



## Director's Instruction No. 8

### Referring matters to Restorative Justice

#### Aim of Instruction

To set out the considerations relevant for the referral of matters to Restorative Justice (RJ) by the Director of Public Prosecutions.

#### To which matters does this instruction apply?

This instruction applies to all matters liable to be referred to Restorative Justice:

#### Background

The objects of the *Crimes (Restorative Justice) Act 2004* are set out in section 6:

- (a) to enhance the rights of victims of offences by providing restorative justice as a way of empowering victims to make decisions about how to repair the harm done by offences;
- (b) to set up a system of restorative justice that brings together victims, offenders and their personal supporters in a carefully managed, safe environment;
- (c) to ensure that the interests of victims of offences are given high priority in the administration of restorative justice under this Act;
- (d) to enable access to restorative justice at every stage of the criminal justice process without substituting for the criminal justice system or changing the normal process of criminal justice;
- (e) to enable agencies that have a role in the criminal justice system to refer offences for restorative justice.

RJ in the ACT is based around the needs of the victim. It is designed so that it 'augments' the criminal justice system without replacing it. In this sense, RJ processes in the ACT may run parallel with the existing criminal justice processes. More information may be found at: [http://www.justice.act.gov.au/criminal\\_and\\_civil\\_justice/restorative\\_justice](http://www.justice.act.gov.au/criminal_and_civil_justice/restorative_justice)

### **What matters may be referred?**

Section 14 of the *Crimes (Restorative Justice) Act 2004* provides that "less serious" offences committed by an offender may be referred to RJ. A "less serious offence" is defined in section 12 as "an offence other than a serious offence".

Section 15 provides that "serious offences" committed by an offender may be referred to RJ. A "serious offence" is one that is punishable by imprisonment for a term longer than—

- (a) if the offence relates to money or other property—14 years; or
- (b) in any other case—10 years.

Section 16 provides that a "less serious family violence offence" or a "less serious sexual offence" committed by an offender may be referred to RJ. Section 12 defines these terms:

***less serious family violence offence*** means—

- (a) an offence if the conduct making up the offence is family violence under the *Family Violence Act 2016* that is punishable by a term of imprisonment of—
  - (i) if the offence relates to money or other property—14 years or less; or
  - (ii) in any other case—10 years or less; and
- (b) a contravention of a protection order under the *Family Violence Act 2016*, section 43.

***less serious sexual offence*** means an offence under the *Crimes Act 1900*, part 3 that is punishable by a term of imprisonment of 10 years or less.

Section 16 also provides that RJ referrals can be made for a "serious family violence offence" or a "serious sexual offence", defined in section 12 as follows:

***serious family violence offence*** means an offence if the conduct making up the offence is family violence under the *Family Violence Act 2016* that is punishable by a term of imprisonment of—

- (a) if the offence relates to money or other property—more than 14 years; or
- (b) in any other case—more than 10 years.

***serious sexual offence*** means an offence under the *Crimes Act 1900*, part 3 that is punishable by a term of imprisonment of more than 10 years.

## Referrals

The *Crimes (Restorative Justice) Act 2004* sets out the entities that may refer an offence for RJ and also the stage of the criminal justice process that they may refer it (see Annexure). The DPP may refer a matter to RJ:

- after a prosecution referral is made for the offender; and
- before a second mention hearing for the offence by a court has begun.

### Relevant considerations for referral

The DPP will refer eligible matters to RJ where a prosecutor has formed the opinion that the objects of the Act would be served by such a referral, and in particular that the victim may benefit from the process.

This does not place an obligation on the prosecutor to ascertain the views of the victim – that can be done by the RJ unit if referral takes place. However, the views of the victim will clearly be relevant if known.

A DPP referral is no different to a referral by the AFP or the Court. The only distinguishing factor is the time at which the power to refer falls to the various entities. A DPP decision to refer a matter should be made in light of where the matter sits within the timeframe of the prosecution.

If the matter has progressed to a prosecution, this indicates that the AFP has determined not to exercise their discretion to refer the matter prior to charge or summons. The decision of the AFP not to refer may be relevant, but it is not determinative. An indication that the Court believes the matter should be referred is relevant but it is not determinative.

Neither the referral of a matter to RJ, nor the participation by a defendant in RJ, in itself affects the prosecution process. Matters should proceed in the same manner regardless of whether there is any referral to, or participation in, RJ.

In particular, there is no basis for any expectation that just because an offender participates in the RJ process, the prosecution will offer no evidence in the matter.

It may be appropriate for the court to take participation in the RJ process into account on sentencing an offender. However it is not appropriate for the court to indicate to a defendant that if they participate in RJ, the prosecution may be inclined to offer no evidence in their matter. Any such suggestion from the court should be politely but firmly disputed.

The decision to offer no evidence in a matter at any stage on public interest grounds will be taken in accordance with the Prosecution Policy.

## **Procedure**

The following procedure should be followed for a RJ referral by DPP:

1. The prosecutor identifies a matter for referral in accordance with this Instruction.
2. The prosecutor fills out the form and faxes the referral, Criminal History and Statement of Facts to RJ on 6207 3961.
3. Copy of the referral fax to be placed on file
4. Any correspondence or reports are returned to the A & B- list Paralegal to place on file

**ANNEXURE**

**Crimes (Restorative Justice) Act 2004, section 22**

**Table 22 Referring entities**

column 1 item	column 2 referring entity	column 3 stage of criminal justice process
1	chief police officer director-general (restorative justice) director-general (children and young people) police officer victims of crime commissioner	(a) after the offender is cautioned or apprehended; and (b) before a prosecution referral is made for the offender
2	director of public prosecutions	(a) after a prosecution referral is made for the offender; and (b) before a second mention hearing for the offence by a court has begun
3	Magistrates Court (including the Childrens Court) Supreme Court	unless, or until, the offender pleads guilty to the offence— (a) after a second mention hearing for the offence has begun; and (b) before the end of a pre-hearing mention or case status inquiry for the offence
4	Magistrates Court (including the Childrens Court) Supreme Court	if the offender pleads guilty to, or is found guilty of, the offence— (a) after the offender pleads guilty to, or is found guilty of, the offence (whether or not the offender has been convicted or sentenced); and (b) before the end of the proceeding
5	director-general (children and young people) director-general (corrections) director-general (restorative justice) sentence administration board victims of crime commissioner	(a) after a court has made a sentence-related order in relation to the offender; and (b) before the end of the term of the sentence-related order or the sentence (if any) of which it forms part (whichever is later)
6	referring entity prescribed by regulation	stage of the criminal justice process prescribed by regulation