the brain injury unit.

These examples represent what Daly (2003) refers to as 'nirvana' stories of restorative justice – they are held up as an ideal as to what is possible in Forum Sentencing but are also exceptional in that they do not necessarily represent the outcome of the majority of Intervention Plans. In the typology represented in Table 6.1, such items would be a likely outcome of 'storybook' stage three dynamics.

While there is a tension between encouraging such creativity and the ability to monitor such items, our interviews suggest that Intervention Plan Supervisors are enthusiastic about supervising these kinds of items. It is also important to note that creative items coded as 'other' do not necessarily meet the restorative ideal Daly (2002) describes above, and may have punitive elements. Forum Sentencing should consider the relative value of different kinds of items, and emphasise incorporating examples of creative items that can still be monitored into the preparatory stage with participants.

Financial compensation

Financial compensation does not appear as a common item on Intervention Plans in the Case Census. However, it was often discussed at forums but not included in the plan as an actual item, rather as a recommendation to the magistrate. This was due to legal issues concerning sentencing and monetary compensation orders.

A desire for financial compensation was a significant motivator

for many victims. In some cases, victims wanted to be reimbursed for out-of-pocket expenses, for example, an assault case where the victim had lost money due to time off work and damaged property. In other situations, the victim explicitly requested only a token repayment, not wanting to financially cripple the offender. In yet another, it was recognised that the offender was struggling financially and could not afford to pay back the sum taken but suggested she could afford a portion over time in weekly instalments.

In the forums observed, compensation was seen primarily as a straightforward transaction that restored financial balance, a gesture of apology or as a punitive measure. The desire for financial compensation was often articulated in fraud/embezzlement cases, in many of which the offenders themselves initiated the discussion by stating that they wanted to repay victims.

In cases where insurance companies had already rectified the loss to victims, the group's motivation for repayment became less straightforward. In a couple of such forums, the victim representatives sought 'symbolic' compensatory measures from the offenders for largely punitive reasons. In another forum, the victims did not want the money personally but suggested that the offender give the money to charity to remind her 'at the hip pocket' of what she had done.

An issue with the monetary compensation orders is that court costs are added to the compensation orders. This is seldom discussed at the forum, and may be unknown to participants. It is one of the areas in which facilitators could have more knowledge.

Intervention Plans and Sentencing

After the forum the facilitator writes a report about what happened. This can be an arduous task and facilitators put great effort into making reports succinct, representative, and balanced. The report is given to the magistrate along with a copy of the DIP. Both documents are considered at the time of sentencing. This practice follows on from a recommendation in People and Trimboli's (2007) evaluation of the pilot program, that the program should: 'Develop a proforma court report, with a succinct summary of key features, for submission to the magistrate prior to the offender's sentence hearing, to allow the magistrate time to consider the report' (2007: p. xi).

When a case goes back to court, the magistrate can decide to sentence on the day, usually making the Intervention Plan items the conditions of a bond, or they can defer sentence, keeping the offender on bail while they complete

the Intervention Plan items. The Case Census shows that the magistrate accepts most Intervention Plans. Nine out of 203 forums were rejected outright although it is unclear how many were modified. Program Administrators reported examples of magistrates modifying plans, either adding a compensation order to a sentence, or disregarding the recommendation for compensation.

While, anecdotally, magistrates have commented to the program that these reports are useful, there is no systematic data on how reports are used in sentencing. Both Forum Sentencing and the Local Courts would benefit from such an investigation.

Supervision of Intervention Plans

The Intervention Plan Supervisor position was created in response to recommendations from People and Trimboli's study (2007). The Program Administrator also plays a role in supervising the implementation and completion of the Intervention Plan.

At present, each Forum Sentencing office has a dedicated Intervention Plan Supervisor who is responsible for overseeing the offenders' progress with each item agreed to on their respective Intervention Plan. Intervention Plan Supervisors interviewed indicated that at any one time they could be supervising between 40 and 60 offenders, depending on which office they were based at and how busy it was. Intervention Plan Supervisors also suggested that it works well to have regular (usually weekly) contact with offenders, though some offenders require more support, and some less. Supervision of plans can be for a few months or several years depending on the sentencing outcome and contents of the Intervention Plan.

Some Intervention Plan Supervisors suggested the need to 'go beyond' their supervisory responsibilities in order to do their job well, explaining that 'sometimes you need to do those little things that are outside the scope of what you would normally do.' Examples of this might include supervisors accompanying offenders to their Centrelink appointments, or helping offenders who have become homeless to find accommodation. While this might fall outside the scope of their duties, they report that this is the best way to ensure compliance and that few offenders require such involved supervision.

Once the Intervention Plan is completed (or at the end of the period of the Order), the Program Administrator notifies relevant stakeholders of the outcome. This includes the court, the facilitator, the victim(s), the investigating police officer, the

Probation and Parole Service and the Police Prosecutor (Forum Sentencing Operating Procedures p.31).

Amendments to Intervention Plans

The Intervention Plan Supervisors and Program Administrators can make a submission for the magistrate to amend a plan. This is especially common when the plan contains specific requirements about counselling or drug treatment that do not accord with the offenders' needs or the capacity of the named service organisations. For example, the forum may agree for an offender to attend 24 sessions of counselling and the offender might begin treatment with a counsellor who advises that less counselling is required. The task of making submissions for amendment is considered time consuming and could be avoided if the language of the Intervention Plans enabled flexibility.

Non-compliance with Intervention Plans

A difficult part of the Intervention Plan Supervisor and Program Administrator's role is managing offenders who are not complying with the conditions of the Intervention Plan. If an offender is not completing their plan or not reporting on their progress to the Intervention Plan Supervisor, a warning letter outlining the consequences of non-compliance is sent to them. After three warning letters have been sent, the Program Administrator is obliged to submit a non-compliance order to the magistrate. The decision to breach an offender is taken seriously and activated after warnings are given.

Intervention Plan Supervisors and Program Administrators exercise discretion when deciding whether to breach offenders who are partly complying with Intervention Plans. For example, it was difficult to decide to breach offenders who were paying financial reparations to the victim but not fulfilling other aspects of their Intervention Plan, with the knowledge that a breach would affect the offender's repayment. Future research on the outcomes of Forum Sentencing should examine compliance of Intervention Plan orders and breaches.

Summary

The process of developing and managing Intervention Plans in stage three can define the overall quality of the forum. Here, participants are asked to make suggestions about how to 'make things better' ('repair the harm' and 'reduce reoffending'). This chapter has described the different trajectories that forums take in deciding what to include in the Intervention Plans.

When people come together to develop an Intervention Plan, the forum can go in a number of directions. Where earlier stages were marked by consensus, forums can continue on this path of high levels of engagement, goodwill, and 'restorativeness' (storybook model). In other forums, consensus is reached quickly and unproblematically, but doesn't achieve this same level of goodwill and engagement even though an amicable agreement is reached (polite). Reasons for this include potential areas of disagreement are not challenged or debated; the victim does not attend or, if they do attend, the impact is described as minimal; and the offender is cooperative and compliant from the outset. Other times, the positive dynamic developed in early stages disintegrates as stage three unfolds (drained). Reasons can include: endless negotiations over minute details of the plan or participants resist particular items and that frustrates and stalls the discussion.

Forums where stages one and two are marked by division can take two forms when participants negotiate an Intervention Plan. Unresolved issues can further divide the group and make it difficult for agreement to be reached (divisive) or, as sometimes happens, the participants make efforts to put their disagreements aside to work together to develop a plan despite feeling that the conflict has not been resolved by what appears to be an amicable agreement (salvaged).

Other elements that impact on which path the forum takes include participant domination (especially by community members, victim representatives, and offender supporters), facilitator knowledge and skill in managing forum dynamics and decision-making.

Common Intervention Plan items included voluntary work, counselling, drug treatment, an apology letter, and personal development training. Items involving unique attempts to directly repair the harm of a particular offence were rare. When they were included, they had restorative, rehabilitative and punitive aspects. Financial reparations, while not included in most Intervention Plans, were commonly discussed at forums. Magistrates accepted the majority of Intervention Plans. As far as commenting on compliance, breaches, and the amendments of plans, the researchers believe this is something that could be more adequately addressed in further studies.

Key issues and areas for improvement or follow-up

Divisive Forums. A small number of forms in the Case Studies were categorised as divisive. The divisive factors in these forums raise important issues regarding suitability and the

influence by particular participants, such as supporters and community members.

Duration of forums. Forums varied in length but the duration of stage three was particularly onerous in some cases. This could be improved by reducing the length of time it takes to develop the DIP. Some specific ways to do this include:

- Limiting the discussion around the length and duration of plan items pertaining to counselling and drug treatment. The facilitator could take a more active role in drafting the precise wording of the items. This is not to suggest that facilitators decide on the substantive content but rather that they take responsibility for drafting the proposed item using language that is appropriate for the court.
- Ensure participants and facilitators are aware of the role and existence of Intervention Plan Supervisors. The facilitator can introduce the concept of the Intervention Plan Supervisor and explain their role, either during preparation or at the beginning of stage three. In some forums, this would increase efficiency in stage three.
- Consider setting a time limit on stage three. This may require a revision of the script.
- Taking a break. The research found that many forums were run over several hours without a break. This creates discomfort for some participants. Forum Sentencing can look to other conferencing models to consider how they structure in breaks rather than enforcing a 'no breaks' policy which can have a negative impact on forum outcomes.

Facilitation: managing stage three. Managing stage three is one of the most challenging facilitation tasks. Some ways facilitators can be supported to manage this stage effectively are:

- Ensure facilitators are fully briefed on court processes relevant to Forum Sentencing, such as bonds and compensation orders, so as to be able to answer more detailed questions from participants before or during the forum.
- Increase the mentoring of new facilitators including observing more experienced facilitators prepare for and facilitate forums.

Future research. The key areas for future research suggested by this report are how Forum Reports are being received and considered by magistrates and the outcomes of Forum Sentencing, including compliance of Intervention Plan orders and breaches.

CHAPTER 7

CONCLUSION

The current report documents the process and dynamics of Forum Sentencing in New South Wales in order to analyse what contributes to a 'successful' forum and suggest areas for improvement. This final chapter presents a summary of the key findings.

Profile of Forums

Chapter three presents a profile of the characteristics of forums and participation in forums. The most common offences were dangerous driving offences (mostly involving high-range PCA), assault, and theft. The majority of offenders were male, and more than half were over 25 years of age. A direct victim was present in over half of the forums and when there was no direct victim present, a victim representative usually attended (frequently from a victims' advocacy organisation). While most offenders had at least one supporter present, only a minority of victims who attended brought a supporter with them. The majority of forums had a community member and a police officer present. Typically, forums had six to eight participants present.

Successful Processes

A restorative justice encounter can have many twists and turns, unanticipated deviations, dull moments and dramatic events. Certain developments in the early stages, however, can significantly impact on the overall quality of the forum.

Two main trajectories can be identified in the early stages (Chapter 5). These are a shift towards **consensus** among the forum participants in successful forums or towards increasing **division** in less successful ones. The main elements that contribute to the development of consensus or division are whether the offender is upfront and willing to take **responsibility** (and is perceived to be sincere), and whether the victim and other participants can articulate the **harm** of the offence in a meaningful way.

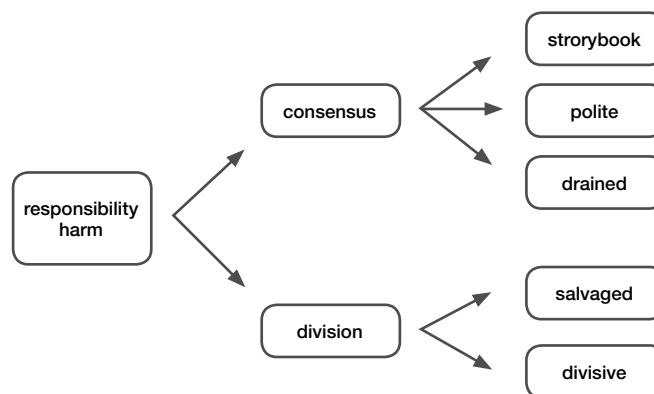
If consensus about the offence and its impact emerge in the early stages of a forum, there is a good chance that the main issues will be resolved and the participants will proceed towards an agreed outcome. Based on these early trajectories, a number of forum dynamics can be broadly identified by the end of the forum. These models describe the dynamics of the forum as **storybook**, **polite**, **drained**, **salvaged** or **divisive** (Chapter 6).

When participants begin to negotiate the Draft Intervention Plan from a starting point of consensus, they tend to actively work together to develop a plan that everybody appears happy

with. This **storybook** model is marked by a high level of shared understanding and a feeling of goodwill. Forums that do not achieve these high emotional resolutions, but instead are typically marked by a **polite** dynamic, are where participants are amicable and the plan is accepted as fair. In forums where the goodwill generated in the early stages disintegrates, as participants endlessly negotiate the fine points of the DIP, the forum loses momentum, the participants become bored and restless. These are the characteristics of a **drained** forum.

Forums that are marked by division in the early stage can develop two typologies. In some, the activity of developing a draft Intervention Plan can **salvage** the forum by allowing for a new focus, away from arguments, towards a shared common goal of developing a workable plan. Participants work together to develop an outcome without hostility, although some divisions remain. In others, the volatility and unresolved issues in stage two can continue into stage three, resulting in unsatisfied participants and a **divisive** forum.

Figure 7.1 Emotional trajectories in a forum



This report details the trajectories and typologies that contribute to the dynamic of a forum; the role of the participants in developing, maintaining, and influencing these trajectories; and the strategies facilitators use to effectively manage forums.

The next section summarises the key issues at each stage of the Forum Sentencing process, and explains how it relates to the trajectories and typologies defined above.

Referrals and forum preparation

There are key activities and tasks that need to be completed by stakeholders, forum staff and facilitators before each forum

as a prerequisite for a successful forum. For example, as discussed in Chapter 4, suitable cases need to be identified and suitable participants prepared for their role in the forum. Issues that contribute to suitable cases and appropriate participant identification and preparation are outlined below.

Referral of cases. Successful forums depend on appropriate referrals where there is an identified harm to be discussed. A challenge that the program faces in the long-term is to establish an active referral pathway by magistrates, rather than the current ‘case extraction’ pathway. This would strengthen the process by enabling Program Administrators to more effectively manage and support facilitators.

Eligibility and suitability. Most of the cases referred to Forum Sentencing meet the eligibility criteria and are assessed as suitable. In some of the cases that were marked by a divisive dynamic, the suitability of some participants was questionable. When a facilitator has suspicions that a participant is unsuitable at any stage in the preparatory process or even once the forum has begun, they should feel that they are able to exclude their participation.

Consent. It is important to acknowledge the criminal justice context in which Forum Sentencing is situated. As it is a pre-sentencing process, offenders may feel obligated to comply with the magistrate’s Forum Participation Order. It is also important to ensure that all participants have given informed consent and are aware of the voluntary nature of the process.

Number of participants. Facilitators are expected to invite approximately ten people to the forum. This is an ‘aspirational number’, and facilitators need to balance quantity and quality of participation. It can be difficult for facilitators to find ‘appropriate’ participants who have a connection to the matter (including community members, professionals, service providers, and victim representatives). Even so, it is preferable to have less than ten participants than to invite additional community members and other participants solely for the purpose of increasing numbers. A forum with fewer participants where consensus emerges is preferable to more people where division emerges and participants are left feeling frustrated by the end of the forum.

Victim representatives. Victims can nominate someone to attend on their behalf or, commonly, the facilitator or Program Administrator will invite a victim representative. This has led to strong links between victim’s rights and advocacy groups and Forum Sentencing which may result in the same representative attending numerous forums and, at times, exercising significant influence.

Police preparation. Some police were more supportive of Forum Sentencing than others. Program Administrators and Facilitators viewed police involvement in Forum Sentencing as important for filling in details about the offence that may not have been raised by other participants, and also providing support for victims. Strengthening relationships between police and Forum Sentencing remains a continuing priority.

‘Respected community members’. The role of respected community members encapsulates a diverse range of participants. It is important that facilitators identify community members who have some connection to the participants or the case.

Facilitator training and experience. Training for facilitators is important for ensuring that they understand the tasks they are expected to carry out as part of their role. Interviews with facilitators indicated that while they found the training and the Program Administrator’s support helpful before their first forum, some suggested that they had also benefited from mentoring by an experienced facilitator when they first started.

Developing Positive Trajectories in Stages One and Two

As discussed in Chapter 5, successful forums develop a dynamic of consensus in the early and middle stages of a forum when the offender effectively takes responsibility for the offence at the encouragement of all participants and the harm of the offence is communicated in a meaningful way. Issues that contribute to these two elements are outlined below.

Offenders give their account of what happened and take responsibility for their actions to varying degrees. Some are better communicators than others, and those who are articulate have an advantage. When offenders are defensive or don’t appear sincere, however, this puts the other participants off. An offender who sincerely takes responsibility for what they have done can put the dynamic of the forum on a path towards consensus. Some offenders are clearly remorseful and ready to take responsibility at the beginning of the forum. For others, this happens during the forum as the victim and other participants describe the impact of the offence. Both types of forums can be successful but in order for a feeling of consensus to be reached, it is imperative that participants perceive that the offender is taking responsibility.

Community members can help draw out the story, encourage the offender to take responsibility, and contribute to the development of appropriate Intervention Plan items. They can contribute towards achieving high levels of consensus. Their

contribution can be detrimental, however, when there is a lack of rapport between the offender and community member, or the offender resents their presence. This will contribute to a divisive forum dynamic. Their presence can be effective if they have communicated with the offender before the forum and developed rapport. There is an additional barrier to consensus when community members are not fully briefed about the case, or they do not have a direct connection to the offender. This was most often the case for members who had attended multiple forums.

In successful forms, *victims* effectively communicate the harm of the offence to the offender and the other participants. To reach consensus, all participants develop an understanding and agreement about the impact of the offence. When a victim is not present, *victim representatives* used a number of strategies to discuss the likely harm caused, the most effective being to represent the views of the primary victim. When a victim representative does not directly represent the victim's interests, it is harder for a meaningful articulation of harm to be expressed and this limits the ability of the group to reach consensus. This suggests that forums are more likely to have a successful trajectory when a victim or victim representative is present who can directly speak about the harm caused as a result of the incident.

Supporters can help draw out the story and provide a context for the offending behaviour or acknowledge the extent of the victim's harm. They can also cause imbalance and division, such as when offender supporters shield the offender from taking full responsibility or challenge the victim's explanation of the harm they have experienced. Victims, in particular, often do not have supporters present, although other participants such as police can play a support role. Too many supporters on the offender's 'side' can contribute to division and even at times to re-victimisation. If offender supporters are domineering or aggressive at the forum it needs to be carefully managed by facilitators.

Police effectively contributed to forums when personal reflections about the nature of the harm caused were offered over general complaints about 'the paperwork' that an arrest caused. Some police are unsure about the legal issue of providing more information about an offender or an offence in a forum. Forum Sentencing can clarify the role of the investigating officer at the forum and explain what information, such as the offender's history and details of the case, can be discussed at the forum.

There are two additional elements that may impact on how

participants communicate with each other and their capacity to reach consensus. The first concerns awkward moments due to the forum script. While facilitators follow the script carefully, when scripted questions are asked that have already been answered it disrupts the conversation. If scripted questions have already been answered, it is superfluous for facilitators to read every prompted question in the sequence it is written. In addition, the requirement that facilitators take detailed notes in order to write up the forum report decreases their ability to keep track of forum dynamics (verbal and non verbal) and effectively manage conflict.

Developing an Intervention Plan

As discussed in Chapter 6, during the negotiations over the Intervention Plan, the trajectories that develop in earlier stages either shift participants towards further consensus or towards increasing division. This stage can be categorised by five dynamics, described above as storybook, polite, drained, salvaged, and divisive. The key elements that can contribute to these dynamics during the negotiation of agreements are outlined below.

Firstly, although forums vary in length the duration of stage three was particularly onerous in some forums. These forums ran the risk of becoming drained. One way to address this is to reduce the length of time it takes to develop the Intervention Plan. This can be achieved in a number of ways. One strategy is to limit the discussion around the length and duration of plan items pertaining to counselling and drug treatment. The facilitator can take a more active role in drafting the precise wording of these items. Another is to ensure participants and facilitators are aware of the role and existence of Intervention Plan Supervisors. The facilitator can introduce the concept of the Intervention Plan Supervisor and explain their role (during preparation or at the beginning of stage three). In some forums, this knowledge would serve to increase efficiency at this stage. Also, the program could consider setting a time limit on stage three but this might require a revision of the forum script.

Secondly, many forums were run over several hours without a break, which appeared to create discomfort for some participants. Forum Sentencing can look to other conferencing models to consider how they structure in breaks rather than enforcing a 'no breaks' which can have a negative impact on the forum dynamic.

Thirdly, while participants are asked to make recommendations that fit the specific case and offender, most Intervention Plans take a similar shape, that is, they contain similar types of items

around voluntary work, counselling, or personal development. Facilitators can encourage participants to suggest and develop items that are closely relevant to each case. However there is a risk too that such proposals might not necessarily be rehabilitative or restorative, or that punitive items might be proposed or included. This process therefore needs to be carefully managed by facilitators.

Fourthly, financial compensation was commonly discussed in forums. Monetary items cannot be included in the Intervention Plan but they can be suggested to the magistrate as a recommendation. Greater awareness for participants and facilitators of the potential capacity for financial reparations at forums and subsequently at court, as well as of the limitations surrounding them, could help to demystify financial matters and manage expectations relating to monetary compensation.

Finally, managing the development of Intervention Plans is one of the most challenging facilitation tasks. Facilitators can be supported in this stage by including training on court processes relevant to Forum Sentencing, such as bonds and compensation orders, so as to be able to answer more detailed questions asked by participants before or during the forum. Another way to support facilitators is to increase the mentoring of new facilitators including by allowing opportunities for observing more experienced facilitators in preparing for and facilitating forums.

Future Research

The current study has described the nature of the Forum Sentencing process from court referral, preparation and forum discussion through to the forum decision-making stage. In doing so, it documents the different elements that contribute to achieving 'successful' restorative justice processes and suggests several ways in which the process and operation of Forum Sentencing can be improved.

While the current study provides an in-depth examination of the dynamics of forums, it is limited in its capacity to report on aspects of the Forum Sentencing process at the referral and sentencing stages. As the program expands, future research should focus on including the nature of the referral process in different court locations and whether it is improving; how Intervention Plans and reports are integrated into the sentencing process by magistrates; and how Intervention Plans are supervised, monitored and completed including compliance of orders and any breaches.

There are also a number of ways that the program can improve the way it records information on criminogenic needs and

participant satisfaction to inform future monitoring, evaluation and research.

Future research encompassing a more longitudinal perspective on forum trajectories and typologies is needed. This can examine longer-term outcomes for participants whose forums fall into different typologies including long-term participants' perspectives on the forum, the sentencing process and subsequent reoffending.

References

- Bolitho, J. (2005) 'Restorative justice in action' in J Chan (ed.) *Reshaping Juvenile Justice: The NSW Young Offenders Act 1997* Sydney: The Sydney Institute of Criminology Series No. 22, pp. 17-24.
- Braithwaite, J. (2002) *Restorative Justice and Responsive Regulation*. New York: Oxford University Press.
- Braithwaite, J. and S. Mugford (1994) 'Conditions of successful reintegration ceremonies: dealing with juvenile offenders', *British Journal of Criminology* 34:139-71.
- Bruce, J. (2008) *Facilitating Restorative Justice: A Study of Conference Convenors*, PhD Dissertation, University of New South Wales.
- Bruce, J., Mason, G., and J. Bolitho (2012) 'Restorative justice: from juveniles to adults' in J. Bolitho, J. Bruce, J. and G. Mason (eds) *Restorative Justice: Adults and Emerging Practice*. Sydney: Sydney Institute of Criminology, pp. 1-16.
- Chan, J. (ed.) (2005) *Reshaping Juvenile Justice*. Sydney: Sydney Institute of Criminology.
- Daly, K. with Venables, M., McKenna, M., Mumford, L. and J. Christe-Johnston (1998) *SAJJ Technical Report No. 1: Project overview and research instruments*, accessed at <http://www.aic.gov.au/rjustice/sajj/tech-rep1.html>.
- Daly, K. (2002) 'Restorative justice: the real story', *Punishment and Society*, 4: 55-79.
- Daly, K. (2006) 'The limits of restorative justice', in D. Sullivan and L. Tift (eds) *Handbook of Restorative Justice: A Global Perspective*, Oxon: Routledge, pp. 134-145.
- Doak, J., and D. O'Mahony (2011) 'In search of legitimacy: restorative youth conferencing in Northern Ireland', *Legal Studies*, 31(2):305-325.
- Forum Sentencing (n.d.) *Facilitators Manual*. New South Wales: Attorney General and Justice Department.
- Forum Sentencing (2011) *Forum Sentencing Operating Procedure, 6 April 2011*. New South Wales: Attorney General and Justice Department.
- Harris, N., and S. Maruna (2006) 'Shame, shaming and restorative justice: A critical appraisal' in D. Sullivan and L. Tift (eds), *Handbook of Restorative Justice: A Global Perspective*. London: Routledge, Taylor & Francis Group, pp. 452-462.
- Hart, D. and G. Pirc (2012) 'Forum Sentencing: Using research and experience to improve practice' in J. Bolitho, J. Bruce and G. Mason (eds) *Restorative Justice: Adults and Emerging Practice*. Sydney: Sydney Institute of Criminology, pp. 57-79.
- Hayes, H. and K. Daly (2003), 'Youth justice conferencing and reoffending', *Justice Quarterly* 20(4):725-64.
- Hayes, H. and K. Daly (2004) Conferencing and re-offending in Queensland', *Australian and New Zealand Journal of Criminology* 37(2):167-191.
- Jones, C. (2009) *Does Forum Sentencing Reduce Reoffending?* Sydney: NSW Bureau of Crime Statistics and Research.
- Latimer, J., Dowden, C. and D. Muse (2005) 'The effectiveness of restorative justice practices: A meta-analysis', *Prison Journal* 85: 127-144.
- Luke, G., B. Lind, et al. (2002) *Reducing Juvenile Crime: Conferencing Versus Court*, Sydney: NSW Bureau of Crime Statistics and Research.
- Marchetti, E. (2009) *Indigenous Sentencing Courts, Indigenous Justice Clearinghouse. Research Brief no.5*. Sydney: Department of Attorney General and Justice, accessed at <http://www.indigenousjustice.gov.au/briefs/brief005.pdf>
- McDonald, J. (2012) 'Best practice in restorative justice facilitation: Some big ideas' in J. Bolitho, J. Bruce, J. and G. Mason (eds) *Restorative Justice: Adults and Emerging Practice*. Sydney: Sydney Institute of Criminology, pp. 156-172.
- Miers, D. (2001) *An International Review of Restorative Justice*, London: Home Office.
- Miller, S. L. (2011) *After The Crime: The Power of Restorative Justice Dialogues Between Victims and Violent Offenders*, New York and London: NYU Press.
- People, J. And L. Trimboli (2007) *Evaluation of the NSW Community Conferencing for Young Adults Pilot Program*, Sydney: Bureau of Crime Statistics and Research.
- Presser, L. and P. Van Voorhis (2002) 'Values and evaluation: Assessing processes and outcomes of restorative justice programs', *Crime & Delinquency* 48: 162.
- Rossner, M. (2008) 'Healing victims and offenders and reducing crime: A critical assessment of restorative justice practice and theory', *Sociology Compass* 2(6): 1734-1749.
- Rossner, M. (2011) 'Emotions and interaction ritual: A micro-analysis of restorative justice', *British Journal of Criminology* 51: 95-119.
- Rossner, M. (2013 forthcoming) *Just Emotions: Rituals of Restorative Justice*, Oxford: Oxford University Press.
- Shapland, J., Atkinson, A., Colledge, E., Dignan, J., Howes, M., Johnstone, J., Robinson, G. Pennant, R., and A. Sorsby (2004) *First Report from the Evaluation of Three Schemes*, London: Ministry of Justice Research Series.
- Shapland, J., Atkinson, A., Atkinson, H., Chapman, B., Dignan, J., Howes, M., Johnstone, J., Robinson, G. and Sorsby, A. (2007) *Restorative Justice: The Views of Victims and Offenders. Third Report from the Evaluation of Three Schemes*, London: Ministry of Justice Research Series.
- Shapland, J., Atkinson, A., Atkinson, H., Chapman, B., Dignan, J., Howes, M., Johnstone, J., Robinson, G. and A. Sorsby (2008) *Does Restorative Justice Affect Reconviction?: Fourth Report From the Evaluation of Three Schemes*, London: Ministry of Justice Research Series.
- Sherman, L. and H. Strang (2007) *Restorative Justice: The Evidence*, London: The Smith Institute.
- Sherman, L., Strang, H. and D. Woods (2000) 'Recidivism patterns in the Canberra Reintegrative Shaming Experiments', Canberra: Australian National University.
- Sherman, L. and H. Strang (2007) *Restorative Justice: The Evidence*. Smith Institute.
- Strang, H. (2002) *Repair or Revenge: Victims and Restorative Justice*, Oxford: Clarendon Press.

University of Western Sydney

Locked Bag 1797
Penrith NSW 2751 Australia
+61 2 9852 5222
www.uws.edu.au