



## VARJ Newsletter

### SPRING – SUMMER 2016

#### OCTOBER 2016 RJ INNOVATIONS FORUM

*What are the important **current innovations in restorative justice** in our part of the world? At a recent VARJ forum, held on the evening of October 19<sup>th</sup> at the **Law Institute of Victoria (LIV)**, a panel of presenters addressed this question before an enthusiastic group of practitioners and policy makers in education, justice and industrial relations.*

*Most of the presenters are experienced facilitators, and are currently managing programs, developing policy &/or mentoring colleagues. Their work collectively highlights how important it is that professionals involved with restorative policy or programs have a deep knowledge, drawn from experience, of **restorative processes**.*

**Amanda Lutz** manages the **Restorative Justice Unit (RJU)** in the ACT government's Justice & Community Safety Directorate (CSD). In February 2016, the RJU, began taking referrals of cases involving adult offenders from referring entities in the criminal justice system including the ACT Magistrates Court. The ACT is thus extending *group conferencing as part of the sentencing process* beyond youth justice into adult criminal justice.<sup>1</sup>

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<sup>1</sup> A [forum sentencing](#) program in NSW has been operating since 2005, but is not easy to compare with the ACT program. The NSW program has been undergoing reforms since 2013 to address a lack of central quality control over facilitation practice, relatively low rates of victim participation, and a lack of linkage with programs that reduce re-offending by adequately targeting risk factors.

Three **program managers** from **Jesuit Social Services (JSS)** described their current work. **Daniel Clements** is **General Manager of JSS** justice programs. **Glen McClure** and **Genevieve Higgins** are among Victoria's most experienced group conference facilitators. Glen has recently overseen the successful pilot of a **youth court diversion program**; Genevieve is currently overseeing the Hume-Moreland region pilot of the Education Department's **Navigator program**, which works with young people who are disengaged from school.

In the early 2000s, **Russell Jeffrey** was one of Victoria's original youth justice group conference facilitators. He subsequently worked as state-wide manager of the YJGC program within the Department of Health and Human Services, and is currently **Manager of Community Conferencing** at the Collingwood **Neighbourhood Justice Centre**. At the NJC, Russell is systematically applying group conferencing to support local residents proactively and collectively to address, crime, conflict and other common concerns – in the manner pioneered by our [friends in Maryland](#).

**Claire Seppings** has been widely acknowledged for the quality of her social work practice, including an award for *Exemplary Service* from the Minister for Human Services and the *Dennis McMillin Access to Justice Award*. Claire was more recently awarded a *Churchill Fellowship*, which enabled her to study international examples of programs in which ex-prisoners provide **peer mentoring for post-sentence reintegration**.

**Katrina Robinson** is also one of the state's most experienced group conference convenors. Katrina spoke, on behalf of CatholicCare Sandhurst about providing **restorative options for cases of family violence**, and the role that the **Central Victorian Restorative Practice Alliance** might play in supporting these reforms.

## RESTORATIVE JUSTICE in the Australian Capital Territory Beyond youth justice



Amanda Lutz explained that the **Restorative Justice Unit (RJU)** was established in Canberra in January 2005. The Unit is funded by the Australian Capital Territory's **Justice and Community Safety Directorate** (JACSD). It operates according to the *Crimes (RJ) Act, 2004*, and currently only receives referrals from the criminal justice system. The operations of the RJU are officially underpinned by UN principles for Restorative justice program operations.

Offering restorative justice group conferencing opportunities for members of the ACT the community in relation to offences committed by youth has been understood, from the outset, as Phase 1 of a broader RJ scheme which is intended eventually to include all offences. The Territory has been unusual in having bi-partisan support and legislative foundation for this more extensive application of restorative practices. There are doubtless multiple factors for this commitment to good policy. One factor may be that the average level of education in the ACT is 50% higher than the national average, such that the local population may be less willing to accept fear-and-anger-based politics and media, offering simplistic solutions to complex problems.

More specifically, Canberra was the site of the original [RISE program](#), which evaluated group conferences run by the Australian Federal Police. RISE involved four experimental-longitudinal tests of restorative justice as a diversion from prosecution. The tests compared outcomes for victims and offenders randomly assigned to have their cases prosecuted in court or diverted to a restorative justice conference. Four separate experiments enrolled cases from 1995 to 2000. One experiment tested cases of violent crime committed by offenders under the age of 30. A second tested cases of property crime against individual victims by young offenders. A third tested cases of shoplifting by young offenders in major department stores. The fourth tested cases of offenders arrested for driving under the influence of alcohol.

The RISE program took inspiration from [the original Australian pilot of group conferencing in southern New South Wales](#), and in turn inspired [larger experiments in the United Kingdom](#). These police-run conferencing programs prompted the establishment of the ACT's Restorative Justice Unit with a complement of full time facilitators and also prompted the NSW government to establish and fund youth justice group conferencing programs that employ independent expert facilitators.

Amanda described the accumulation, through the last decade, of additional data from conferences, surveys, and related studies on [the applicability of conferencing for cases involving adults](#). In addition, local champions across ACT institutions and agencies have generally supported and promoted the work of the RJU. These include media with knowledge of RJ principles, most notably senior reporter [Ross Peake of the Canberra Times](#), and perhaps the most consistently enthusiastic and effective champion across community and government over recent years, the progressive – and now retired - ACT Attorney General Simon Corbell.

The breakthrough of expanded funding in the 2015-16 Territory budget finally made it possible to extend the program to [Phase 2](#), involving adult cases and more serious offences for both adults and young people. (Serious or indictable offence attracts maximum sentence of more than ten years for a personal crime and more than 14 years for property/other). Increased funding has supported the unit to hire three new convenors, as well as a court liaison officer/administrative support worker, and a second Indigenous Guidance Partner. The funding has enabled enhanced supervision and additional facilitator training, and the development of additional guidelines. The Unit is now building capacity for stage 2 of Phase 2 in 2018, when conferencing will be offered for cases of family violence and sexual offences.

Expanding the scheme has required further strengthening stakeholder engagement. ACT Policing were already a strong partner, and the Unit has also built good working relationships with the Courts – including the Galambany Indigenous Court, ACT Correctional Services, the Sentencing Administration Board and Victim Support, ACT.

Importantly, the current Victims of Crime Commissioner, John Hinchey, is not only a strong advocate; he was one of the pioneers of restorative justice in the ACT. John Hinchey had worked in Sydney as a welfare officer with the homeless before managing an ACT community-based welfare service. After fifteen years with ACT Corrective Services, he helped establish the ACT Restorative Justice program, and was its inaugural manager.

Amanda provided **early statistics** from Phase 2 of the ACT RJ program. Between March and October 2016, 57 adult offenders had been referred. Although some of these were still undergoing assessment, 21 had already participated in RJ conferences, and 24 agreements had been established. Agreement plans have typically involved payment to the victims, a plan of work for the victim, written letters of apology, and attendance at rehabilitation programs or counselling. Most agreements were still being monitored as of October, but the agreement compliance rate to date has been 100%.

There have been several challenges to court referrals. Some involve simple logistics: concern about an increased workload in an already busy, fast-paced and often adversarial environment, which already focuses on mandated reports, and from which many clients just want to move on as quickly as possible. Courts are largely offender-focused forums, and making space for victims to access RJ when there is often no clear sense of whether they are even interested at this stage, has meant that initial uptake of the scheme in this space has been slow. If a matter does proceed to conference, and an RJ Agreement is formed, the courts then have the option of deferring sentence until the RJ Agreement is complied with, or to make compliance a condition of a Good Behaviour Order. (Agreements may include financial restitution.) Furthermore, a case cannot be referred to the RJ program without agreement both from Defence lawyers *and* Prosecution – and the ACT [Office of the Director of Public Prosecutions](#), which was a prolific referrer in the early years, has made only a handful of referrals over the past seven years.

Nonetheless, there is a long list of **initiatives that have worked well** – and which may prove instructive as Victoria’s justice system follows the lead of the ACT. These include: having an organised and confident *Court Liaison Officer* with a weekly list of identified eligible defendants, and who approaches lawyers and defendants effectively; taking opportunities to *provide reinforcing feedback* to referring entities; protecting participant interests and safety by avoiding naming either the offender or the victim as “not suitable”, and instead simply stating that the “*matter is judged not-suitable*”; *consistency in reporting*, including consistently providing - with the permission of participants - extra commentary in reports. Facilitators are encouraged in their court reports to “write for story”, and provide a narrative account that conveys to any reader some sense of the power of a group conference, and the benefits for participants.

Amanda concluded by outlining some of the challenges anticipated when Part 2 of Phase 2 extends the ACT RJ program to cases of family violence & sexual offences in 2018. Important collaborative work is already underway with justice system colleagues and other external agencies that deal with gendered violence matters. These are much the same challenges that are also being addressed by members of the Central Victoria Restorative Justice Alliance - as Katrina Robinson addressed later in the evening [see below].

### **JSS justice programs and a restorative justice approach**



#### ***Jesuit Social Services (JSS)***

*Daniel Clements from Jesuit Social Services provided some background to the work of the organisation to build a just society by advocating for social change and promoting the health and wellbeing of disadvantaged people, families, and communities.*

*JSS work where the need is greatest and where its capacity, experience and skills make the most difference. Jesuit Social Services values all people, and seeks to engage with them in a respectful way, that acknowledges their experiences and skills and gives them the opportunity to harness their full potential.*

*JSS service delivery and advocacy focuses on the following key areas:*

- *Justice and crime prevention – people involved with the justice system.*
- *Mental health and wellbeing – people with multiple and complex needs and those affected by suicide, trauma and complex bereavement.*
- *Settlement and community building – recently arrived immigrants and refugees and disadvantaged communities.*
- *Education, training and employment – people with barriers to sustainable employment.*
- *Direct services and volunteer programs are located in Victoria, New South Wales and Northern Territory.*

Daniel described his key area of responsibility, the Justice and Crime Prevention portfolio, which focuses on delivering programs that support young people, families and individuals who come in contact with the criminal justice system. He spoke about the importance of a practice approach that incorporates principles of Restorative Justice.

The principles and practice of restorative justice are most applicable in programs (i) where cases involving young people are diverted from the court, (ii) where conferencing is offered as part of the sentencing process in the Children's Court, and now also (iii) where restorative practices are provided "behind the wall." In discussing the inherent tensions in this work, Daniel cited an important paper by Mandeep Dhami, of the University of Cambridge, and two colleagues, who argue that while *"imprisonment is associated with an increase in recidivism, [r]esearch on prisoners' adaptations to imprisonment may bring us one step closer to explaining and potentially controlling the (in)efficacy of prison."*<sup>2</sup>

*"For instance, identifying the indigenous and imported factors that influence a prisoner's participation in the regime, his contact with others, his thoughts and feelings, and disciplinary infractions in prison may help prison managers to reconfigure experiences of confinement so that prisoners are more likely to reintegrate successfully and less likely to reoffend on release, as adaptations may significantly impact these outcomes. [...] Restorative justice and imprisonment are seemingly compatible when the goal of both is to rehabilitate, and prisons purport to encourage successful social reintegration upon release, while restorative justice aims to reconcile damaged relationships. Overall, restorative justice can have many potential benefits not only for prisoners, staff and prisons, but also for victims of crime and the communities in which prisons are located". [...] It is possible to see restorative work as a culture-changing process for those prisons that wish*

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<sup>2</sup> Mandeep K. Dhami, Peter Ayton & George Loewenstein [adaptation To Imprisonment: Indigenous or Imported?](#) *CRIMINAL JUSTICE AND BEHAVIOR*, Vol. 34 No. 8, August 2007 1085-1100



*to become more effective in meeting the long-term needs of offenders, victims and their communities”*

This restorative approach to work with people in the criminal justice system can at times come under pressure from poorly informed critiques of restorative practice that limit the focus to recidivism. For example, members and friends of VARJ may be familiar with the consistently [positive evaluations of Victoria’s Youth Justice Group Conferencing program](#). Nonetheless, in the week of our forum at the LIV, Victoria’s parliamentary opposition offered another proposal for progress-through-regress in youth justice. One-line policies are apparently particularly appealing when they involve alliteration or rhyme, and “*naming and shaming*” certainly seems to have enduring appeal. Appropriately, one articulate response was written by Siann Nutting, a student on placement at Jesuit Social Services:

*[‘Naming and shaming’ young offenders would only further marginalise](#) 28th October, 2016*

*There has been growing attention given to issues of youth crime, with talk of ‘thugs’ and youth gangs widespread in the media. As a tough on crime response to these issues, the Victorian Opposition recently proposed the introduction of reforms which relate to the naming and shaming of young offenders. These proposed reforms would include the removal of the protection of anonymity for repeat young offenders aged under 18.*

*However, these reforms are unlikely to have a positive impact on community safety, and research shows they are actually more likely to have the opposite effect, and lead to further re-offending.*

*The average person could be led to believe we are in the midst of a youth crime wave. This is simply not true. According to the Crime Statistics Agency the number of crimes committed by young people has decreased from over 44,000 per year in 2009-10 to under 36,000 in 2014-15 – a 20 per cent reduction. The number of young offenders committing those crimes is also down and has been dropping consistently for the past five years.*

*There is however a small group of young people who are committing more crimes and that these crimes are serious and cause harm. It is this small group of serious offenders that demand our attention and we must respond with the most effective tools at our disposal.*

*The types of responses proposed in the mainstream media are not the most effective tool and do not adequately take into consideration the negative impact that naming and shaming would have on a young person’s prospects for rehabilitation and may ultimately increase their likelihood of re-offending.*

*A 2008 NSW Parliamentary report found that the naming and shaming of young offenders with the associated effects of stigmatisation can be counterproductive, and actually reinforces deviant behaviour. Young offenders who are labelled as ‘criminal’ typically accept this label, which leads to increased association with other offenders, negative self-identity and further re-offending. Further, the*

*stigmatisation of being labelled a criminal can negatively impact on their ability to gain employment and accommodation, and lead to reduced educational opportunities.*

*Naming offenders would act to only further marginalise a group who are already marginalised.*

*We must hold young people accountable for their actions while working with them to address the often complex factors that led to their offending. Data from the Youth Parole Board has shown that of those youth offenders in Victoria in 2014, 62 per cent were victims of abuse, trauma or neglect, 23 per cent had a history of self-harm or suicidal ideation and 43 per cent had a previous Child Protection order.*

*We all want to live in safe communities. To achieve that we need to rely on evidence as the basis for persistent, respectful interventions with young people that can turn their lives around, rather than populist responses that will only entrench harmful behaviour.*

Daniel Clements addressed the more general, persistent claim that restorative justice programs “don’t work”. He rightly noted that a focus on reoffending outcomes alone fails to capture the extent of other benefits, such as victim satisfaction, offender responsibility for actions, and increased compliance with a range of orders, among others. Nonetheless, since false claims about recidivism rates persist, Daniel reminded us of the 2013 Campbell Collaboration meta-study by Heather Strang and Lawrence Sherman, who have been involved with restorative justice for over twenty years.

In [Restorative Justice Conferencing \(RJC\) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systematic Review](#), they report the results of ten comparable experiments and conclude that:

*“the evidence of a relationship between conferencing and subsequent convictions or arrests over two years [...] is clear and compelling, with nine out of 10 results in the predicted direction... The impact of RJC on 2-year convictions was reported to be cost effective in the 7 UK experiments, with up to 14 times as much benefit in costs of the crimes prevented (in London), and 8 times overall, as the cost of delivering RJC. The effect of conferencing on victims’ satisfaction with the handling of their cases is uniformly positive...” [Properly conducted conferences] “appear likely to reduce future detected crimes among the kinds of offenders who are willing to consent to RJC, and whose victims are also willing to consent [...] Among the kinds of cases in which both offenders and victims are willing to meet, RJC seem likely to reduce future crime. Victims’ satisfaction with the handling of their cases is consistently higher for victims assigned to RJC than for victims whose cases were assigned to normal criminal justice processing.”*

Daniel also noted a 2014 summary review of restorative justice programs by Jacqueline Joudo Larsen, for the Australian Institute of Criminology. In [Restorative justice in the Australian criminal justice system](#), she suggests that the three key challenges currently facing the restorative justice movement are to:



- extend restorative justice to adult offenders;
- extend restorative justice to serious offences;
- achieve “restorativeness”.

Daniel described current work to extend restorative justice to adults. Feedback from the Justice User Group – a joint partnership between Jesuit Social Services and The Centre for Innovative Justice – has suggested that one cohort for which this would be valuable is that of adults with Acquired Brain Injury (ABI), who have histories of offending and multiple periods in and out of custody. The experience of frontline practitioners across JSS programs is that many program participants would welcome an opportunity to offer an apology, and to make reparation for harm they have caused.

So the JSS staff involved in justice programs will: continue to explore opportunities to incorporate restorative justice into programs, including for young people in and out-of-home care setting; advocate generally for an *opt-out* rather than opt-in approach to restorative justice programs; pursue opportunities to link restorative justice with intentional and purposeful *case management*; seek opportunities to *evaluate* programs more thoroughly, and strengthen and grow the skill-base for practitioners, including through the [group conference convenor accreditation program](#).

The recent **Navigator** and **Court Diversion** programs are both consistent with these goals:

## **NAVIGATOR**

**Genevieve Higgins** described the **Navigator** program, which is one element in Victoria’s “Education State” initiatives to cut by 50% the proportion of students who leave education early. Navigator is aimed at young people between the ages of 12 and 17 who have disengaged from education. The program is designed to break a cycle of inter-generational disadvantage and respond to individual needs, particularly for those cohorts most at-risk: young people in care, Indigenous young people, young people from disadvantaged backgrounds, and young people from newly arrived communities

JSS is responsible for running the pilot of Navigator in Hume/Moreland. The JSS approach to Navigator is informed by the agencies’ knowledge and experience that engagement with education is the best prevention against criminogenic behaviour, and is a major promoter of community safety. Elements of the JSS approach include: a family focus (which includes engaging siblings where possible); professional practice that is trauma-informed, restorative, culturally respectful and safe; assertive outreach; and intentional case-management.

The initial work with schools in the Navigator program has served as a reminder of differences between schools, inconsistent practices, and the need to bridge the gap between what

happens in the school environment and what happens outside. To manage these differences and gaps, JSS is currently developing and trialling:

- [1] A *typology of cases*, distinguishing various factors that contribute to school disengagement;
- [2] Multiple *process options*, including a format for *Student Support Groups* (SSG) informed by restorative principles to ensure consistent quality practice;
- [3] A *decision tree* to support intake and case management;
- [4] A *glossary of acceptable / appropriate language* to use in the program.

Interestingly, some of the terminology used in the Navigator program serves as a reminder of the significance, and evolution over time, of the [names used to label](#) individuals, social trends and policy initiatives. In the early twentieth century, "juvenile delinquent" was the most commonly used English-language term to refer to young people who were out of school and not working. The term arose in the context of the "reform-", "residential-" or "industrial schools" movement, which institutionalised young people in a way that was, in many cases, profoundly harming. Commissions of Inquiry in [Canada](#) and [Australia](#) have recently been examining some of the consequences of these practices.

Through the 60s and 70s, "delinquent" was replaced with "drop-out", a phrase apparently derived from the Timothy Leary slogan "Turn on. Tune in. Drop out". This terminology implied that a wayward young person had chosen a life of drugs and indiscipline over education. Interestingly, language in North America and Australia seems currently to be diverging, with activists and policy-makers in North America using terms such as "pushout", which (rightly) implies that the onus should not be entirely on the "dropout", or the more optimistic terminology of "opportunity youth," which (rightly) suggests a more systemic approach. The Australian phrase "*disengaged from education*" (i) does not imply any particular causation, and (ii) is purely descriptive, rather than optimistic. Nonetheless, this sober, purely descriptive language may prove to be a useful starting point for effective reform.

### **Youth Diversion Pilot Program**

**Glen McClure** explained the Youth Diversion Pilot Program, an initiative of Court Services Victoria, which has been piloted since 2015 within the Children's Court of Victoria, in partnership with Youth Support and Advocacy Service (YSAS) and Centacare. The pilot has involved four metropolitan courts and three rural/regional courts. It was judged successful after twelve months.

The program has been informed by lessons from Youth Justice Group Conferencing. It provides an opportunity to redress harm caused by offending behaviour. It involves a targeted and timely brief intervention, with the capacity to adjust the intensity and duration of the exercise.

It works with the family, carers, community, and schools, and is integrated with other court diversion programs.

Diversion plans have sought to improve family relationships, link a young person into support services, and arrange some redress for the harm caused by the offending. Glen provided two case studies of a targeted brief restorative justice intervention, and provided two examples of diversion plan conditions: “Participate in a family restorative practice session to address offending behaviour, impact on family and victim and redress harm caused”, and “Engage with support services to address substance use/anger management/ employment &/or education pathways”.

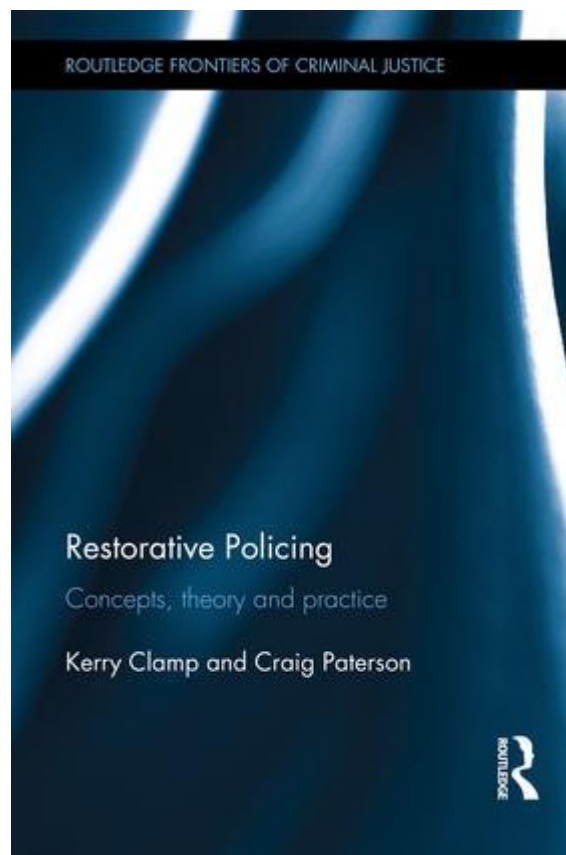
*Successful experiments can have unintended consequences or flow-on effects, and some of the effects of the Children’s Court Diversion Program are discussed below [pages 19 - 24].*

Glen also provided three striking recent case studies from the Youth Justice Group Conferencing program. Since changes to the law in 2015, **group conferencing** is offered for a wider range of **serious offences**, and Glen described group conferencing to address cases of **aggravated burglary**. His consistent experience has been that, when dealing with serious offences such as violent assault, aggravated burglary and armed robbery, the process of reaching a shared understanding, addressing the harm that has been caused, and working together to improve the situation can be extremely powerful and empowering process for the young person *and the victim[s]*.

## Community conferencing at the NJC



Police are increasingly aware of the evidence about *what works* with real victims-of-crime, offenders, and the communities in which they reside. In the just-published *Restorative Policing: Concepts, theory and practice* (Routledge 2017), Kerry Clamp and Craig Paterson discuss the twenty-five year history of *restorative policing* practice, and locate this experience within a criminological discussion about “neo-liberal” responses to crime control:



The authors suggest the book will interest undergraduate and postgraduate students studying restorative justice, policing and crime control, and also police professionals implementing restorative practices. It certainly provides an interesting framework within which to consider developments that **Russell Jeffrey**, supported by Anoushka Jeronimus from Victoria Legal Aid (VLA), and Katrina Hall from Victoria Police (Vic Pol), explained to the October forum.

Russell described a recent case referred from the Melbourne Children’s Court involving eight young men who agreed to participate in a *Community Group Conference* (CGC). The terminology of “Community Group Conferencing” was requested by the referring Judge to indicate that the referral occurred outside the legislative guidelines of the Youth Justice Group Conferencing program.

Vic Pol and VLA had submitted a joint proposal to the Court for a number of young men to participate in a CGC to deal with incidents in a public affray earlier in the year. Vic Pol regarded the situation as unusual because of (i) the high number of young people involved and (ii) the fact that many had had minimal or no prior contact with police.

For five of the young men, the CGC took place at the pre-sentence stage of proceedings, and they would later return to Court for sentencing. However, for three of the young men, participating in the CGC was an intrinsic part of their respective “diversion plans”.

Vic Pol’s was looking to achieve two key goals: for the young men involved in the incidents to be “accountable” for their actions, and for them “not to reoffend”. It was hoped the exercise might mitigate the risk of further reoffending between affiliates of rival gangs.

Other issues discussed that Vic Pol and VLA discussed with Russell, as convenor, were how to define the focus of the CGC, and who else should be invited, in addition to young people. It was agreed that each young man must be accompanied by a family member. Other participants might include victims and witnesses, victim advocates, community elders/leaders, Vic Pol members - including officers on duty during the incidents, investigating officers, youth resource officers and prosecutors, lawyers, and any other people affected by the incident, and/or who had an interest in reducing the likelihood of reoffending.

Thirty-three people participated in the CGC, which was held at the Neighbourhood Justice Centre. Each of the eight young men was accompanied by a family member, and 17 professionals also attended.

Vic Pol representatives noted, during the CGC, that the eight young men - and indeed, many of the other young men involved in similar incidents - seemed to have had no intention beforehand of being involved in offending. It appeared that a culmination of peer pressure, Facebook chatter, media coverage (by Channel Seven), and general rumours of a fight, whipped up emotions that led to young men acting “out of character”. The stories told at the CGC, particularly by the young people, illustrated that [behavioural thresholds](#) had been crossed, and young people who might not otherwise offend had committed crimes.

The young men acknowledged their accountability during the CGC, and the group developed plans to ensure something similar does not happen again. The young men agreed to take responsibility for their actions, and so the hopes of Vic Pol members and other stakeholders for the CGC were fulfilled.

This test case raises questions about the broader use of the group conferencing process in the youth justice system, beyond the current YJGC program, to address offending, including offences *perpetrated in groups*. This use of conferencing, as part of a diversion plan for three of the young men, is significant. It supports the use of restorative justice practices as *both* an *alternative* to, and an *extension* of, traditional court-based responses to criminal behaviour.



## Reintegration after prison

State and Territory governments are spending at least \$80,000 to house each prisoner for a year. **Claire Seppings** noted that Victoria recorded its highest ever prisoner population of 6,506 on 31 January 2015. In the five years since 2011, the budget for correctional services in Victoria has risen by 31% to \$1.04 billion. Corrections Victoria anticipates that, at current rates of increase, Victoria's prison population may be as high as 8,600 by June 2019.

Yet prison has not been particularly effective at creating individual rehabilitative change. Victoria's *recidivism rate* is currently also at a record high of 44.1%. This rate of recidivism is a growing burden on government budgets, while disengaging people from society, undermining human potential, and increasing risk for the community. The [Victorian Ombudsman's September 2015 report into the rehabilitation and reintegration of prisoners](#) urged Corrections Victoria to provide better value for that \$1 billion annual spend, and improve public safety.

The public expects violent offenders to *serve time*, but if prison is to *reduce crime*, offenders should be better coming out than when they went in. Claire suggests, in her [Churchill Fellowship report](#) that a missing link in rehabilitation and reintegration is to use the expert experience of people closest to the problem, and to realise real reform by valuing reformatory success stories. As Claire puts it:

*"No matter what I have given or done personally and professionally, or any of us "straight agencies" hoped to achieve through our obvious mainstream and specialised services, it would never be enough. Prisoners had been telling me for years that the prison programs (violent offender, drug and alcohol, clinical sessions exploring the impact of state care on their addictions and offending) do not work and they could run them better themselves. They want to change but have forgotten. Forgotten how to live a straight, drug and crime free life - a normal life."*

Claire described a range of programs internationally that have successfully embraced the benefits of peer mentoring; former "criminals and drug addicts" now sit at the policy table, and work with researchers, public servants and government ministers to inform justice-, social-, and health policy reform.

Former prisoners in Australia describe the opposition they have encountered to the idea of engaging reformed prisoners in the criminal justice system. Other agencies suggest the key problem is the current security clearance processes, and a general wariness about using reformed offenders in adult pre-release programs. Correctional authorities feel that their programs are under intense scrutiny from community, media and politicians, and claim there is insufficient evidence to support such programs. However, this report provides solid evidence of success in comparable jurisdictions. Commencing mentoring prior to release is vital - and it should be happening now.



## Restorative Process in cases of Family Violence

As we reported in our [Autumn 2016 VARJ Newsletter](#), the Victorian Commission into Family Violence identified a number of potential benefits of a restorative justice approach:

*The Commission examined this matter carefully, particularly in light of concerns that such an approach might be manipulated by perpetrators and could undermine the important gains that have been made in ensuring that family violence is treated as a public concern rather than simply a private matter between individuals.*

*The Commission is persuaded that, with robust safeguards in place and as an additional option for (not a substitute or precondition for) pursuing action through the courts, a restorative justice process should be made available to victims who wish to pursue such an option. Restorative justice processes have the potential to meet a broad range of victims' needs that might not always be met through the courts and to help victims recover from the impact of the abuse they have suffered.*

*[Restorative Justice has the] potential to deliver better outcomes for victims than the adversarial justice system because it is able to provide a forum for victims to be heard on their own terms and offers a process that is tailored to individual women's needs, and informed by their own choices its particular relevance in those cases where the victim does not wish to separate from the perpetrator but wants the abuse to stop, or where violence has been used by an adolescent against their parents the prospect of encouraging perpetrators to acknowledge the impacts of their behaviour and to recognise its effects on the victim. [...] The development of a restorative justice approach should proceed cautiously. In consultation with victims' representatives and experts in restorative justice, the Department of Justice and Regulation should develop a framework and pilot program for the delivery of restorative justice options for victims of family violence that are victim-driven, incorporate robust safeguards, are guided by international best practice, and are delivered by suitably skilled and qualified facilitators."*

Katrina Robinson explained how this cautious, consultative work was already underway in Central Victoria, originating in discussions in the Central Victorian Restorative Justice Practice Alliance. The Loddon Campaspe Community Legal Centre had conducted a three-year research project involving 190 victims of family violence with cases before a number of central Victorian Magistrates' Courts. The research report [Will Somebody Listen to Me](#) was published in April 2015. It identified five elements that women consistently identified as being important to their sense of justice:

- **Participation:** for example, for the decision-making to be more in their hands;
- **Voice:** to be heard, for legal actors to listen, and for those experiencing family violence to be empowered to say what is their truth; for them to define clearly what is safety and justice for them;
- **Validation:** for their feelings, behaviour and experiences to be understood; to be believed, rather than judged or made to feel ashamed;

- **Offender accountability:** for the offender to acknowledge the harm he has caused; for him to apologise and change his behaviour; and for the community and justice system to monitor his behaviour and hold him accountable;
- **Restoration:** for the justice process to be the beginning, not the end; for healing to occur for the women, and their children, and their community.

The *Will Somebody Listen to Me* report recommended the development of a restorative pilot program for families experiencing family violence. In response, the Centre for Non Violence (CNV) in Bendigo and CatholicCare Sandhurst commenced joint research in relation to the use of restorative process in family violence. They undertook a joint research trip to Wellington New Zealand in February 2016, just prior to the release of the *Royal Commission Family violence* report.

The research trip engaged in conversations with researchers, academics, RJ practitioners, family violence specialists. The Bendigo CNV family violence specialists were immersed in the possibilities and critiques of restorative process through this engagement. Meanwhile, the Royal Commission released its recommendations, including # 122:

The Department of Justice and Regulation, in consultation with victims' representatives and experts in restorative justice, develop a framework and pilot program for the delivery of restorative justice options for victims of family violence. The framework and pilot program should have victims at their centre, incorporate strong safeguards, be based on international best practice, and be delivered by appropriately skilled and qualified facilitators [*within two years*].

In August, 2016 CatholicCare and the Centre for Non Violence co-sponsored Fiona Langdon, Jennifer Annan and Tony Lindquist from the Auckland-based [Project Restore](#) to conduct a three-day workshop, critiquing and comparing practice, in order to inform the development of the proposed pilot program in Central Victoria.

## **Key lessons to date have been:**

### **The model needs to be driven by the needs of the victim-survivors.**

Do they want an RJ process? What are their expectations of the process? When do they feel safe and ready to engage in a conference?

### **The model needs to be flexible, and consider the needs of victim survivors, especially in regard to *when* the process is delivered.**

There are opposing views internationally on whether restorative justice should be available, pre- or post-sentence, or both. NZ practitioners are government-funded for pre-sentence conferencing. Project Restore originated with philanthropic funding, and continues to have some flexibility in how to fund service delivery. To best meet the needs of the victim, there is an opportunity to deliver post-sentence conferences.

### **Collaboration with victim-survivor and offender specialists is essential in design and delivery of the program.**

The group was surprised by the variation of practice in New Zealand. Conversely, they were impressed by the strong collaborative practice of Project Restore.

### **Both victim-survivors, and offenders are engaged in therapeutic interventions, prior to participation in the conference.**

Restorative Practice is one intervention among many that may be needed to stop violence, and support repair.

### **Comprehensive systems in place for ongoing safety assessments and the monitoring of compliance to the conference agreements.**

The group was surprised at how many referrals were assessed as “unsuitable” to proceed to conference. The New Zealand funding model covers referral, each preparation session, and conference delivery. This funding model means that service providers are not pressured to push through to conference in order to meet organisational funding targets. The group noted that funding for post-conference follow-up is essential. This is at a point where the RJ process many have increased the vulnerability of victim survivors, and follow-up needs to be well funded.

### **Practitioners with highly developed skill, and experience are essential. A well-developed training and accreditation process is essential to ensure consistency of quality practice.**

New Zealand currently has 27 providers of programs offering Restorative Practices in response to Family Violence. Each program is guided by the Ministry of Justice Practice Standards, yet even in the small sample of the three providers that the delegation visited, there seemed to be significant variation in practice.



In January 2016, the Central Victoria Restorative Justice Alliance expanded its membership criteria to also include colleagues interested in restorative practices, either as practitioners, advocates or interested parties, including individuals and organisations. These changes are reflected in the Alliance's [new website](#). The Alliance meets monthly to:

- Promote “best practice” in restorative practices in the local area;
- Develop partnerships and links between restorative practice practitioners;
- Develop a local area community model of restorative practice;
- Identify trends, issues and service gaps across each of the practice areas;
- Explore the application of restorative practices with different cultural groups in diverse settings;
- Share resourcing and ensure continuity of individual and organisational membership;
- Provide peer support as required in the Victorian Association of Restorative Justice (VARJ) accreditation process.

## ISSUES RAISED IN THE OCTOBER *CURRENT INNOVATIONS* FORUM

### Youth Diversion: Challenge AND opportunity

The **Youth Diversion Pilot Program** being run within the Children's Court of Victoria was judged successful after a 12 month pilot through 2015. Key results from the pilot program were provided to the stakeholder reference group in early 2016:

- 175 diversions were finalised, and 162 of these were judged successful, representing a **success rate of > 92%**;
- The most common outcomes are reported to have been: (i) a better **understanding** by the young person of their offending; (ii) **improved relationships** with family and community; (iii) **reengagement with education** and improved **mental health**.
- The key demographic data are unsurprising: 70% of young people involved with the program were male; ~70% were aged between 15 and 17 years; <10% identified as Aboriginal and Torres Strait Islanders (ATSI); nearly half of the young people involved with the program reported previous offending; ~ 1/3 had a history of either child protection or family violence; > ½ had previously been suspended or expelled from school; and > 1/3 were disengaged from education and /or employment at the time of assessment.

In the 2016/17 Budget, the Victorian Government announced funding to deliver a **state-wide Youth Diversion Program**. The **Victorian Children's Court website** describes the program as follows:

#### Aims

The youth diversion program aims to:

- change offending behaviours and attitudes;
- promote pro-social behaviour;
- assist rehabilitation; and
- reduce crime, improve community safety and cut the cost of prolonged involvement with the criminal justice system.

The program will target young people who acknowledge the offence/s and who have little or no history of offending.

#### Key objectives

The key objectives of the program are to:

- enable support and intervention to be provided to young people who may be starting out on a path of offending;
- facilitate diversion away from the criminal justice system at that crucial point;

- avoid a finding of guilt being recorded (on successful completion of the program); and
- assist the young person to address any problems likely to lead to further offending behaviour.

Diversion plans will focus on links to family, school and community. Plans will be broad-ranging and fit the circumstances of the accused and the offending (e.g. letter of apology to the victim, drug and alcohol counselling, employment services *etc.*).

### Program components

The key components of the program are:

- referral of the young person by the court for assessment as to their suitability for diversion;
- assessment of the young person at court as to their suitability for diversion;
- recommendation to the court about a diversion plan, including any program components necessary to address the particular circumstances and/or needs of the young person and the offences before the court;
- if part of the diversion plan, delivery of a support program for the young person for a limited period of time; and
- reporting to the court in relation to a young person's compliance with and completion of any diversion plan.

The **typical diversion plan** has involved between two and five action points. The statistics suggest that the plans have largely been effective for the young people involved. Delivering the program seems also to have **increased the organisational profile** of the service-providing agency. An increased profile may increase awareness of, and engagement with, related programs. So the diversion program seems to be positive both (i) for young people involved with the justice system, and (ii) for service provider agencies.

The program has nonetheless raised concerns in several general areas. The fundamental concern was that, in the absence of clear principle-based guidelines, there may be a temptation for professionals, organisations and “the-system-as-a-whole” to take shortcuts. The most obvious impact of “shortcuts” relates to:

#### ▪ **The interests and rights of *Victims of Crime***

The current data suggest that some cases suitable for *group conferencing*, and where (i) the **victim(s) of crime** may wish to have participated in a group conference, and (ii) may have benefited from participation, have nonetheless been referred to the *youth diversion* program.

This emerging practice is **not inconsistent with the *Children, Youth and Families Act 2005*** nor with the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014*. Section 415(1) of the *Principal Act* lists the range of cases in which “the Court may consider deferral of sentencing for the purpose of a child's participation in a group



conference.” In other words, the primary rationale for convening a group conference is to **support judicial decision-making about a suitable disposition for the young person.**

The legislation indicates that victims of crime *may* be invited to the group conference, but the *Act* itself does not create an obligation to invite the victims of crime. In practice, court advice workers and group conference convenors are aware that the presence of victims generally improves the group conference process, and is beneficial for victims themselves, and so these professionals strongly endeavour to ensure victims’ attendance. Nonetheless, victim participation is supported mainly by (i) *ethical principles*, and (ii) *practice guidelines* on facilitating the conference *process*, rather than required than by the *legislation* governing the YJGC *program*.

However, referring certain cases to *youth diversion* as against *group conferencing* **may be inconsistent with the Victorian *Victims Charter***, which indicates that victims should expect “*to be given clear, timely and consistent information about [their] rights and entitlements and, if appropriate, be referred to victims’ and legal support services [and] to have the court process explained to [them], including [their] ability to attend relevant court proceedings and [their] role if [they] are a witness.*”

It is not entirely clear, in the Victorian context, whether victims of crime are being denied their rights and entitlements under the *Victims Charter* if a case that might otherwise be eligible for conferencing is instead sent to youth diversion. This issue is likely to become more significant as the anecdotal and research evidence grows about the therapeutic benefits of participating in a group conference. Certainly the Victorian context contrasts starkly with that of the ACT.

As a 2014 Australian Institute of Criminology [overview of Australian restorative justice programs](#) highlighted, the ACT is currently the only jurisdiction with a “victim-centric” group conferencing program. The ACT *Crimes (Restorative Justice) Act 2004*, which commenced operation on 31 January 2005, requires that a group conference cannot proceed unless a victim or parent of a child victim (or substitute participant for either) participates, as well as the offender;

The program, delivered by the ACT Restorative Justice Unit, is designed to ensure serious offences are dealt with appropriately within the criminal justice system while *also providing victims, offenders and their supporters opportunities to deal with the personal effects and impacts of crime through restorative justice*. Studies of the program show positive outcomes on victim and offender perceptions of fairness, victim *feelings of safety* and on reducing reoffending among offenders who participated in a conference following a violent offence.

The *Crimes (Restorative Justice) Act 2004* has been implemented in two phases. The first operational phase involved the referral of young offenders aged between 10 to 17 years of

age for less serious offences involving a victim. Phase two, which began in March 2016, has seen the scheme expand to include adult offenders, as well as serious offences for both young and adult offenders. Guidelines to provide a framework for the management of domestic violence and sexual offences are being developed in consultation with key government and community stakeholders. The ACT scheme will eventually be available to both young and adult offenders for all types of offences.

It seems that, in the ACT, the legislated emphasis on the **interests and rights of victims** has supported the continuing extension of applications of group conferencing. Conversely, (i) a relative lack of emphasis on the *interests and rights of victims* in Victoria's *Children, Youth and Families Act 2005*, and (ii) a lack of any deep understanding among policy-makers of the *therapeutic effects* for victims and other participants of attending a well-convened group conference, may now be allowing cases that are suitable for group conferencing to be *diverted* from the YJGC program.

Clearer **referral guidelines for decision-makers** may be required to protect the interests and rights of victims of crime to participate in a group conference.

#### ▪ **Unmet targets**

Service provider agencies have been required to convene a certain number of group conferences. It has long been a source of concern that service providers have only limited influence on the *factors that affect these targets* – most obviously, (i) the degree of *understanding* that court officials have about the group conferencing process, and (ii) the *willingness* to refer cases to group conferencing.

A great deal of work has been done at courts around the state to increase stakeholder awareness of group conferencing. It would be unfortunate if some of the value of this work is undone because a “shortcut” is now officially available. It would be even more unfortunate if service providers were somehow penalised for failing to meet targets because a growing number of otherwise-eligible-cases are now being diverted from a group conference.

One way to address the concern about unmet targets would be to house the youth diversion program with the agencies that currently deliver YJGCs. It seems clear from the youth diversion pilot program that the skill-set developed by group conference convenors has been valuable for working with young people in the diversion program.

Another way to address this concern about unmet targets would be to identify **other applications of group conferencing** where the skills of the YJGC convenors could be put to good use.

## ▪ Underutilised Skills

Emerging programs in a number of areas could – and should - make direct use of **the group conference convenor skill-set**. Key programs are overseen by the Departments of Education and Justice, rather than Health and Human Services, which funds and centrally coordinates the YJGC program. Relevant programs include:

### ☞ Schools:

Schools have for many years used group conferencing to respond to serious cases involving conflict within the school community, including cases where the school is considering suspending or excluding students. The single largest constraint on the use of conferencing for this application is the *lack of availability of skilled convenors*.

Group conferencing can also support two programs recently launched by the Department of Education and Training. The program *Respectful Relationships* has been developed to address family violence through education in schools and early childhood education settings. The report on the pilot of the Respectful Relationships program notes that schools have been provided with general advice on how to respond to disclosures but not with any adequate process, and the group conferencing process would be well suited to bridge this gap.

[Navigator](#) is a service delivered by community agencies in collaboration with the Department's Area teams and schools. Providers are responsible for linking young people to support services and interventions, and working with schools to support re-engagement planning by addressing barriers to engagement and supporting learners to re-engage in education or training. Providers monitor young people, report on outcomes, and identify service and planning gaps. The group conferencing process is ideally suited to re-engagement planning.

### ☞ Problem-solving courts:

Group conferencing has long supported judicial decision-making in the Children's Court. In other jurisdictions, group conferencing has been extended to support judicial decision-making in other courts. There is a growing trend for the establishment of specialist problem-solving courts. Their guiding philosophy is most commonly described as "therapeutic jurisprudence" – which tends to mean minimising further harm and addressing underlying causes. What is lacking in these courts is a mechanisms for involving all those affected in decision-making. Group conferencing can provide that mechanism, thereby combining *therapeutic jurisprudence* with *restorative justice*. Applications of group conferencing in problem-solving courts include a response to:

- **family violence** – as per recommendation 122 of the *Victorian Royal Commission into Family Violence*:

“The Department of Justice and Regulation, in consultation with victims’ representatives and experts in restorative justice, [should] develop a framework and pilot program for the delivery of restorative justice options for victims of family violence. The framework and pilot program should have victims at their centre, incorporate strong safeguards, be based on international best practice, and be delivered by appropriately skilled and qualified facilitators [*within two years*].”

▫ **culpable driving cases –**

In its [Snapshot 173: Sentencing Trends For Culpable Driving Causing Death In The Higher Courts Of Victoria, 2009–10 To 2013–14](#), the Victorian Sentencing Advisory Council reports that from 2009–10 to 2013–14, *67 people were sentenced in the higher courts for a principal offence of culpable driving causing death*. A total of 58 people received a principal sentence of imprisonment for this offence, ranging from 3 years to 10 years and 6 months. The most common length of imprisonment imposed was between 5 and 6 years. Every one of these cases leaves a legacy of unaddressed anger and grief. A group conference can engage the surviving family members and friends who have been harmed by a culpable driving incident, and so can support the long-, slow process of some-sort-of-healing.

☞ **Post-sentence victim-offender conferencing:**

Post-sentence Victim-offender conferencing has been offered in New South Wales for fifteen years. It is also offered in the ACT. The request for a conference can come from a victim of crime, a perpetrator, or any other party affected by the crime. An ARC-funded evaluation of the NSW program, by a research team from UNSW, found that participants in the conferences experienced profound and enduring therapeutic effects.<sup>3</sup>

☞ **Pre-release conferencing:**

Conferencing has been successfully used in other jurisdictions as a mechanism for planning pre-release from prison. One of the obvious reasons why prison increases the likelihood of reoffending is that it tends to break links with the social and economic supports that make it possible for a person to live meaningfully and productively. A well-prepared and convened group conference can help (re)establish some of those links before release.

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<sup>3</sup> Chan, J, Bolitho, J, Bagen, J 2016 “Restorative Justice as an Innovative Response to Violence” in J. Stubbs and S. Tomsen (eds) *Australian Violence*, Sydney: Federation Press

## SCHOOLS

In some recent high-profile cases, schools in Victoria have suspended or excluded students, without providing some opportunity for those involved to learn and make amends. This is generally explained as taking “swift, decisive” action. This is not always consistent with *effective* [evidence-based] action.

*New York Times Magazine* writer Susan Dominus recently described restorative practices as an Effective but Exhausting Alternative to High-School Suspensions. University of Illinois psychology academic Mikhail Lyubansky offered a clearheaded alternative analysis in a rejoinder in *Psychology Today* entitled Is Restorative Justice Exhausting? He suggests that what really is exhausting for school staff, students, and families is:

1. the **suppression** of conflicts, not the conflicts;
2. the **acts of harm**, not the restorative responses;
3. the **inertia**, not the method;
4. the **incongruence**, not the restorative practices;
5. the **lack of infrastructure**, not the lack of energy or desire.

*“For many [in schools, a] shift to “restorative discipline” is actually not congruent with their values and beliefs. The result is often something that is labelled as “restorative” but actually punitive action in disguise. I worry that, because they set up false expectations, such so-called “restorative” responses may be even more harmful than conventional discipline ever was.”*

A recent important **doctoral thesis** studied *precisely* this phenomenon. [Kristin Reimer, now based at Monash University](#), studied efforts to implement restorative practices in schools in Scotland and the Canadian province of Alberta. She found in detail what we’ve observed working on restorative practices in schools since the early 1990s:

*“RJ is a window into the character of school relationships since it provides a view of those relationships. [It] is used in the service of predominant relational objectives in the school.*

*A school in which relationships are ones of social control – based on compliance, rules, behaviour, punishment and seeing students as isolated individuals – will utilize RJ to strengthen that control.*

*A school in which relationships are ones of social engagement – based on relationships of equality and mutuality, with a broad focus that encourages the realignment of power – will utilize RJ to strengthen that engagement.”*

Victorian school leaders have been reporting to VARJ that their staff continue to revert to punishment, even though “we’ve done the training”. Accordingly, we have been providing a brief overview of **system issues in schools**:

## Why do teaching staff revert to punishment?

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Schools are complex organisations. Their primary task is to provide an environment where students can learn. School authorities are legally and morally (and pragmatically) responsible for maintaining an appropriate degree of order in the learning environment. Order requires appropriate degrees of individual and collective *control*. **Behaviour management** is the term traditionally used for activities that maintain order in schools. The term “behaviour management” is consistent with a system of *behaviourist order maintenance*, where members of the organisation or community are (i) persuaded through *external rewards* to behave appropriately, and (ii) dissuaded by the threat of *punishment* from behaving inappropriately.

The fourfold aim of punishment is:

- Restoring of moral balance – “*You’ll pay for this!*”
- providing individual deterrence – “*That’ll teach you!*”
- providing collective deterrence – “*Let this be a lesson to the lot of you!*”
- Appropriately exercising authority – “*This will remind you who’s in charge here.*”

Restoring balance, deterring inappropriate behaviour, and being seen to exercise authority are all legitimate *outcomes*. However, punishment is not the only, nor necessarily the most effective, *means* to achieve these outcomes. Punishment may encourage obedient compliance in the short term. But that compliance is often achieved at the expense of autonomy, commitment and engagement. In a system of *behaviourist order maintenance*, authorities maintain order by doing things *to or for* people. This system is preferred in organisations where the focus is on input and outputs.

If a school is to produce the outcome of **genuine learning for life**, the lessons learned should include:

- not only knowledge of a formal curriculum, but also
- relationship management skills: self-regulation, co-existence, & democratic engagement.

*Relationship management* requires a subtly but fundamentally different approach from behaviour management. To promote appropriate behaviours, minimise inappropriate behaviours, and to provide for learning and healing when inappropriate behaviour does occur, the key requirement is *not* for authorities to provide outcomes, *not to do things to or for others*. The key requirement is for authorities to provide the right *processes for working with others*.

True teaching involves facilitating learning – and not only in the classroom, but everywhere else in the school. Authorities need to create the conditions where people can work with each other:

- to make things go right,
- to prevent things from going wrong, and
- to respond constructively when things do go wrong.



When things do go wrong, when students – and staff – make mistakes and cause harm, school authorities need to provide processes to *restore right relations*.

The recent Australian documentary series [\*Revolution School\*](#) demonstrated the impact when staff shifted the understanding of their role from “teaching” to “facilitating learning” – and were shown specifically *how* to do this in practice. Their emphasis shifted from talking to the students to *engaging with* the students. The students became rapidly more engaged and formal learning outcomes improved markedly.

And yet, outside the classroom, there was still a good deal of *behaviour management*: staff telling before asking, providing general rather than specific feedback, focusing on what was not working – and not necessarily providing a framework for students to resolve social challenges themselves. Relying on behaviour management – persuasion and punishment - continually risks *student disengagement*.

The reasons for this risk are clear. **Motivation** occurs on a spectrum. Towards any given activity, a person may be **amotivated** - just “going through the motions”. Or they may be **extrinsically motivated**, and *at one of four stages of extrinsic motivation*. However, a person can also be **intrinsically motivated** to engage in an activity - because they experience an inherent satisfaction from the *activity* itself.

In schools that provide a true learning environment, people are largely intrinsically motivated to learn. This is only possible where not only is the principle of *working with* embedded in principles and policy, but members of the community also have ongoing opportunities to practise collaborating - through specific **skills-development** and **consistent reinforcement and refinement of an integrated set of skills**:

Level of operation ↴	Primary aim ↴	Reactive	Preventative	Proactive / Creative
<b>Observation</b>		Constructive observational feedback		
<b>Conversation</b>		Structures for resolving disputes and conflict ⇔ techniques for negotiation		
<b>Mediation</b>		Peer mediation ⇔ Staff-assisted negotiation		
<b>Facilitation</b>		“Conferencing” ⇔ “Circle-time”		

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In the absence of a *system* of relationship management, and the requisite *skills*, school staff – who are required to maintain order so as to deliver the outputs of curriculum knowledge - will revert to behaviour management, and that will often include punishment.

## COURTS

Academic researchers Kelly Richards, Lorana Bartels & Jane Bolitho recently summarised for the journal **Youth Justice** the results of interviews with Children's Court magistrates in New South Wales. As they explain, Children's Court magistrates are gatekeepers to restorative justice and therapeutic jurisprudence measures introduced into youth justice systems, and so they play a crucial role in the success of these measures. However, little research has been undertaken into magistrates' views of them. The Magistrates at our October forum will not be surprised by NSW Children's Court Magistrates' Views of Restorative Justice and Therapeutic Jurisprudence Measures for Young Offenders:

*Magistrates are enthusiastic about the philosophy of both restorative and therapeutic measures, but are reluctant to embrace them if they consider them under-resourced, poorly understood and/or poorly implemented.*

So - **guidelines for policy-makers:**

Resource programs adequately, explain them accurately, and implement them effectively!

## SENTENCING



Radio National's *Law Report* broadcast earlier this year a particularly interesting episode on Community values and sentencing. Presenter Damien Carrick interviewed Governor Kate Warner Governor of Tasmania, former director of the Tasmanian Law Reform Institute and Professor Law University of Tasmania, and Chris Gill of the Victorian Sentencing Council about the research program You be the Judge, which has been conducted by the Victorian Sentencing Council.

Kate Warner is the lead author of new research on community views on sentencing. The research was inspired by a former Chief Justice of the High Court, in response to public opinion

polls regularly reporting that around 70% to 80% of the public feel judges are too lenient. The Chief Justice suggested that policymakers might gain a better sense of what the public actually think by asking jurors after a trial for their views about sentencing.

While it is rare for jurors to be asked about sentencing, researchers in all Australian states may ask their Attorney General for an exemption to this rule. The Victorian study, which follows an earlier smaller study of jurors in Tasmania, was conducted between 2013 and 2015. It involves 987 jurors from 124 County Court of Victoria criminal trials in which the jurors returned a guilty verdict. 39% of these trials involved sex offences, 32% violence, and a smaller number involved drugs, property or other offences.

The researchers asked the jurors after the verdict what they thought the *sentence* should be in the case. A high proportion of jurors thought the sentence was appropriate. A majority thought it was *very appropriate*. However, in 62% of cases the jurors came up with a sentence which was more lenient than the judge's sentence. Importantly, the degree of difference between judge and jury depended on the nature of the case. In sex offence trials, only 50% of jurors were more lenient than the judge, whereas in trials of cases involving violence, 71% of jurors were more lenient.

These results should be of particular interest to sentencing advisory councils, parliaments, and judges. The Victorian Sentencing Advisory Council has been considering whether or not particular offences should be singled out for guidance where there seems to be significant disparity between lay opinion and judicial opinion. Kate Warner's group is now conducting a further national study, because of the particular concern the jurors seem to have in relation to sex offences in particular.

Meanwhile the key lesson from the Victorian research is that jurors represent the community, that they are not really clamouring for heavier sentences - and perhaps judges and policymakers shouldn't either.

ABC television's **Lateline** program reported on a related project that asks what happens when ordinary citizens are asked to set the sentence for serious cases? Professor Arie Freiberg, of Victoria's Sentencing Advisory Council, created [\*You be the Judge\*](#) to help people understand how complicated sentencing really is.

A participant in the program said the exercise highlighted the:

*"real imbalance [between] the breadth of factors the judge takes into account and [...] the misinformation or miscommunication that's understood in sentencing by the community."*



Arie Freiberg notes:

*"[Participants] get an understanding of just how hard the sentencing task is and just how dangerous it is to rely on that 500 word newspaper snippet where you don't have the background of the offender or full facts."*

We had planned to give Professor Freiberg the last word in this edition of the *VARJ Newsletter*:

*"It's dangerous to jump to conclusions on the information you get from the media."*

But instead, we'll give the last word to a media representative. A senior writer in a local journal of record recently approached VARJ, concerned that he was having:

*"difficulty finding a credible source who [will] speak on the pitfalls of restorative justice in general."*

VARJ has suggested that this is because credible sources examine the evidence.



Feel free to share any relevant **evidence - or suggestions** - with us [by email](#).

The VARJ committee is still planning events for 2017.

We welcome your ideas - and hope to see you at a VARJ event in the new year.