



Victorian Association for Restorative Justice WINTER-SPRING 2017 Newsletter

Youth justice reform – and beyond: Can short-term politics align with long-term policy?

Youth Justice remains in the news around Australia. Tabloids and talk-back propose simplistic solutions to complex problems. Politicians, feeling besieged, find it hard to resist gesture politics. Recent developments in youth justice policy have been widely interpreted as a periodic pendulum swing, away from rehabilitation and towards retribution.

Calls for retribution have a short-term commercial and political logic. Anger in response to public fear is understood to sell papers, raise ratings, win votes. Unfortunately, in the medium- to long-term, angry responses to public fear produce deeply illogical, counterproductive social policy. Large prison systems produce high rates of recidivism. Longer sentences for young people increase the likelihood that they will reoffend. So punitive youth justice policies make communities *less safe*. Policy makers know this, but struggle to **resolve an apparent conflict between short-term politics and long-term policy in youth justice.**

In mid-2017, a Jesuit Social Services delegation travelled overseas to investigate youth justice policy, systems, facilities and advocacy. Their aim was to identify effective, evidence-based practice as an alternative to “hasty and uninformed policy [that] can set a youth justice system off course for many years.” Their Justice Solutions report provides examples of effective youth detention facilities in Western Europe and even the United States, which deliver low rates of reoffending after young people are released.

Unsurprisingly, these facilities tend to be small and home-like, with a high ratio of staff to young people. They apply a therapeutic and developmental philosophy, and provide staged transition back into local communities. This sort of arrangement is apparently un-Australian.

Large youth detention centres are a key part of Australia's State and Territory youth justice systems, and an example of path dependence in social policy. Governments locked into a model of centralised detention find it hard to take another path. A Royal Commission has been examining youth detention, and the broader youth justice system, in the Northern Territory. Allegations of abuse in youth detention centres in Queensland and the ACT are also being investigated. Meanwhile, in Victoria, youth justice has been generating rolling headlines for some years. There have been riots at Parkville and Malmsbury detention centres, young offenders moved to the maximum-security Barwon prison in late 2016, and a judicial determination that this move was illegal. In early 2017, the Victorian Labor government announced plans for a new youth detention facility in Melbourne's outer west (and quickly had to find an alternative site in response to local protest.)



The state's capacity to accommodate young offenders will double when this new facility opens. There will be a temptation to fill it, against international evidence of best practice.

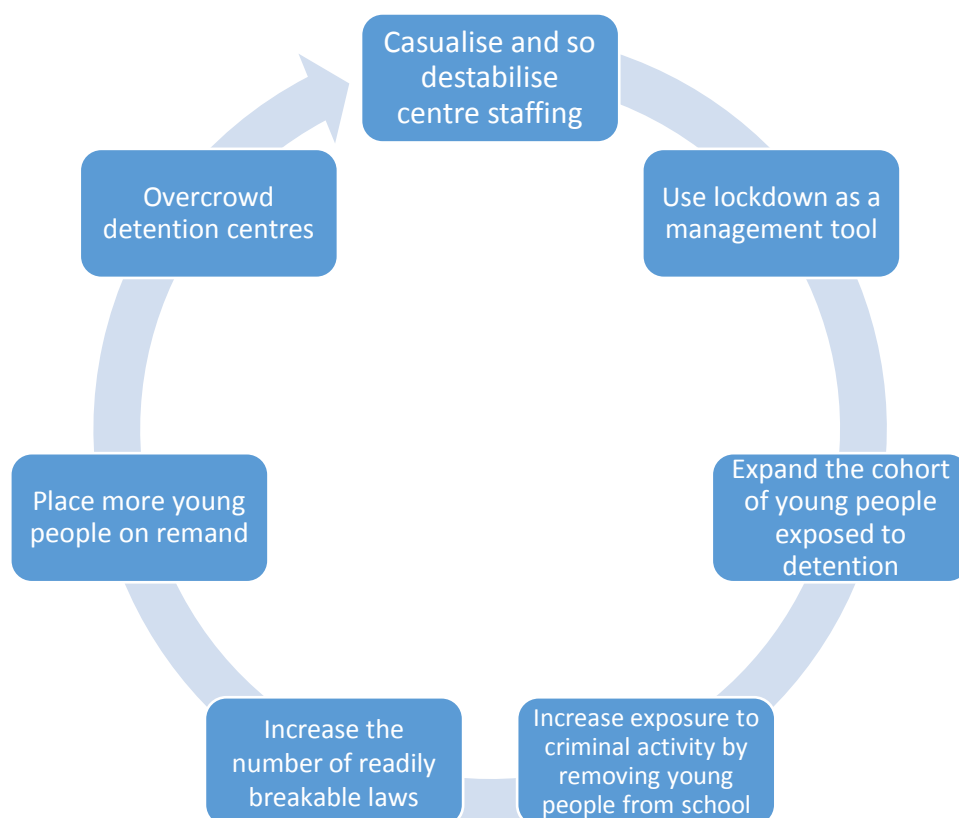
Fortunately, behind the bipartisan "tough on crime" talk, some more complex and constructive developments are underway. Patient, thoughtful work is promoting recovery for victims of crime *and* for offenders. That work is promoting social reintegration, rather than increased stigmatisation, social disconnection and institutionalisation, and reducing crime. It focuses on working *with* people, rather than doing things *to or for* them.

But it is difficult for individual governments to take credit when success results from the collective efforts of dedicated workers across a whole justice system, over many years. It is more difficult to articulate the coherent, integrated policy that is needed to sustain this sort of reform. And it is

apparently even more difficult for media to describe **how mutually supporting programs create virtuous circles**, where each improvement supports other improvements. These *virtuous circles* tend to become visible only by seeing common themes across many programs.

It's certainly easier to find examples of "**hasty and uninformed policy**" feeding a **vicious cycle**. Policy relating to **Victoria's detention centres** is one such example. Although 58% of current youth justice investment is allocated to custodial supervision, the centres deal with only about 20% of the young people who appear before the Victorian Children's Court. Those who do receive a custodial sentence enter facilities with a troubled history. There were eight reviews of Victoria's youth detention centres between 2000 and 2016. The State Parliament's *Legal and Social Issues Committee* spent the first half of 2017 again inquiring into Parkville and Malmsbury.

A highly critical 2010 report by the Victorian Ombudsman and Deputy Ombudsman prompted significant reform at Parkville. Most obviously, a dedicated school was established within the detention centre. Other factors then worked to undermine the reform. One factor was a *change in the demographic of the inmate population*. A sudden and sharp increase in the number of young people on remand changed the *ratio of remandees to inmates serving a sentence*. The resultant restlessness contributed to rioting. "Locking down" inmates in their rooms for extended periods became a common management tool, rather than a last resort. Deteriorating circumstances reinforced problems *with staffing*: turnover, casualization, absenteeism, inexperience, and shortages.



Government policy contributed to this vicious cycle. The former Victorian coalition government changed the *Bail Act* in 2013, making it an offence to break a condition of bail. Parkville and Malmsbury began to fill with remandees, who typically waited months before attending court. (This

impressively counterproductive legislation was repealed in 2016.) Then, in March 2014, the coalition government produced *Ministerial Order 625*, which gave principals in Victorian government schools more power to suspend or expel students. Departmental data indicate that the number of students expelled rose by over 25% in 2016. As was predictable from the extensive literature on the effect of school suspensions, many of these young people subsequently appeared before the courts and spent time in Parkville or Malmsbury.

From the end of 2014, the Minister for Families and Children and for Youth Affairs in the newly elected Labor state government seems to have focused more on the troubled child protection system than on youth justice. After the sense of crisis continued for another two years, responsibility for youth justice was transferred, in April 2017, from Human Services to the Justice Department. There may yet be administrative and other advantages in this move. In the short term, there is a stronger emphasis on safety and security. Detention centre staff are receiving training in improved tactical responses, which bring capsicum spray, batons and restraint belts into the youth custodial environment.

Ironically, all this has occurred in the context of **a general reduction in crime committed by young people in Victoria**. Data from the Crime Statistics Agency show a significant *reduction* over the past five years in the number of crimes committed around Victoria by 10 to 17 year olds. There has likewise been a *reduction in the total number of young offenders*. There *has*, however, been a troubling **increase in certain categories of violent crime** committed by young people, most notably *aggravated burglary and car theft*.

These crimes tend to be highly traumatising for the immediate victims, and they attract wide publicity, raising community concern and fear. Some of these crimes have been committed by a relatively small population of repeat offenders. But other serious crimes have been committed by young people who had previously had little record of trouble with the law.

The cohort of repeat offenders seems easier to understand. A report to parliament in late 2016 showed that nearly half of the young people in detention had spent time in child protection. (This figure is similar around Australia. Some of those who have been wards of the state as children remain wards of the state as adults. While the terminology has changed from “wardship” to “guardianship” to “protection”, the cycle of trauma continues.)

Two of every five repeat offenders surveyed in 2016 had a parent or sibling in jail. The majority misused alcohol and other drugs. And as the most recent report to the Department of Justice notes, there are insufficient services for this population, in custody and in the community, to address mental health and other drivers of offending. Former NSW Juvenile Justice Peter Muir summarised the challenge in his 2016 report to parliament: **“The sad reality of clients in detention [is] that they are BOTH victims and perpetrators.”**

For that other cohort of young people – those who have committed serious crime seemingly “out of the blue” - a number of factors seem to be at work. A common factor seems to be that they have been expelled from school during a period of difficulty in their lives. They have then “fallen in with the wrong crowd”, and “gone along for the ride”. Peer pressure can prompt young people to act “out of character”. Social media can coordinate their networks and magnify peer pressure. When

behavioural thresholds of what is acceptable are lowered, young people who might not otherwise offend commit crimes. It's not that they don't know right from wrong. Rather, the need to belong overrides the need to do right.

This fits with conclusions reached by criminologist Don Weatherburn, who has been with the NSW Bureau of Crime Statistics and Research for more than three decades. A consistent and simple theme runs through his closely-argued books: young people who become involved in crime have poor attachments and/or poor associations. Repeat offenders have both. Long-term crime reduction requires improving the conditions of family and community life. The criminal justice system should not undermine these efforts. Detention-as-punishment cannot improve *attachments* with carers. It runs the well-known risk of increasing poor *associations*. It doesn't increase community safety in the medium- to longer-term, let alone provide redress for victims of crime. So what's the appeal of punishment?

Governments promote detention for at least **five reasons**. One is a supposedly *pragmatic* argument: young offenders can't harm the general public while they're inside. Yet the evidence is consistent: the longer the sentence, the greater the likelihood that a young person will reoffend once they're back outside. That leaves the other four rationales, which all promote **detention-as-punishment**, and all involve *moral intuition*. An official response to crime should promote *individual deterrence*. ("That will teach you a lesson!") It should promote *collective deterrence*. ("This should be a lesson to the lot of you!") It should *restore moral balance*. ("You'll pay for this!") And authorities are obliged to *exercise legitimate authority* and provide an effective response to crime. ("We're in charge here, so we'll deal with it!") These are all legitimate *outcomes*.



As it happens, punishment isn't a particularly effective way to achieve any of these outcomes. It is not an effective way to *teach or learn lessons about* the impact of *offending* on others. Punishing offenders doesn't provide redress for victims. We're left with authorities saying: "We're in charge here, so we'll deal with it" - then doing things *to or for* people, rather than working with them, which

proves to be ineffective and inadequate. And this inadequacy of punishment to achieve legitimate outcomes is a key reason for the **growing international *restorative* justice movement**.

An international base of evidence indicates that well-designed and delivered restorative justice programs can help victims of crime to recover, reduce the likelihood of people reoffending, and increase community safety. Restorative justice involves the people who are most affected in determining an appropriate response to the harm caused by crime. Restorative justice processes can be used as an *alternative* to *retributive* justice, or as an *adjunct*. The evidence suggests that, governments that exercise their authority legitimately should be offering something more effective than punishment-through-detention as a path to community safety.

The movement for restorative justice offers **a way to resolve this conflict between *short-term politics* and *long-term policy* in youth justice**. For several decades, however, many governments have been trying to have it both ways. **They have promoted *retributive justice* for short-term politics, while *slowly* accepting the evidence for *restorative justice* as responsible long-term social policy.**

The **Northern Territory (NT)** provides an early example. In 1997, the Territory's CLP government introduced *mandatory sentencing* for young people guilty of property offences. Three years later, a 15-year-old Aboriginal boy committed suicide in Don Dale Detention Centre after receiving a mandatory 28-day sentence for stealing a small quantity of school supplies.



The Territory government now needed to address the problem it had helped create. In 2000, it quietly arranged for police officers in Darwin, Alice Springs and some smaller Territory communities to be trained to caution young people more effectively, rather than send them to court. The officers, along with some other local service providers, were trained to facilitate **community (or group) conferences**.

A **community conference** is a meeting of a group of people affected by some common concern that is causing conflict. The best known use of community conferencing is in youth justice. A youth justice group conference involves a facilitator supporting the group of people affected by a crime to recount collectively what happened, to reach a shared understanding of how everyone has been affected, and then to agree on what might be done to improve their situation. Community conferencing is now widely understood as the preeminent example of “restorative justice”. And while there is ongoing discussion about what precisely “restorative justice” means, experienced practitioners agree that a core element is “**restoring right relations**”.

It is important to address a common misconception here. “Restoring right relations” is *not* some warm-hearted-but-soft-headed notion that “everyone gets along”. Depending on the nature of a case, **relationships** between participants in a restorative process may be restored or “set right” by:

- actually being “**restored**” [to something positive].
But relations may instead:
- simply no longer involve intense conflict [and thus “**neutralised**”]; or
- be formally ended [and so effectively **non-existent**], or
- be **established** [because some participants are meeting for the first time].

All Australia jurisdictions adopted some form of restorative justice group conferencing between the mid-1990s and the mid-2000s:

| | Program name | Legislation | Eligible participants | Point of referral |
|------------------------------|--------------------------------------|---|--|--|
| New South Wales | Youth Justice Conferences | <i>Young Offenders Act 1997</i> | Youth (10 to under 18 years) | Police and court (pre-sentence) |
| | Forum Sentencing | <i>Criminal Procedure Legislation 2010 NSW (Part 7)</i> | Adults—18 years and older | Court (pre-sentence) |
| Victoria | Youth Justice Group Conferencing | <i>Children, Youth and Families Act 2005</i> | Youth (10 to under 18 years) & young adults (10 to 20 years) | Court (pre-sentence) |
| Queensland | Justice Mediation Program | <i>Dispute Resolution Centre Act 1990</i> | Adults (17 years and over) | Mostly diversionary but can come at all stages of the criminal justice process |
| South Australia | Family Conferencing | <i>Young Offenders Act 1993</i> | Youth (10 to under 18 years) | Police and court (pre-sentence) |
| | Port Lincoln Aboriginal Conferencing | <i>Criminal Law Sentencing Act 1988</i> | Adults—18 years and older | Court (pre-sentence) |
| Western Australia | Family Group Conferencing | <i>Young Offenders Act 1994</i> | Youth (10 to under 18 years) | Police and court (pre-sentence) |
| Northern Territory | Youth Justice Conference | <i>Youth Justice Act</i> | Youth (10 to under 18 years) | Police and court (pre-sentence) |
| Tasmania | Community Conference | <i>Youth Justice Act 1997</i> | Youth (10 to under 18 years) | Police and court (sentencing option) |
| Australian Capital Territory | Restorative Justice Unit | <i>Crimes (Restorative Justice) Act 2004—Phase 1</i> | Youth (10 to 17 years) | From apprehension to post-sentence |

[source: AIC]

This relatively rapid change was inspired by 1989 legislation in New Zealand, which made *family group conferencing* available for both youth justice and child protection matters, and by a pilot program in NSW in the early 1990s, from which an effective facilitator training was developed.

In some of these programs, police refer cases directly to community conferencing. For these cases, community conferencing functions as an *alternative* to court. In other programs, courts may also refer a case to a community conference after a determination of guilt. For these cases, community conferencing functions as an *adjunct* to sentencing. Conferencing is part of the court process; it is *not* a diversion from court. Once participants in the community conference have reached an agreement, the case returns to court, and their agreement supports judicial decision-making.



The NT government introduced community conferencing discretely, and confined its use to cases referred by police. By supporting *police discretion* to direct cases to a community conference, the CLP government was seeking to save itself from the consequences of its own politicking. Diverting cases to community conferencing could at least reduce the supply of young people to detention, now that the Territory government's own policies had removed *judicial discretion* from the courts to provide anything other than detention-as-retribution.

Although Labor chief minister Clare Martin repealed mandatory sentencing laws in 2001, successive NT governments re-introduced and then strengthened those laws. Royal Commissioners are now seeking to explain just how the Territory's youth justice got set off course for so many years... The Territory government's quiet support for police to divert cases away from court and to a restorative process seemed, at the time, as just one small initiative *pushing against a stronger retributive tide*.

That one small initiative can still be understood as an early example of governments overtly promoting *retributive justice*, while covertly promoting *restorative justice*. More optimistically, the Territory's move can now also be understood as **an early sign of a turning tide**.

Community conferencing continues to be used in youth justice to divert cases *from court* and to support judicial decision-making *in court*. In these applications, it delivers very high rates of participant satisfaction, including for victims of crime. It reduces reoffending relative to other interventions for equivalent cases. (The effect has been found to be particularly strong with crimes involving violence, and where community conference agreements address causes of offending.)

However, community conferencing also has many other applications beyond youth justice, and indeed, many **applications beyond the justice system**. Astute politicians, who can understand and explain how restorative justice works, and the outcomes it can deliver, **can use restorative justice for effective short-term politics, as well as responsible long-term policy**.

Many programs that provide community conferencing have emerged beyond Australia and New Zealand since the 1990s, particularly in the other industrialised Anglophone democracies of the UK, Canada and the United States. In addition to the original applications in youth justice and child protection, programs use community conferencing to support effective relationship management in *schools* and “conflict resilience” in *workplaces*. Some programs prefer the phrase “restorative practices”, which emphasises fair or *just restorative process and outcomes*, but independent of the criminal justice system.

A small but growing number of programs also deploy restorative practices to address family violence and sexual assault cases. These programs have been controversial, in part because reformers struggled for years to have family violence and sexual assault treated as matters of public concern, and to have these matters addressed with adequate seriousness and consistency by the criminal justice system. However, many of these same reformers, having now listened more carefully to hear what victims of crime are actually seeking, and having observed what the criminal justice system currently has to offer, are themselves now advocating for restorative approaches.

Common to all these programs is a shift in **how decisions are made**, and **who makes** those decisions. **The essential shift is** from (i) a central authority imposing *outcomes* on people **to** (ii) **an agency providing processes by which people who are affected by some common concern can reach a shared understanding, and can transform conflict into sufficient cooperation to negotiate workable outcomes for themselves**. (Some reformers understand restorative justice as a re-emergence of traditional practices supplanted or repressed by central, and sometimes colonial, authorities.)

Two further Australian examples indicate how community conferencing, by providing effective responses to harm in the short-term, can reduce and prevent further harm in the longer-term, and can promote a *virtuous circle* of mutually supporting efforts. And although these examples are also from youth justice, they offer **lessons that extend beyond the justice system**.

Australia’s first randomised control trial of community conferencing began in the **Australian Capital Territory** (ACT) in 1995. It evaluated a program run by Australian Federal Police, and in retrospect, was simply a test run for a much larger series of trials in the UK. But it was also a prompt for the ACT’s *Crimes (Restorative Justice) Act 2004*.

The ACT *Crimes (Restorative Justice) Act* remains unique in Australia in stating explicitly that community conferencing is offered, in the first instance, to **address the needs of victims of crime**. The ACT community conferencing program has certainly addressed those needs.



Then ACT Attorney General Simon Corbell & ACT Chief Police Officer Rudy Lammers, with RJ Unit Manager Amanda Lutz (background left.)

But by articulating a “victim-centred” philosophy so clearly, the ACT legislation has also protected the youth justice group conferencing program and the Restorative Justice Unit against cyclical outbreaks of tough-on-crime populism. (In contrast, in the absence of a victim-centred philosophy, the Newman Queensland LNP government abolished that state’s court-referred community conferencing program in 2012. Like Victoria’s 2013 Bail Act, this impressively counterproductive Queensland policy was also repealed several years later.) The ACT program, with a clear, legislated philosophy of addressing *the needs of victims of crime*, has bi-partisan support for more extensive applications of restorative practices. And it has the means to deliver high standard community conferences.

The ACT Restorative Justice Unit, located in the heart of Canberra, has a complement of full-time professional facilitators. For over a decade, the Unit received only youth justice cases from police and from the Children’s Court. But in 2016, the Unit also began receiving cases involving *adult* offenders. And from 2018, they will accept family violence and sexual assault cases. The work of the ACT Restorative Justice Unit is **demonstrating how restorative justice can align effective short-term politics with responsible long-term policy.**

Victoria has taken a slightly different path. The Victorian Parliament legislated relatively late for community conferencing. The Children, Youth and Families Act 2005, which uses the terminology of *youth justice group conferencing* (YJGC), allows conferences to be convened only for crimes that are sufficiently serious to be sent to Children's Court. The original legislation allowed a case to be referred to a conference in circumstances where the court was considering imposing *probation* or a *youth supervision order*. (Under section 362(4), the court must impose a less severe sentence where a young person participates and agrees to an outcome plan.)



The coalition state government, elected in late 2010, apparently considered abolishing the YJGC program, with familiar ideological logic: since youth justice group conferencing wasn't overtly "tough on crime", it must somehow be "soft on crime". However, a 2009 parliamentary inquiry and a 2010 report by KPMG had both already evaluated the program as cost-efficient and highly effective, noting that it delivered better outcomes than would otherwise have been achieved for victims of crime, for young people who had offended against them, and for their respective communities of care.

So instead of abolishing the state's youth justice group conferencing program, the coalition government increased program funding by 50%. On the advice of Magistrates, the successor Labor government then amended the *Act* in 2014. The changes came into effect in 2015, extending the eligibility for referral to a conference to those cases where the court is considering the more onerous tariffs of either a *youth attendance order* or a *period of detention*. This looks remarkably like bi-partisan support. And yet the number of youth justice group conferences convened in Victoria each year remains surprisingly low. Less than 300 cases are referred annually to the youth justice group conferencing program, far fewer than in NSW and Queensland, and about the same as in the ACT, although the population of the ACT is less than one tenth the size of Victoria's population.

The primary reason for this low number is that Victoria remains the one Australian jurisdiction where *only courts can refer cases to conferencing*. Victoria also has significantly lower rates of youth offending than do New South Wales and Queensland. But even allowing for these factors, **community conferencing remains significantly underutilised in Victoria**. (A total of 3% of the youth justice budget is allocated to the Children's Court *Pre-Plea Diversion* and *Youth Justice Group Conferencing* programs combined.)

The less-than-300 cases referred annually to youth justice group conferencing constitute only about 20% of the cases that appear before the Children's Court, even though the court may now refer virtually any case to a community conference. Around half of the young people whose cases are referred to conference receive a Non-Supervisory Order; about a quarter receive a Probation Order. Slightly less than a quarter receive either the more onerous Youth Supervision- or Youth Attendance Orders. A handful receive a Youth Justice Residential Centre- or Youth Justice Centre Order. Many more cases could be referred. Each case *not* referred is a lost opportunity for young people who are troubled and troubling, and for victims of crime, and for their respective communities of care.

There are **institutional reasons for this underutilisation**. There seems to be significant variation in Magistrates' understanding of, and support for, community conferencing. There is also significant variation in the understanding of community conferencing by police officers, who are often inadequately trained to explain the process to victims of crime. Slow, patient institutional reform is helping to increase understanding by these key actors in the system, and so to increase referral rates.

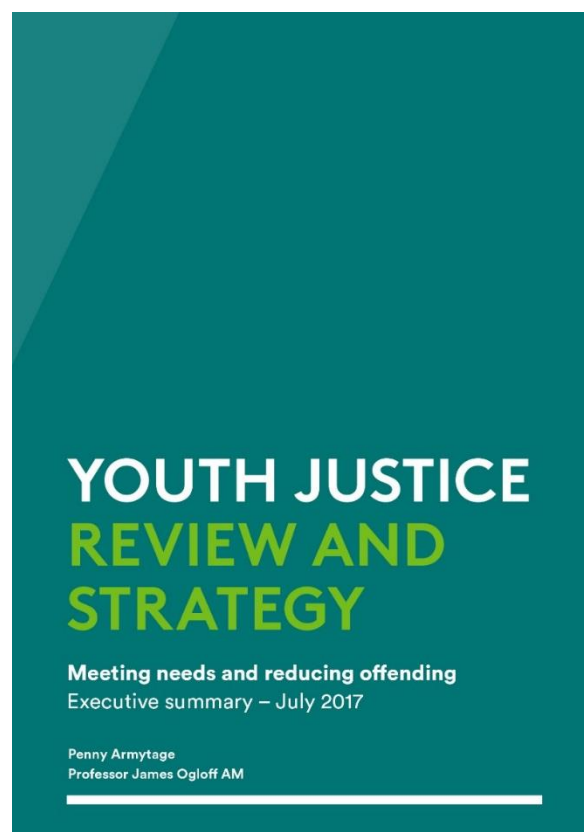


Meanwhile, the value of community conferencing in supporting judicial decision-making has been understood beyond youth justice. On the recommendation of Victoria's **Sentencing Advisory Council**, the state government amended the *Sentencing Act* in 2010. Section 83a of the *Sentencing Act* now allows that, just as in the Children's Court, a Magistrate may refer a case to a community conference "*for any [...] purpose that the court considers appropriate having regard to the offender and the circumstances of the case.*" In effect, Victorian Magistrates can refer most cases involving an adult offender to a community conference. Seven years after the Act was amended, Victorian Magistrates had referred... *no cases*.

There are certainly Magistrates who well understand the community conference *process*, and who support the *principle* of using conferencing to support judicial decision-making in adult courts. But they have not had a community conferencing *program* to which to refer conferences. That may now change.

Unlike in the ACT, where the Department of Justice and Community Services employs the facilitators who work from the Restorative Justice Unit, Victoria's youth justice group conferencing program has been *administered* by the Human Services Department from its inception until early 2017. However, the YJGC convenors do not work directly for the Department. Instead, the Department contracts responsibility for *service-delivery* to an established NGO in each region, and the YJGC facilitators are employed by these regional NGOs.

The April 2017 transfer of responsibility for youth justice group conferencing from Human Services to the Department of Justice and Regulation has now **opened up the possibility of deploying this pool of experienced community conference facilitators across a broader range of justice programs.**



In early August 2017, the Victorian state government released a report by Penny Armytage, former Secretary of the Department of Justice and Regulation, and Professor James Ogloff, Director of the Swinburne University's Centre for Forensic Behavioural Science. The official media release emphasised that their *Youth Justice Review and Strategy: Meeting needs and reducing offending* "**is the first comprehensive independent review of Victoria's youth justice system in over 16 years [and] will help guide work to strengthen and modernise Victoria's youth justice system.**" The report provides **126 recommendations** for meeting the needs of young people at each stage of their interaction with the justice system, and for ensuring the State Government fulfils its responsibility to care for them.

Top-of-the-list of their recommendations is *getting first principles right*: “*The Children Youth & Families Act needs to be revised or complemented with a new Act providing **some clear statement of purpose***”. Also fairly high up the list of recommendations is: “***Expand the use of restorative justice***”!

A guiding principle should be to address the needs of young people. The authors also recommend providing targeted responses for those at higher risk of offending and diverting those at lower risk. Then there’s a long list of sensible **frameworks, strategies, programs** relating to: responses to “*pre-offending*” at-risk youth who have been suspended or expelled for threatening or violent behaviour; evidence-based *diversion*; the youth *engagement skills* of youth justice workers; a full *continuum of community-based interventions*; assessment orders; a multi-systemic therapeutic approach for at-risk families; *engagement with families* of young offenders; decriminalising challenging behaviour in out-of-home care; a new therapeutic intensive intervention unit; and high-risk violent offending.

The authors seem puzzled that “***Victoria’s youth justice system does not leverage restorative justice programs to the extent that the Review would have expected to see, despite evidence of its effectiveness in reducing reoffending and establishing victim empathy.***” They observe:

*“There is evidence of the effectiveness of restorative justice processes, particularly around reducing reoffending as well as supporting positive reconciliation, including some level of victim empathy. Despite this, **there are limited restorative justice opportunities throughout the entire youth justice continuum.** Current restorative justice options are limited to the front end of the system; however, there are minimal legislated principles around restorative justice throughout. **There is greater opportunity to incorporate restorative justice processes, including with more serious offences.***

*“**The potential of restorative justice opportunities remain[s] unrealised,** particularly when considering the role of victims and community satisfaction in the justice process. **The lack of restorative justice elements in the operating framework limits the opportunity for victim and community involvement, further highlighting the limited focus on community safety and the role of the community more broadly.**” [p.17]*

“There is very low investment in community-based early intervention and support, representing a missed opportunity to intervene. Approaches to diversion are limited and ad hoc and provide little focus on addressing criminogenic needs.” [p. 23]

So the two highly experienced professionals who authored this report are puzzled at this failure to *leverage restorative justice programs*. Their puzzlement is interesting - and significant. The answer to this puzzle, like answers to other riddles, is not at all obvious - until it is revealed, at which point it perhaps does seem obvious:

“Restorative justice” seems consistently to have been (mis)understood *and implemented as something that should be delivered in stand-alone programs*. The experience of many of these restorative justice programs, no matter how positively evaluated, is that they have then **tended not to be leveraged by the rest of the justice system.**

Rather, stand-alone restorative justice programs are at risk of being largely *ignored*, and of ossifying or stagnating as the rest of the system continues with business-as-usual. (Contemporary business-as-usual can include covering available wall spaces with laminated posters articulating admirable principles – such as restorative justice.)

Reformers make far more progress once restorative justice is understood and articulated – *and then practised, in all its complexity*, as:

- (i) a small and coherent **set of principles** that inform the design of:
- (ii) a **wide range of processes**, which can deliver optimal outcomes across:
- (iii) a **wide range of new or improved programs in the justice system** – and a whole lot of other programs besides!

So the practical puzzle that Penny Armytage and James Ogloff have, in effect, articulated is:

What can be done to ensure that opportunities to deliver restorative justice are ***leveraged by the rest of the justice system, rather than ignored by it?***

Some accounts of the emergence of restorative justice emphasise *foundational texts*. Others emphasise a particular *process*, such as *group conferencing*. Others point to pioneering *programs*, many of them underwritten by legislation. Broader definitions extend beyond criminal justice to issues of *social justice*, understanding restorative justice as:

- *fairer and more effective decision-making in the search for outcomes that heal individuals and restore right relations in the wake of social harm, and also*
- *providing peaceful, problem-solving, and evidence-based approaches to social harm and violations of human rights more generally.*

Accounts of the emergence of restorative justice vary in the extent to which they understand that ideas have driven practice, or that practice drives ideas.

What types of organisation most effectively promote reforming ideas or support reforming practice? How do processes, programs, and principles (including social norms) *mutually reinforce*? More succinctly: **How does a virtuous circle emerge?**

In restorative justice, our current best answer to the question of *how virtuous circles emerge* is: through effective **pilot programs** which have the dynamic of **action learning processes**. Effective programs evolve through cycles of *planning, initial implementation, review, reflection and revision*, and this revision then enables the next phase of planning and implementation. Importantly, though, each set of *lessons-to-date* needs to be translated into *changes to individual and organisational practice*. And those changes need to be implemented not just *within*, but also **beyond the initial program**. Lessons from pilot programs need to be **shared across a broader network of professional practice**. We are now seeing this phenomenon occur in a structured, intentional fashion.

A regional Victorian example is provided by the Central Victorian Restorative Practice Alliance, based in Bendigo. Regional cities are often *just right* for innovation in social policy: *large enough* to have a range of services but not so large that professionals in one area of practice don't talk to professionals in another; *far enough* from the metropolitan centre to have autonomy and independence, but not so far as to be out-of-touch; with sufficient *diversity* among service-providers to be creative, but not so *diverse* that they don't share common practices; and with professionals sufficiently experienced in their various fields of expertise, but not so experienced as to lose reforming zeal.

Bendigo-based Catholic Care Sandhurst is the NGO contracted to deliver youth justice group conferencing in Central Victoria. Their YJGC convenors are now at the centre of a community of practice, and their colleagues are now using community conferencing in a range of other applications, including schools, community policing, residential care, mental health case-planning. There are signs of similar developments in other regional centres, such as Dandenong, Frankston and the Mornington Peninsula, Geelong, Ballarat, Albury –Wodonga, and the Goulburn and La Trobe Valley.

In metropolitan Melbourne, Jesuit Social Services is the NGO contracted to deliver youth justice group conferencing. Jesuit Social Services has sufficient corporate knowledge and experience to influence the policy and practice of Victorian government departments and other NGOs, and their Justice Solutions report is just one recent example of this. When the Northern Territory Government announced a new diversionary program in April 2017, under the spotlight of the Royal Commission, Jesuit Social Services was able to provide the requisite facilitator skills and mentoring to deliver this “different approach to **youth justice in the Northern Territory**.”



Victims of crime Shirley Downing & Wayne Woods (centre) with Minister for Territory Families Dale Wakefield (left) & Jared Sharpe, JSS (ABC News: Dane Hirst)

Territory media have emphasised the dynamic of Darwin's victims of crime coming face-to-face with perpetrators as part of the new program. The program is indeed being called *victim-offender*

conferencing, and fifteen court-ordered conferences were convened within the first few months of the program commencing.

As the restorative justice legislation and program in the ACT have demonstrated, it is sensible for this sort of program to emphasise (i) the importance of *meeting the needs of victims of crime*, and (ii) that meeting the needs of victims of crime can be quite compatible with meeting the needs of people committing crime. At the same time, the experienced professionals who are implementing this program in the Territory are aware, from experience in other jurisdictions, that the dynamic of “victim meets offender” (together with respective supporters, and relevant professionals) is particular to the application of the conferencing *process* in a court-referred youth justice *program*. The dynamic common to *all* applications of community conferencing is *restoring right relations*.

As discussed above, “*restoring right relations*”, or *setting relations right*, is a complex process. What is required to *set relations right* will differ from one case to another. Relationships may be “*restored*”, “*neutralised*”, *established* between participants meeting for the first time, or formally “*extinguished*”. And it is more complex than that. People who have been affected by social harm often then experience conflict at several levels:

- *within* themselves [physiological / psychological conflict];
- *between* themselves and others [interpersonal conflict]; &/or
- *between groups &/or institutions* [social & political conflict]

In recent years, community conferencing facilitator skills have been taught with this deeper understanding in mind. The more nuanced teaching of community conferenced facilitator skills distinguishes formats for dealing with incidents of undisputed harm, with many incidents that have occurred over an extended period, or with an issue of common concern that is affecting a residential or workplace community. This means that reformers now have not only an admirable set of *principles*. They have a tested and teachable *process, with specific variations for different categories of case*, so that the process can be tailored to any program.

Again, there are some impressive local examples of *tailoring-the-process-to-the-program*. The Victorian coalition government’s 2014 *Ministerial Order 625* fed what in the US is now routinely called the “school to prison pipeline”. It increased the number of young people expelled from government schools, and thus the number of young people appearing before the Children’s Court. The Victorian Ombudsman tabled an *Investigation into Victorian government school expulsions* in mid-August 2017, and drew precisely this conclusion. In the meantime, the state Labor government, while not rescinding *Ministerial Order 625*, had launched a program to remedy some of its deleterious effects.

The Navigator service is delivered by community agencies in collaboration with the Education Department’s Area teams and schools. It is currently being piloted across *eight* of the Department’s seventeen administrative areas. Providers are responsible for improving outcomes for young people who, in the purely descriptive phrase, are “*disengaged from education*”. Navigator service-providers are responsible for linking young-people-disengaged-from-education to support services and interventions, and for working with local schools to plan for the young person’s re-engagement.

Hume–Moreland, in Northern Melbourne, is the only one of the eight participating administrative areas with just a single Navigator service-provider: Jesuit Social Services. The program coordinator is an experienced community conference facilitator, and members of her team have received community conference convenor training and continue to develop their skills in the area of effective meeting facilitation. As a result, they are achieving very positive results in re-engaging young people with education, training or work, and developing good working relations with schools.

Their work is consistent with a growing realisation among educators that “restorative practice” in schools involves more than running the occasional community conference to address a major incident, and more than implementing *circle time*, valuable as this is. Restorative practices in schools are more accurately understood as part of a broader approach to effective relationship management. And effective relationship management is a teachable skill that is at the core of effective pedagogy, which understands the *teacher-as-facilitator*. An impressive example of this approach is the work done at Worawa College, Victoria’s only Aboriginal Boarding school, where students as well as staff are taught techniques for building, maintaining and repairing relationships.



ABC News: Jane Cowan

And this same principle, that **restorative practices are part of a broader approach to relationship management**, can be applied wherever people study together, work together, or *reside* together. This was realised many years ago by our colleagues at the Baltimore Community Conferencing Centre, who developed a format for large “**neighbourhood**” interventions. Ironically, although Australian expertise supported the establishment of the centre in Baltimore in the mid-1990s, it took twenty years for something similar to be established in Australia.

Victoria’s Neighbourhood Justice Centre, in inner city Collingwood, created the position of *Manager of Community Conferencing* in 2015. This initiative has made community conferencing available as a process for dealing with issues that affect a group of local residents or trader, and/or for dealing with issues on a larger scale. The NJC is still developing adequate internal referral mechanisms so that existing programs can refer cases to community conferencing. However, the Manager of Community

Conferencing has received referrals from local residents, and other colleagues in the justice system, such as Victoria police and the Melbourne Children's Court.

Victoria Police and other officials were highly impressed by the process and outcomes of a community conference held with some of the young people involved in and others affected by, the so-called *Moomba riots* of 2016. Age journalist Emily Woods produced an accurate and thoughtful article on this event in MAY 2017, with a headline proclaiming that this response to "the young Moomba rioters [was] restoring faith in justice."



Radio National's *Background Briefing* program produced a similarly accurate program around the same time, with the title Machetes, migrants, and misinformation: why Africans are copping the blame for Melbourne crime wave. A subsequent conference dealing with a similar issue included traders and representatives from AfriAus care – a local support group with the motto "building bridges and strengthening community." The principle of responding constructively and with dignity to social harm was illustrated when a local jewellery store owner announced in July that he would donate \$5000 to launch a basketball team for young people of African heritage in Melbourne.

But just as these broader applications of community conferencing were gaining recognition with various justice system agencies and community groups, and receiving informed coverage in the media, the state government announced a program that looked as though it might *reduce the use of community conferencing* in youth justice.

Following a successful 18-month pilot of a Children's Court Youth Diversion Program (CCYD), the state government announced that the Department of Health and Human Services to deliver the program in all Children's Courts across Victoria a state-wide. (Funding was provided in the 2016/17 Budget.) The CCYD program "targets" children and young people charged with low-level offences, who have little or no criminal history, and who would otherwise not require supervision with the youth justice service. Diversion orders provide a *brief intervention* "tailored to a young person's individual circumstances and proportionate to the circumstances of the offence(s) before the court." However, some youth

justice professionals working for NGOs expressed concern that this otherwise sensible program may lead to the further underutilisation of community conferencing if cases that would otherwise be referred to the YJGC program are instead diverted to a *brief intervention*.

Some YJGC program managers expressed the practical administrative concern that diverting cases, which might otherwise proceed to a community conference, could make it harder for YJGC programs to meet annual targets prescribed by the Department. But there was also a concern about a possible disconnect between the *program principles* and the available *processes*. Guidelines for the new CCYD program state that:

“A diversion order may contain a range of conditions [...] targeted to promote reparation of harm caused by the offence(s)... CCYD coordinators will [...] engage supports to promote the completion of a diversion activity. The intervention will build on and strengthen a young person’s existing relationships and interests, engaging them in the context of their family or carer and their community to promote positive change.”

Wherever (i) effective early intervention requires the formal engagement of family and other members of a community, &/or (ii) victims are seeking an opportunity to be involved in the response to crime, &/or (iii) offences have been committed by a group – in all of these cases, a community conference would appear to be an ideal option. After careful deliberation, the Department determined in mid-2017 that a brief diversion program intervention, for certain cases, might indeed include a community conference, facilitated by an experienced YJGC facilitator.

This is a small but significant breakthrough: restorative justice has been understood, articulated *and practised* here as a coherent set of *principles*, realised through the particular *process* of community conferencing, which is now being made available beyond one particular *program*.

Interest continues to grow in using community conferencing to address the needs of victims of crime in other parts of the justice system. Despite growing interest, Victoria still lacks a program of post-sentence community conferencing for cases involving adult offenders, which is already available in other jurisdictions. As Radio National’s *Law Report* recently documented, it is those most directly affected who are seeking the option of restorative justice for survivors of sexual assault.

For this type of case, where there has been significant trauma &/or the circumstances are particularly complex, “restoring right relations” typically requires several formal interventions over an extended period. This is certainly true in complex child protection cases, where facilitators in the state-wide family led-decision-making program recognise the value of community conferencing process skills. It is also true in a pioneering **adolescent family violence program** (AFVP), administered by the Department of Health and Human Services, again contracting experienced local NGOs to: reduce the number and severity of family violence incidents perpetrated by young people against family members; to improve relationships between a young person and their parents/carers; to facilitate familial access to support services; to engage young people in effective education, training &/or work.

A recent Australian institute of Criminology (AIC) evaluation of the program across its current three regional locations determined that it delivered high standard services, and that family members have

reported being very satisfied with the level and nature of support provided to them. The AIC found that this program fills an important gap in Victoria, does not replicate other services or programs, and is strongly supported by the practitioner community, who emphasise the need for similar programs in Victoria and Australia.

The program has, in effect, already realised a recommendation [rec. 128] of Victoria's 2015 **Royal Commission into Family Violence**, namely that *"the Victorian Government trial and evaluate a model of linking Youth Justice Group Conferencing with an Adolescent Family Violence Program to provide an individual and family therapeutic intervention for young people who are using violence in the home and are at risk of entering the youth justice system."* And although the dynamics of family violence perpetrated by adults can be very different, these programs, which offer intensive individual case management and group work over an extended period, provide a working model for another of the Royal Commission's key recommendations.

The Commissioners recommended [rec. 122] that:

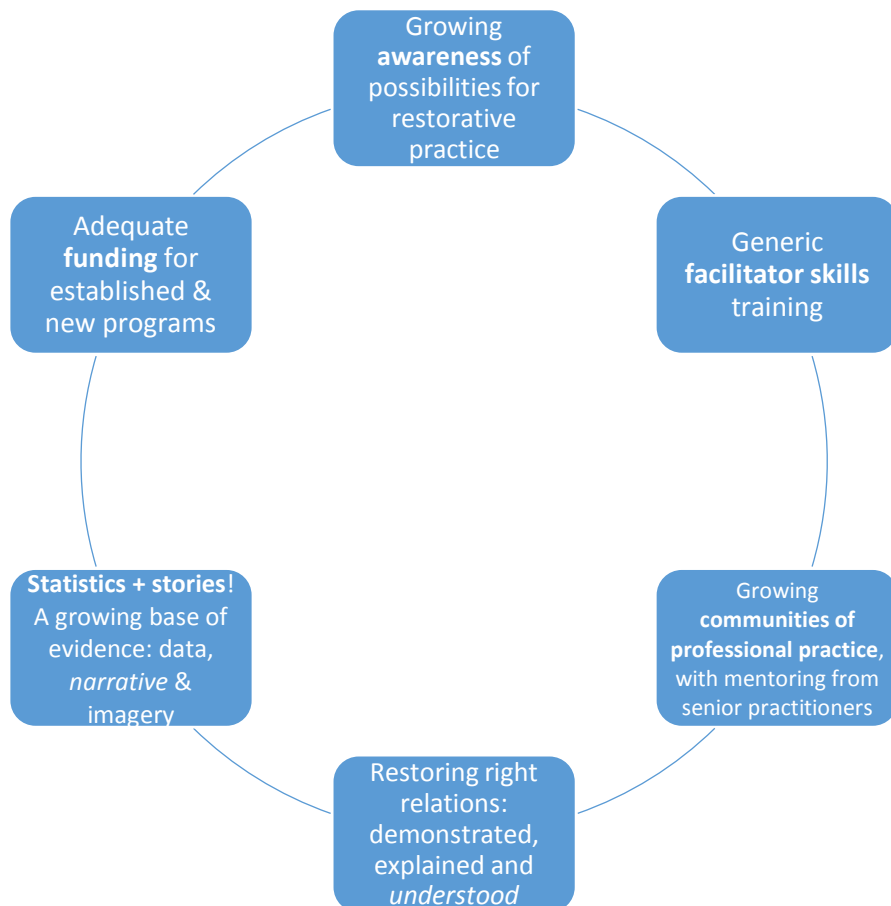
"The Department of Justice and Regulation, in consultation with victims' representatives and experts in restorative justice, develop a framework and pilot program for the delivery of restorative justice options for victims of family violence. The framework and pilot program should have victims at their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

This project is now well underway. A *Consultation Report* was presented in May 2017 workshop, a *Family Violence Restorative Justice Framework* has been finalised, providing clear contextual information about stakeholder expectations, and the Department is now developing a **specialist Family Violence Restorative Justice (FVRJ) workforce**.

Another significant recent innovation has been the development of a variant of community conferencing called **restorative engagement**. The restorative engagement program was developed by the Defence Abuse Responses Taskforce (DART), as part of a broader exercise to provide redress for people traumatised by abuse in the institutional setting of the Australian Defence Force. More than 600 of these restorative engagement conferences were conducted, most of them in 2014 or 2015. These restorative engagement conferences were found to have been (i) so therapeutic for the individuals involved, and (ii) such a source of learning and cultural reform for the organisation, that the program has now been revised, under the aegis of the Commonwealth Ombudsman (OCO).

In mid-2017, the OCO selected a national panel of **60 experienced facilitators** who can provide restorative engagement, and related processes. Because this is an "open" provider panel, the facilitators may be engaged by other programs to deliver a similar service. And indeed it seems likely that some facilitators may be called on to facilitate a "Direct Personal Response", as part of the national redress scheme recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse. They may also be engaged to provide restorative justice for survivors of sexual assault. As other service-providing agencies become aware of the results from these programs, there is growing pressure to make restorative engagement available.

In just the last few years, then, there has been a proliferation of programs that realise the value of providing an effective process whenever and wherever a group of people need to *restore right relations*. Generic community conferencing facilitator skills training has become a key mechanism for building and strengthening this a community of practice. Having long felt they were pushing *against a retributive tide*, many frontline practitioners now sense a turning *tide*. Vicious cycles of counterproductive-social-policy-exacerbating-ineffectual-practice are being counteracted by **virtuous circles**, such as this one:



Restorative justice practitioners and reformers are developing a better sense of this virtuous circle, where polices are mutually supportive, and evidence-based *processes* enable agencies to work *with* people, rather than doing things to or for them, promoting social reintegration and therapeutic responses to trauma. However, those of us working in this field must clearly and consistently explain *how* this approach works in youth justice, in other justice programs, and in programs that deliver social justice beyond the formal justice system. Clear and consistent explanations help power this virtuous circle of effective interventions that (i) respond to problems, (ii) prevent their recurrence, and (iii) promote social flourishing. And with some luck, our clear and consistent explanations can help policy-makers **align effective short-term politics with responsible long-term policy**.

Members of the Victorian Association for Restorative Justice will discuss these recent developments during this year's **restorative justice week** (November 19th – 26th). A presentation and panel discussion will be held at the Law Institute of Victoria on the **evening November 23rd 2017**. Details to follow!

[Prepared by David Moore on behalf of the VARJ Committee, August 2017]

Restorative justice week 2017 (November 19th – 26th)
VARJ Forum at the Law Institute of Victoria: 23rd November



Note the date in your diary / calendar!

The Victorian Association for Restorative Justice, in association with the Law Institute of Victoria, will host an evening panel discussion in Melbourne on the evening of **23rd November 2017**

Venue

Law Institute of Victoria
470 Bourke Street Melbourne

Topics

Presentations and a panel discussion are likely to address:

- An update on victim-offender conferencing in the Northern Territory
- An update on restorative justice reforms in the ACT
- Victoria's Adolescent Family Violence programs
- Improving relationship management in youth detention
- & more....

Information on speakers and other event details to follow.

Information will be emailed to VARJ members, and available at the VARJ website.