



WINTER 2018 Newsletter

People who have experienced harmful behaviour can experience conflict:

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

Our previous newsletter (Winter-Spring 2017) described a growing number of *restorative* programs that help people who have been affected by social harm to “*restore right relations*” or *set relations right*. We can sense an emerging **virtuous circle** of programs that support people to (i) respond effectively to harm, (ii) prevent similar harm from recurring, &/or (iii) promote social well-being – within their place of education, their workplace, their own family, or residential community:



This virtuous circle may eventually help policy-makers to **bridge the gap between short-term politics and responsible long-term policy**. This gap desperately needs bridging.

Many politicians struggle to articulate coherent, integrated justice policies that sustain effective social reform. Individual governments can't legitimately take credit for success that results from the collective efforts of dedicated workers, across a whole system, over many years. During the current crisis in representative democracy, some politicians, urged on by partisan media, continue to respond to complex social challenges with sloganeering and demonstrably counterproductive policies: *Complex social issue? We'll give you more punishment!*

In an April 2018 article in the *New York Review of Books*, Professor David Cole, National Legal Director of the American Civil Liberties Union (ACLU), summarises a prominent contemporary example of **counterproductive national justice policy** from "Trump's Inquisitor", US Attorney General Jeff Sessions:



"He and Trump would both like to take us back to the heyday of "tough on crime" politics. Trump campaigned on a "law and order" promise to clean up the streets and as president has expressly encouraged police officers not to worry about injuring suspects during arrests. Sessions never tires of referring to violent crime, even though in most of the country it is at or near record lows. As a senator, Sessions successfully blocked a bill with broad bipartisan support that would have reduced reliance on mandatory sentencing minimums. As Trump's attorney general, he has again opposed bipartisan reform of sentencing guidelines. [...] Sessions has also ordered all federal prosecutors across the nation to seek the most extreme charges possible against criminal defendants, regardless of extenuating circumstances, and without any consideration of whether the specific case justifies the penalty sought. Eric Holder, attorney general under President Barack Obama, issued a very different directive, urging his prosecutors to seek the most extreme penalties only in cases that actually warranted them. Holder specifically directed prosecutors to avoid filing charges that carry unnecessarily harsh mandatory minimum penalties if defendants had no significant criminal history, had engaged in no violence, had not been part of gang leadership, and had no substantial ties to drug-trafficking organizations. Sessions's policy directs prosecutors to throw the book even at such low-level, nonviolent offenders. [...]"

This shift in charging policy is critical because, as Fordham law professor John Pfaff has shown in his excellent book *Locked In: The True Causes of Mass Incarceration—and How to Achieve Real Reform*, **prosecutorial charging decisions were the driving force behind the rise of America’s system of mass incarceration in the last quarter of the twentieth century, when incarceration rates quintupled.** Pfaff’s data demonstrate that the main cause of the unprecedented growth was not longer sentences authorized by legislatures or more arrests by police officers, but harsher charging decisions made by prosecutors. Prosecutors generally have wide leeway in how they charge criminal conduct, precisely because “one size fits all” is not appropriate when taking a human being’s liberty. But **Sessions has directed prosecutors to exercise that discretion in only one way—as harshly as possible.**

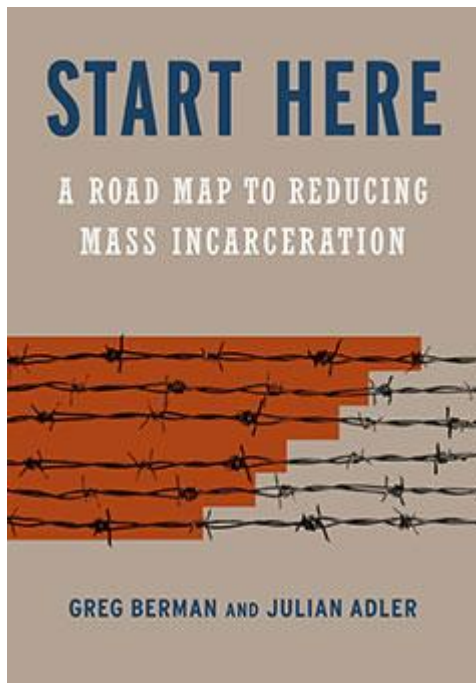
Sessions has done his best to reverse nearly all of his predecessor’s much-needed criminal justice reforms. Vowing to **relaunch the failed “war on drugs”**, he revoked a Holder guidance memo that discouraged prosecution of marijuana offenses in states that have chosen to legalize that drug. He **retracted another memo that sought to end the federal government’s reliance on private prisons**, which are driven by the profit motive to favor more and longer incarceration. He signalled a major retreat on oversight of policing, ordering a review of existing consent decrees with cities that had demonstrated discriminatory policing practices, with an eye toward abandoning such decrees if necessary. In one of his first actions, he sought to back out of a consent decree imposed on the Baltimore police department, but the judge in the case refused his request. And he has opened no investigations of systemic policing abuse since taking office.

All of this is very much against the grain, but fully in keeping with Trump’s “law and order” platform. Over the last decade, a bipartisan consensus has emerged—uniting the Koch brothers and George Soros, the Tea Party and the Center for American Progress—that our criminal justice system is unfairly and needlessly harsh. The **reflexive politics of “tough on crime,”** so dominant in the 1980s and 1990s as incarceration rates rose, have been replaced by a desire to reserve our harshest measures for the worst offenses and to address other problems through more humane and cost-effective measures, including drug treatment, reintegration policies, and non-penal responses to urban poverty.

Unnecessary incarceration comes at tremendous cost to the individuals locked up, their loved ones, their communities, and society as a whole. Increasing incarceration is certainly not needed to reduce crime. Europe, and indeed most of the developed world, have vastly lower crime rates than the United States, and vastly lower incarceration rates as well. In the last thirty-five years, New York City has dramatically reduced homicides and serious crimes, while simultaneously reducing incarceration. Yet Sessions and Trump have resurrected the “tough-on-crime” mantras of the past, ignoring the evidence that such policies are unjust, wasteful, and inhumane.”

New York City’s effective policies are well-described in Greg Berman and Julian Adler’s recent book, [Start Here: A Road Map to Reducing Mass Incarceration.](#) Berman and Adler emphasise the foundational principles of:

- treating people, including defendants, with dignity and respect, and
- providing **appropriate community connection and support** as an alternative to prison.



These principles indicating *what to do* are demonstrably correct. The biggest challenge for each jurisdiction is to identify precisely *how*. Certainly, a “reflexive ‘tough on crime’” politics is *politically* unnecessary if adequate political skill can be applied. But where is the adequate political skill?

Unfortunately, it’s not hard to find local parallels to Jeff Sessions’ aggressive criminal justice policy. Australia experiences a version of ‘tough on crime’ politics with nearly every state election. For good measure, members of the current Commonwealth government have been seeking political capital from “tough on crime” rhetoric.

In Australia, as in the United States, a common tactic has been for the political executive to **remove discretion from key decision-points in the justice system**, whether from police, prosecutors, or magistrates.

Contemporary politics in the state of Victoria provide a clear example. Some members of the state coalition proselytise for *punishment-as-an-end-in-itself*. (This is a consistent element in the authoritarian personality.) But there is now effectively bi-partisan support for policies that increase the *number* of citizens in prison, and increase the *proportion* of those prisoners who are on remand.

Elements of these costly policies have been prompted by prominent and tragic *individual* cases. (In mid-2018, in Victoria, the complex social problem allegedly solvable with more punishment is a pattern of assaults on Emergency Service workers. The state government proposes to remove from Magistrate’s the discretion to craft a sentence appropriate for each case.)

As Adam Carey has been assiduously reporting in *The Age*, policies that respond to understandable public outrage around individual cases have population-level impacts. Victoria’s prison population is reaching record levels. Almost 2000 new prison places have been created since the state Labor government came to power in 2014, with hundreds more places planned. The 1000-bed medium-

security Ravenhall prison, commissioned by the former Napthine government, opened in October 2017. The Andrews government has committed to build a new maximum security men's prison with 700 beds in Lara, forecast to open in 2022, at a cost of almost \$700 million.

Labor's toughened bail laws have doubled the number of prisoners on remand. *Less than a quarter* of all Victorian prisoners in 2013-14 were on remand awaiting trial or sentencing. Four years later, the proportion of prisoners has risen to *more than a third*. This overcrowded system now costs \$800 million a year for male prisoners.

Nationally, the situation is worse for the female prisoner population. Figures from the Australian Bureau of Statistics show that the incarceration rate for women increased twice as fast as for men, between 2005 and 2015. In NSW, women convicted of a crime were nearly 50% more likely to be sent to prison in 2015 than in 2005. However, this increase in prisoner numbers is not driven by any increase in violent crime. Most women prisoners have been incarcerated for non-violent crimes - such as property and drug and traffic offences. Research from the Australian Institute of Health and Welfare reveals that women entering prisons are more likely to have a diagnosis of mental illness, have a disability, be in poor health &/or to have suffered physical and sexual assault.

In Victorian, as elsewhere, policies that increase incarceration rates may be socially harmful, but are understood to have a *political* logic. As in other jurisdictions, these policies are believed to *avoid risk within the three-year electoral cycle*. **Comments in response to Adam Carey's Age reports** remind us of the political logic in offering simple answers to complex social problems. The comments illustrate social media's familiar:

- capacity to amplify shame and rage, and its
- uselessness as a mechanism for deliberative decision-making.

Here are some examples proffered - by commentators-[exclusively]-of-the-male-persuasion - just before the 2018 Victorian budget:

Rover suggests, cynically but accurately, that *"building and running prisons may be seen as a growth industry and maybe adds to GDP, making economists happy."*

Allan reminds us how pub-test 'logic' can breach foundational principles of *formal logic*. Allan conflates causation and correlation, and offers the resulting *non sequitur* as folk-wisdom:

"Andrews likes to pretend that crime has been cut on his watch. If that is true, then why are Victoria's prisons bursting at the seams with thousands more prisoners since he came to power? Logic would say that if crime was down there would be LESS prisoners, not MORE. It doesn't pass the pub test and Victorians have said in polls they now feel less safe since 2014."

The at-least-partially self-aware **Captain Grumpy** recommends: *"Deport as many as possible. Introduce outside manual labour work groups for non-violent offenders on government projects and cut all luxuries prisoners of all security levels enjoy in jail. That should cut the bill somewhat for starters."* Captain Grumpy admires Alabama's approach to justice.

Bob sits ideologically with Grumpy but prefers policy options from our region: “*Instead of building further 5 Star prisons at the cost of taxpayers, why not hire out prisons in Indonesia, Malaysia, Thailand or Philippines [sic] and ship the hardened criminals. This will make them think twice before committing a crime.*” To Bob’s mind, Rodrigo Duterte has the policy settings we need.

However, Bob also notes: “*taxpayers [sic] money will be better spent on providing help to the victims. [...] There will be a hue and cry about civil rights of the criminals but what about the victims?*” And here Bob has a point. True, he applies more flawed ‘pub-test-logic’ in assuming that policies must be “either/or” rather than “both/and”. (This is another foundational element of authoritarian thinking.) But Bob’s recommendation to **allocate a greater proportion of the justice budget to supporting victims of crime, and – better still – working with victims of crime**, points towards a fairer and more effective justice system.

As it happens, the perception may be illusory that political capital can be gained from mirroring the tough-on-crime-talk of the Rovers and Allans and Grumpys and Bobs. The tactic worsens the problem it claims to solve: tough-on-crime-talk seems to *increase subjective fear of crime*, even as objectively measured rates of crime continue to fall. So tough-on-crime-talk feeds a vicious cycle, fuelling the fear it purports to sooth. And the perceived-but-possibly-illusory **short-term political efficacy** of *tough-on-crime-ism* comes at the cost of **significant social harm in the short-, medium- and long-term**. And these policy directions cannot be quickly or easily reversed.

The vast majority of citizens want and deserve policies that reduce crime, provide support for those affected by crime, and reduce recidivism. However, at this bread-and-circuses stage of representative democracy, citizens are being offered a Hobson’s choice between (i) frequently counterproductive policies, or (ii) *wholly* counterproductive *and* vicious policies. Those of us who are keen to see crime and recidivism reduced, and greater support for those harmed by crime, need to work together to demonstrate a better way.

Of course, many agencies are already *working with* local communities and demonstrating a better way. As the Herald Sun has recently been reporting without irony, Victoria Police are achieving more effective outcomes with young-people-engaged-in-crime by thoroughly ignoring the *Herald Sun’s* free policy advice. (Importantly for *Sun* sub-editors, they can report on this VicPol initiative while still meeting the paper’s in-house key performance indicators (KPIs) of one “Teen Thug” headline per week, 52 per annum.)

Through Operation Wayward, VicPol appears to have helped reverse a spike in aggravated burglary by young people, with *a policy of intensive focussed early intervention*. A broader crime prevention initiative is likewise coordinating the work of those service-providing agencies that intervene effectively with the approximately 2 percent who commit approximately 25 percent of youth crime. These policies produce good *public health outcomes*, although there still seems to be less success translating effective policies into political capital. And yet, as we also argued in our last *newsletter*:

Astute politicians, who can understand and explain how restorative justice works, and explain the outcomes it can deliver, **could use restorative justice not only for responsible long-term policy, but also for effective short-term politics.**

We note an honourable example from an unsurprising source: **New Zealand's Minister of Justice Andrew Little** recently laid out a vision for criminal justice reform which overtly rejects "tough on crime" politics. Minister Little notes that "so-called law-and-order" policies have been "a 30-year failure and locking up more people with longer sentences has not made New Zealand safer". Elsewhere in Australasia, there still seem to be significant obstacles to understanding this fact:

"Restorative justice" seems consistently to have been (mis)understood *and implemented* as something that should be delivered in stand-alone **programs**. And these programs **tend not to be leveraged**. The rest of the justice system tends to continue with business-as-usual.

We do have pockets of *restorative reform* in various sectors: justice, education, health, family services. A growing number of policy documents espouse *what* improvements are required – *access to justice, multiagency partnerships, integrated services*. Funding – albeit often short-term – *is* being provided for programs to pilot *restorative* innovations. But we need more emphasis on *how* to implement practices that produce meaningful systemic change in the long-term.

Common to every program with a genuine "restorative" philosophy is a shift in **how decisions are made**, and in **who makes** those decisions. **The essential shift is:**

- (i) *from* some **central authority imposing outcomes** on people – *doing things to or for* people;
- (ii) *to* an **agency providing processes** by which people who are affected by a common concern can **work together** to reach a **shared understanding**, and – in the process - **transform conflict into cooperation**, so that they are then able to **negotiate workable outcomes** for themselves.

The emerging *virtuous circle* of mutually reinforcing restorative responses is easier to perceive if we look for **common themes** across many effective **pilot programs**.

Effective pilot programs tend to evolve through cycles of *planning, initial implementation, review, reflection and revision* – leading to *changes in individual and organisational practice*, which launch a next phase of planning and implementation. Importantly, each **set of lessons-to-date needs to be translated into teachable and learnable practice**. And those changes need to be implemented not only *within the initial program*, but also **beyond** it. Lessons from pilot programs need to be **shared across a broader network of professional practice**.

This phenomenon of **evolving service delivery**, *as it applies in public health*, is discussed in an illuminating episode of ABC Radio National's *Health Report* (first broadcast in March 2018). In The Glasgow Effect: Unpacking why the west of Scotland has poor health outcomes, the former Chief Medical Officer for Scotland discusses efforts to bridge the historical gap in life expectancy between people in disadvantaged areas of Glasgow and the rest of the city and country.

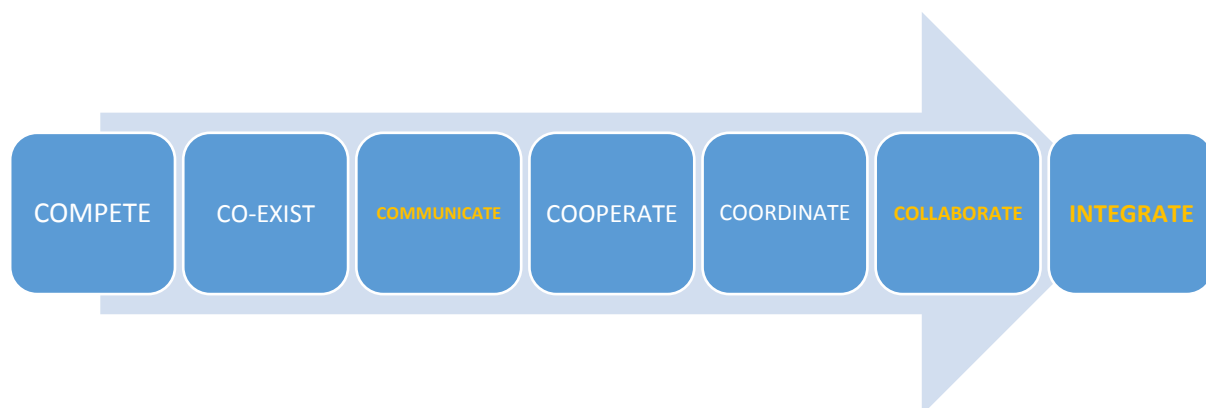
As Sir Harry Burns explains, a **key shift in understanding and action** involves shifting the focus from addressing an *excess of illness* to addressing **a deficit of wellness**. This shift is consistent with the experience of many programs that begin by **reacting or responding** to harm, and then gradually increase the proportion of effort spent on *preventing* harm, then promoting well-being.

There is a **related** shift in **how people involved in these programs work with each other** – and it’s a profoundly important point for those of us interested in promoting restorative practices. Many factors can push individuals and agencies towards actively **competing**, simply **co-existing** (*‘in silos’*), or at best **communicating** in the sense of *providing information as required* (*‘on an as-needed basis’*). However, effective human services can only survive, and thrive, when local service-providers move *beyond* operating in these modes, and also move beyond merely **cooperating** – “randomly” helping each other as required.

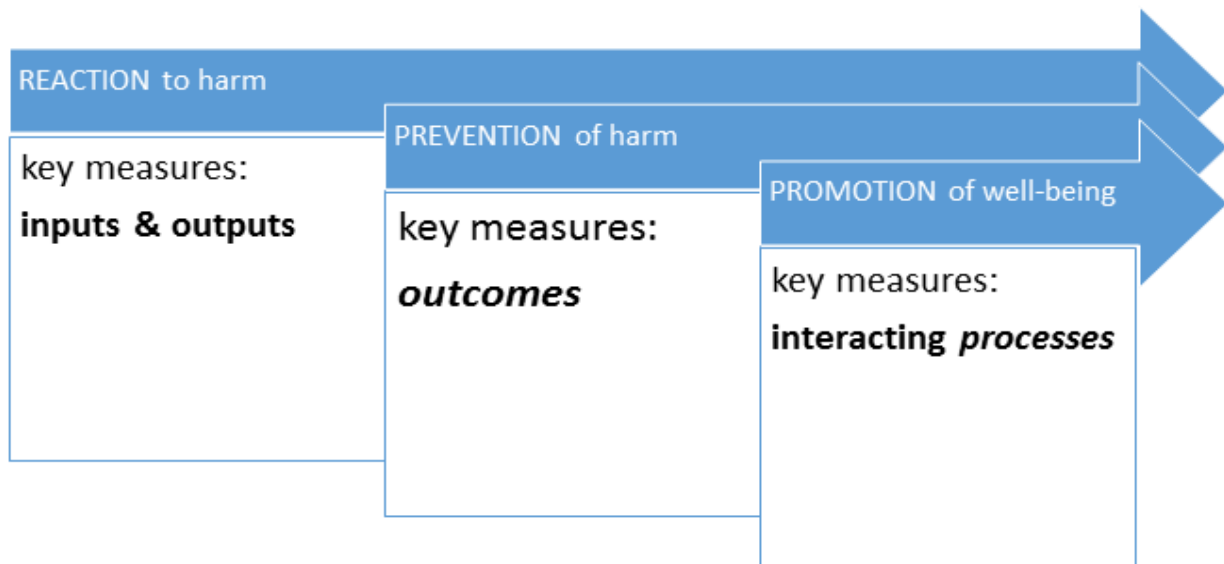
As effective programs grow in sophistication, service providers find themselves needing to coordinate the *language and the activities of all the agencies working in the same area*. **Common language** (informed by *shared concepts*) and some **common practices** enable a shift towards **collaboration** – *i.e.* “systematically” supporting each other’s efforts in the interest of members of the local community. This shift supports a change in **the ratio of resources** devoted to:

reacting to harm* ⇒ *preventing harm* ⇒ *promoting well-being

A useful framework for understanding this dynamic is a **“continuum of working together”**, which is an important concept underlying complex public health initiatives, and more generally, attempts at **joined-up government**. Some successful current initiatives in *justice* are also working this way:



A Department can **coordinate the activities of agencies** and enable **their shift towards collaboration** – *i.e.* “systematically” supporting each other’s efforts in the interest of members of the local community. Crucially - but not necessarily *obviously* - this shift requires additional “key performance indicators” (KPIs) - the elements of work that are considered *most worth measuring*. The **KPIs that promote well-being or flourishing** tend to measure PROCESSES:



This observation about the **shift-in-what-we-measure** helps explain a persistent barrier in the reform movement promoting restorative practices. The barrier is one of those issues that only *become-obvious-once-they-become-obvious*.

Professionals who have been working in this field for many years eventually notice a striking pattern:

Many policy-makers and other commentators, who speak admiringly about the *principles* of restorative justice, seem nonetheless to pay little attention to – and seemingly have little interest in - actual *process(es)*. And yet, *without effective processes*, delivered *consistently*, there can be no viable *programs*.

More specifically, the prominent restorative process of **community conferencing** continues to be ***misunderstood*** as a process that is used ***primarily*** or ***solely***:

- for young people;
- for *lower-level offending*;
- to address incidents of *undisputed harm*;
- to *divert* these cases from the *youth justice* system;
- to focus on the harm more than the underlying causes; &
- as a *single* or one-off intervention, with little or no follow-up.

These are *all* misunderstandings of the applications and possibilities for community conferencing. It is helpful continuously to guard against these misunderstandings- and particularly by distinguishing **principles** from **programs** from **process**. So, for example, the community conferencing **process** can be used (i) in **programs** that *divert* from court, but it can also be used (ii) to improve judicial decision-making during a *deferral* of the sentencing process, and (iii) *post-sentence*, at the request of victims of crime. The **principle** here is *not* that 'RJ processes are an alternative to imprisonment'. Rather:

The principle is that **RJ processes**, rather than compounding the original harm with a destructive response, **provide a constructive and therapeutic response to social harm**.

It's a small and seemingly subtle distinction, but it can make a profound difference in public discussion of this issue. Community conferencing certainly continues to be used in youth justice to divert cases *from court and* it is also used to support judicial decision-making *in court*. In these applications, it delivers very high rates of participant satisfaction, including for victims of crime. It reduces reoffending relative to other interventions for equivalent cases. The effect has been found to be particularly strong with crimes involving violence, and where community conference agreements address the *causes* of offending. However:

Community conferencing also has many other applications beyond youth justice, and, indeed, many **applications beyond the justice system**.

The most experienced facilitators now distinguish more clearly the **various formats** for dealing with:

- (i) incidents of **undisputed harm**,
- (ii) a **legacy of conflict** from many incidents that have occurred over an extended period,
- (iii) some issue of **common concern** that is affecting people who share a place of residence, an identity, a belief system &/or a project, and
- (iv) a **legacy of trauma** as a result of betrayal.

(This last variant of the community conference process is best known as “restorative engagement” or “direct personal response.” It helps participants to address all the elements of a **meaningful apology**: *recognition, reason-giving, responsibility, regret, and redress*.)

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Program managers and facilitators, who understand these *specific variations* of the community conferencing process, can better tailor interventions *for different categories of case*. So, there is now a tested and teachable *process*, more nuanced ways to teach and acquire the requisite skills-set, and a growing number of skilled and experienced facilitators. An important part of national *and international* reform strategy is **now to build and strengthen links between the communities of professional practitioners who are delivering restorative practices**.

Some readers of this newsletter will have attended our **evening** presentation and panel discussion held during last year's **restorative justice week**. The **November 23rd, 2017** forum was convened by the Victorian Association for Restorative Justice, in association with the Law Institute of Victoria (LIV), and held at the LIV's city headquarters. We provided, at that forum, an update on several important programs, and include here some of the important practices & lessons outlined by the presenters, and further updates on some developments in the areas discussed on the night, namely:

- victim-offender conferencing and related developments in the **Northern Territory**;
- improving relationship management in youth detention in various states;
- restorative justice reforms in the **Australian Capital Territory**;
- re-engaging young people with education, training or work in a **Victorian** program;
- **Victoria's** Adolescent Violence in the Home (AVITH) treatment programs.

It's now high time to **update those updates**:

NORTHERN TERRITORY

At the November 2017 VARJ forum, **Glen McClure** from Jesuit Social Services reported on his role supporting a pool of **group conferencing convenors** who are working in the Northern Territory. The convenors have been accepting cases referred from the NT courts, and working with the parties involved to develop *'diversion plans'* that focus on restoration, on improving family relationships, redressing the harm caused by the offending, and linking young person into support services. Diversion plan conditions have included:

- 'Participate in a one-on-one restorative justice session to explore impact of offending and victim empathy';
- 'Participate in a family restorative practice session to address offending behaviour, impact on family and victim, and redress harm caused';
- 'Engage with support services to address substance use/anger management/ employment and/or education pathways'.

Fittingly, in that same last week of November 2017, the ***Royal Commission into the Protection and Detention of Children in the Northern Territory*** delivered its findings and recommendations.

A striking number of the Commissioners' recommendations seek to **improve decision-making processes in key areas of justice and social welfare**. Their recommendations are relevant not just to the Territory, but to *every Australian jurisdiction*.

For example, **Chapter 7** addresses **Community engagement**. The Commissioners recommend that:

"The Northern Territory Government and the Commonwealth Governments [should] commit to a 'place-based' approach for the implementation of the relevant recommendations of the report in partnership with local communities. The location of the 'place' could be a single community, a group of communities or a region. And in all these places, partnership should be built on the principles of mutual respect, shared commitment, shared responsibility and good faith.



Broad terms for the partnership and its implementation across the Territory [include the] principles:

- *the best interest of the child*
- *local solutions for local problems*
- *local decision-making*
- *the centrality of family and community to the wellbeing of children and young people*
- *the Territory Government has the ultimate responsibility to ensure the safety and security of all Northern Territory children and young people, and*
- *shared responsibility and accountability."*

But what is now needed is to identify **precisely HOW to realise these principles**. And this need to go **beyond WHAT to HOW** applies to **all the other key recommendations**. The Commissioners' report makes a range of specific recommendations for **facilitated processes throughout the report** to ensure the delivery of:

- therapeutic, trauma-informed and child-centred **case management**;
- a comprehensive **wraparound approach** facilitated by cross-agency involvement;
- effective **diversion from the courts** of young people who 'do not deny' their offence;
- bail support services which engage young people and their family in the **development of a bail plan**;
- **section 84 conferencing**, that engages young people in the parole decision-making process;
- Structured Decision-Making tools and **family group conferences** to develop kinship care plans for children in out of home care;
- **case management for release and transition-planning** for children in detention.

Importantly, local service providers in the Territory have now formed a **Restorative Practices Network**. The Network includes representatives from Territory Families, NT Community Corrections, the NT Police Diversion program, Witness Assistance Service, Charles Darwin University, NAAJA, and the key NGOs of YWCA, Catholic Care NT and Jesuit Social Services, as well as some independent professional facilitators. Its members are busy establishing practice standards and providing policy advice as the Royal Commission recommendations are gradually implemented.

YOUTH DETENTION

Meanwhile, the facilitation skills of Jesuit Social Services Youth Justice Group Conference convenors are also being applied to support reform within the Don Dale Detention Centre, east of Darwin. In one of those fortunate coincidences we see quite often in this field, the **Queensland Department of Child Safety, Youth and Women** is conducting an important parallel exercise - a pilot project to expand the use of **restorative justice / restorative practices** in Youth Detention Centres. The pilot is initially focused on the **Brisbane Youth Detention Centre**.



Some early results from the Brisbane project already suggest lessons for other Australian jurisdictions, including Victoria – where they are very much needed.

In early March 2018, the Victorian Parliament’s **Legal and Social Issues Committee** tabled an **Inquiry into youth justice in Victoria**. The Committee made 33 findings, and 39 recommendations to address problems across Victoria’s youth justice system, including ensuring sufficient ongoing funding for Victoria Police Youth Resource Officers, and reviewing the Children’s Court group conferencing program to determine whether it can occur prior to sentencing. The Committee’s most substantial recommendations concern the youth justice centres, and include:

- stabilising staffing and employing an appropriately qualified and diverse workforce;
- broadening assessment procedures for young people;
- better understanding of the drivers for high remand numbers and implementing rehabilitation programs suitable for young people on remand;
- ongoing requirement to monitor the use of techniques such isolation, lockdowns in youth justice facilities; &
- providing more effective post-release services to young people who have spent time in a youth justice centre so as to reduce the risk of them reoffending.

The committee noted a “clear attitudinal change [...] in some parts of the Victorian community, including the Victorian parliament, away from rehabilitation and towards punitive responses” [and] expressed concern “that this move towards a punitive response can be self-defeating [in light of the] strong evidence for the benefits of restorative, rehabilitation-centred treatment.”

The *Minority Report* of three Labor Committee members noted a considerable overlap with other reports, most notably the August 2017 report by Penny Armytage and James Ogloff. The Minority Report also noted that the Department of Justice and Regulation (DJR) has been implementing many of the recommendations of both reports. Youth Affairs Minister Jenny Mikakos criticised the main report’s focus on youth justice centres and complained that: *"This report is a cut-and-paste job that's eight months too late and a political exercise to serve the interest of the Liberals and Greens"*.

Actually, the Liberals are proposing police in schools and forced rehabilitation for substance abuse. But there is, indeed, otherwise a unity ticket for improved policies, including from the Victorian Council of Social Services. These agencies may well become interested in the initiative by the Queensland Department of Child Safety, Youth and Women to **expand the use of restorative practices** in Youth Detention Centres.

Time spent in detention presents an opportunity to develop **self- and relationship management skills**:

- not only so that **young people pose less of a danger to themselves and others while *in detention***;
- but also:
- to **better equip young people to be-in-community *after their release*** from detention.

This Queensland project, perhaps unexpectedly, draws on some lessons from the last two decades of work in schools.

We have previously noted significant findings of a doctoral thesis by Melbourne Academic Kristin Reimer, who teaches Restorative Justice and Relational Pedagogies at Monash, and is a 2018 Transformative Teacher Educator Fellowship Fellow. Kristin Reimer's recent article, "**Relationships of control and relationships of engagement: how educator intentions intersect with student experiences of restorative justice**", published in the *Journal of Peace Education*, neatly summarises her case study comparing the use of restorative justice in a school in Scotland and one in Canada, exploring the intersection between educator intentions and student experiences.

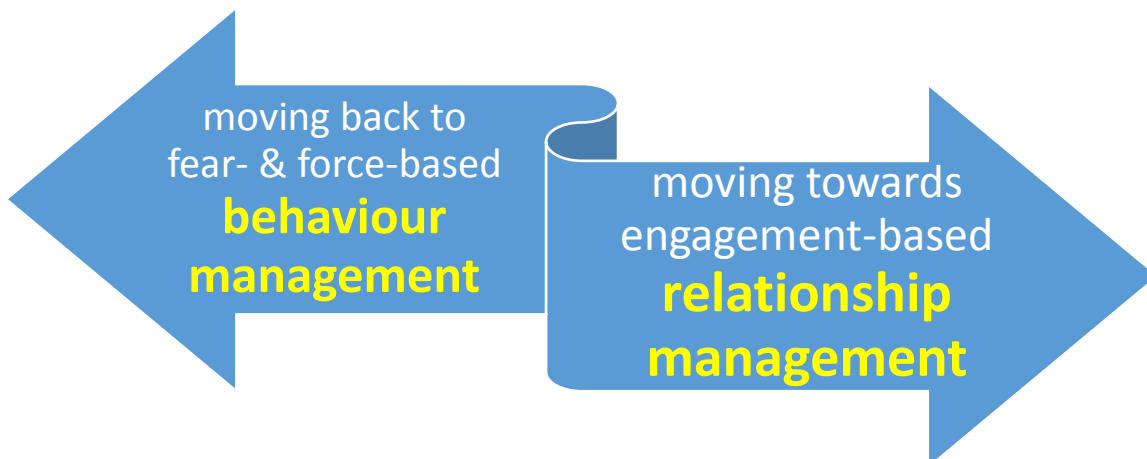
Restorative Justice in schools is a window into what is most fundamental to students: relationships. Restorative Justice, by itself, does not guarantee certain qualities of relationship, but it does allow us to examine those qualities and ask questions of how school relationships are used to engage and/or control students.

She notes that *RJ can be understood in dramatically different ways by those implementing it*. The **unsophisticated understanding** of restorative justice is *simply as another tool for solidifying compliance and meting out punishment, albeit in a kinder, gentler way*. A **more sophisticated understanding** is that restorative justice – or restorative practices – can create *an environment of and for student engagement that challenges traditional systems of discipline and facilitates learning*.

The most fundamental finding from this important case study is that:


In a school where **relational objectives are of social control**, RJ is utilized to strengthen that control. Where the relational objectives are of **social engagement**, RJ is utilized to strengthen that engagement.

This distinction can be expressed as a continuum *that runs from behaviour management to relationship management*, with *doing to* and *doing for* being the primary modes of action at one end of the spectrum, and *working with* being the primary mode at the other end:



To support the move beyond behaviour management towards relationship management requires a **coordinated effort to drive a virtuous circle of reform**, in which *each element supports other elements*. Across a complex organisation such as a large detention centre, a **virtuous circle of mutually reinforcing effective practice** is likely to involve the following elements:

- Restorative interventions to **address specific incidents**;
- Use of circles to **build and manage relationships** in sections;
- Initial efforts to deal with **legacy conflict** – issues that have remained unresolved from some time;
- Awareness-, knowledge- and **skills-building for staff**;
- Adjusting and aligning **feedback methods**;
- Awareness-, knowledge- and *skills-building for young people*;
- Efforts to **coordinate practices and language** across all areas of the centre, etc.

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		

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The use of circles to **build and manage relationships** is already paying dividends in the setting of a detention centre. Colleagues working on the projects in Darwin and in Brisbane are now liaising, so that lessons about what works can be shared not only within centres, but *between* them as well.

Meanwhile, in other parts of the country, reformers are looking to align practices such that they can call their whole city *restorative*. There are similar **restorative cities projects** now emerging both in Newcastle and in Canberra. Newcastle University hosted a successful symposium on the topic in mid-June 2018. However, Canberra may have a number of advantages over other larger Australian cities in this respect:

The AUSTRALIAN CAPITAL TERRITORY



CANBERRA
RESTORATIVE
COMMUNITY

The ACT *Restorative Justice Act*, passed in 2005, enabled the expansion of the Australian Capital Territory's restorative justice scheme. The ACT Attorney General Gordon Ramsay is now actively supporting a **Canberra Restorative Communities Network**, and is keen for restorative practices to be implemented through directorates.

The network is supported by practitioners and other reformers interested in the potential to adopt restorative practices more broadly across the Canberra community. It includes experienced restorative justice practitioners and reformers from schools, health, corrections, juvenile justice,

police, human resource management, and Aboriginal services. It is providing for regular interaction through with guest speakers, case studies, seminars, and peer collaboration.

As part of the project, Relationships Australia hosted a group from Hull/Leeds at a two-day workshop in the Canberra in January 2018 on the topic of a restorative city. The AG and Minister for Justice and Consumer affairs then co-hosted a forum to identify ways to improve services and treatment across institutions through restorative practices.

The foundation for a broader network of skilled practitioners across the ACT is provided the ACT Restorative Justice Unit. At our November 2017 forum, **RJ Unit Manager Amanda Lutz** described in some detail the work of her Unit:

[...] “Thank you for inviting me to connect with you and inform you of our progress in the ACT since we last gathered a year ago [...] I pay my respects to the traditional custodians of the land in which I’m speaking from (the Ngunnawal people) in Canberra and surrounds, and ***to acknowledge the people of the Kulin Nations, on whose land you are gathered today. I pay my respects to all the Elders, past and present.***

This week, in celebrating RJ, we are celebrating the importance of everyone living lives of dignity and value.

- We celebrate our ordinariness and our ability to learn from our mistakes.
- We celebrate the extraordinary ability of people to forgive others in tragic circumstances and for people who have caused harm to dig deep and do the hard work of reaching out to make amends.
- We celebrate and promote an independent wilfulness that helps us critique ourselves usefully in the service of our clients.
- We celebrate nourishing an ongoing ‘aliveness’, ‘a genuine connectedness with people’ and a ‘spirit of humility’ that acknowledges there is much that is unseen/unknowable and bigger than ourselves.

We know that doing all these things will help us all to operate in a zone of excellence.

Background

To give you a very brief background about Restorative Justice in the ACT: It began with police-led conferencing in the nineties and morphed into a dedicated centralised ‘RJ Unit’ in 2005, receiving referrals from police, prosecution, the courts and youth justice. A key component of the ACT model was the introduction of the *Crimes (Restorative Justice) Act* in 2004, after extensive consultation among government, statutory bodies and community agencies. The *CRJ Act* is underpinned by the recommended UN Standards for operating RJ programs.

Affinity between the ACT and Victoria

As you’ll know, there is a strong overlap between Human Rights and Restorative Justice. Some would even say that ‘doing RJ is doing Human Rights’.

In 2004, the ACT also passed the *Human Rights Act*. Currently the ACT & Victoria, which has the *Victorian Charter of Human Rights and Responsibilities* (2006), are the only Australian jurisdictions to have done so.

So, we share a legal environment in which RJ can flourish. RJ in the ACT enjoys strong bi-partisan political support. The current government is progressive and human rights focused.

Looking back over the past year, our annual statistics report shows that we received 260 referrals including a total of 573 offences, comprising 501 victims, 169 young offenders and 128 adult offenders. 551 of these offences were technically categorised as 'less serious' with a maximum prison term of 10 years or less for a personal offence and 14 years or less for a property offence.

In 2017 we reached 1000 overall referrals from ACT Policing and received our 100th referral from the ACT adult Magistrates Court in October.

Less serious matters referred last financial year included thefts, burglaries, assaults, including assault occasioning actual bodily harm; negligent driving causing grievous bodily harm. 22 offences referred to the RJU were categorised as 'serious', including aggravated burglaries and assaults occasioning intentional grievous bodily harm.

The highest referrers to RJU were ACT Policing & the courts, ACT Policing referred 181 matters including 135 referrals for young offenders and 46 for adult offenders. The Magistrate's court referred 61 adult offenders, the Children's court 31, the circle sentencing court six and the supreme court, nine.

119 conferences were facilitated last financial year, 82 of those being face to face and 37 indirect involving a shuttle dialogue or using video or phone conferencing.

What has worked well?

The team

Pausing to look at what has worked well, the first thing I would mention is that we have built a stable team of facilitators with diverse backgrounds who bring a maturity, passion and strong aptitude for doing the work of RJ.

Two years ago, we employed three new facilitators and brought David Moore to Canberra to deliver a fresh round of RJ training. Our newest staff received a solid basic grounding in the theory and practice of RJ and all of us received a more advanced understanding of how to respond to the more complex and sensitive issues surrounding working with adults and more serious offences for both adults and young people.

Our 'newer' staff have been working in the unit for two years and so now each team member has, as a minimum, around 25 conferences under their belts including a range of face to face, and indirect processes involving people of all ages and offences involving a range of seriousness.

Our RJ team are strongly reflective and supportive of each other, often co-convening and providing debriefing for each other, regularly attending peer supervision and externally provided practice

development and all eagerly embracing relevant training. They reflect the values and ethics of RJ and they are all irreplaceable ... we haven't lost one yet (touch wood). The RJU team deliver presentations, train alongside other agencies or meet regularly with other criminal justice entities, and they build relationships of trust and reassurance wherever they go. This is doubly important ahead of moving into phase 3 next year when we will accept referrals for family violence and sexual offences.

The RJU admin team process referrals, update the database, deliver on our reporting obligations, remind facilitators of due dates and also provide the essential court liaison support. Having organised, quick thinking and robust people in these roles is a must in the fast-paced, complex and formal environment of the courts.

The legislation

Another thing that continues to work well in our favour in the last financial year is the RJ legislation. The life of the RJ scheme in the ACT relies on the discretionary behaviour of referring entities and their understanding and acknowledgement of the value of RJ and benefits for participants.

Criminal justice system agencies who have referring power, actually have very little to do with victims or even offenders (unless they are police responding to the initial incident or witness support staff helping a victim to answer questions in a trial). So even if they contemplate RJ as an option, they are not always feeling sure about whether a victim will benefit from RJ or if an offender has good enough potential to participate with any particular referral.

A large part of our communications around phase 2 was providing reassurance that offenders will be assessed thoroughly, that victims will be approached sensitively, protected in the process and that their particular expectations and hopes about what can be achieved by conference is realistic. We are careful to ensure that the process is respectful and fair for offenders too and indeed, it simply would not work let alone achieve satisfaction rates in the upper 90% region if it were not!

Without the benefit of the legislation & an RJ court liaison officer to draw attention to it, the fast-paced traditional adversarial court environment can be oblivious to the possibilities that RJ can provide participants. Indeed, most victims and offenders themselves have no clear understanding or faith in the benefits of RJ until they are fully informed about it and or experience it for themselves.

Despite the Magistrate's court being a relatively high referrer to RJ, there are constraints of time in this space. Some referrals are made immediately prior to sentencing so that the RJ takes place after sentence and the offender cannot be motivated by the possibility of any leniency at sentencing.

While this takes the pressure off timewise and takes away any concern that an offender may only be engaging for their own benefit, it also means that there will be no further judicial oversight of any RJ agreement that might have been made in a conference for the victim's benefit. Sometimes, the pre-sentence space may be the last opportunity for a victim to have their say and get answers to questions. We would say: sometimes, a little external motivation for offenders to succeed can be a good thing for victims.

Sometimes however, magistrates hold off on sentencing to make themselves aware of RJ outcomes for the purposes of sentencing.

In the Supreme Court there has been concern raised about the possibility of a referral to RJ being 're-victimising' for a person already harmed by an offence.

Other concerns expressed in the Supreme Court include that, although an offender had pled guilty to a series of assaults, they could not be sure he was really taking responsibility. Indeed, victims themselves are often pre-occupied by the possibility that an offender may be 'putting on an empathetic performance, while untouched at a deeper level'.

For those folks, waiting until after sentence for an RJ referral by corrective services is a more palatable proposition.

We've had over a dozen face to face conferences in the ACT's prison, and a further 12 indirect RJ processes for matters with offenders in custody.

One particularly successful jail-based conference became the focus of a media story by ABC's Sunday TV News program one week. The victims of this matter were surprised at how cathartic the experience was for them. Both were women. One, an elderly woman, was warned by her family not to get involved, but did so anyway. As a consequence, she was able to have some items returned to her. These were precious, because they had been given to her by her late husband, not long before he died. The other was keen for communication as soon as she heard about the idea of RJ.

Before this conference, the offender was nervous, stating "I thought she was going to jump over the table and attack me". The victim of this serial burglar stated "I had plenty of time to prepare so instead of being vindictive and bitter, like I was at the beginning, I was excited because I was going to get answers. I was very curious."

All participants were very grateful to have the opportunity to talk about what happened. The victims were surprised at how ordinary the offender seemed - just a human being not so removed from them, who'd made some bad decisions. He and his family were paying the price for his out of control drug addiction.

Stories like this, whether told by media or by us for our stakeholder groups, helped to raise an awareness of RJ for adult offences in the ACT over the past year.

Phase 3

Next year, at a time approved and announced by the Minister for Justice and Consumer Affairs, the RJ scheme will move into phase 3 accepting referrals for family violence offences and sexual offences.

The RJ scheme has been developed to be integrated into the formal system and will not accept referrals outside of the criminal justice system. The RJ scheme will only provide diversionary opportunities for FV and sexual offences when exceptional circumstances exist to do so. Any matter that involves existing relationships can involve a reluctance on the part of victims to see people they

care about 'getting into what is undoubtedly, 'serious trouble'. A focus on rehabilitation may become far more prominent on a victim's justice wish list than punishment, yet there are community justice aims of deterrence and safety that must also be considered.

We envisage there will be some internal and external pressure on victims to engage in RJ processes to 'soften the blow'.

Examples of scenarios which may constitute an exception for a diversionary referral include those involving lower levels of transgression of an isolated nature rather than those that involve higher levels of harm and indicate the presence of patterns of coercion, of attitudes and beliefs that are entrenched. The latter scenarios will still invoke formal criminal justice responses and RJ may play a role at some later point post plea or finding of guilt.

The ACT has a Family Violence Intervention Program (FVIP) that involves a collective of agencies that provide a continued focus on the needs of women and children in the face of gendered violence. Policy arising from this collective includes a strong pro-arrest, pro-charge and rigorous prosecution regime for family violence. Member agencies meet regularly to scrutinise upcoming cases for risks so that there is a good cross agency awareness of matters which carry high risk. This is especially effective in a smaller city like Canberra. The RJU will seek membership of this body when it enters phase 3.

Family violence and sexual offence matters referred after a plea or finding of guilt at court at pre-sentence will carry heightened risks and any referrals will be thoroughly assessed for suitability. Of course, when we talk about risk and suitability for RJ we are looking at two different but overlapping concepts.

A standard risk assessment's purpose is to provide some reliable indication of what proportion of people who share certain histories and characteristics will 're-offend' in future when similar circumstances arise.

A restorative justice suitability assessment is designed to ascertain whether all the characteristics, hopes and needs of the people involved in an offence combine to suggest that this will be a safe enough, and satisfying experience emotionally, physically and materially and one that aligns with the aims and purpose of restorative justice.

A victim may be under no illusion that an offender will re-offend, but she may wish to engage in RJ to have a voice about the impacts of the offender's past behaviour. If the offender is deemed capable of attending a conference respectfully, listening and responding without doing further harm in this context, despite having little control over his behaviour in other contexts, the matter may be suitable to proceed.

A referral to RJ at post-sentence of a family violence matter may occur prior to an offender's release from prison, with the knowledge that he will be returning to the home and his family no matter what anyone else feels is suitable or appropriate or safe. In this circumstance, an opportunity for the offender to consider the impacts of his previous behaviour on his partner and any children in the household will be an important one. In such cases, the victim and offender may benefit strongly from

the circle of community support and accountability that an RJ conference can assemble in its preparation phase.

If participants are going to take up the offer of RJ for family violence, we would like to see sentencing practices acknowledge the voice of the victim in RJ agreements and support accountability to them as well as paying attention to any further needs for deterrence, punishment and community safety.”

Members of the ACT **Restorative Justice Unit** and the community-based **Conflict Resolution Service** are currently in discussion with a number of other agencies around the ACT to develop a more active ‘Local Practitioner Network’.

For further information on this initiative, please contact [Amanda Lutz](#) &/or [Lyn Walker](#).

SCHOOLS

The Victorian Ombudsman tabled an *Investigation into Victorian government school expulsions* in mid-August 2017. The Ombudsman concluded that the Coalition government’s 2014 *Ministerial Order 625* had – entirely predictably - fed what in the US is now routinely called the “school to prison pipeline”. In the meantime, the state Labor government, while not rescinding *Ministerial Order 625*, had launched a program to remedy some of its deleterious effects. Again, there are some impressive local examples of *tailoring-the-process-to-the-program*.

The Navigator service has been piloted across *eight* of the Department of Education and Training’s (DET) seventeen administrative areas. Navigator service-providers are responsible for linking young-people-disengaged-from-education to support services and interventions, and for working with local schools to plan for the young person’s re-engagement. The Jesuit Social Services have been delivering Navigator program services in the Hume–Moreland region in Northern Melbourne. Making good use of established skills in meeting facilitation, they are achieving very positive results in re-engaging young people with education, training or work, and developing good working relations with schools.

Jennifer Walters was working as a **Case Manager for the Navigator project in Hume/ Moreland**, when she described key aspects of the program at our November 2017 forum. (Jennifer has since accepted the role of Program Manager.)

Key points about the program as of late 2017 were as follows:

The 2017 Victorian state budget confirmed commitment to the Navigator Program, extending funding to each of the 8 pilot sites through 2018. This funded an additional case worker for each of the eight providers, and extended funding for the DET navigator team. The JSS program in Hume Moreland managed over 110 cases between August 2016 and November 2017. Most referrals were from schools, then mental health care providers, then child protection. 55 individuals were being case-managed in late 2017, with 38 people on a waiting list.

Jennifer provided a brief overview of the young people with whom the Navigator team has been working.

Participants have multiple and complex needs. The average age of the participants is 14, with more and more 12 and 13-year olds being referred. This indicates that transition from Primary school to High school is still an enormous challenge for our young people. Of this cohort:

- 65% were experiencing anxiety and depression (with 25% formally diagnosed, 40% exhibiting symptoms);
- 35% have experienced &/or are currently experiencing family violence;
- 31% have has some involvement with Child Protection.

The Navigator team in Hume Moreland have worked with each young person and their family over an average 9 months. There are obviously a wide range of issues impacting on these young people and it can be difficult to discern where to target an intervention and resources. The team has found a number of opportunities within the Navigator Program to work restoratively with schools and families.

Communication systems:

Schools in Victoria are governed and supported by legislation and policies that talk extensively about what needs to be done in schools, but there is less emphasis on *how* to go about that. Navigator is putting a lot of energy into looking at the *how* and developing a typology of cases that will determine the type of process facilitation appropriate for certain cases.

Family work in the home: facilitating discussions between parents and children.

Preparation and intention is essential for these conversations. Jennifer provided an example of the work she is involved in:

"I worked with a young girl at the end of 2016 who had had attendance issues since the beginning of 2014, her attendance was around 20%. She presented as a high capable young person, the main barrier appeared to be significant conflict between her and her mother and the anxiety that this was causing her. I focused my intentions on facilitating discussions between them both, enabling them to express to each other how they were feeling, share their experiences and begin to understand each other. These meetings proved to be the key for her wellbeing and had a knock-on effect into her capacity to re-engage with school successfully."

Student Support Groups (SSGs):

The Department of Education and Training have a policy and expectation that all schools participate in SSG's for navigator participants. We offer to prepare and facilitate meetings and use a restorative lens throughout the process. What these meetings look like will depend on the context and constraints. For example, the team regularly uses the format for examining an issue of common concern: looking at specific examples, then drawing general lessons from these examples to determine a list of issues to address (and sometimes prioritising three issues), then identifying some general options before agreeing on specific actions in an outcome plan.

We've also facilitated restorative meetings after an incident has occurred, in order to give the young person an opportunity to reflect and respond. An example of this involved a young boy who has a "reputation" for violence and had been expelled from 2 schools, and not provided with any further pathway. He was proactive in calling schools and the Department to ask what was going on, or what

he should be doing. Jennifer arranged an enrolment meeting for him at a new school, the leadership of which was extremely hesitant to take him. A facilitated discussion between the school and his family gave him an opportunity to address his behaviour in the past, take responsibility for his actions and to advocate for himself. He was successfully enrolled after this meeting and remained highly engaged throughout the rest of the year.

Individual Learning Plan's (ILP or plans in general):

These learning plans equate to what are known in justice as outcome plans. Drafting a document, that takes the learnings from these meetings and formulating a realistic plan is very important. It brings together people's ideas and establishes accountability. These are living documents that can be reviewed and used in a proactive way at future meetings. Working restoratively is not just about addressing harm and making amends, it is also about how we then reinforce the things that people are doing well and celebrate these achievements, which is so important for our young people.

Professional Development

The JSS Navigator program has been working with School-Focused Youth Services to develop training for schools and continue to build strong practice to share. This work is consistent with a growing realisation among educators that "restorative practice" in schools involves more than running the occasional community conference to address a major incident, and more than implementing *circle time*, valuable as this is. Restorative practices in schools are more accurately understood as part of a broader approach to effective relationship management. And effective relationship management is a teachable skill that is at the core of effective pedagogy, which understands the *teacher-as-facilitator*.

Meanwhile, Victorian Minister for Education James Merlino announced a new **Protective Schools Package** in mid-February 2018, with the press release quote using Tony Blair's tough-on-the-issue-and-tough-on-the-causes formula:

"We have zero tolerance for violence and aggression in schools but simply moving the child on doesn't fix the problem. This is providing support to intervene earlier and stop aggressive behaviour occurring in the future."

The new package follows the engagement of KPMG to help develop a new school incident management system as a single point through which schools report incidents involving staff, student &/or security issues. The *Protective Schools Package* is part of the *Principal Health and Wellbeing Strategy* and *Victorian Anti Bullying and Mental Health Initiative*, and includes:

- establishing a new operations centre in 2018, through which Principals who make reports will receive advice and support on how to respond to incidents and fast-tracked access to additional social workers, behavioural experts and psychologists;
- creating a new intelligence system, using past reports to inform the deployment of regional response teams into schools when incidents occur;
- training support staff in specialised behavioural assessment and practice so they can support schools across Victoria manage students displaying particularly challenging behaviours;

- training Principals and teachers on how to respond to violent and aggressive incidents, as well as additional support to manage long-term and complex student cases to reduce the risk of future violence and aggression;
- A 12-month task force to provide expert advice on implementing the package, bringing together educators, psychologists and child health experts.

We will be watching with interest to see the extent to which the *Protective Schools Package* offers *effective* advice, consistent with the work of the already-existing Navigator program, and more generally consistent with what we know about **restorative practices as part of a broader system of relationship management** – as discussed above (pages 14 – 15).

ADOLESCENT VIOLENCE IN THE HOME (AVITH)

In late-2015, the (then) manager of Victoria’s Youth Justice Group Conferencing (YJGC) program, Russell Jeffrey, hosted a **workshop with YJGC program managers and convenors** and other guests to discuss how to provide a safer and more effective intervention for Children’s Court cases involving some element of adolescent violence in the home (AVITH).

At that workshop, Jo Howard, the then Executive Manager, Child, Youth and Family Services at Kildonan Uniting Care, was invited to report on the incidence of AVITH in Victoria and the **Step Up** programs funded by the Department Health and Human Services (DHHS) operating in Frankston, Geelong and Ballarat. Jo established the Peninsula Health, Frankston Step Up program (in 2011) and has pioneered bringing attention to the issue of AVITH in Australia. Jo’s 2009 Fellowship study tour report, Adolescent Violence to Parents: Current Interventions in the United States and Canada and Implications for Australia, identified how well-designed programs (such as the Step Up program in Washington State) can offer a coordinated response to Adolescent Family Violence (AFV).

Workshop participants discussed the logic of linkage between the YJGC program and the *Keeping Families Safe / Step Up* programs. The workshop participants identified some key principles, and elements of program and process design for a possible pilot combining youth justice group conferencing with a family systems therapeutic intervention.

A follow-up workshop in April 2017 involved YJGC agencies, Children Court Youth Diversion coordinators, and AFV program representatives. This workshop focussed on how to implement the Recommendation 128 of the Royal Commission into Family Violence: that the Victorian Government ‘trial and evaluate a model of linking Youth Justice Group Conferencing with an Adolescent Family Violence Program...within two years’.

That April 2017 workshop identified a number of initiatives to facilitate cooperation and collaboration between YJGC and AFV programs. These included sharing risk assessment tools, devising referral pathways to support AFV service-providers to refer cases to YJGC, and YJ convenors consulting with AFV providers and adapting the YJGC process to better accommodate cases involving AFV.

At VARJ's November 2017 forum, **Jo Howard** (now an independent consultant) and **Kali Davis and Jennifer Banner**, from Barwon Child, Youth and Family, **provided an update on adolescent family violence intervention programs.**

Jo Howard began her presentation by outlining defining elements of AFV, the behaviours involved, and some key characteristics of the problem:

Defining elements of AFV:

- * A pattern of behaviours by an adolescent (aged between 10-18) that intimidates and coerces family members in order to gain power and control;
- * The pattern of behaviours is on-going, rather than a one-off incident;
- * Parents commonly adjust their behaviour to accommodate threats or anticipate violence;
- * The relational patterns are mutually reinforcing/recursive – the parent backs down, the adolescent gains power.

Behaviours:

- Physical: hitting, punching, slapping, kicking, hair pulling, spitting, property damage;
- Psychological: manipulation, intimidation, sarcasm, criticism, threats to harm self and others;
- Financial: property damage, theft, disruption of parent's work, incurring debts and fines;
- Social: embarrassment, isolation, denigrating family and friends, controlling social contact, undermining attempts for others to form new friendships/relationships.

Demographics

- 64% of offenders are male;
- Most primary victims are mothers (80%);
- The largest single cohort is **sole mothers of adolescent males**;
- Accordingly, AFV is a 'gendered issue';
- One in ten family violence police call-outs relates to adolescent family violence;
- The phenomenon occurs across all socio-economic groups – from affluent to lower SES;
- There can be an **intergenerational cycle of violence, whereby** some adolescent offenders become adult family violence perpetrators;
- Over the past 5 years, there has been an increase in reported incidents of AFV in Victoria, from 4,516 to 7,397 cases.

Jo Howard also provided an overview of how the sector is responding to Adolescent Violence in the Home (AVITH), including those working with parents, families, children, youth and families. She outlined the 3 Victorian government-funded **Step Up programs**, operated respectively by Peninsula Health (Frankston), Child & Family Services (Ballarat) and Barwon Youth & Family Services (Geelong), and described several other smaller Step Up programs funded by different organisations such as Uniting Care Kildonan, Epping and Step Up in Horsham - as well as parent only programs such as the TARA program, Berry Street, Eaglemont.

The goals of Step Up programs are as follows - to:

- establish family safety & stability;
- support insight – for parent and adolescent;
- foster empathy – between parent and adolescent;

- change family patterns and dynamics (e.g. dealing with conflict);
- rebuild family connection;
- support healthy adolescent development (i.e. emotional regulation);
- stop offending behaviour.

Jo has advocated for ‘family healing’ and ‘making amends for harms done’. [See: *Adolescent Violence in the home: How is it different to adult family violence?* (Australian Institute of Family Studies website, 8 December, 2015,) and *Adolescent Violence in the Home: Mapping the Australian and International Service System*, (No To Violence (NTV) Conference, 2012).] She also advocates for the type of restorative options currently offered in the youth justice system, arguing that these same processes should be available to provide an ‘integrated systems response’ to AVITH and so foster sustainable change.

Kali and Jennifer then explained Barwon Child Youth and Families Step Up program: *Building Healthy Relationships*. This program was piloted in 2014, in partnership with Minerva Community Services (formerly Zena Women’s Service). The pilot was found to be successful, and so has since received additional funding.

Step Up – Building Healthy Relationships provides a **case management model of support for young people within the context of their family**. It is underpinned by assertive outreach and engagement that aims to reduce adolescent family violence and increase the safety of all affected family members.

The target group for *Step Up – Building Healthy Relationships* is young people (aged between 12 and 17 years) and their families where:

- the young person is using frequent and ongoing violence against a parent or carer, resulting in the young person being at increased risk of homelessness; criminal justice involvement; disengagement from education; or vulnerability to mental health issues.
- the parent/carers are likely to experience an increase in the frequency and severity of family violence, resulting in reduced safety and well-being for themselves and for other children living in the family home.

The service consists of two key components:

- Intensive case management for the young person, incorporating a comprehensive safety and well-being assessment, the development of a care plan and therapeutic intervention (both individual and family-based).
- A program of group work that uses concurrent adolescent and parent group sessions to strengthen the parent-adolescent relationship through skills development in areas such as respectful communication and assertive parenting.

The program utilises person-centred, trauma-informed and developmental frameworks to inform individually tailored comprehensive needs- and risk-assessments to enable well informed, coordinated and holistic interventions that encourage self-determination. The intended outcomes for the program include a reduction in the severity or cessation of family violence; increased safety and stability for all family members; improved emotional health and well-being for the young person; and strengthened parenting capacity within the family.

Kali and Jennifer explained that restorative practice principles could be used within the context of the intervention, particularly following a family violence incident where the case worker can provide an opportunity to redress harm caused by violent behaviour. When dealing with family violence incidents, the process of reaching a shared understanding, addressing the harm that has been caused, and working together to improve the situation could be extremely powerful and empowering for the young person and for other affected family members.

Glen McClure from Jesuit Social Services also provided a brief overview of arrangements for an **innovative adolescent family violence restorative pilot** that will operate **within the Family Division of the Melbourne Children's Court** from mid-2018.

In late 2016, Jesuit Social Services (JSS), in partnership with the Melbourne Children's Court, agreed to develop the pilot program. JSS will apply fourteen years of experience to provide an effective Group Conferencing program within the Criminal Division of the Children's Court to develop and deliver the RESTORE program to address adolescent family violence. RESTORE will offer a Family Group Conference process for civil cases to assist a young person and affected family members address the harm caused by family violence and prevent further harm being caused. The program also aims to prevent the risks associated with a young person from the Family Division entering the *Criminal* Division of the Children's Court.

Family group conferencing can assist all family members to address complex issues and dynamics and so restore right relations. The process can expand the network of people who can provide insight, support and oversight, and help the young person and their family to develop practical strategies in the short-term and for the future. Well-facilitated family group conferences can help name the dynamic of violence, address concerns about safety, and involve affected family members, together with an extended network of professionals. The RESTORE program will provide the young person and their family members the opportunity to connect to relevant service agencies.

The RESTORE program will be aligned with, but distinct from, the work of *Youth Justice* Group Conferencing Program. RESTORE will explore opportunities to link with the existing AFV programs. Currently, the Melbourne's Children's Court does not have access to an AFV Step Up program. However, once these programs are offered state-wide, RESTORE will be able to refer family members to these specialist therapeutic AFV services.

The development of a court-based AFV restorative pilot program at the Children's Court meets some of the recommendations of the Royal Commission – such as supporting a coordinated, positive, effective and therapeutic intervention to AFV so that adolescents and parents can address factors contributing to the violence and help to reduce the young person's likelihood of using violence in future relationships. The JSS's RESTORE program will provide restorative options which have hitherto not been offered for civil cases.

NATIONAL REDRESS SCHEME

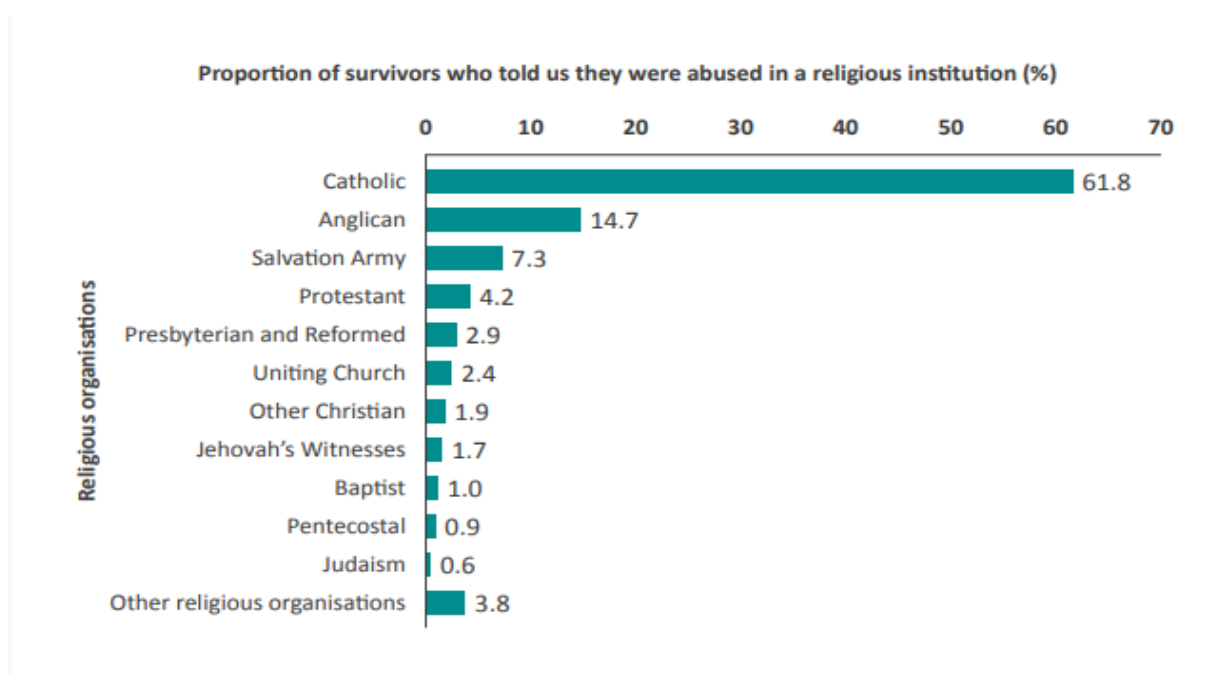
Previous VARJ newsletters have discussed the variant of community conferencing called **restorative engagement**. A restorative engagement program was developed by the Defence Abuse Response Taskforce (DART), as part of a broader exercise to provide redress for people who had been left traumatised by abuse in the institutional setting of the Australian Defence Force. More than 600 of these restorative engagement conferences were conducted during the life of the Taskforce, most during 2014 or 2015. Restorative engagement conferences were found to have been (i) sufficiently therapeutic for the individuals involved, and (ii) such a significant learning experience and prompt for organisational cultural reform, that the program has since been re-established, under the aegis of the Commonwealth Ombudsman (OCO).

In mid-2017, the OCO selected a national panel of **60 experienced facilitators** to provide restorative engagement, and related processes, ostensibly to the Commonwealth Ombudsman's program operating for Defence cases. However, this is an "open" provider panel, and in April 2018, the OCO advised facilitators that *additional agencies* could contract them on the same terms as their original deed. The Australian Federal Police and the Department of Social Services have requested access to the panel and have been provided with *service provider* contact details. Accordingly, facilitators who are part of the OCO national panel may be called on to facilitate a "**Direct Personal Response**" as part of the National Redress Scheme (NRS) recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse.

From March through May 2018, news emerged that Victorian and New South Wales had joined the NRS, followed by all other jurisdictions (including – belatedly - Western Australia), then non-government organisations including the Anglican Church, Salvation Army, Scouts Australia, YMCA and – most significantly, the Catholic Church. As CEO of the Catholic Church's Truth, Justice and Healing Council., Francis Sullivan, told Martin McKenzie Murray of the Saturday Paper:

"I had a very chilling experience early on. A victim said to me: 'Don't let us down again.' Part of that challenge was: if you have an opportunity to advocate, do so. They were imploring me to step up and help keep their experience in the forefront of the collective imagination of the community. They had too much experience where the church seemed to keep them at a distance and had tried to manage them rather than genuinely listen to their stories and act on the implications of those stories."

Participation by the Catholic Church is very important to the integrity of the scheme. This infographic from the final Royal Commission report Executive Summary shows the distribution of complaints from survivors in each religious institution, highlighting that 62 per cent of all survivors reporting abuse in a religious institution were abused within the Catholic Church. The Royal Commission into Institutional Responses to Child Sexual Abuse heard evidence from 2,500 people who had been abused in Catholic-run institutions.



On May 31st 2018 Minister **Dan Tehan** gave a statement to parliament on the national redress scheme for survivors of institutional child sexual abuse, paying credit to the survivors, and to former Labor Prime Minister **Julia Gillard**:

“Could I say to all members in this House, you all deserve credit for putting the interests of survivors first when it comes to this issue. Can I commend the former Prime Minister Julia Gillard for over seven years ago having established this royal commission. Can I commend my shadow for the personal interest that she has taken in this issue and the way it that she spoke on that bill during the week would have touched every member of this House.

“Can I thank the prime minister for hosting survivor groups in Kirribilli and showing them the utmost dignity that they deserve, and can I thank my predecessor, the now attorney general, for the way he handled this issue when he was in the office that I now have the honour to hold.

“Mr Speaker, delivering justice to the survivors of child sexual abuse is something that all of us in the house want to see and can now make happen by 1 July. It will not deal with all of the crimes, all of their sins, that were committed on those young, young innocent people but it will go a long way to help.

“It will mean they can get payment of up to \$150,000, an average payment of around \$76,000, access to psychological counselling and, as importantly, an apology from those institutions whether they were government or non-government institutions, who committed these heinous crimes on these people.”

The Minister’s Opposition counterpart, **Jenny Macklin**, thanked the Minister for his remarks. So, there is bi-partisan support. The Prime Minister subsequently announced he would deliver a national apology to survivors on October 22nd. However, there is now likely to be a period of intense public discussion about whether survivors should participate in the NRS.

Much of the reportage to date has perpetuated significant misunderstanding around the terms **compensation and reparation**, and the concept of **apology**. The national head of abuse law at

Maurice Blackburn has suggested that “institutions that signed up to the scheme have modelled how much compensation pursued through the courts could cost them, and concluded the redress scheme is the cheaper option.” Reducing payouts may be a significant motivation for some. It may be the main motivation for others. It’s difficult to judge the full complexity of individual and institutional motivations. But, of course, the motivation of institutional representatives *does* matter to those affected. This is an intensely moral issue. It matters to survivors that a new generation of managers has learned the lessons of the past and put in place governance arrangements and cultures that protect children from harm. The most consistent concern of survivors is to do whatever needs to be done to ensure that *others don’t suffer what they suffered*.

Yet the common misunderstanding endures that National Redress is a “*compensation* scheme”, that money is the main issue, and that, as some sort of afterthought, institutions may “deliver an apology”. The terms compensation and reparation are sometimes used synonymously, but their subtle differences are significant:

- **Compensation** is defined in law as a *payment* to an injured party *equivalent to income or earning capacity* lost as a result of personal injury, illness, or disease.
- The colloquial meaning of the term “**reparations**” has evolved over the last century, from (i) punitive payments by a surrendering state to a victorious state, as determined by treaty, to (ii) *payments and other measures provided to victims of severe human rights violations by the parties responsible*, consistent with United Nations guidelines. The meaning of the term continues to evolve, as the *emphasis* in reparative work shifts further beyond the state *towards civil society*, beyond punishment of offenders *towards support for victims*, beyond violations of civil and political rights, *towards abuses of economic, social, and cultural rights*, and beyond a focus on those who have *structural power and a voice*, to those who have historically had neither.

In short, the current use of the term **reparation** emphasises *acknowledging past wrongs*, and *working with* those who have been harmed, with the aim of *setting relations right*.

This is very different from the simplistic notion of “delivering an apology” – as an *outcome*, rather than participating in restorative engagement or a direct personal response – which should be a meaningful *process*. Fortunately, a great deal of work has gone into selecting the panel of skilled facilitators who can support a meaningful process of restorative engagement or direct personal response.

For information on the panel of Restorative Engagement / Direct Personal Response facilitators, contact [Dymphna Lowrey](#), Director, Direct Personal Response, National Redress Scheme, Commonwealth Department of Social Services.

WORKPLACES

This year VARJ and VADR (the Victorian Association for Dispute Resolution) have again agreed to collaborate on a series of forums for the '**Workplace Special Interest Group**' which was established in April 2015. The forums will run from June through until November, will be held at CBD venues, and will be free for VARJ and VADR members. VARJ Committee member Michael Mitchell is coordinating the program.



The current list of forums is:

27th June: Workplace & Family ADR;
August (date TBC): The NEW Workplace 'Conciliator' - Victorian Government Internal ADR - A new approach, Sue Ackerly (DEDTJR); Fred Wright (DWELP); Rodney McBride (DHSS)
September: Restorative Practice in Workplace Disputation Forum.
October: Special Guest to be confirmed;

We are interested in any suggestions from VARJ and VADR members for additional forum subjects, case studies and analysis, and we welcome members' contributions and recommendations for Guest Speakers and Panellists as the year progresses.

Please do not hesitate to contact Michael Mitchell with any questions or suggestions.

PENDING EVENTS

THE VARJ Committee has determined two key dates for events later this year - so please diarise these!

- **22nd November:** Innovative Programs Forum (5.30pm, other details to be confirmed);
- **5th December:** VARJ AGM (5.30pm, venue details to be announced).



[Prepared by David Moore on behalf of the VARJ Committee, May- June 2018]