



Australian Association
for Restorative Justice

Submission to the **Victorian Sentencing Advisory Council (VSAC)**
Major Review of Sentencing for Workplace Health and Safety Offences

The Committee of the **Australian Association for Restorative Justice (AARJ)** understands that the 2020 Victorian legislation relating to workplace manslaughter was accompanied by a package designed to improve investigation and enforcement of workplace Occupational Health and Safety (OHS) laws. That package included a specialist WorkSafe team to lead investigations and prosecutions, and two additional Family Liaison Officers. The AARJ Committee also understands that:

- a Workplace Incidents Consultative Committee has continued to develop **further reforms to support those affected by workplace fatalities and serious incidents**; and
- through February and March 2024, VSAC hosted community conversations on Victoria's OHS laws across regional Victoria and metropolitan Melbourne.

The standing Workplace Incidents Consultative Committee, and the statewide community consultation, have both highlighted the need to answer two questions that raise a more complex set of issues than does the single question of *how heavy punishment should be* for a failure of workplace safety. Those two questions are how to:

- *address the harm caused in specific cases*, and
- *ensure that workplaces in general are safer in the future*.

Both the standing- and statewide consultations on OHS laws have suggested that some form of restorative *practice* could better *address harm* in specific cases, and better *ensure safer workplaces* in general. The AARJ committee agrees with this suggestion about the potential of restorative *practice* - and cautions that the requisite reforms will be complex.

Our experience, around Australia, and internationally, has been that reformers readily comprehend restorative *principles* and the rationale for a restorative *program*. However, to operate an effective program, senior decision-makers also need a thorough understanding of restorative *processes* – and until recently, there has been only very limited understanding of the nature of restorative processes, and of the subtle-but-important differences between them.

Accordingly, this submission:

- defines the processes used in different restorative programs, and summarises the related-but-different outcomes that these programs and processes seek to deliver;
- considers how a restorative program and processes could form part of an effective response to a breach of OHS laws, and could help to prevent future breaches; then
- considers the design of an effective restorative workplace safety program, with suggested arrangements for governance, capacity-building, quality control, and resourcing.

Varieties of RESTORATIVE PRACTICE¹

Restorative practice is a generic term that covers related-but-different programs, all guided by the same foundational restorative principles to *do no further harm* and *work with people to set relations right*. The right restorative process for the presenting situation can help relations between the people affected to be:

- *restored* [to something positive];
- *deepened*;
- *neutralised* [and so no longer involves intense conflict];
- *formally ended* [and so effectively *non-existent*]; and/or
- *established* [between participants meeting for the first time]

The term **restorative practice** covers programs of:

- **Restorative Justice:**
which responds to harm with healing in *justice system* programs;
- **Restorative Practices:**
which are processes & techniques that help to *build, maintain, deepen, & repair* relations in communities, including schools, workplaces, extended families, neighbourhoods, towns and regions;
- **Restorative Engagement:**
which is a process used in Redress Schemes to link *individual recovery & institutional reform*.

The common element across these different types of programs is the use of *facilitated processes* that support participants to reach (i) a *shared understanding* of their current circumstances, then (ii) some *agreement* on how to improve those circumstances.

Restorative Justice programs *refer* cases to a restorative process at different stages of the criminal (or civil) justice system:

¹ Core concepts in the following sections of the submission are adapted from David B Moore & Alikki Vernon (2024) *Setting Relations Right in Restorative Practice: Broadening Mindsets and Skill sets*, Routledge

- diversion *away from* court by community &/or police
- sentencing support *in* court
- setting relations right *after* court
- planning *before release* from corrections
- community support *after release* from corrections

Restorative programs at each of these stages of processing use slightly different criteria for *referral*. Some programs function as an ‘adjunct’ to the criminal justice processing, others as an alternative, or stand-alone program, with its own aims and objectives, which may or may not influence other criminal justice processing.

Restorative practices can be understood as a set of techniques and processes that help to *manage relationships* in a community. Restorative practices improve the ways in which people provide each other feedback, converse, mediate the conversations of others, and facilitate meetings among larger groups. The most familiar applications of restorative practices have been in schools and other workplaces, but the same general approach can be applied in any community.

A continuous exercise of *reviewing, fine-tuning, & aligning communication-and-decision-making practices* can be understood as a *system for improving systems*. To implement that system-for-improving-systems requires a system that support community members to learn-by-doing. Accordingly, successfully implementing restorative practices requires a coordinated learning system, with some individual or group responsible for that coordination.

Restorative engagement is a process typically provided by a *program-within-a-(larger)-program* or scheme that provides redress to a group of people harmed within &/or by an institution.² The essential rationale for restorative engagement is that people in authority cannot *deeply* understand what happened, and the impact of what happened, without *engaging directly* with those-who-have-been-harmed. Many people who have been harmed *within* and/or *by* an institution sense a connection between healing their own complex harm, improving relations among their community-of-care, and seeing evidence of reform of the institution-associated-with-the-harm.

An emerging consensus in the literature on *trauma and recovery* is that recovery from institutional harm requires the *truth and repair* provided by a restorative program that offers

² The Australian [Defence Abuse Response Taskforce](#) (DART) (2012-2016) developed the first Restorative Engagement program. A Defence Restorative Engagement program was reestablished, at the conclusion of the Taskforce in 2016, within the [Office of the Commonwealth Ombudsman](#). There followed: a [National Redress Scheme](#) (NRS) (2018-) with *restorative engagement* renamed a *Direct Personal Response*; the Victoria Police [Restorative Engagement & Redress](#) Scheme (2019); and Redress Schemes for [Ambulance Victoria](#) [[pending](#)]; mothers subjected to [forced adoption](#); [Care leavers](#) [who were in institutional care as children]; Members of the [Stolen Generations](#) (2022-)with *restorative engagement* renamed *Personal Acknowledgement*]; the Australian Sports Commission’s restorative engagement scheme for [Elite Sports](#) (2022-), and Services Australia after ‘[RoboDebt](#)’ (2023-), which involves an in-house program with *restorative engagement* renamed *Listen to Learn*.

both a public *and* a personal apology.³ *Restorative* practice shares with *trauma-informed* practice the understanding that a narrative account of what has happened can reveal meaning – especially the origins and underlying logic of rules-&-routines, or *habits*, which operate at the levels of:

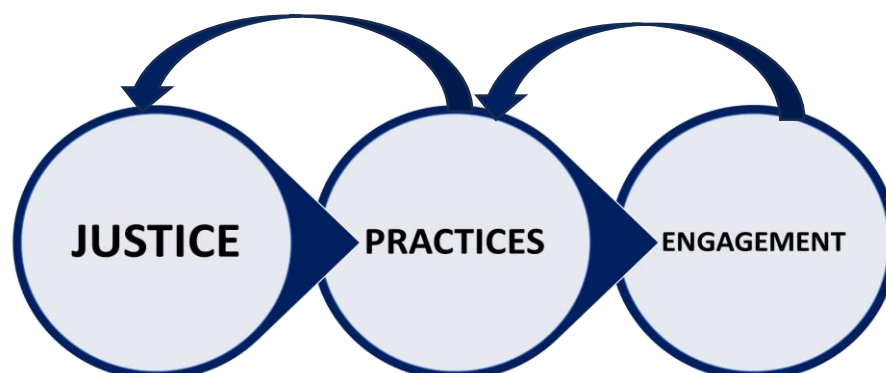
- individual personality,
- relational patterns of interaction,
- group culture, and
- organisational policies-and-procedures.

As the number of redress schemes has grown, practitioners have become more confident to provide variants on the most basic format of a restorative engagement, and have facilitated meetings involving multiple survivors, &/or supporters, &/or institutional representatives. These more complex configurations enable more fulsome discussion about rules-&-routines that need to be changed.

Broader Applications for restorative approaches in institutions

The evolution and proliferation of redress schemes offering restorative engagement has recently also begun to effect more general *systemic change*. Senior organisational representatives who participate in restorative *engagement* have been engaging in discussions about *restorative practice* more generally, with many now considering the potential for:

- *restorative practices* to improve relationship management in workplaces, and
- for programs of *restorative justice* to *provide* deliberative democratic *processes* within systems that have, historically, *imposed outcomes* on people:



Criminal justice systems provide multiple rationale(s) for imposing *punishment* on people judged to have caused harm. The key rationales include: (i) individual *deterrence*, (ii) *collective*

³ Herman, J. (1993/2015) *Trauma and Recovery: The Aftermath of Violence--From Domestic Abuse to Political Terror*; (2023) *Truth and Repair: How Trauma Survivors Envision Justice*

deterrence, (iii) restoring *moral balance*, and (iv) demonstrating appropriate *authority*. All these goals seem desirable – and there are legitimate social scientific questions about whether *punishment* is the most effective way:

- for officials to exercise authority appropriately;
- for individuals and groups to *learn from experience*;
- to restore *moral balance* between all-those-affected.

The evidence is growing that officials can exercise appropriate authority by enabling access to a process that supports individuals and groups to *learn from experience* and to plan reparation that restores *moral balance*. *Restorative* processes can either complement *retributive* responses to harm, or provide an alternative that is better aligned with good practice in education and public health.⁴

Beyond the capacity of restorative practice to improve *responses* to harm, there is also growing awareness that restorative practices can improve *prevention*, by:

- assisting key agencies in the **workplace safety ‘ecosystem’** to *coordinate their efforts at responsive regulation*, with a strengthened focus on education and public health
- better *align the efforts* of individuals and organisations that support workplaces to increase *dynamic safety*, by implementing a restorative justice culture, in which there is *leadership at every level*, and all *workers have a voice* in workplace improvement.

GROUP CONFERENCE FORMATS

The generic term for the most widely-used restorative process is a *group conference*. Different formats of group conference have been developed to address distinct circumstances:

1. An *incident* of undisputed harm
2. The legacy of a *sequence of poorly resolved-incidents &/or issues*
3. Some complex issue of *common concern*
4. The legacy of harm caused in &/or by an institution

The first of these four group conference formats is the most widely used in restorative *justice* programs; the second and third formats are most widely used in restorative *practices*; the fourth format is used as restorative *engagement*, and primarily in redress schemes.

⁴ Restorative *Inquiry* has been used with positive outcomes in Nova Scotia to address harms across different institutions. *The Nova Scotia Home for Colored Children Restorative Inquiry* was established following a 17-year journey for justice by former residents of the Nova Scotia Home for Colored Children (NSHCC, or *the Home*). It was established under the authority of the *Public Inquiries Act* following a collaborative design process involving former residents, Government, and community members.

A group conference in any of these formats, or a hybrid of more than one format, can:

- bring together a *network of people* who can provide *insight, support & oversight*
- involve those *people* in “*sense-making*” & “*agreement-making*”
- through sense-making or *truth-telling: transform conflict into cooperation*
- harness that *cooperation* to develop a pragmatic *agreement* to:
 - *respond* with authority to harm,
 - *prevent* further harm, &/or
 - *promote* healing and well-being;
- coordinate “community” & “official” support & oversight

Programs offering group conferences provide *administrative* guidelines on the *standard specific* actions required in *every case*. But since every case is different, restorative facilitators need more than administrative guidelines. To guide the *variation* required in *each case*, facilitators must also follow *general* principles, and use a set of core skills, as they *diagnose* each case accurately, *define* the best process to address it, *prepare* participants, ask *questions* so that each participant can relate their experience effectively, *negotiate* an agreement that supports all participants, and engage in *reflective practice*, supporting participants to follow-through on agreements and supporting fellow-professionals to learn from experience.⁵

OUTCOMES FROM RESTORATIVE PROCESSES

The benefits of providing well-facilitated restorative processes within effectively administered restorative *justice* programs have been well demonstrated. Measures of success in restorative programs are variations on the elements common to trauma-informed- and restorative practice, namely:

- *learning* from the past, *healing* in the present, and *planning* for a better future.

The first randomised trial of group conferencing in restorative justice was conducted in the Australian Capital Territory (ACT) from 1994 – 1999. It was followed by a total of ten randomised trials conducted in the UK from 2001 – 2013.⁶ All these evaluations produced much the same basic findings - that group conferences *do* prompt significant positive behavioural changes, including:

- *healing* for all those who have been harmed;
- *decreased reoffending* by people who have caused harm.

⁵ David Moore & Alikki Vernon *Setting Relations Right in Restorative Practice: Broadening Mindsets and Skill Sets* Routledge 2024

⁶ Sherman, L.W., Strang, H., Mayo-Wilson, E. et al. 2015 'Are Restorative Justice Conferences Effective in Reducing Repeat Offending? Findings from a Campbell Systematic Review' *Journal of Quantitative Criminology* vol. 31

These evaluations also found that group conferences *are* appropriate in cases involving:

- *adults* who have caused harm;
- *violent crimes and more serious property crimes.*

Important research on *how* the group conferencing works has since been done by researchers from Swinburne University in Melbourne, who used life-course methodology to identify what factor in a group conference *most* causes behavioural change:⁷

The Swinburne study tracked 800 Victorian Children's Court cases between 2012 – 2018 (with a control group of 1500), and again found that YES, group conferencing prompts *significant* positive behavioural changes AND *is* appropriate in cases involving violent crime and more serious property crime. Importantly, the Swinburne study also found that:

- the sentence received from court does *not* predict recidivism;
- recidivism is most reduced when primary *and* secondary victims *attend together* - *and is still reduced* when secondary victims attend *in the place of* a primary victim;
- recidivism is reduced when the police officer *actually-involved-with-the-case* attends.

All these findings strongly confirm that:

- the factor that most *transforms conflict into cooperation* is **involving communities-of-care in the process**, and
- **the most significant change occurs at the level of the group.**

Well-facilitated group conferences convened *post-sentencing* have likewise been shown to produce sustained therapeutic recovery for participants.⁸ Similar findings are emerging from recent evaluations of group conferences used for more complex cases, including family violence.⁹ *Restorative engagement* conferences have a similar dynamic. In an institutional context, however, the person who can *make the most* from lessons of experience is more often a senior manager with the authority to effect institutional change.

Evaluating restorative *practices* has been more challenging, because it requires evaluating the *program* and sometimes also *multiple processes*. However, restorative practice can be effectively evaluated by distilling, categorising, and linking evidence from a range of sources: (i) external and in-house *formal evaluations*, (ii) large-scale *anecdotal evidence*, (iii) *natural experiments*, where different programs and jurisdictions collectively suggest optimal

⁷ Bonett, R.J.W., Lloyd, C.D., & Ogloff, J.R.P. (2022) *Group Conferencing Effects on Youth Recidivism and Elements of Effective Conferences* Centre for Forensic Behavioural Science, Swinburne University of Technology, Melbourne, Australia

⁸ Bolitho, J. (2015) *Putting justice needs first: a case study of best practice in restorative justice*. *Restorative Justice*, 3(2)

⁹ Lawler, S. Boxall, H. & Dowling, C. (2023) *Restorative justice conferencing for domestic and family violence and sexual violence: Evaluation of Phase Three of the ACT Restorative Justice Scheme*, Canberra: Australian Institute of Criminology

arrangements for program administration and process facilitation, and (iv) emerging *consensuses from related fields*.

Evaluations of restorative *practices* across multiple schools indicate a reduction in distress on the part of students and staff, and a more harmonious learning community. Larger-scale evaluations have highlighted the foundational importance of a coherent and *publicly articulated philosophy*.¹⁰ Some of these lessons from school communities have been translated to other workplaces: mechanisms that *give community members a voice*, and engage them actively in continuous improvement, are consistent with principles of *dynamic safety*, which can make workplaces both *physically* and *psychologically* safer.¹¹

However, the broader benefits of restorative practice have yet to be applied very widely to workplaces. The key reason seems to be that this *system for improving systems* requires a learning system to develop and support a cohort of skilled convenors, and interagency coordination to deal with complex cases. In the absence of pressure for *systemic change*, people working in large systems generally tend to keep *doing-whatever-they're-doing*.

This tendency to keep *doing-whatever-we've-been-doing* is particularly true of organisations and *professions* that are not subject to competitive pressure to change adaptively. Many professions persist with a model of humanity that assumes individuals motivated primarily by self-interest and a rational assessment of punishments and rewards. This model underplays (i) the importance of people's relational commitments, and (ii) the role of emotions in motivation. Meanwhile, many organisations and regulatory systems in the community, government, and corporate sector continue to *function as monopolies*, with little pressure to engage in effective adaptive change.¹²

RESTORATIVE PRACTICE IN THE CONTEXT OF OHS OFFENCES

Criminal and civil justice systems determine responsibility according to the criterion of *beyond reasonable doubt* or the *balance of probabilities*. The court process applies these criteria to *resolve a dispute*, which is a situation in which two-or-more parties disagree on the *facts*, the optimal distribution of *resources*, and/or the optimal course of *action*.

A court can *resolve a dispute* with a determination about *culpability or responsibility*, and can *impose an outcome* in the form of a sentence, order, or direction. However, court processes are generally not designed to *manage conflict* among the affected parties. Indeed, adversarial court processes often exacerbate the preexisting conflict associated with the incident(s) or situation(s) before the court.

¹⁰ Reimer, K.E. (2019) *Adult Intentions, Student Perceptions How Restorative Justice is Used in Schools to Control and to Engage*,

¹¹ Dekker, S. Oates, A. & Rafferty, J (2022) *Restorative Just Culture in Practice: Implementation and Evaluation*

¹² Market, state and third sector organisations can all function as near-monopolies, albeit with the different causes of (i) market dominance, (ii) state-granted authority over policy-and-practice, or (iii) guaranteed grant-funding.

The field of Alternative or Appropriate Dispute Resolution (ADR) offers *non-adversarial* processes through which disputants can seek areas of agreement and/or agree to disagree. However, in situations where the parties involved in a dispute cannot *agree-to-disagree* about the *facts*, optimal *resource* distribution, or other *actions*, conflict typically persists. This is because disputes and conflicts, although they are related and often co-occur, are different phenomena.

Conflict arises from a more general *clash of opposites*, and so tends to be broader, deeper, *more strongly felt*, and more enduring. The experience of conflict can generate strongly negative feelings *within* a person, *between* people, between *groups*, and/or between people and *systems*. One-or-more *people* can feel *churned up* or *in two minds* about a situation; two people can remain *at loggerheads*; groups can form into *factions* and remain *polarised*; *systems* can be criticised for not being *user-friendly* or *human-centred*.

In contrast with the *adversarial* process used in Australian courts, coronial hearings use an *inquisitorial* process, and provide recommendations for future action. Some coronial systems are now also currently considering how restorative practice might help them to engage more effectively with bereaved families, and to apply a more nuanced understanding of ‘accountability’ that looks backwards and forwards.

Grieving family members may draw some solace from knowing that their experience has generated lessons for systemic change, and that people in authority are accountable for learning those lessons. Accountability means *acceptance of responsibility*, but responsibility is a complicated concept. Responsibility can mean:

- *being to blame for* – and so involving the *ethics of justice*
- having a *duty to watch over* - and so involving the *ethics of care*
- *having a coordinating role* - and so involving *managerial ethics*.

Harm is likewise a complicated concept. Harm can result from:

- actual *criminal acts*
- behaviour that was not necessarily criminal, but recognised *at the time* to be harmful
- behaviour considered standard practice *at the time*, but recognised *in retrospect* as harmful.

A restorative process to any of these forms of harm can enable collective *sense-making*, which has the effect of *transforming conflict into cooperation* and collective decision-making about changes for individuals, relations, groups, and/or organisations. In a workplace where a colleague has died, many people will typically be affected: family, friends, work colleagues, employer(s), and their broader community. A group conference should prioritise the needs of the bereaved family.

People-harmed and/or their communities-of-care should have the option of participating in a restorative process:

- as part of the court process, for sentencing support; and/or
- after a court process, for post-sentence healing, and/or pre-release planning;
- linked with a decision in a civil court or tribunal.

ROLES OF PARTICIPANTS IN A RESTORATIVE PROCESS RELATING TO WORKPLACE HARM

A group conference can provide for *sense-making* about how we got here, and for *agreement-making* about how we can address harm and grief, and work towards healing. The list of participants in a group conference will depend on whether that conference is held (i) as part of the court process, (ii) after a court process, or for (iii) preventative work within a workplace.

The general principles for determining who should participate are that each participant should be part of the *network of people* affected by the presenting incident(s) or issue(s). They may be affected directly, as a member of the affected “community”, or as a professional whose role is to provide support in such situations - or both. A group conference provides an opportunity for those affected to gain a fuller picture of the incident(s) or issue(s). Every affected participant will have *part of the picture* - but no one will have *the full picture*.

Each participant should be able to provide *insight* about the situation, *support* other participants, and/or *oversee* the agreement on how best to *respond* with authority to harm, *prevent* further harm, and/or *promote* healing and well-being. The agreement should coordinate the reparative efforts of all members of the affected “community”, including the professionals providing support.

EFFECTIVE CAPACITY-BUILDING FOR FACILITATORS AND ADMINISTRATORS

A core challenge for contemporary restorative programs remains the scarcity of appropriately skilled facilitators. The challenge of capacity-building is compounded if facilitators are required only infrequently or irregularly to facilitate in complex cases.

Fortunately, there are several cohorts of facilitators who could readily be involved in a program providing restorative justice conferencing for OHS offences in Victoria. At least two cohorts currently operate explicitly as *restorative* practitioners:

- The teams of facilitators currently providing youth justice group conferencing under the Children, Youth and Families Act 2005;
- The panel of facilitators selected by the Office of the Commonwealth Ombudsman to provide restorative engagement.

A third cohort of *conciliators* at the Victorian Accident Compensation Conciliation Service (ACCS) have undertaken basic training in restorative practice and could complete that process with appropriate support.

Senior management and staff of the ACCS identified in 2015 that complex cases involving mental injury and return-to-work claims had poor resolution rates through the existing conciliation process or court. A 2016 report by Victorian Ombudsman called for a review of dispute resolution processes within the Victorian Workers Compensation Scheme and improvements to the oversight of complex claims by WorkSafe.¹³ During 2017, the ACCS developed a proposal to offer restorative group conferencing to assist participants to better address unresolved disputes and conflicts and the trauma associated with workplace injury, to set relations right between employee and employer and/or among work team, and to devise durable therapeutic outcomes that were suitable both for the injured worker and the employer. ACCS administrators, conciliators, Insurers, union groups, and employer groups were all involved in developing this restorative pilot proposal, but the reform was temporarily derailed when the ACCS was instead directed to develop an *arbitration* process to address intractable cases.

1. The teams of convenors currently providing youth justice group conferencing (YJGC) across Victoria are employed by a different NGO in each region.¹⁴

Facilitators in the statewide YJGC program are paid a salary by their NGO-employers, and the NGOs are funded by the Department of Justice to provide an agreed number of group conferences annually in their region. The counterpart programs in some other jurisdictions also provide group conferencing for cases in which adults are responsible for harm, and the Victorian group conferencing program could do the same.

However, managers of the smaller Victorian YJGC programs have noted that current arrangements for funding NGOs are antiquated. Funding is focussed on cost per conference, and as the complexity of the work increases, program managers have struggled to remunerate their more experience convenors adequately, and struggle to retain staff, unable to compete with government departments or universities.

2. The other Victorian cohort currently operating explicitly as *restorative* practitioners are members of the panel selected ostensibly for the Defence restorative engagement program operated by Office of the Commonwealth Ombudsman (OCO) since 2016.

¹³ See <https://www.ombudsman.vic.gov.au/News/Media-Releases/Media-Alerts/WorkSafe-complex-claims-process-needs-fixing>

¹⁴ The current contracts for providing YJGC are held by Jesuit Social Services in Metropolitan Melbourne, CatholicCare in the North West and West, Anglicare in the East, SalvoCare in the North East, and Meli in the South West.

State agencies have engaged members of this OCO panel to assist with cases in the National Redress Scheme. Individual members of the panel are listed publicly, by agreement with the OCO, at the website of the Australian Association for Restorative Justice. Many of the Victorian facilitators on the OCO panel have also been engaged to facilitate restorative engagement in the Victoria Police Restorative Engagement and Redress Scheme.

Despite variations in *process format*, experienced restorative facilitators in all these areas of practice use the same core facilitation skills. Facilitators from one or more cohorts could be provided supplementary training to prepare them to facilitate restorative conferences for OHS offences. Training would need to address the requirements of the new program, explain the specific meeting format, and how it differs from the format of other restorative processes, and refresh facilitation skills. There would be merit in also reviewing and renewing skills to facilitate the group conference format for dealing with issues of *common concern*, which is used to negotiate physically and psychologically safer workplaces.

To administer a *program* that delivers well-facilitated restorative *processes* requires a particular understanding (*mindset*) and a *skillset* in both *administration AND facilitation*. Develop that common *mindset* and *skillset* among a group of *facilitators* requires coordination *across units &/or services* – and ideally also across communities of practice. Program *administrators* and *evaluators* can benefit from coordinated support for systemic learning among colleagues. Collectively, this emerging network of skilled practitioners can maintain momentum to create a healthy ecosystem of restorative practice. Facilitators acquire their skills incrementally through an *apprenticeship*, which involves:

FOUNDATIONAL SKILLS TRAINING based on accurate practical theory, for facilitators, administrators, *and* evaluators, then **LEARNING-ON-THE-JOB** by:

- *observing* and *being observed* by more experienced colleagues, then
- *facilitating* in *less complex cases*, then
- gradually developing *competence & confidence* to:
 - [i] *facilitate* in *more complex cases*, &
 - [ii] *coach-&-mentor* less experienced facilitators as they learn-on-the-job.

Effective apprenticeship provides regular opportunities for reflective practice, with both:

COLLEGIAL REFLECTIVE PRACTICE, whereby facilitators follow standard templates when they *reflect* on practice with a colleague, during or after a case; and

COLLECTIVE REFLECTIVE PRACTICE, whereby a group of colleagues reflect together on one or more *detailed case studies*, presented within a framework for case presentation that ensures key practice issues are articulated and examined.

Both collegial and collective reflective practice help to consolidate existing knowledge, and to generate new lessons. Lessons from case studies can help to refine guidelines for administrators, facilitators, and institutional representatives, and the *program framework*, and help to refine the advice provided to participating survivors and their supporters. This apprenticeship system and reflective practice is already being adopted in the YJGC programs with AARJ's support.

In addition to improving responses to failures of workplace safety, restorative practice can support prevention work by assisting key agencies in the workplace safety 'ecosystem' to *coordinate their efforts* at responsive regulation, and by better *aligning the efforts* of individuals and organisations that support workplaces to increase dynamic safety, and implement a restorative justice culture.

OPTIMAL GOVERNANCE ARRANGEMENTS FOR A PROGRAM

Any effective *model* for providing restorative justice conference in response to OHS offences should clearly distinguish the *guiding principles* from *program* administration and from *process* facilitation. A single unit could be responsible for administering a program providing restorative practice both for *responding* to harm caused by significant failures of workplace safety, and for *preventing* harm by providing technical support to increase dynamic safety in restorative just workplaces.

A single unit could be responsible for administering a program providing restorative practice could be located in any of several organisations:

- Court Services Victoria:
- WorkSafe
- Within the Department of Justice or Industrial Relations Victoria (IRV)
- The Accident Compensation Conciliation Service (ACCS).

Several factors need to be assessed to determine which organisation might be best placed to offer a tailored program, including:

- *Genuine interest and willingness* to establish and host a restorative practice program;
- *Impartiality*
(For example, WorkSafe may not be viewed as a sufficiently independent body);
- The *availability of administrative staff* who could oversee referrals and liaise with families and workplace staff/employers;
- The location and resources to work in both *urban and regional* settings.

From the outset, a program of restorative practice relating to workplaces would need to involve both administrators and skilled facilitators to work together to identify how best to

coordinate the system of case referral and case management, with efficient use of resources and effective service delivery.

The system used by redress schemes, which contract a panel of facilitators to steward the restorative process, could be replicated with industrial workplace manslaughter cases. Alternatively, the 'host' organisation administering the restorative program could establish a Memorandum of Understanding with the network of YJGC programs in metropolitan and regional areas who already have trained facilitators. A pilot program could trial a combination of engaging facilitators on the OCOC panel and facilitators working with the YJGC programs.

SYSTEMS OF QUALITY CONTROL

Administrators and facilitators in restorative programs have consistently noted the benefits of collaborating *within* and *across* work teams - especially as the diversity and complexity of cases increases. These positive experiences have prompted arrangements for reflective practice among restorative practitioners *across jurisdictions*.

The restorative programs that seem to achieve the highest level of practice, with a high level of practice consistency, are those in which a state department or a grant-funded third sector organisation employs facilitators, provides them with foundational skills training, then supports those foundational skills to be augmented *and to evolve* through ongoing learning in an active community-of-practice.

For example, the state of Victoria funds a different third sector organisation in each region to provide Youth Justice Group Conferencing (YJGC). This arrangement has produced *some* 'healthy competition' for funding and facilitators, but mainly overt *collaboration* between practitioners across regions. Since the YJGC pilot programs of the early 2000s, the responsible government department has hosted forums in which experienced independent facilitators lead reflective practice, and this work has helped to establish minimum standards of practice.

Since the early 2020s, program administrators and facilitators from restorative justice programs in Australian states and territories and New Zealand have participated in regular online community-of-practice sessions hosted by the Australian Association of Restorative Justice. In these community-of-practice sessions, facilitators and administrators compare their work by analysing complex cases, then translating lessons into open-source advanced practice guidelines. This emerging system of interlinked local communities of practice is:

- raising the general standard of facilitation;
- increasing interagency collaboration; and
- extending the applications of group conferencing.

PROGRAM RESOURCING

It is difficult to estimate the resource implications of making a restorative process available in cases involving OHS offences without some sense of the general demand, and of differences in the nature of conferences convened as *part of the sentencing process*, and those *convened post-sentence*. Most of the redress schemes implemented during the last decade, and offering restorative engagement, have conducted a pilot of some ten-to-twenty cases. A comparable pilot program offering restorative responses to failures of workplace OHS would generate lessons about:

- the differences between group conferences convened as *part of the sentencing process*, and those *convened post-sentence*;
- the average time and number of meetings required for preparation, the variation in that time and number, common elements in group conferences, and the variation in the dynamic of those group conferences.

The redress schemes have developed cost guidelines for facilitating different case types, and other costs relating to program administration. Copies of these guidelines could be provided as required to support a pilot program of restorative responses to failures of workplace OHS.

A pilot program need only involve a small number of experienced convenors, and might also give a better sense of whether the optimal source for a larger cohort of convenors is the group of NGOs providing YJGCs statewide, the panel of OCO restorative engagement convenors, the ACCC, some other cohort, or some combination of these.

The Australian Association for Restorative Justice is happy to provide further information to the VSAC as the Council develops its final report with recommendations, to be delivered to the Victorian Attorney-General and the Minister for WorkSafe and the TAC by the end of 2024.

Members of the AARJ Committee wish the Council well for your final report on this very important issue.