



Australian Association for Restorative Justice Submission to the Parliamentary Inquiry into the Victorian Criminal Justice System August 2021

INTRODUCTION

The Victorian Legislative Council's *Legal and Social Issues Committee* is reviewing Victoria's Criminal Justice System. The Committee is seeking submissions that address:

- (1) *factors influencing Victoria's growing remand and prison populations;*
- (2) *strategies to reduce rates of criminal recidivism;*
- (3) *how judicial officers apply appropriate knowledge and expertise when dealing with offenders;*
- (4) *the requisite set of specific skills for judicial officers who oversee specialist courts.*

This submission from the **Australian Association for Restorative Justice** summarises some authoritative research on: factors that have been driving the *growth in remand and prison populations; strategies to reduce recidivism; engaging appropriate expertise* when addressing offences; and the *skills* available to judicial officers. However, the primary focus of this submission relates to the Association's particular expertise in **restorative justice** and **restorative practices**.

There is a consistent and growing base of evidence that restorative approaches can deliver an effective *response* for all those affected by crime, and that a broader set of restorative practices can help to *prevent* crime.¹

Despite this base of evidence, restorative approaches remain significantly underutilised in the Victorian criminal justice system, and underutilised in other systems that influence individual and community wellbeing. This submission addresses key reasons for the **persisting underutilisation of restorative approaches**, and proposes some remedies that may increase their use, and so help to reduce *crime* and criminal *recidivism*, and limit the size of Victoria's remand and *prison populations*.

¹ There is also a growing literature on methodological flaws of evaluations that have not adequately assessed the *quality of facilitation* in a program, have failed to distinguish markedly different *programs* and *processes*, &/or have failed to distinguish categories of case with low baseline recidivism rates from those with high baseline recidivism rates. This relative paucity of *quality* evaluation will only be remedied when researchers themselves better understand restorative practices. Fortunately, organisations such as the Australian Institute of Criminology are increasingly aware of these problems, and are working to address them.

Restorative processes have the potential to safely increase the proportion of cases *diverted* from court, to support effective sentencing *in court*, and to provide for *post-sentence* healing and effective *pre-release* planning. A broader set of restorative *practices* can be used in detention settings to enhance the management of centres, and to support rehabilitate and therapeutic outcomes. Restorative *practices* can also contribute to positive outcomes in a range of contexts outside the justice system, particularly in education, and services that provide social support for young people and families. Outcomes in these areas are directly relevant to the justice system, because education, family support and other services have a significant influence on individual and community wellbeing – and poor outcomes in education and social support can increase rates of criminal offending.

FACTORS INFLUENCING the GROWTH in REMAND & PRISON POPULATIONS & SENTENCING ADVISORY COUNCIL RECOMMENDATIONS to ADDRESS THESE FACTORS

In another submission to this Legal and Social Issues Committee review of Victoria’s Criminal Justice System, Professor Arie Freiberg has provided a very useful summary of relevant recent **Sentencing Advisory Council** reports that address *factors influencing Victoria’s growing remand and prison populations and suggest strategies to reduce rates of criminal recidivism*. Professor Freiberg’s summary of these reports distinguishes responses to offending (i) by children and young people, (ii) by young adult offenders, and (iii) by adult offenders.

The following section provides a further distillation of Professor Freiberg’s summary:

CHILDREN on remand now constitute nearly *one-in-two* children in detention in Victoria, compared to *one-in-five* in 2012. This increase in remanded children far exceeds any increase in the number of children sentenced to a period of detention. This is a very concerning development. Once children enter the youth justice system, their rates of reoffending tend to increase. The younger a child is at their first sentence, the more likely they are to reoffend, to reoffend violently, to continue offending into adulthood, and to be imprisoned in an adult prison.

Relatively few children start offending early. Most of those who do have experienced some form of trauma involving abuse or neglect. This is particularly true of so-called “*crossover kids*” - children who are also known to child protection. *Crossover kids* are significantly over-represented in the youth justice system. Sentencing alone cannot address the root causes of their offending. The best chance of diverting at-risk children and young people from persistent criminal behaviour, and from a lifetime of harm to themselves, their families and the broader community, is provided by enhanced early intervention, with responses that effectively address the trauma and focus on rehabilitation. In short, *effective interventions with children and young people primarily involve a public health focus*.

The Sentencing Advisory Council’s suggested options for dealing with children and young people who offend include:

1. introducing **pre-trial youth justice family group conferencing** for effective intervention;
2. ensuring that **culturally appropriate specialist services** are available across Victoria.

YOUNG ADULT OFFENDERS are also over-represented in Victoria's criminal justice system. They commonly display impulsivity, disproportionately strong responses to emotional arousal, an impaired understanding of consequences, and a lack of resistance to peer pressure. Again, sentencing alone cannot address the root causes of their offending. Many young adults mature out of offending behaviour if managed effectively. In short, as with *children and young people*, so with *young adults*: *effective interventions involve a public health focus*.

The Sentencing Advisory Council's suggested options for dealing with young adult offenders include:

- adapting community-based sentencing options for young adult offenders, including **tailoring community correction orders** to allow for a specialised approach to this cohort;
- **extending the dual-track sentencing system** and availability of youth justice centre orders for young people aged 21 to 25;
- introducing **specialist courts or court lists** to provide appropriate services, and support young adult offenders to engage effectively with justice system processes and programs.

ADULT OFFENDERS: The increase in the size of Victoria's prison population has been driven by changes to bail and sentencing practices, and changes to detected crime. The increase in detected crime has been greatest in crimes against the person, including family violence. The composition of Victoria's prison population is also changing. The largest increases have been in the number of unsentenced prisoners, Aboriginal and Torres Strait Islander prisoners, and female prisoners.

In recent years, the percentage of all people found guilty who then receive a *custodial* sentence has remained relatively consistent. The use of *shorter* prison terms led to a decline in the number of *sentenced* prisoners since 2014. However, there has been a countervailing increase in the number of *unsentenced* prisoners. Currently: more people are being sentenced, so courts are imposing prison sentences more often, but are then not actually requiring people to spend a greater length of time in prison. The policy implications of this **increase in the number of shorter time-served prison sentences** include:

- some people on remand apparently pleading guilty in the hope of being released earlier than if they proceed to trial;
- limited opportunities to provide targeted programs that address offending behaviour;
- limited opportunities to make transitional arrangements for release; &
- ineffectual rehabilitation or community protection.

Each of these recent developments seems counterproductive, and none has a public health focus. Nor do any seem to address the interests of immediate victims of crime, nor communities affected by crime.

Importantly, the Council's report 2015 *Reoffending Following Sentence in Victoria: A Statistical Overview* found that, excluding people sentenced for traffic-related offences, 2 in 3 people do not reoffend after a sentence. The Council's 2018 report on *Sentencing Guidelines Council for Victoria* made recommendations towards more transparent and consistent decision-making processes in sentencing, and sentences appropriate to all circumstances.

RECOMMENDATIONS of the YOUTH JUSTICE REVIEW

Restorative processes offer a mechanism to support decision-making in sentencing, assisting a judicial officer to take into account all the circumstances of a specific case. The use of restorative processes for decision-making in cases involving adults-who-have-offended is *legally* permissible in Victoria. In *practice*, however, restorative processes are not currently used in Victoria for such cases. The Council recommendations can be read as implying, but not overtly recommending, a greater use of restorative approaches to enhance court decision-making. Other senior officials have made more explicit recommendations to expand the use of *the effective decision-making process of restorative justice* group conferencing, at least in *youth* justice.

In their 2017 report ***Youth Justice Review and Strategy: Meeting needs and reducing offending***, Penny Armytage, former Secretary of the Department of Justice and Regulation (DJCS), and Professor James Ogloff, Director of the Swinburne University's Centre for Forensic Behavioural Science, expressed puzzlement 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 observed:

- "*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]

Minister for Crime Prevention Natalie Hutchins announced a Crime Prevention Strategy in June 2021 that has the potential to address some of these concerns. The strategy offers "*a framework for government to partner with communities and key organisations to deliver local solutions that address the underlying causes of crime*", and "*recognises that communities hold the expertise, knowledge and ideas to design the solutions that are right for them.*"

In short: *government must engage communities in decision-making!*

This seems an excellent first principle. If translated into effective practice, it could ameliorate harmful behaviour involving children, young people, and adults.

MECHANISMS for ENGAGING COMMUNITIES

However, engaging communities in decision-making remains a core practical challenge of modern governance. Fortunately, *engaging communities in decision-making* is the essence of restorative approaches. However, there can be some foundational confusion here: the word *community* is used interchangeably to refer to three levels of social organisation. “Community” can mean:

- (i) a *very large* group of *fellow citizens*: everyone within the one (national or state) *jurisdiction*;
- (ii) a *medium- to large-sized* group of “*our people*” – a group defined by some common place of residence, language, ethnicity, beliefs, identity, profession, or some other interest or project;
- (iii) a small *community of care*: a network of people who are actually known to each other, and may provide each other with support.

Under certain conditions, members of a community at any of these levels can feel that “*we’re all in this together*” – and so be motivated to work together to make effective decisions. Different processes can support effective decision-making for a group of people from each of these different levels of *community*. However, restorative *justice* - that is, a restorative process used in the justice system - most typically involves members of one or two “*small communities*” - family members, friends, colleagues.

An official response can support members of a small community to respond constructively to the harm caused by crime, according to the principle that *crime hurts, so justice should heal*. Making restorative processes routinely available for many situations faced by *smaller* communities can gradually have a cumulative effect across the *medium-size* communities of neighbourhoods, suburbs or towns, &/or people with a shared ethnicity, language or belief. The widespread use of restorative approaches may eventually have a measurable impact across the larger jurisdiction that public officials have in mind when talking of *community*.

BASIC PRINCIPLES of A RESTORATIVE APPROACH

It is important that policy makers make a clear distinction between these different levels of community. It is also important that policy makers distinguish foundational restorative justice (i) **principles** from the design of administrative (ii) **programs**, from any facilitated (iii) **process**, or *series* of processes, that a program delivers.²

The **principles** common across effective restorative programs are to:

- Cause *no further harm*;
- *Work with* those involved;
- Set *relations* right.

What is involved in **setting relations right** can differ from one case to another.

Depending on the nature of a case, **relations** between participants in a restorative process may:

² Many of the following points can be found at the website of the [Australian Association for Restorative Justice](https://www.aarj.org.au), and are elaborated in D.B. Moore & A. Vernon *Setting Relations Right: Core Skills and New Horizons for Restorative Practice* (Routledge, in press, 2022)

- indeed be “*restored*” [to something **positive**]; &/or
- further improved [& so made more **positive**]; &/or
- simply no longer involve intense conflict [and thus be “*neutralised*”]; &/or
- be formally **ended** [& so effectively become **non-existent**, by mutual agreement], &/or
- be **established** [between participants meeting for the first time].

An effective restorative process can help to:

- **react** - by *responding* when things have gone wrong; but also:
- **prevent** - by *stopping* things from going wrong in future; and also:
- **plan pro-actively** - so *helping* things go right.

Meaningful restorative interventions bring together members of one or more *small* communities and coordinate the efforts of these community/familial networks with the work of professional services, so as to assist *recovery and* healing. Community members can work together to address harm, and then develop practical strategies for setting relations right.

This all sounds relatively logical, perhaps even simple. It is, in fact, far from simple. And this seems to be part of the reason why governments have frequently struggled to implement **programs** that deliver restorative **processes** which *engage communities in decision-making*. If restorative processes are to be used more widely, it is important first to understand why implementing restorative justice programs has proven so challenging.

Victoria has had some successes with implementation, most notably in the continuing operation of the state-wide **youth justice group conferencing (YJGC) program**, which operates under the *Children, Youth and Families Act 2005*. Unlike in other Australian jurisdictions, the actual service-delivery for Victoria’s YJGC program is out-sourced to non-government agencies. A different NGO delivers YJGCs in each region of the state. A 2009 Report on Alternative Dispute Resolution (ADR) And Restorative Justice by the Victorian Parliament’s Law Reform Committee, and a 2010 review by KPMG both noted the quality of facilitation in Victoria’s then-still-new YJGC program. Both evaluations recommended the development of some system to maintain the quality of facilitation.

The quality of *process* facilitation has been maintained, and perhaps even increased. A recent academic evaluation (currently in press), using sophisticated longitudinal methodology, finds that the youth justice group conferencing program in metropolitan Melbourne is reducing the individual likelihood of recidivism by approximately ~40% (after accounting for individualised propensity); that the reduction is much the same for crimes against the person *and* against property crimes; that the strongest effect of reduced recidivism occurs when *indirectly* impacted victims concurrently attend the conference. Conversely, imposed sanctions do *not* have a predictable and consistent effect on rates of reoffending.

Importantly, these recent findings are consistent with the training currently provided to in Victoria’s group conference facilitators. Meanwhile, the differing governance arrangements for youth justice group conferencing programs in each Australian jurisdiction have functioned, in effect, as a natural experiment. Useful lessons about foundational *principles*, program *administration*, and process *facilitation* are now being actively shared by members of a nascent national community of practice.

CHALLENGES OF IMPLEMENTING PROGRAMS

In contrast, as in other jurisdictions, Victoria has also experienced some “natural experiments” that offer lessons in how *not* to approach the challenge of implementing restorative justice programs. A common theme in these cases is *bold aspirations followed by inadequate implementation*. For example, the 2016 Recommendations of the Royal Commissions into Family Violence included recommendations to provide effective restorative interventions in programs that address family violence perpetrated (i) by adolescents, and (ii) by adults.

The Commissioners recommended a program to address cases of violence-in-the-home perpetrated by an *adolescent*. The recommendation was to deploy (i) youth justice group conference facilitators in (ii) programs providing therapeutic support for family members affected by violence-in-the-home. However, there was little technical support to *integrate* these two programs, nor to *extend* the skills of facilitators into this more complex area of practice. Meanwhile, the program that was recommended to address cases of domestic-violence-perpetrated-by-an-*adult* attempted to start from scratch, rather than extend the offerings of an existing program with already-skilled facilitators. In both cases, implementation has, to date, failed to match aspiration. As the recent fourth report (2021) of Victoria’s family violence implementation monitor noted:

- *.... restorative justice options are frequently misunderstood and poorly implemented, but when done so with the necessary expertise and approaches, show very strong results and should continue to be offered and considered. [...] The Department of Justice and Community Safety’s **acknowledgement of the limitations of the trial** and of the need for a restorative justice response for adolescents who have used violence in the home suggest **that a further carefully implemented trial should be considered.***

There are some foundational lessons from these experiences, and comparable examples of bold aspiration followed by inadequate implementation:

- “Restorative justice” seems frequently to be (mis)understood *and implemented* as something to be delivered in stand-alone *programs* which, no matter how positively evaluated, then tend **not to be leveraged by the rest of the justice system.**
- Reform efforts commonly make the mistake of adopting the same implementation model as used for **complicated physical infrastructure** (*i.e.*, where the interrelationship of the many parts is known and fixed): start with a linear project plan and attempt to establish a pre-determined administrative architecture before any service is actually delivered. However, this approach is simply inappropriate when attempting to develop a **complex ecosystem of services** (*i.e.*, where the interrelationship of the many parts will continually evolve);
- Accordingly, while some observers identify the essential implementation challenge as “short-term political urgency trumping long-term planning”, what is actually most commonly missing seems to be something subtly different from long-term *planning*. What is often missing is a **coordinated process of action learning**, oriented to the long-term.

Those restorative programs that *have* survived, and indeed are *flourishing*, remain committed to **action learning**. They work in a collegiate manner, cooperating across agencies, and the professionals working in these programs involved regularly review and refine foundational *principles*, adjust the administrative arrangements of the *program*, and increase their understanding of *process* facilitation. In this way, successful restorative programs have been able to consolidate, improve, and then extend their services into different applications.

There *are* some good examples, in Victoria and in other Australian jurisdictions, of restorative justice practitioners who are involved in *action learning*, working in programs with a long-term focus. (Again, the most notable current Victorian example is the metropolitan youth justice group conferencing program. In recent years, facilitators from this program have extended their work into schools, interventions to address adolescent family violence, pre-trial diversion, pre-release planning and post-release transition.)

The GROUP CONFERENCE PROCESS in RESTORATIVE JUSTICE PROGRAMS

To understand how and why *action-learning-with-a-long-term-focus* is such an effective approach when developing restorative **programs** requires some foundational understanding of restorative justice **processes**, and particularly the core restorative justice process known as **group conferencing**.

Group conferencing, used in *criminal justice systems*, brings together people who have caused harm, people who have been harmed, their supporters, and relevant professionals. Group Conferencing has been delivered and positively evaluated within criminal justice systems at the points of:

DIVERSION: where police (or a pre-plea court diversion program) refer a case to a restorative process.

In this application, a group conference functions as an *alternative* to court; &/OR

SENTENCING SUPPORT: where a *court* refers a case to a restorative process *after a determination of guilt*. Participants reach some form of agreement, which is then returned to court, and taken into account during the sentencing process. In this application, a group conference functions as an *adjunct* to court; &/OR

POST-SENTENCE HEALING: where the people affected by a crime-that-has-attracted-a-custodial-sentence meet to “*make sense*” of their experience together, enabling them to “*get on with their lives*”;

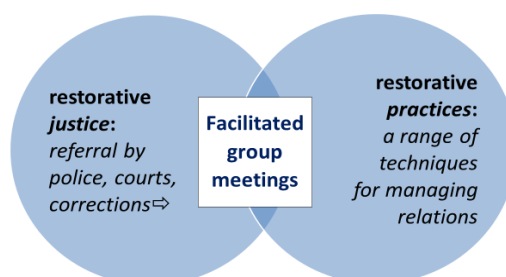
PRE-RELEASE PLANNING: so that a person can make plans with members of the community to which they are returning, so that their return can be successful and sustainable.

Evaluations show that, in (*well-administered*) programs referring cases referred to a (*well-facilitated*) restorative group conference, there is a significant reduction in reoffending, relative to comparable cases that are not referred. This seems to be true for cases involving property offending *and* offenses against the person. It seems to be true for cases involving offending behaviour by people under eighteen *and* by people over eighteen. Importantly, participation in a group conference generally has a therapeutic effect for all those impacted by crime: for the immediate victims of crime and their supporting family and friends, for perpetrators of crime and their family and friends, and indeed, for the professionals who see constructive outcomes for people they are supporting.

Yet, despite this evidence, the use of restorative processes in Victoria’s criminal justice system is still largely confined to dealing with relatively simple cases in *youth* justice, and for a still relatively small proportion of the potentially eligible cases. There is a similar underutilisation of restorative *practices* in schools - again, despite a growing body of evidence that well implemented programs of relationship-based education using restorative practices can increase student and staff wellbeing, and improve academic results, while conversely, reducing student days lost to suspension and expulsion. Reducing suspension and expulsion can, in turn, reduce crime - as the Victorian Ombudsman has noted. There is certainly widespread use of restorative *terminology* in schools - but still a very mixed level of *skill* on the part of school staff.

So, a common theme, across the justice system *and beyond*, is that there is growing support for restorative *principles* or a **mindset**, but inadequate development and evolution of the requisite **skillset** among program administrators and, especially, process facilitators. To work restoratively, both in the justice system and in other human services, requires sophisticated, higher-order skills. And it appears that the nature of these skills remains poorly understood beyond the existing pool of frontline restorative *practitioners*, and a smaller number of experienced *administrators*.

With limited awareness of the requisite skills, policy makers and program managers have not adequately resourced *facilitation* – which requires learning systems to develop a pool of skilled convenors - nor *administration* – managers with the knowledge and experience to develop the *systems for improving systems* that make for *learning organisations*. Quality *facilitation* and *administration* are necessary if the application and impact of restorative approaches are to expand. Work is underway to address these deficits, but far more could be done to realise the potential for restorative justice processes *in* the justice system, and restorative practices *beyond* the justice system.



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With the requisite skills in facilitation and administration, and with dedicated funding for programs that deal with these various categories of case, Victoria’s youth and adult justice systems could safely:

- increase the proportion of cases *diverted* from court,
- expand *sentencing support* in court,
- provide for more *post-sentence* healing, and
- provide for more effective *pre-release* planning.

This expanded use of restorative justice processes could occur both in the youth justice system, and in *adult* justice. Restorative *practices* could increase both the safety and the rehabilitative potential of youth detention and adult prison systems. But none of this is possible without **systems for learning** (“apprenticeship”) and **systems that learn** (“continuous improvement”).

EXTENDING RESTORATIVE JUSTICE APPLICATIONS

As it happens, an illuminating example of apprenticeship and continuous improvement can be found across the Victorian border in the Australian Capital Territory. The ACT Restorative Justice Unit (RJU) has been providing a victim-centred restorative response in the Territory since 2005, enabling the people most directly *affected* by a crime to be *directly involved in addressing* the resulting harm. The Unit's restorative justice *facilitators* have consolidated and extended their practice through effective training, on-the-job learning, and adaptive program change.

The ACT Crimes (Restorative Justice) Act allows for offences to be referred to a restorative process at several stages of the justice process. There are some key differences from the counterpart Victorian legislation. The ACT legislation allows for cases to be referred directly to the RJ Unit by ACT community *police*, as well as by courts (as is also the case in several other Australia jurisdictions). However, two other features of the legislation are unique to the ACT.

First, the ACT legislation expressly prioritises *the needs of victims of crime*. This reflects the understanding that a group conference is convened for *all* participants, and that the more this principle is understood in theory, and the more it is realised in practice, the better the *outcomes* for *all* participants. Second, the ACT legislation envisioned from the outset that the justice program would expand through *a process of action-learning*, and that learning would occur, both on the part the service providers and of the broader community of ACT citizens, through three distinct *phases*.

Phase 1 of the program lasted from 2005 until 2016, during which time the ACT RJU Unit only received *youth* justice cases. However, since Phase 2 commenced in 2016, the Unit has also received certain categories of offence committed by *adults*. Phase 3, which commenced in 2018, permits ACT magistrates to refer *all* types of Territory offences to the Restorative Justice Unit - including family violence &/or sexual offences.

The work of Family Safety ACT coordinator-general Jo Wood had already demonstrated that many survivors of domestic violence absolutely wanted to lose the *violence*, but not necessarily the *relationship*. For several years in advance of Phase 3, the RJ Unit worked to address a range of understandable concerns around the use of restorative justice in family violence matters. Restorative Justice Unit convenors have developed detailed guidelines and skills for managing this type of offence, and established service provision agreements with educational and therapeutic service providers.

ACT Justice Minister Shane Rattenbury noted in 2018:

"[Phase 3] breaks down the final legislative barriers which prevented victims of crime from having access to restorative justice, simply because they were survivors of particular offence types. [...] This referral opportunity will provide additional scope for the Restorative Justice Unit to manage offences of sexual and family violence where power imbalances may mean it is not safe to notify the offender, at the point of referral, that a referral has been made. [...] This is not right for everybody, and not every victim will want to go through this process. That's the fundamental nature of it being voluntary. [However,] through a process like this, the perpetrator can get a much clearer insight into the impact their violence has."

Participation in a group conference - for the sake of the person responsible for the harm, the person harmed, and their respective communities of care - may be considered by the court. It is also possible to seek referral for a case at a later stage. Key elements of the program include that participation is voluntary, and that an intervention can only proceed after the person responsible has demonstrated some willingness to accept responsibility for the harm, to be actively involved in making amends, and to work on behavioural change. Convenors work with the person or people harmed to address their individual interests and needs through an appropriately structured group conference, or, indeed, through a *series* of appropriately structured and facilitated meetings.

The first referrals to the RJU under Phase 3 were cases involving parents who are victims of violence from their adult children. Three of the first four referrals were referred by the court; one by the Australian Federal Police as a diversion from court. The program has already been very positively-reviewed by those involved and by external evaluators.

Importantly, this extension of the services of the ACT Restorative Justice Unit to a much broader range of cases since 2016 provides a mechanism for judicial officers to “*apply appropriate knowledge and expertise when dealing with offenders*”, and to draw on “*skills relevant for specialist courts*”, or special court lists. The ACT experience is directly relevant to Victoria.

The ACT Justice Minister also introduced into the Legislative Assembly in 2018 laws that widen access to restorative justice for juvenile offenders. Previously, young people who had offended were eligible for the restorative justice program only if they immediately and *proactively* accepted responsibility for a crime. Now, a young person who has offended but *doesn't* initially *confess* to a crime may nonetheless be eligible to participate. These changes reversed the onus, such that a young person (aged under 18) who has committed a less serious crime may access restorative justice, as long as they *don't deny* responsibility for that crime.

This change – from *doesn't confess* to *doesn't deny* - is subtle but significant. It was prompted, in particular, by the reality that many young Aboriginal and Torres Strait Islander people have been reluctant to cooperate with police because of “historical mistrust”. Their silence at the point of arrest can be wrongly interpreted as *denying responsibility*.

The concept “*does not deny responsibility*” was prompted by reports of ACT community police failing to divert young Indigenous offenders away from the criminal justice system. Depending on the seriousness of crime, a restorative justice intervention can now commence in the ACT before a plea is entered. These 2018 changes also removed the requirement for referring agencies to assess an offender’s *ability to agree* to participate in the scheme.

Staff of the ACT Restorative Justice Unit are still required to assess someone’s “*suitability*” to take part in the scheme. However, in effect, once a case has been judged as *eligible* for the program, the focus of administrators and facilitators is to work to ensure that someone is *ready* to participate. The 2018 laws include a clause that a young person who has participated in the restorative justice program, and dealt with an offence, may nonetheless still plead *not guilty* in court. They may plead *not guilty* for technical reasons – for example, because they do not agree with the *exact charge* - but can nonetheless participate in a therapeutic process and take responsibility for harm they have caused.

The results have been much as predicted. The Australian National University and the Australian Institute of Criminology examined the impact of restorative justice conferencing on re-offending for young people over an extended period. A multivariate observational outcome evaluation generated familiar findings: the frequency of offending in the follow-up period was 30% lower for those who participated in restorative justice than for those who didn't, and participants in restorative justice conferences, including victims of crime and their supporters, report a 98 % rate of satisfaction with the process.

Meanwhile, the ACT's law reform advisory council has also been considering the use of restorative justice in the coronial system. The Territory's coronial system was criticised more than a decade ago for "soul-destroying delays". A group of Canberra parents, each of whom lost a son in tragic circumstances, and whose inquests have lasted between four and seven years, have urged that a coronial liaison officer position be created to help families navigate the coronial process, and to ensure government acts on coronial recommendations.

This is an example of a powerful idea being demonstrated by a program that is first consolidated, then able to expand the range and reach of its offerings. Action learning authorised by evidence-based policy-making generates *evidence* for rational policies through outcome *statistics*. But *motivation* to change comes from stories. In this case, colleagues have been relating stories about the power of applying some basic principles through a process that powerfully realises these principles, by involving people in sharing their stories and so making sense, collectively, of their complex current reality.

One less-anticipated consequence of the successes of the Restorative Justice Unit has been that staff in other units of the ACT Directorate of Justice and Community Safety now better understand the power of collective decision-making for prevention, and are considering broader applications of restorative practices. But all of this is only possible with *skilled facilitators* - and with dedicated *funding* to provide the requisite processes.

As it happens, Victorian law already allows for cases involving adult perpetrators of crime to be referred to a group conference, as occurs in the ACT. Changes to the state's Sentencing Act in 2010 (Section 83A) make it *legally* possible for sentencing in adult cases to be deferred, and for a case to be referred to a group conference. However, eleven years after the law was changed, there is still no funding to make it *practically* possible for judicial officers to refer cases involving adult offenders to a restorative process.

The GROUP CONFERENCE PROCESS in RESTORATIVE PRACTICES

Meanwhile, a group conference and other restorative processes can also be applied in many situations *outside of the formal criminal justice system*.

A restorative process, such as the group conference, can be provided within a **community of people who share a common concern**, such as:

- **family members** (especially where conflict &/or violence has caused trauma);
- an **educational community** (of students and teachers);
- a **workplace community** (in which a group of colleagues in a corporate, government or community / third sector organisation harness their efforts toward some common cause); or
- a **residential community** (such as people who reside in some common premises, or people in the one street, suburb or whole region seeking to live harmoniously together).

A restorative process may be a one-off exercise, or provided as part of a broader formal program.

Group conferences can be used for many different types of situations that occur in a medium-sized “community”, perhaps most obviously in schools, family-led decision-making, and residential care. Participants can be offered a group conference through many different referral pathways. Restorative responses should be offered as early as possible to at-risk youth, families and other community members, including at points where there are currently gaps in programs operated by justice system agencies, and by other agencies responsible for providing social support.

Importantly, the essential elements of a system of **relationship-based education using restorative practices** that has developed in schools has also now been adapted and trialled in the distinct setting of **youth detention centres**. A Youth Detention Centre is a highly artificial community. Precisely because of this artificiality, particular attention should be paid to how best to *build, maintain and repair relationships* involving young people during the period of their detention – and *afterwards*. Time spent in detention presents an opportunity to develop self- and relationship management skills:

- so that **young people pose less of a danger to themselves and others while in detention**; & also:
- to **better equip young people to be-in-community after their release** from detention.

In short: “restorative justice” in youth detention has a broader and deeper application than in other parts of the youth justice system, where it typically refers to *group conferencing referred by police or a court to deal with an incident of undisputed harm*. In youth detention, a restorative approach involves a general *program*, rather than one specific *process* – it is *part of a system for managing relationships*. Hence, it is more accurate to speak of **restorative practices** in youth detention.

In 2018, a regional office of Queensland’s Department of Children, Youth Justice and Multicultural Affairs initiated a project to trial restorative practices in the Brisbane Youth Detention Centre (YDC) at Wacol. An internal departmental evaluation soon showed marked reductions in the number of incidents of violence occurring within the centre *and* an apparent reduction on baseline rates of reoffending post-release. Accordingly, the program was extended to the state’s second YDC in Townsville, and more recently to a new third West Moreton YDC, which has explicitly included restorative practices in its foundational operating principles.

Staff involved with these programs in Queensland’s Youth Detention Centres are now liaising with their Victorian counterparts in a nascent national community of practice focussing specifically on YDCs. Operational managers at Victoria’s Parkville and Malmsbury YDCs are developing Communities of Restorative Practice among staff, as Victorian Minister for Justice Natalie Hutchins announced in September 2020:

[This] pilot program [...] will improve the day-to-day operations of youth justice centres by reducing violence and conflict. Using restorative justice principles, young people will be taught how to manage conflict and interpersonal relationships in custody so they prosper on their release into the community.

In sum, although a youth detention centre is a highly artificial and unusual “community”, it has in common with other communities – that is, groups of people who share some common place of residence, identity or project – that ongoing relationships need to be managed. So, it makes good sense to use evidence-based communication practices to manage those relationships. Community conferencing is usefully understood as just one of a set of communication practices:

Rationale for communicating ☞ 🔊 Level of communication	NEGATIVE Reactive	NEUTRAL Preventative	POSITIVE Promoting
One way (Coaching)	Observational Feedback: coaching / mentoring		
Two-way (Conversation-Negotiation)	Structured conversation		
Third-party assisted	Mediation = Assisted Negotiation		
Group Facilitation	Various structured meeting formats, including group conferencing to manage conflict		

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When implementing restorative practices to assist with relationship management, is important that policy-makers understand that there is more than one format of group conference. Indeed, there are at least **four main formats** currently in regular use. The first format, for addressing specific incidents, is used mainly in the justice system. The second and third formats are used more in organisations or other communities. It is not uncommon for community members, who have to actively coexist, to be struggling with a series of poorly resolved issues, or some common concern.

The fourth format is used by various redress schemes that seek to model the success of the Defence Abuse Response Taskforce (DART) Redress Scheme, which was re-established in 2016 under the aeqis of the Commonwealth Ombudsman. Other Schemes modelled on the DART include the National Redress Scheme, Victoria Police Restorative Engagement Scheme, and the recently announced Stolen Generations Redress Scheme. Each uses a format of the group conference called either “*restorative engagement*” or a “*direct personal response*”. The process has the twin function of (i) addressing the *betrayal trauma* of people who experienced abuse in an institution, and (ii) using the lessons from these experiences to inform and motivate *improvements to institutional governance and culture*.

VARIATIONS on the Group Conference Format			
<i>A single incident of undisputed harm</i>	<i>A sequence of poorly resolved incidents</i>	An issue of common concern	A legacy of betrayal trauma
What happened and how were people affected? What now needs to be done to: <ul style="list-style-type: none"> ○ repair harm, ○ reduce the risk of further harm, & ○ restore right relations? 	Things were good (enough) [1] Things turned bad [2] Things went from bad to worse [3] Now Something <i>really</i> needs to be done	We have different <i>specific</i> experiences of the same <i>general</i> situation: [1] Specific examples [2] General Issues [<i>prioritised</i>] [3] General Options [4] Specific Action	Historic abuse has left a legacy of trauma: [1] A narrative of the incident or patterned behaviour [2] Official or formal response [3] Shared lessons [4] Plans of action & support

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In each of these variations, a group conference can:

- expand the **network of people** who can provide insight, support & oversight;
- involve that network of people in **“truth-telling”** & **“problem-solving”**;
- through truth-telling: **transform conflict into cooperation**;
- harness that cooperation for problem-solving & then developing a **pragmatic plan** to:
 - **respond** with authority to harm,
 - **prevent** further harm,
 - **promote** well-being;
- **coordinate** “community” & “official” resources to provide ongoing support & oversight.

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RESTORATIVE JUSTICE & RESTORATIVE PRACTICES in REGIONAL SERVICE REFORM

Although it is useful to distinguish restorative *justice* in the justice system from restorative *practices* used to help manage relationships in various communities, there are significant gains to be made at the broader level of “community” by *integrating* the work of restorative justice and restorative practices. There are very important reasons why:

- effective criminal justice system reform should *connect* with work beyond the justice system, and
- reform across these various areas should be *coordinated*.

For example, comparative studies on the social determinants of health in *Aboriginal* communities show a direct correlation between *public health* outcomes and *self-determination* across multiple domains. The correlation between cultural continuity, self-determination and public health is *direct and linear*: the greater the number of domains in which there is meaningful self-determination and community control, the better the public health outcomes.

An influential study of First Nations bands across British Columbia, Canada identified this correlation between community wellbeing and self-determination across six domains: land claims; self-government; education in locally controlled schools; (locally controlled) health services; cultural facilities; and emergency (police & fire) services. Significantly, only *one* of these domains relates to the criminal justice system.

This finding is consistent with experience around Australia and comparable countries over the last several decades. Yet the implications of this correlation between community wellbeing and self-determination have still not been adequately translated into policy and practice. There is still an excess of *doing to* and *doing for*, and a deficit of *working with*:

1. Many attempts to improve justice system *outcomes* continue to focus primarily, or exclusively, on the *justice system*. Yet there is consistent evidence that significant **improvements in justice system outcomes require reform efforts to be *connected and coordinated***, from the outset, **with broader services and systems** that provide social support and mechanisms for self-determination.
2. In addition to the mistake of focusing exclusively, or primarily, on the justice system, many reform initiatives continue to make the mistake of focusing on *tertiary* prevention at the expense of secondary prevention, let alone primary prevention. Again, there is consistent evidence that it is ineffectual to focus exclusively, or mainly on how systems *respond to harm*. In order to be effective, efforts to reform the ways in which the justice system responds to harm need to be coordinated with efforts to improve the ways in which government and community programs work to *prevent harm* and *promote wellbeing*. The most effective projects work across all three areas of intervention: **responding to harm, preventing harm, promoting wellbeing**.
3. Another common but less-obvious error is related to this excessive-focus on justice system responses to harm, at the expense of programs that prevent harm and promote wellbeing. There is a subtle but significant link between what a reform project aims to *achieve*, and what project operators and evaluators tend to *measure*. Programs that focus on *responding* to harm tend to measure *activity*: inputs and outputs. Programs that focus on *preventing* harm tend to measure *population-level outcomes*. However, if the ultimate focus is to promote individual and group *wellbeing*, reformers need to look deeper, and in more detail. **Project operators and evaluators** need to understand and measure not only *activity* and *outcomes*. They also **need to attend to the processes that are achieving those outcomes**.

This truth may seem obvious when spelled out so explicitly, and yet it is still frequently overlooked – hence the recurring problem that **policy makers and managers fail to understand the skills involved in facilitating restorative processes**, and **evaluators** often fail to assess the *quality of facilitation* in a program, and so fail to distinguish markedly different *programs* and *processes*.

When programs in the justice system *do* provide well-facilitated decision-making processes that can transform conflict into cooperation, and when other government and community programs make use of similar processes to manage relations in the broader community, there can be a *region-wide* effect.

And when a range of service-providing agencies collaborate, and coordinate their work, their collaboration can disrupt **vicious cycles** (where each problem compounds other problems), and instead drive a **virtuous circle** (where each improvement supports other improvements).

To drive a **virtuous circle of regional reform**, decision-making processes should meet the three foundational restorative principles: *do no further harm*, *work with people*, and *reset right relations*. A virtuous circle of regional reform requires that changes across different agencies be well-coordinated. The work of professionals needs to be coordinated with work done by members of social networks - family, friends, and other community members, including volunteers in community organisations. Regularly involving community members in leadership, governance and decision-making, can increase people's connections to family, community and culture; it can decrease conflict in communities; and it can help to heal communities.

Importantly, creating and driving a virtuous circle of regional reform does *not* necessarily require new programs. Rather, to drive a virtuous circle, reformers primarily need to:

- **Diagnose** existing programs and processes;
- **Fine-tune** program administration and process facilitation – to ensure that professionals do no further harm, work with people, and reset right relations; and then
- **Align** practice – so that good practice becomes standard practice, consistent across programs.

GENERALISABLE PRINCIPLES for REFORM

Recent strong evidence for some generalisable principles to inform good practice in criminal justice comes from two Anglophone countries with which Australian governance systems are most compared. The US National Bureau of Economic Research (NBER) recently evaluated a program in Massachusetts that expressly sought to reduce sentencing for misdemeanours. The logic of the program was that sentencing for misdemeanours can have the effect of *criminalising poverty*.

A useful summary of the evaluation, and of an evaluation of a comparable program in Maryland, is entitled **Keeping People Out of Jail Keeps People Out of Jail**. That sounds like an empty tautology. In fact, it reflects a profound finding of the NDER and the counterpart study: that *criminalising poverty is criminogenic*; it actually increases rates of crime.

The NDER economists set out to determine a balance of costs and benefits from the program, but instead found only benefits. Resources were saved not only by not having to process the misdemeanour cases, but by a broader reduction in rates of crime. The Bureau of Economic Research data indicate that, at a local population level, when the state criminalises poverty less, people commit less crime.

A similar phenomenon can be inferred from a 2021 study by the NSW *Bureau of Crime Statistics and Research* (BOCSAR) that examines a decline in the number of Aboriginal young people in custody in NSW from 2015 to 2019. Aboriginal young people remain significantly overrepresented in custody across Australia (and are one-in-three of the current NSW adult prison population). However, there

was a decline (from 161 to 121) in the average daily number of Aboriginal *young people* in custody in NSW over the five-years from 2015 to 2019.

The BOCSAR report concluded that two key factors contributed to this reduction: a reduction in the number of Aboriginal young people charged by police and appearing in court, and a decline in Aboriginal young people sentenced to a custodial order. Victoria's Commission for Children and Young People has made recommendations consistent with these findings in the 2021 report *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system.*

Similarly, a 2021 *Public Interest Advocacy Centre (PIAC) and Homelessness NSW report* on the interactions with police of people sleeping rough in Sydney found that they felt unjustly and excessively targeted. *The PIAC and Homelessness NSW* argue that the appropriate use of police discretion can reduce the impact of "law enforcement" interventions on the lives of vulnerable people. The report authors propose assertive outreach programs to re-engage people who have long and complex histories of rough sleeping.

A core principle across successful reforms seems to be to retain the *option* of enforcement, but first offer a public health response. In many areas, enforcement should be understood not as a Key Performance Indicator, but as a sign of failure.

A common response to this suggestion is scepticism, if not cynicism. But police agencies themselves are trialling these principles in practice - with some startling results. A recent headline reporting on a key UK pilot program announced that the "pioneering police scheme slashes reoffending rates". The headline in some ways misses the key point. Several pilot programs of **deferred prosecution** in the UK are *increasing social support* and *well-being*. A reduction in reoffending rates is a side-effect of increased social support. These police-initiated programs offer a *public health intervention*, rather than enforcement, as the default option. They are achieving compliance rates as high as 94%. In other words, only *one-person-in-twenty* does *not* take the opportunity to address the underlying causes of offending behaviour.

It is not a coincidence that some senior police involved in these trials of deferred prosecution had earlier trained as restorative justice facilitators for the original UK trials of group conferencing, attending workshops with Australian trainers held in 2001 at the Universities of Oxford and of Northumbria. They subsequently had direct experience of the benefits for all when the foundational questions asked by professionals shift from the retributive "*Who has done wrong?*" and "*What should be done to them?*" to the restorative "*What has happened?*" "*How have people been affected?*" and now "*What can be done to improve the situation?*"

ADDITIONAL EFFECTIVE OPTIONS for RESPONDING to FAMILY VIOLENCE?

This core principle of retaining the *option* of enforcement, but first offering a public health response, can be extended beyond the types of crime addressed in deferred prosecution trials. As the Sentencing Advisory Council has noted, the recent increase in detected crime in Victoria has been greatest in crimes against the person, including family violence. Effective responses to family violence are desperately needed.

In her Stella prize-winning 2019 book *See What You Made Me Do: Power, Control and Domestic Abuse*, former ABC journalist Jess Hill found that programs that have been relatively effective in addressing family violence are driven by much the same basic idea: *An invitation to change - with a strong, backed-up threat*. But the *invitation* is a genuine offer to help those who are perpetrating violence with whatever they need to help turn their lives around: counselling, employment, treatment for addiction. In other words: *“It’s non-negotiable that the violence must stop. But if you are prepared to work with us, we will work with you to identify how to make that change happen.*

In these cases, enforcement - *doing to* – is used primarily as a mechanism for encouraging people to *engage* – and *work with*. Really effective engagement then needs to address *psychological* and *cultural* issues. The *relational* element bridges the psychological and the cultural.

Jess Hill observes that it is common to ask the question *“Why didn’t / doesn’t she leave?”*, but that it has been less common to ask: *“Why did / does he do it?”* The responses to these foundational questions have been influenced by an *“intellectual turf war”* between two general theories:

- **psychopathology**, which understands domestic abuse as a symptom of mental illness, childhood trauma &/or substance abuse;
- **feminist political sociology**, which understands men's violence as a by-product of a *patriarchal system* in which men feel entitled to dominate women.

Both *psychological-* and *social-theory* provide *part* of the picture. Neither theory on its own provides a complete picture. Both theories certainly inform current approaches. Men’s behavioural change programs emphasising psychological change *and* programs promoting socio-cultural change towards gender equity both appeal to funding agencies as they are **visible and seemingly low-risk**.

Men's Behaviour Change programs emerged in the mid-1980s, helping participants to acknowledge their violence and learn strategies to stop it. Participation was initially voluntary, but as programs have become more connected with the justice system, more men are being referred by police and courts. There is still some controversy around these programs; some social workers do not approve of assisting perpetrators; there are often problems with “one-size-fits-all” programs; and there is still only very limited longitudinal research on their effectiveness. Nonetheless, the 226 recommendations made by Victoria’s *Royal Commission into Family Violence* in 2016 included substantial boosts in funding for behaviour change programs run by community-based organisations and corrections – which Victoria's specialist family violence courts can mandate men to attend.

With regard to **socio-cultural change programs**, Jess Hill notes that these can risk messaging that evokes a sense of guilt or collective shame, and have perhaps inadvertently encouraged some men towards the counter-productive discourse of “men's rights”.

The effect of mandatory arrest policies has likewise, proven more complex than was originally anticipated. It is not surprising that frontline workers with years of experience in the social movement to end family violence were among those arguing to Victoria’s Family Violence Royal Commission that we cannot arrest our way to complex psychological and social change. In the words of an experienced US activist, constructive reform efforts need to move “from carceral feminism to transformative justice”. Some judicial officers are reaching similar conclusions.

Meanwhile, embedded in the terms of reference for the Victorian Royal Commission was the reflexive tendency of agencies to oscillate between enforcement and therapy - doing things *to* people and *for* people. The Commissioners were asked to find more, and more effective, ways to:

1. prevent family violence;
2. **improve support** for victim survivors;
3. **hold perpetrators to account.**”

Some of the ongoing work to implement key Family Violence Royal Commission recommendations has encountered these related challenges of contemporary **governance** to:

- transcend an (understandable) preference of governments and NGOS to *avoid* risk, and instead implement programs that actually support citizens to *manage risk* (which they can’t avoid);
- bridge the gap between long-term *primary prevention* policies and short-term *tertiary prevention* tactics with the **missing middle** of interventions that **provide safety and address complex issues**;
- augment and link psychological and socio-cultural approaches with **relational approaches** [which, in the various redress schemes, are helping to address the *betrayal trauma* of abuse];
- understand that “*guilt and shame are poor motivators for change*” and make good use of insights on how to-increase-voluntary-participation-in-justice-programs;
- increase the skills of service providers to *work with* clients (rather than succumbing to the reflexive tendency of agencies to do things *to* and *for* people);
- not only work effectively with individuals, but also with *family systems* [without attracting accusations of “victim-blaming”].

Since it commenced Phase 3 of the ACT legislation, the ACT RJU has been working to address these challenges, and several recent research reports support an integrated system approach consistent with these principles. A 2021 Australian Institute of Criminology report on the relevant Australian and international research literature indicates that escalation within current and former abusive intimate relationships appears to be limited to serious or prolific offenders rather than characterising most abusive relationships.

A report by Health Justice Australia (HJA) describes health justice partnerships as an integrated response to domestic and family violence (DFV), and a tool to provide accessible, safe, client-centred and holistic support for those experiencing DFV. Likewise, a 2021 report by Australia's National Research Organisation for Women's Safety (ANROWS) explores how human services agencies can play

an essential role in broader perpetrator intervention systems, and a pivotal role in guiding men into behaviour change interventions, working with the legal system and with men's family violence intervention programs by monitoring perpetrators' risk over time, sharing information, and working collaboratively to manage risk, and *lose the violence*.

In cases where family members accept that “*we must lose the violence - but not necessarily the relationships*”, *restorative interventions* offer a way forward. Not surprisingly, the explanation provided in *See What You Made Me Do* for key psychological and relational dynamics involved in family violence involves the same bio-psycho-social theory that informs effective restorative practice.

Some programs dealing with *adult* family violence will begin to act on lessons from programs that are already addressing *adolescent* family violence by working with the *family system*. For example, by asking *family members* “*What kind of father / husband/ man do you want [him] to be?*”, some programs are working towards effective interventions with family systems. In short, emerging effective responses combine individual change *with relational intervention*.

The cumulative effect of many effective interventions may yet be broader *cultural* change in areas where these programs are operating. For example, in Central Victoria, and in parts of metropolitan Melbourne, programs that work with people to address complex issues are being supported by regional communities of restorative practice. Colleagues in these communities note that, in addition to fine-tuning practice and programs - *within* and *beyond* the justice system - there is also a need to *coordinate* these programs, so as to address the familiar problems of service gaps and service duplication – whereby people “*fall through the cracks*” when programs operate “*in silos*” and workers “*tread on each other's toes*” or grant-funded programs “*battle over turf*”.

Many professionals have experienced the phenomena of community and government sector workers meeting their individual *key performance indicators* as they deliver services across a region, and yet much of their activity not addressing the specific needs of the individuals and groups for whom they are funded to provide a service. Community members and supportive professionals cannot collaborate effectively, & certainly cannot work-as-one, unless their work is *coordinated*.

In addition to more coordination across formal *services*, the work of professionals can generally be better coordinated with informal work done by members of social networks – family, friends, and other community members, including volunteers in community organisations. This approach emphasises the importance of a *continuum of community-based interventions*, which together provide a supportive therapeutic approach for at-risk young people, families and communities. The approach is consistent with the aspirations of various communities for greater self-determination and significant structural and system change.

There is a wide range of opportunities to further reform service-delivery across administrative regions in Victoria. Some of these opportunities for reform are *within* justice system agencies, other reform opportunities lie *beyond* the justice system, and then there is an opportunity, across each region, to increase the level of *coordination* between service-providing agencies:

JUSTICE SYSTEM REFORM POSSIBILITIES	COORDINATING SERVICE REFORM	BROADER SYSTEMIC REFORM POSSIBILITIES
Diversion Sentencing support Monitoring Orders Governance within youth detention ↔ Post-sentence/ pre-release	Prioritising local issues in each region Regular structured review of inter-agency cooperation and collaboration in each region to support integrated housing, health, education, welfare & justice responses	Families Schools Health Residential care Supported accommodation Community organisations

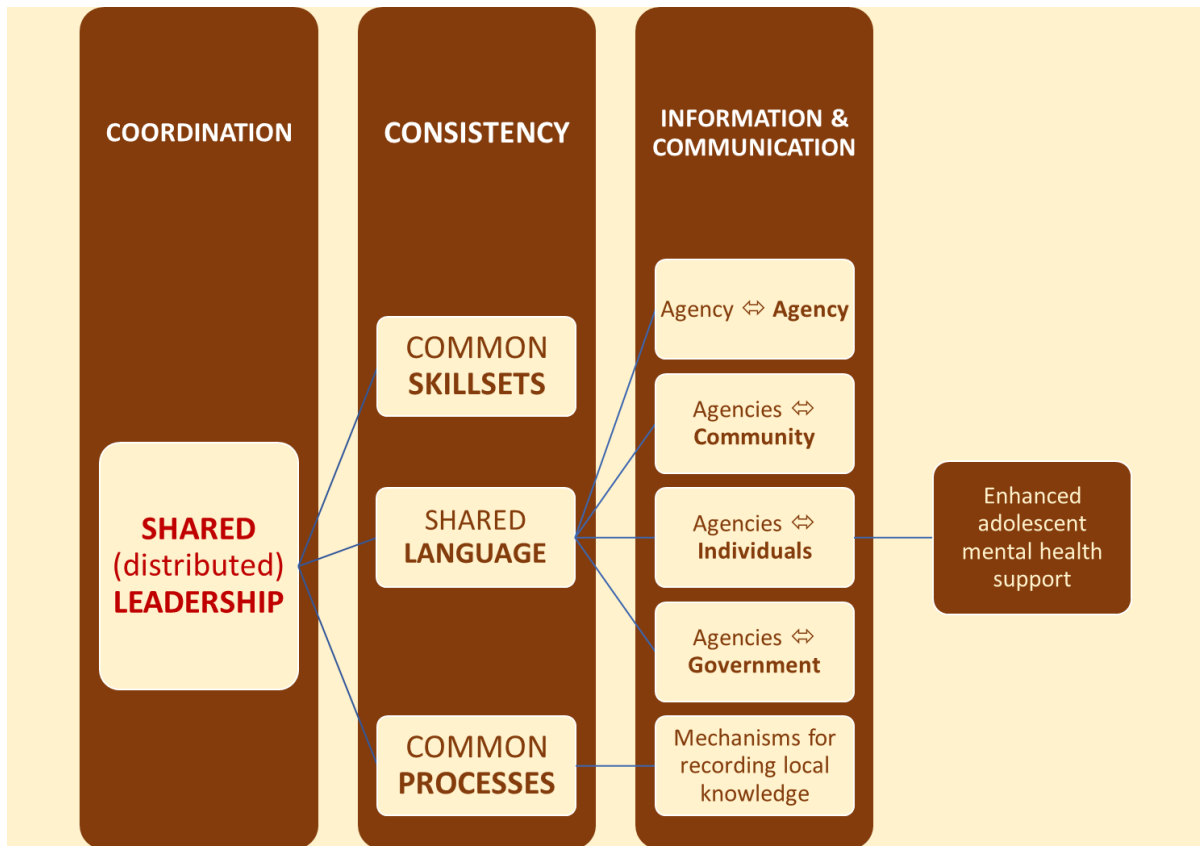
One mechanism to increase linkage and coordination across sectors and agencies is through the roles of a **regional restorative practices coordinator** and specialist **lead restorative practitioner**. Professionals in these roles can help oversee a cycle of **action learning** with other members of a community of professional practice. This collaborative learning could include police prosecutors, lawyers and key court personnel, including registrars who might then be well-placed to provide important information to magistrates about restorative options.

As it happens, something similar has already occurred in parts of Canada. A joint initiative of The Royal Canadian Mounted Police and the Aboriginal Justice Learning Network resourced Australian trainers, in the late 1990s and early 2000s, to support community groups across the country to develop skills to facilitate community conferences. The philosophy underpinning this work was then enshrined in Canada's national Justice Act in 2003. Some perceptive early analysis correctly predicted that reform in Canada would then continue along two parallel lines:

- **multi-agency forums** (police, public schools, child welfare, immigration) would align with the national *government's public safety framework*; and at the same time:
- **non-state local peacemaking forums would proliferate** – and many would experiment and extend restorative practices into new applications.

The resulting justice “ecosystem” enables communities gradually to shift the ratio of their time spent *reacting* to crime ↔ preventing crime ↔ working to *promote* community-level well-being. When the ultimate focus becomes promoting individual and group well-being - which happens to have a crime prevention effect - what then needs most to be measured are **mutually reinforcing processes**.

Administrators and evaluators involved with efforts to improve individual and collective well-being can then focus on how agencies deliver processes that support people to establish, maintain, strengthen &/or repair relationships: With the right *common skillset*, service providers can improve decision-making, better resolve disputes and more effectively manage conflict. When a project *coordinates* the work of these service-providers, **leadership can be more effectively “distributed”** among professionals and community members across the region:



The cumulative effective of this work, over time, across regions, can be to *increase* the proportion of resources devoted to *supporting wellbeing and preventing harm*, and to *reduce* the proportion of resources devoted to reacting to harm. In this way, restorative practices provide practical mechanisms for a virtuous circle leading to **justice reinvestment**.

RECOMMENDATIONS

Members of the Association for Restorative Justice (AARJ) see many opportunities to increase the use of restorative processes in the Victorian Criminal justice system, thereby both (i) improving responses to crime and (ii) preventing crime.

With regard to cases involving CHILDREN & ADOLESCENTS who have offended

Consistent with the principle that *effective interventions with children and young people primarily require a public health focus*, we strongly support the recommendations of the Sentencing Advisory Council to:

- expand the use of **pre-trial youth justice family group conferencing**;
- ensure that **culturally appropriate specialist services** are available across Victoria.

We would then build on that recommendation, and recommend to:

1. more consistently **involve specialist service providers** as participants in **youth justice group conferences**, &/or trial the use of a variation of the **group conference for dedicated care-planning** so as more effectively to coordinate specialist services.

Related changes could include skills-training for youth officers to conduct restorative conversations with young people, and support for existing Children’s Court Youth Diversion (CCYD) programs to refer cases to the YJGC programs.

AARJ also recommends that:

2. the existing **Children’s Court Youth Justice Group Conferencing** program shift from an ‘opt-in’ to an **‘opt-out’ model**.

Given the evidence that participating in a group conference is generally beneficial for all the parties who have been affected by an incident of offending, and that participation reduces the likelihood of reoffending relative to other criminal justice ‘treatments’, the default assumption should be that the Children’s Court will refer a case to a group conference unless those involved object. In other words, while participation should always remain voluntary, the parties should initially be offered the best-available option. This arrangement could be trialled at one or more sites.

Other opportunities for greater use of restorative processes with **children and adolescents** include to:

3. increase the application of **relationship-based education using restorative practices** in schools.

Restorative practices provide some of the “*how-to*” for existing DET initiatives, most obviously School Wide Positive Behaviour Support (SWPBS), and also Respectful Relationships. A logical mechanism for providing technical support to School Executive Teams is through Senior Education Improvement Leaders (SEILs), Service Support Managers, and SWPBS coaches located at DET regional offices;

Collaborative work with the Department of Families, Fairness and Housing (DFFH) could:

4. review current practice in **family-led decision-making** to ensure that facilitation is of a consistent high standard, so that decision-making can identify the safest and most supportive placement options for children in need of alternative care arrangements;
5. support the use of *restorative practices* in **Out-of-Home Care**, with dedicated skill-development for staff, and for police officers dealing with “crossover kids”;
6. **augment existing programs that address adolescent family violence** with the option of **group conferencing** as a mechanism for effective work with *family systems*;

This remains a recommendation of the Royal Commission into Family Violence, but has *not* been implemented. There is a strong case for a new pilot with adequate forethought and resourcing, as recently recommended by the Family Violence Implementation Monitor.

A related program called RESTORE, which addresses Adolescent-Violence-in-the-Home, has been trialled in the *family division* of the Melbourne Children’s Court. Effective work in this area can provide an early, public health response in cases involving young people who have been causing harm, and can minimise the risk of them entering the criminal justice system. The trial of RESTORE had been achieving promising results when interrupted by the pandemic. Its operation-to-date should now be reviewed, in an effort to determine what combination of (i) funded coordination, (ii) training for court personnel and related justice professionals, and (iii) the engagement of these professionals in action learning would increase referrals to the program.

AARJ also strongly supports:

7. adequate and ongoing resourcing of the project to implement **restorative practices across** Victoria’s two current **youth detention centres**, and in the new facility at Cherry Creek, and that restorative practices in youth detention should include the option of using group conferencing for **pre-release planning** with members of the community to which a young person is returning.

With regard to cases involving YOUNG ADULTS who have offended

We support the recommendation of the Sentencing Advisory Council to **extend the dual-track sentencing system** for young people aged 21 to 25. We would then add the recommendation to:

8. use group conferences as a mechanism for developing **tailored community correction orders**;

One possible mechanism for *supporting and coordinating* these recommended initiatives across justice, education and family support is through (i) a *regional* Restorative Practice Coordinator &/or (ii) a Regional Lead Restorative Facilitator. Professionals in one or both of these roles could (a) facilitate in complex cases, and (b) coach less experienced facilitators, so as to consolidate and extend their skills. These Coordinator- &/or Lead Facilitator roles could be located within DET, DFFH, the regional provider of YJGC, or another NGO that is already funded to provide related social support services.

Accordingly, AARJ recommends:

9. a pilot program involving (i) a *regional* Restorative Practice Coordinator &/or (ii) a Regional Lead Facilitator to *coordinate* and *support* consistent a high standard of restorative practice across a region.

A pilot along these lines could support professionals across a region to engage in effective *reflective practice* so as to attain and maintain high and consistent practice standards, even as that practice continues to evolve. This sort of *learning system* requires collaboration between facilitators, administrators, trainers, and evaluators. This arrangement could assist specialist courts to trial referring certain types of cases to the Lead Facilitator, and could assist working groups to improve administrative systems.

With regard to cases involving ADULTS who have offended

10. A regional Restorative Practice Coordinator &/or Lead Facilitator could also work with either (i) the regional service that is already funded to deliver *youth justice* group conferencing under the *Children, Youth and Families Act 2005*, or with (ii) a related service to **provide group conferencing** as a **mechanism** for:

- **Sentencing Support** in cases involving adults who have offended, as per *Section 83* of the *Victorian Sentencing Act*, and as is already operating successfully in the ACT;
- **Post-sentence healing**
[for all parties directly affected by a crime-that-has-attracted-a-custodial-sentence, such as has already been trialled in Victoria by DJCS with *individual cases*, but has been operating successfully in NSW as a dedicated program since 2000]; &/or
- **Pre-release planning**, for cases involving children and young people, young adults, *and* adults [actively engaging members of the community of care to which a person will be returning after a custodial sentence, including addressing housing arrangements].

11. Any future legislative amendments that expressly authorise &/or extend the use of group conferencing should emphasise **the needs of victims of crime**, and their communities of care.

In relation to other initiatives that can prevent crime, and can provide more effective response to crime perpetrated by adults, AARJ recommends that:

12. Victoria police initiate an evaluated trial of **deferred sentencing** across a division or region.

We trust that some of the above suggestions are helpful, and we wish the Legislative Council's Legal and Social Issues Committee well in this important review of Victoria's Criminal Justice System.

Members of the Committee of the **Australian Association for Restorative Justice**

August 2021