



Australian Government

Australian Institute of Criminology

# Restorative justice approaches to economic crime control

Dr Russell G Smith  
Principal Criminologist  
[Russell.Smith@aic.gov.au](mailto:Russell.Smith@aic.gov.au)



# The limitations of prosecution and punishment

## Administration of criminal justice

- Low levels of detection and under-reporting of economic crime
- Difficulties associated with investigation and prosecution
- Sentencing problems – choice of sentence and severity

## Effectiveness

- Lengthy prison terms may be unnecessary and overly expensive
- Financial sanctions ineffective for high wealth individuals
- Professional sanctions may be more effective deterrents than prison
- Recidivism rates for some economic crime offenders are high

## Impact on offenders, victims and the community

- Family breakdown, wasted life skills and human capital, suicide
- Personal, emotional and financial impacts on victims and their families
- Indirect negative effects on business viability and shareholders



# Restorative justice approaches

## Definition

- ‘A process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future’ (Marshall, *Restorative Justice*, Home Office, 1999)

## Reintegrative shaming

- An offender admits the misconduct, recognizes its social significance, pledges corrective action, and is welcomed back into the community of law abiding citizens
- Allows offenders to explain their behaviour, and victims to explain the impact that the crime has had on them

## Outcomes

- A facilitator negotiates an outcome which will provide a reintegrative response to the offending – such as positive unpaid work, financial reparation, victim support, or community service



# The effectiveness of restorative justice approaches

## Quantitative evidence

- Prior evaluative research has mainly focused on juvenile, violent and property offenders – little white collar crime research
- On average, prior studies have found up to a 27% reduction in repeat convictions following the use of restorative justice procedures
- Restorative approaches tend to be more effective for serious offending
- Aust. study of 652 tax offenders – those who had reintegrative enforcement experiences reoffended at lower rates than others after 2 years

## Qualitative evidence

- Enables offenders, victims and the affected community to understand the causes and impact of the offending behaviour
- Achieves behaviour change without stigmatising the individual
- Is cheaper to conduct than conventional criminal justice punishments
- Shows more beneficial outcomes for victims than at present



## Responding to the critics

### A soft option / not real punishment

- Well-conducted conferences can have a profound impact on offenders

### White collar criminals don't reoffend

- Some serial fraudsters continue to offend, even in prison and on parole

### There are no victims of white collar crime

- Even for revenue fraud, community interest can be represented

### There are no identifiable peer groups available

- Company directors, accountants and lawyers have specific peer groups

### Some harms are incapable of remediation e.g. GFC

- Gestures of remediation can be given; opportunities to work debts off

### Offenders and victims may be located in different countries

- RJ may be inappropriate in some cases; could use video-conferencing



# Tailoring restorative justice to hot spots

## Least appropriate for:

- Corporate entities, scammers, cross-border offending, sociopaths

## Most appropriate for:

- Serious, high-value offending, driven by cupidity as opposed to temporary or situational reasons for offending
- Recidivists for whom conventional punishments have been ineffective
- Offenders with identifiable victims – who are willing to engage
- Offenders with a reputation to protect and a willingness to change
- Offenders with identifiable social or occupational reference groups who see the offender's conduct as undesirable (e.g. professionals)
- Offenders from non-corrupt countries

## Choose the most appropriate model of restorative justice:

- Indirect or direct mediation; conferencing; use with other sanctions



# Conclusions

## A need for change

- Conventional prosecution and punishment have not provided a complete solution to economic offending

## Targeted use of restorative justice can be effective

- Can reduce recidivism, help victims understand the crime constructively, enable offenders to continue to lead productive lives

## Avoiding counter-productive consequences of shaming

- Minimising indirect harm of innocent fellow employees / corporations
- Minimising negative effects on sharemarkets and innocent shareholders
- Ensuring that shaming does not go on forever

## Need for evaluative research

- There is a need for controlled experimental research, cost-benefit evaluations, and qualitative research on participants involved



**Australian Government**  
**Australian Institute of Criminology**

**[Russell.Smith@aic.gov.au](mailto:Russell.Smith@aic.gov.au)**



Australia's national research and knowledge centre on crime and justice