



Submission to the Victorian Royal Commission on Family Violence from the **Victorian Association for Restorative Justice**

The Royal Commission will have received extensive suggestions for how government agencies and community organisations can collaborate to address family violence. This submission from the Victorian Association for Restorative Justice (VARJ) avoids unnecessary duplication by focusing solely on one element that can contribute to a virtuous circle of effective initiatives: *restorative justice*.

The idea of using restorative justice in cases of sexual offending and of family violence has been widely discussed, but remains controversial. Much of the concern derives from a misunderstanding of what restorative justice is, and where it can be applied.

We provide a short overview of various “restorative responses” to family violence, in Australasia and internationally. We highlight elements important for effective restorative justice *programs* in the area of family violence, including a central role for state agencies. We distinguish the restorative justice *process* of group conferencing from other processes, particularly victim-offender mediation.

In essence, group conferencing can:

- involve a significant number of participants in exercises of “truth-telling” and “problem-solving”;
- thereby expand the network of people able to provide oversight and support;
- transform conflict into cooperation among that network of people;
- harness cooperation to develop a pragmatic, workable plan for responding with authority to harm, preventing further harm, and promoting well-being;
- coordinate “community” and “official” resources to provide ongoing oversight and support.

Used appropriately, group conferencing can support systemic improvements to Victoria’s response to family violence. Effective work at the broader community level can promote equality, inclusion, and improved community attitudes. Effective interventions in specific cases must hold perpetrators to account and support victims, promoting financial stability and well-being, increasing capacity for non-violent problem-solving, and providing ongoing oversight, support and protection from violence.

The restorative justice process of group conferencing can facilitate these outcomes for specific cases. In the medium- to longer-term, the widespread use of group conferencing may help effect broader community level improvements.

Principles

Much of the misunderstanding about restorative justice derives from the failure to distinguish *principles, programs, and processes*. Restorative justice *principles* are typically contrasted with principles of *retributive* justice. These two approaches can be contrasted with plain language questions. *Retributive justice* focuses primarily on imposing just desserts, and so asks: Who has done the wrong thing? And: What punishment should be imposed on the wrongdoer? Punishment has a fourfold justification. It is claimed to: (i) provide individual deterrence, (ii) provide collective deterrence, (iii) restore moral balance, and (iv) assert official authority.

These are all legitimate outcomes. But evidence-based policy makers must ask: How well do punitive interventions work? Are these outcomes best achieved through punishment alone? Can punishment be supplemented by more constructive activity? Are there more effective ways to deter harmful behaviour, provide reparation where harm does occur, and retain social order?

Restorative justice seeks to deter harmful behaviour, maintain social order and promote wellbeing by “restoring right relations”. And so *restorative justice* asks: What has happened? How have people been affected? What can be done to improve the situation? In other words: how can harm be healed and further harm prevented? These questions shift the focus from the dynamic of *authorities imposing just desserts on offenders*. The focus shifts towards *supporting people who have been harmed, preventing harm, and promoting well-being*. So restorative justice principles appeal to many victim support organisations.

However, victim support organisations have also long urged the criminal justice system to respond more consistently and effectively to sexual offending and family violence. And this is where some of the controversy around using restorative justice in these areas arises. The controversy derives partly from a misunderstanding that restorative justice is “soft on crime”. In fact, restorative justice is *effective* in dealing with crime. More precisely, restorative justice provides a mechanism for dealing effectively with the conflict that can be both a *cause* and a *consequence* of criminal behaviour. Restorative justice provides a mechanism for transforming conflict into cooperation.

To understand why restorative justice is *not* “soft on crime” and *is* effective in dealing with conflict, first requires understanding that restorative justice is not necessarily an *alternative* to current justice system programs. Restorative justice *processes* can supplement and strengthen the justice system. Restorative justice *processes* can also supplement and strengthen interventions in health and human services. They can improve decision-making, and in many areas other than criminal justice. To understand why and how requires some understanding of these processes.

Process

The most widely used restorative justice process is *group conferencing*. Its first significant legislated application was in New Zealand. Reforms in 1989 provided for family group conferencing in both (i) care and protection matters, and in (ii) youth justice. These reforms inspired the first youth justice group conferencing program in Australia from 1991. In this Australian pilot group conferencing program, much was done to understand the *process dynamics* of group conferencing.

Group conferencing came to be understood as a process that can bring together safely a group of people in conflict. The structure of the group conference allows participants to reach a shared understanding of their circumstances. As participants develop a shared understanding, their collective emotional state transforms. The “group mood” gradually shifts through stages, starting from strongly negative emotions that fuel conflict, and reaching a state where positive emotions promote cooperation. Participants reach a point where they think *and* feel that it is in their interests to cooperate. They can then negotiate a realistic plan for improving their individual and collective circumstances.

The skills for convening a group conference were codified in a manual. Practice-based training workshops were developed and continuously improved. This package of documentation and training enabled effective skills transfer, such that group conferencing was rapidly adopted through the 1990s in programs around Australia and in North America and Europe.

Many of these programs were in youth justice. A 2013 international metastudy of group conferencing in these youth and adult justice system programs supported the original finding that the group conferencing *process*, when convened by a skilled professional within a well-designed *program*, produces both very high levels of participant satisfaction, and statistically significant reduction in socially harmful behaviour.

Notably, the most pronounced reductions in reoffending are in cases involving violence. The reasons for this are complex, and include both psychological and sociological factors. However, this finding provides a base of evidence to counter intuition that group conferencing should only be used for relatively “minor matters”. In fact, the evidence suggests: the more “serious” the case, the more profoundly positive is the impact of participating in a group conference.

In justice system settings, conferencing is used to respond to incidents of *undisputed harm*. (There is no dispute about who committed the crime, but there is a great deal of conflict within people, between people, and between groups as a result of what happened. That conflict can continue to harm individuals, and relations between individuals and groups, until it is addressed.) Importantly, however, group conferencing is not only applicable in cases of *undisputed harm*. From the mid-1990s, group conferencing began to be used as an intervention in many other settings, including schools, workplaces, and residential communities. In these settings, a group conference is often a response not to any single incident of *undisputed harm*, but to conflict associated with a *pattern of many poorly resolved incidents and issues*.

Programs

This distinction between “no dispute” and “many disputes” generates an important question for program designers: Will the program deal only with cases of undisputed harm, which are typically dealt with by the courts? Or will the program also deal with cases involving many “poorly resolved incidents or issues”? Will it deal *mainly* with these cases? Those most affected may have various reasons for wishing to meet as a group to address the harm. This variation in the types of case that programs deal has indeed been observed. It raises a new set of questions about how to vary the process according to the nature of the program.

Some pioneering programs in Canada dealing with family violence (in Labrador and Newfoundland), and with sexual offending (for example, using Community Holistic Circle Healing in small communities in Manitoba) found themselves dealing with a combination of (i) incidents of undisputed harm, and (ii) many poorly resolved incidents and issues.

In these programs, justice, health and human services authorities have worked with extended families to develop a plan which has to be officially approved before implementation. There is no weakening of state authority and protection. In these pioneering programs, state officials remain directly involved, and generally contribute to, support &/or oversee plans that are more realistic and workable than would otherwise have been the case.

To some degree, these early programs were understood as much in terms of their setting in *remote and largely indigenous communities* as they were for *dealing with family violence and/or sexual offending*. (The diffusion of restorative programs in Canada is reported to have caused mistrust between antiviolence activists and restorative practitioners in some areas, due to a lack of collaborative involvement by antiviolence organisations in project design and implementation.

This is an important lesson for social reformers: engage and coordinate the expertise from groups with different initial focus, but some common ultimate goals. And this is precisely what now seems to be occurring in the search for more effective systemic responses to sexual offending and family violence. An Australian anthology, Restorative Justice and Family Violence, summarised key programs in this field as of 2002. Linda G. Mills 2006 *Insult to Injury: Rethinking our Responses to Intimate Abuse*, which was partly inspired by Australasian reforms, was widely read, and variously received as a refreshing proposal or a provocation. Her proposals have since come to be understood as a “feminist-restorative hybrid”, offering a model of justice that is survivor-centred and “widens the circle” of those committed to stopping family violence, by including more community members and professionals.

It is worth noting here that most programs in continental European offering “restorative responses” to intimate partner violence differ significantly from these programs in Australasia and North America.¹ A recent comparative study examined “restorative” programs across six European countries. All of these programs actually use the *process* of victim-offender mediation.

¹ Lisanne Drost, Birgitt Haller, Veronika Hofinger, Tinka van der Kooij, Katinka Lünemann, Annemieke Wolthuis *Restorative Justice in Cases of Domestic Violence: Best practice examples between increasing mutual understanding and awareness of specific protection needs*, 2013

This two party mediation format is highly vulnerable to risks that: a pattern of abusive violence continues to be serially "forgiven" by the victim; abusers manipulate the process; and abuse victims feeling pressured to "work on the relationship". Calling these programs "restorative" masks a fundamental difference in processes.

Victim offender mediation addresses a single relationship. It does not involve and engage other family members, friends, neighbours, colleagues, or professionals. A mediation between two people thus foregoes what group conferencing provides: an opportunity to coordinate community and state resources to deliver ongoing support and oversight. There may be room for mediation in this field of practice for certain cases where two individuals are seeking help to negotiate some specific outcome. But mediation should *not* be the default process.

An updated (2014) [literature review](#) by the Australian Institute of Criminology summarises criminal justice system responses to family violence across Australia, New Zealand, the United Kingdom, and the United States. The authors conclude that there is "*a need for a differential approach to family violence crimes. [...] Pro-arrest and proactive prosecution policies and [...] specialist courts have demonstrated improvements in the ability of agencies to respond to family violence. Victims have also identified increased feelings of support and satisfaction with the specialist court model. [...]*

Therapeutic jurisprudence and restorative justice principles may also have a role in improving the experience of the criminal justice process for both victims and offenders. [...] Interventions may need to address not only the nature of violent offending but also address any factors that may affect the person's responsivity to the interventions. Assessing risks of victimisation or further offending requires a focus on interpersonal, institutional and cultural factors. Assessments need to be undertaken by a range of professionals [but] should be underpinned by a common understanding of their purpose and limitations."

In short, any program that seeks *therapeutic* or *restorative* outcomes to family violence through group conferencing must answer: What *types of case* will the *program* accept? What is the system of case management? What is the format of the conferencing *process* in this program? Can some variation of the process be offered at different stages of a criminal justice intervention? (*i.e.* pre-sentencing, post-sentencing, pre-release.) Can the conferencing process be offered independent of any criminal justice intervention? Can it be offered in cases where the abuser is not present? And how is the program to be continually monitored and evaluated?

A key lesson of the last twenty five years of restorative justice practice is that there *is* a generic conferencing *process*. This generic process varies according to the nature of the *program* in which conferencing is used. Importantly, the process varies in a small number of specific ways.

Differentiating programs

As mentioned above, a key insight from early programs was that group conferencing supports participants to *transform conflict into cooperation*. This means that the participants reach a point where they feel motivated to negotiate the most constructive outcome, using the resources at their disposal. The details of outcome plans differ from case to case, and from program to program, but the plans have in common that they represent the best options available to the group in question.

The generic conference process has two basic stages. Each stage involves a type of negotiation:

- In the first stage of a group conference, participants negotiate a *shared understanding*;
- In the second stage of a group conference, participants negotiate a *mutually acceptable plan*.

A useful shorthand for these two stages, borrowing terminology from the Harvard negotiation program, is that group conference participants must first “*Get to Peace*” before they can “*Get to Yes*”. The *ratio* of time spent in the conference getting to *peace* - by negotiating a shared understanding - and getting to *yes* – by negotiating a plan of action - varies from one program to another.

Group conferencing programs can be categorised according to the extent to which the program focuses on getting to peace through “truth-telling”, or on getting to yes through “problem-solving.”² The relative focus on truth telling or problem-solving also helps determine whether a case can be dealt with in a single group conference, or whether a series of conferences should be convened.

For example, the current Australian Defence Abuse Response Taskforce [DART] is essentially a truth-telling exercise. The Taskforce is dealing with individual cases of abuse in Defence that occurred before April 2011. It works with complainants to determine the most appropriate outcome for them. The right to pursue redress through the criminal justice system &/or the Defence Force Disciplinary system remains. (As it happens, only a very small proportion of complainants have expressed interest in these options.)

In addition, however, DART now offers complainants (i) *counselling*, (ii) *reparation* payments &/or (iii) the opportunity to participate in a *Restorative Engagement* Conference. Many complainants accept all three. However, these parallel exercises are administered separately. This administrative arrangement was informed by analysis of other programs, which highlighted that related but separate processes work best when they are “quarantined” from each other, and offered as a suite of distinct options. (This principle of separation extends to the location of the Taskforce, in the Attorney General’s Department rather than Defence.)

The Taskforce’s Restorative Engagement Conference Program offers a form of group conferencing, in which a complainant, accompanied by their designated supporter, meets with a currently serving senior officer. The complainant provides a narrative account of their experience to a senior representative of the organisation that failed in its duty of care. Complainants are supported by convenors to relate their story as a coherent, cause-and-effect narrative. This is typically the first time

² This distinction is made clearly in the RMIT Centre for Innovative Justice’s May 2014 report [Innovative justice responses to sexual offending](#)

the complainant has been able to describe their experience in a particular way to a person who not only accepts and acknowledges their experience, but who can “do something” with the lessons gained from this truth-telling exercise. This narrative structure is consistent with the stages of other trauma-informed intervention: establishing *safety*, relating one’s *story*, and reconnecting *socially*.

The exercise seems consistently to assist complainants with symptoms of post-traumatic stress. In language frequently used by complainants, participating in a restorative engagement conference has allowed them to “let it go” and “move on”, confident that lessons from their experience have been deeply understood, and can henceforth inform policy and practice in a reforming organisation. Restorative Engagement provides a mechanism for aligning *therapeutic intervention* with *organisational learning* and cultural change.

Another Australian example of an essentially “truth-telling” process is the Victim Offender Conferencing program run by the NSW Department of Corrections. This program accepts only cases that involve a custodial sentence. Both victims and offenders can request a conference. Key reasons for conducting a victim offender conference are to provide victims an opportunity for therapeutic engagement and post-traumatic growth, and to provide offenders an opportunity for insight, some form of atonement, and a reduced likelihood of recidivism. Some conferences will also plan for post-release offender support.

An evaluation of the program found it to be highly successful – with sustained positive impact *years* after a conference.³ The lead author of this research hypothesises that some form of memory reconsolidation, especially for victims, is responsible for these profoundly therapeutic outcomes. This hypothesis is consistent with observations from the several hundred DART restorative engagement conferences convened as of mid-2015.

The DART restorative engagement program and NSW victim offender conferencing programs produce similarly positive results, although one program involves perpetrators, and the other does not. Their common feature seems to be the power of truth telling to someone who can “do something” with one’s story. There would seem to be important lessons for reformers seeking systemic improvements to Victoria’s response to family violence.

If restorative engagement and victim offender group conferences focus mainly on truth-telling, many of the more familiar applications of group conferencing involve a *roughly equal mix of truth-telling, and problem solving*. For example, in Victoria’s highly successful youth justice group conferencing program, considerable attention is given to the outcome plan.

Victoria is the only Australian jurisdiction where group conferences cannot be referred by police as a diversion from court. A group conference can only be referred from the Children’s Court, and is thus technically *part of the sentencing process*. As a result, there is a superficial tension between this youth justice *program* and the group conferencing *process*. The program is officially focused on *doing*

³ See Jane Bolitho, Jasmine Bruce & Gail Mason [Restorative Justice Adults and Emerging Practice](#) Federation Press 2012

something *to* or *for* a young person. The process focuses on *working with* a group of people. However, this tension has been consistently well managed.

Convenors have been thoroughly trained, and supported through a system of peer mentoring, and regular practice review. Legislation mandates that the informing police officer and a lawyer must attend a group conference. Good practice requires that *all those affected* be invited. (Group conferences have been run in Victoria with as many as forty participants, although this is highly unusual. The typical number of attendees is between five and ten.)

As the program has evolved, the Victim Services Agency has become more actively supportive and engaged. (It has also been more adequately funded, to coordinate its efforts with those of youth justice.) Outcome plans typically deal with (i) reparation of harm, (ii) prevention of further harm, and (iii) promotion of well-being. Each outcome plan is monitored and supported to ensure that the problem-solving process is completed.

Again, this program may offer important design lessons for reformers seeking systemic improvements to Victoria's response to family violence. As experienced convenors well know: up to a certain limit, the more people who can contribute to the truth-telling and the problem-solving, the more complete the understanding, and the more creative and workable the agreement. This mix of truth-telling and collective problem-solving is also typical of many group conferences convened in schools, workplaces, and residential communities.

In contrast, some conferencing programs essentially offer *problem-solving*. The group conference format enables a larger group to be involved in constructive decision-making. In these programs, it is more typical that multiple conferences are convened for each case, allowing for ongoing monitoring, and review of plans. Some of the programs dealing with family violence in small communities have provided ongoing monitoring and review. This is also true of programs of Circles of Support and Accountability.

Circles of Support and Accountability are formed around released sex offenders, who have very little family and community support. Typical programs focus on sex offenders who are considered at high-risk of reoffending. The offender meets weekly with a small team of volunteers who hold the offender accountable for their past criminal behaviour and support them to become a contributing member of society.

Other problem-solving programs use a variant of the group conferencing process to improve mental health case planning. In Victoria, several mental health programs have consciously integrated restorative justice principles into the case planning and review, adopting a clearer process structure, and effective facilitation techniques so that convenors can involve more participants, who find that both their understanding of the situation, and their problem-solving planning, are improved by the group conferencing process.

Group conferencing as part of an improved response to Family Violence in Victoria

Group conferencing may help improve Victoria's response to family violence in a number of applications. However, it is likely to be most valuable when used to provide a clear structure for case-planning and review. An initial group conference may involve significant truth-telling. A "circuit-breaking" intervention using group conferencing may produce the sorts of reductions in violence found in the series of evaluations of group conferencing in criminal justice. But even a first conference should emphasise pragmatic problem-solving. Outcome plans should deal with reparation of harm, prevention of further harm, and promotion of well-being. This can continue through a series of meetings, providing both intensive support, and intensive oversight.

Policies and practice of group conferencing to address family violence are currently co-evolving most rapidly in New Zealand.⁴ Recent amendments to the national *Sentencing Act*, and the *Victims' Rights Act*, mean that New Zealand's legal system now assumes that cases will *opt out* of restorative justice, rather than *opt in*: decision-making will involve some form of restorative justice unless there is a strong reason not to use this approach.

A typical example of a local program using group conferencing to address family violence is the Whanganui Family Violence Integrated Services Project. The program is partly funded by the Ministry of Social Development and involves a collaboration of seventeen statutory, iwi and community organisations. The professionals in this program meet weekly to coordinate and monitor the best possible support to families in Whanganui and Marton impacted by serious violence. In this integrated approach to family violence, health and human service agencies are most responsible for providing constructive interventions. Justice agencies provide a safety net, with reactive interventions as required.

However, in the Victorian context, and in the short- to medium-term, a more likely use of group conferencing is as part of the sentencing process in the context of specialist problem-solving family violence courts.

Conferencing may well be used mainly for those cases where the request from victims of violence is: "I don't want the family to separate. I just want the violence to stop." But it may also be used for planning in cases where there is separation. Some of this planning may occur independent of the justice system, and may be led by community agencies. In both types of case, group conferencing can:

- expand the network of support and oversight by increasing the number of participants;
- provide for both "truth-telling" and "problem-solving";
- transform conflict into cooperation;
- coordinate informal and formal (or "community" and "official") resources;
- deliver ongoing support and oversight through multiple meetings.

⁴ See: Kathy Daly & Gitana Proietti-Scifoni on Gendered violence and restorative justice: the views of new zealand opinion leaders; Authors from University of Canterbury Selecting interventions to reduce family violence and child abuse in New Zealand: A report to The Glenn Inquiry; NZ Ministry of Justice Restorative justice standards for family violence cases;

It has been surprisingly common for policy makers, administrators and evaluators to pay inadequate attention to the dynamic of the group conference *process*, and to the skills of convenors, in the early stages of program development. Their focus tends to be more on (i) *who attends* the meeting, and less on (ii) *how* the meeting is run. And yet it is *in* these meetings that plans are made to improve life circumstances. So we urge that, in the wake of the Royal Commission, any initiatives to use the group conferencing process:

- ***Engage experts in the group conference process throughout the design and evaluation of the programs that use group conferencing.***

The current committee and membership of the Victorian Association for Restorative Justice includes professionals with significant and international expertise in this area. VARJ is happy to provide expert advice to policy makers and program developers as they determine the *types of case* a program will accept, systems of case management, the particular format of the conferencing process in the program in question, and arrangements for monitoring and evaluation.

- ***Use skilled and experienced convenors to deliver group conferences***

VARJ has prepared restorative justice best practice standards and a group conference convenor accreditation scheme that involves structured peer mentoring and evaluation by senior practitioners. The scheme is available to group conference convenors in Victoria from June 2015.

Alternatively or additionally, initiatives that make use of the group conferencing process to support systemic improvements to the response to family violence may choose to:

- ***Provide best practice training for family violence experts in skills of convening group conferences;*** Members of the VARJ committee currently provide training for group conference convenors under the *aegis* of La Trobe University Law School, and are developing training for colleagues interstate and overseas who are working on similar programs for responding to and preventing family violence. Some are consciously planning to employ a combination of (i) *convenors* with generic expertise in conferencing, and (ii) *family violence experts* learning the new skill of convening a group conference. We expect this sort of collaboration will be beneficial for practitioners, for programs as a whole, and - most importantly - for the clients of these programs.

We wish you all the best in your important work. Please do not hesitate to contact us for any further information you may require.

Sincerely



David Moore
President, Victorian Association for Restorative Justice
on behalf of the VARJ committee
Melbourne, May 2015