



Australian Association
for Restorative Justice

Submission to the Senate Legal & Constitutional Affairs References Committee Inquiry into Australia's youth justice & incarceration system

The Senate Legal & Constitutional Affairs References Committee has invited the Australian Association for Restorative Justice (AARJ) to provide this submission to the Committee's Inquiry into Australia's youth justice and incarceration system. Other submissions to this inquiry will provide detailed information on the nature of core problems: the current age of criminal responsibility, harmful impacts of youth incarceration, the over-incarceration of First Nations children, breaches of human rights and international obligations, and the often-unmet needs of victims of crime.

This submission focuses on how restorative practice supports systemic solutions to these problems.

The term restorative *practice* is a broad category covering programs of restorative:

- *justice*, which respond to harm with healing at various points in the *justice system*,
- *practices*, which *build, maintain, deepen, & repair* relations in communities, &
- *engagement*, which links *individual recovery & institutional* reform in redress schemes.¹

AARJ is currently supporting projects that demonstrate how restorative practice can:

- reduce the number of young people encountering the youth justice system by *increasing social support*;
- provide less harmful and *more healing responses* at all stages of justice system processing;
- improve the *governance and culture of youth detention centres*;
- improve pre-release *planning* and post-release *support*, &
- coordinate programs offering these services across a region, so gradually reducing the need to *respond* to harm, and freeing-up resources for *preventing harm and promoting wellbeing*.

¹ Explanations, diagrams and figures on restorative practice in this document from David B Moore and Alikki Vernon *Setting Relations Right in Restorative Practice: Broadening Mindsets and Skill Sets* (Routledge, 2024) – abbreviated as *SRR*.

Appendices to this submission (pages 16-25) provide more detail on evaluations that have demonstrated the capacity of *well-facilitated restorative processes* in *well-administered programs* to *respond to harm with healing*. The appendices also provide additional detail on restorative language-and-concepts, applications, and capacity-building.

This first part of the submission describes how restorative practice, by building the capacity of service-providers and coordinating service-delivery, can function as a *system for improving systems*, which can thereby enable *justice reinvestment*. Restorative processes demonstrably increase community voice and improve decision-making in diverse and complex cases. Minimum standards, international obligations and legal frameworks are evolving in response.

For example, between 1994 and 2005, all Australian jurisdictions passed laws enabling the use of restorative group conferencing in *youth justice*.² In 2018, the Council of Europe's Committee of Ministers adopted a recommendation for member states concerning restorative justice in criminal matters. Nearly every US state has now implemented laws enabling some form of restorative justice at local, regional and/or state level. Earlier this year, the World Federation of Public Health Associations (WFPHA) promulgated a policy encouraging police and the public health sector to collaborate for the public good. Informed by epidemiological evidence, health professionals are urging their justice system colleagues to collaborate to coordinate the requisite *social support to prevent harm and promote individual and collective wellbeing*.

Despite these enabling legal frameworks, restorative processes are still not consistently and comprehensively used in mainstream youth and adult justice programs, nor across education, health, social welfare, and a range of other areas where they can improve community wellbeing. While AARJ Committee members were drafting this submission, National Children's Commissioner Anne Hollonds addressed the National Press Club on this persisting gap between evidence and action. The Children's Commission's new report recommends:

- positioning children at the centre of policymaking and service delivery
- empowering First Nations children, families, and communities
- **optimising community-based action**
- **building a capable and child-specialised workforce**
- basing systems on data and evidence, and
- embedding accountability for the rights of children.

These recommendations from the National Children's Commissioner are fully consistent with our Association's strategy of *optimising community-based action by building a capable [multi-agency] workforce*.

² **South Australia** *Young Offenders Act 1993*; **Western Australia** *Young Offenders Act 1994*; **Queensland** *Youth Justice Act 1992* [1996, 2002, 2010, 2014]; **NSW** *Young Offenders Act 1997*; **Tasmania** *Youth Justice Act 1997*; **Northern Territory** *Youth Justice Act 2005*; **ACT** *Crimes (Restorative Justice) Act 2004* [phase 1]; **Victoria** *Children, Youth and Families Act 2005*

1) Reasons for the persisting gap between evidence and action

Key reasons for the persisting gap between evidence, awareness, and reform action include:

- A vicious cycle rewarding the visible and measurable over the effective;
- Confusion about the language and concept of restorative practice;
- Lack of pressure on organisations to change adaptively;
- Lack of coordination for capacity-building and inter-agency cooperation.

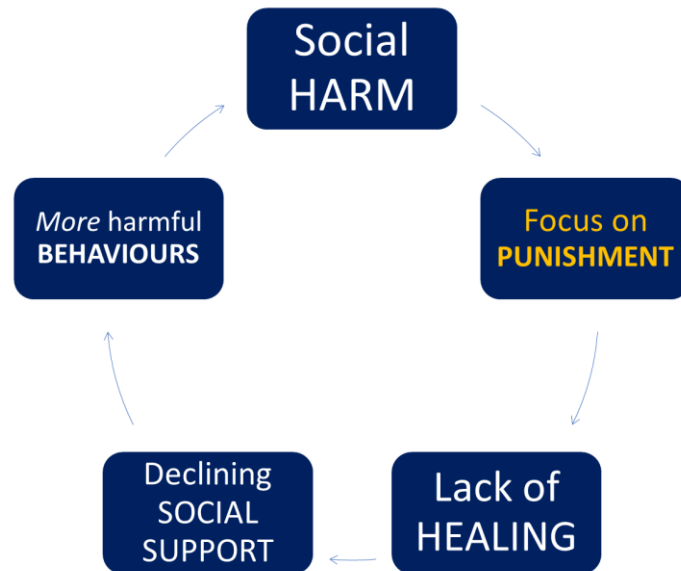
[i] Systems in a vicious cycle of **rewarding the visible and measurable over the effective**

The 2024 WFPHA policy encouraging police and the public health sector to collaborate for the public good is an attempt to counter the tendency of many contemporary *political* systems, and of the *justice* system agencies that they fund, to preference enforcement over social support.

The origins and logic of a bias for punitive enforcement are clear enough. Punitive *enforcement* is measurable, visible, and conceptually simple:

- Organisational *management* systems focus on *measurable* activity - and in the frontline justice agency of police, the *rate of arrests* is a readily measurable activity.
- Representative democratic *electoral* systems reward *visible* activity – and in the justice portfolio, *punishing* people by placing them *in the dock*, then directing them to physically-imposing institutions, is a key visible activity.
- The persisting faith in *punishment* as an effective method for (i) increasing *individual*- and (ii) *collective deterrence*, (iii) restoring moral balance by making those responsible *pay their debts to society* and (iv) authorities thereby to *demonstrate their authority* by imposing outcomes is supported with mantras that help bypass scrutiny of this faith in punishment: *an eye-for-an-eye; just desserts; do the crime, pay the time*, and so on.

However, the cumulative effect of meeting-harm-with-harm in *individual* cases tends to be *collective* harm at the level of communities - and that collective harm then feeds a vicious cycle:



There is now a growing acceptance of the importance of *trauma-informed* approaches, which *raise awareness* about the impact of past-trauma on present-behaviour. Restorative practice augments this *awareness-raising* with *capacity-building* - by increasing the skills of professionals to support people:

- to *make sense* of their situation accurately - through a *collective narrative*, and
- to *make decisions* to improve their situation effectively - through *strategic negotiation*.

Restorative practice shares with trauma-informed approaches the understanding that (i) learning from the past can support (ii) healing in the present, and (iii) working together for a healthier future. A collective narrative account of *how we got here* will typically reveal the origins and logic of habits: those routines-&rules which manifest as *individual* personality traits and *relational* patterns of interaction. Habits also manifest as *group* dynamics, organisational *governance and culture*, and the cultural rules of *whole systems*.

As for individuals, *so for* groups, organisations, and systems: outmoded habits can feed a vicious cycle. And these outmoded habits include faith in *punishment* as the best way to increase *individual-* and *collective deterrence*, restore moral balance and *demonstrate authority*.

Replacing each negative factor in a vicious cycle with its positive counterpart identifies the factors required to drive a *virtuous circle*. In youth justice and other systems that affect young people, increasing effective social support drives a *virtuous circle* that can gradually reduce the need for punitive enforcement:



[ii] Confusion about the language and concepts of restorative justice & restorative practices

The best-known restorative *processes* are various forms of facilitated meetings called *group conferences*. These processes, which are typically conducted in a circle, support participants to reach a shared understanding of their situation, and then typically also to reach an agreement to improve it. A group conference can provide a healing response when someone has harmed someone else, and can provide that healing in many contexts in *justice* systems.

Evaluations over the least three decades consistently show that well-facilitated group conferences dealing with incidents of harm can help those affected to heal from that harm, and reduce rates of reoffending [See *Appendix 3*]. However, restorative processes can be used in many settings *beyond the justice system*. Group conferences and other restorative processes can also help to *manage relationships* in any community and to address systematically the legacy of harm caused by institutions. The point of commonality across these programs of restorative *justice, practices, and engagement* is the use of facilitated group conferences to support participants to engage in fair and effective *sense-making and decision-making*.

[iii] Lack of pressure on organisations to change adaptively

- Market, state, *and* non-government sector organisations can all function as monopolies – albeit for the different reasons of (i) market dominance, (ii) state-granted authority over policy-and-practice, or (iii) guaranteed grant-funding.
- Monopolistic organisations are not subject to competitive pressure to change adaptively – and in the absence of pressure for *systemic change*, people working in *functional monopolies* generally tend to keep *doing-whatever-they’re-doing*.

There is still not sufficient pressure to overcome the institutional inertia of justice system agencies, and to use restorative practice systematically:

- Administering a restorative program that delivers well-facilitated *processes* requires an appropriate *mindset* and a corresponding skillset in both *administration* AND *facilitation*.
- Senior decision-makers in state, *and* non-government sector organisations may readily comprehend restorative *principles*, *and* the rationale for operating a restorative *program*, but cannot operate a program without skilled *process* facilitators.
- Acquiring the skills to facilitate restorative *processes* requires an apprenticeship that starts with foundational training based on accurate practical theory, and continues with learning-on-the-job, consolidated by regular opportunities for reflective practice.

[iv] Lack of coordination for capacity-building and inter-agency cooperation

The widespread use of restorative practice can gradually decrease the need to respond to harm, and increase the proportion of resources available for addressing intergenerational trauma, and enhancing community wellbeing. An emerging network of skilled practitioners can create a healthy ecosystem of restorative practice – which then maintains momentum for reform. However, many previous reform efforts have lacked a coherent and thoroughly-tested skillset for engaging the people involved *in each presenting case*, including professionals from different agencies, to (i) make sense of their situation, then to (ii) negotiate a plan to improve their situation, which coordinates the actions of all involved.

- To support a group of restorative **facilitators** to develop a common *mindset* and *skill set* requires *coordination* across units &/or services, supported by a *community of practice*.
- Program **administrators, evaluators – and legislators** - can likewise benefit from coordinated support for systemic collegial learning.

Facilitated processes consistent with this approach enable professionals to remain focused on their responsibilities to local community members *and* to each other, rather than being *primarily* focussed on their responsibilities to their line manager and agency.

2) Restorative Practice can increase regional social support

The education-, social welfare-, and the criminal- and civil justice systems constitute a complex *system-of-systems*. Workers in all these systems manage difficult situations involving conflict *within* people, *between* people, and between *groups*. Well-facilitated restorative processes can be used in all these systems to engage social networks to address complex issues, and coordinate more effective social support.

To deal with presenting cases consistently, program administrators follow specific actions that are mandated in *every case*. However, every case is different – and so, to provide an appropriately tailored response in *each case*, restorative facilitators follow *general* principles to help to *set relations right*.

Skilled restorative facilitators (i) *diagnose* each case accurately, (ii) *define* the best process to address it, (iii) *prepare* participants, (iv) ask *questions* so that each participant can relate their experience effectively, (v) *negotiate* an agreement that supports all participants, and (vi) engage in *reflective practice*, which supports participants to follow-through on agreements and professionals to learn from experience.

So, the core elements of a regional services reform project are to:

- *coordinate the strategy* of government- and NGO agencies that provide services across the region, so that these agencies *work together*, and at times even *work as one*. When agencies share a clear understanding of restorative practices, key decision-makers can better identify relevant cases and refer them to the right restorative service provider.
- *build the capacity* of individual workers, and work teams, in government- and NGO service-providing agencies, so that workers support each other effectively, as they support community members to build relationships, responsibility, and respect.

Justice system reform possibilities	Coordination for service reform	Broader systemic reform possibilities
<ul style="list-style-type: none"> • Diversion • Sentencing support • Monitoring • Post-sentence (youth and adult detention) • Pre-release planning • Post-release support 	<p>Regular <u>review of inter-agency cooperation and collaboration</u> to support integrated housing, health, education, welfare and justice responses</p>	<ul style="list-style-type: none"> • Housing • Family support • Schools • Health • Residential care • Supported accommodation • Workplaces • Community organisations

Table 5.1 from *SRR*

When there is (i) a *capacity-building* system for increasing the restorative skills of frontline service-providers, and (ii) a system for *coordinating* the work of service-providing agencies, restorative *processes* can be offered systemically in *case-after-case* across a region.

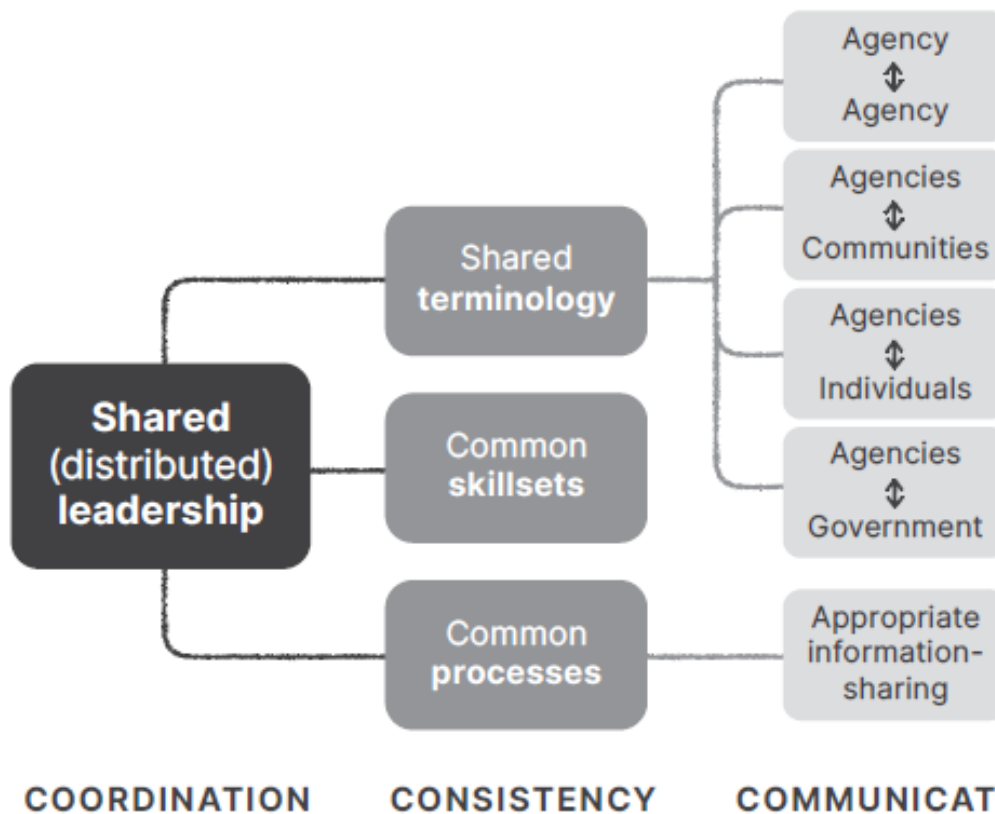


Figure 5.3 from SRR

3) Restorative practice provides healing responses in justice system programs

For those people who nonetheless encounter the justice system, restorative practice offers more effective interventions in cases requiring:

- **diversion** away from court by community &/or police

Between 1994 and 2005, all Australian jurisdictions passed laws enabling the use of restorative group conferencing in *youth justice*. Each Australian jurisdiction has its own administrative arrangements for delivering restorative group conferences, from (i) facilitators being employed directly by the coordinating department, to (ii) one-or-more departmental employees coordinating facilitators on one-or-more regional panels, to (iii) facilitators working for an NGO funded by the department. Since the quality of training and of on-the-job-learning remains variable, so the quality of service-delivery is also variable.

A recent sophisticated evaluation of group conferencing clearly indicates that a restorative process most readily effects learning, healing, and planning when *communities-of-care* are actively involved in the process. However, not all contemporary facilitator training-and-learning is consistent with this understanding that the most significant change occurs at the level of the group. As a result, facilitators are losing opportunities to help participants learn, heal, and plan to respond effectively to harm, prevent further harm, and promote wellbeing.

Problems of quality control over *facilitation* affect programs that provide restorative group conferencing for (i) *diversion* from court and for (ii) *sentencing support* in court.

▪ **sentencing support** *in court*

This problem of facilitation is compounded by a problem of *administration*: far-too-few eligible cases are currently referred to a group conference, because all Australian jurisdictions currently offer the option of *opting-in* to their youth justice group conferencing programs, rather than *opting-out*. Once again, opportunities are being lost to use a demonstrably effective ‘treatment’ for learning, healing and forward-planning.

To address this underutilisation of an effective treatment requires a change in the way decision-makers discuss and manage perceived risk. In programs that provide conferencing for *diversion*, the *risk* of a poor outcome sits with individual police and prosecutors. To *avoid* risk makes professional sense for them. The fact that some police and prosecutors are nonetheless prepared to refer *some* higher-severity cases to a group conference indicates their growing trust in the program and process.

In programs that provide conferencing for *sentencing support*, the *risk* of a poor outcome sits with the judicial officer. Again, it makes professional sense for them to *avoid* risk – and this is one of several reasons why courts currently also refer far-too-few eligible cases to a group conference. In contrast to police, prosecutors and judicial officers, participants cannot *avoid risk*: they are looking for ways to *manage* risk – and a restorative process may be their best way of doing so.

Giving participants the choice to opt-out of a group conferencing program provides them with a range of ‘justice options’ from the outset. A default arrangement of referral to a group conference, with the choice to *opt-out*, *shares* perceived *risk* between participants, the referring officer, other legal personnel, and the *program-as-a-whole*. An *opt-out* arrangement places the onus on program managers to ensure that:

- their program is trustworthy;
- court personnel can engage effectively with people who enter the program;
- working relationships are collegial;
- practice standards are benchmarked; &
- administrators and facilitators maintain a high standard of practice.

Restorative programs in New Zealand have pioneered this shift to *opting-out*, rather than opting in to restorative programs. It seems likely that most eligible cases in Australian jurisdictions will likewise only be referred if default administrative arrangements are changed, such that all eligible cases are referred to a group conference unless parties actively *opt-out*.

- **setting relations right *after* court**

The evidence strongly suggests that a well-facilitated group conference can provide lasting therapeutic benefit for all participants in cases involving a custodial sentence. Some Australian jurisdictions *do* provide for group conferences to be convened in cases where the person-responsible is serving a custodial sentence. Again, however, the availability of this option remains limited and the quality of practice uneven.

- **planning *before release* from detention**

A group conference in the format for addressing *an issue of common concern* can be used to engage members of a young person's social network to plan for their return from detention to community, ensuring greater social support. And again, the availability of this option remains limited and the quality of practice uneven.

- **community support *after release* from detention**

Ditto.

In short, far-too-many young people are still being set-up for failure after detention because of the lack of programs that provide consistent highly-quality processes supporting young people and their communities-of-care to:

- *set relations right* with those who have been harmed;
- *plan pre-release* for social reintegration, and
- ensure adequate *support* post-release.

4) Restorative Practice can improve youth detention centre governance & culture

Australia's State- and Territory youth justice systems officially accept the possibility of education, reform, and even therapeutic treatment for young people-who-have-harmed-others. In practice, a strong element of retribution remains in some youth detention centres.

Political discourse still regularly calls for authorities to exercise their power to punish, underpinned by the belief that punishment can restore *moral balance*, and provide *individual* and *collective deterrence*. Tough-on-crime discourse evokes strong emotions and moral intuitions - then feeds the problem it purports to fix. Simple solutions to complex problems, couched in the language of 'soft' versus 'tough' approaches, crowd out rational assessment of proven options for reducing crime and healing the social harm caused by crime.

The issue of *effective* youth justice policy, and particularly the governance of youth detention centres, continues to receive significant attention around Australia. The *Royal Commission into the Protection and Detention of Children in the Northern Territory*, which delivered its recommendations in November 2017, considered more than 50 previous inquiries, reviews and reports examining child protection and youth detention. One consistent reason why many earlier recommendations had not been fully implemented was the lack of *mechanisms* for involving the affected communities in the work of implementation.

NT Royal Commissioner Mick Gooda and colleagues recommended *a range of facilitated processes* to support *community-level decision-making*: a coordinated process for *community engagement*; a facilitated process for *case management* and for *bail support planning*; group conferencing in police *and* community-run *diversion* programs, and *court-referred pre-sentencing* programs; facilitated decision-making around *care and protection of children*, *care plans* for children, and *transition plans* and *carers' forums*; and integrated programs of *relationship management in out-of-home care* for young people in *care & detention*. The Commissioners urged an intense effort to engage Northern Territorians *at the community level* to participate in decision-making, in part because “*only the power of community will keep governments accountable*”.

A 2016 *Independent Review of Youth Detention in Queensland* reached some similar conclusions. Inspectors reviewing the practices, operation and oversight of Queensland's youth detention centres noted improvements in staff rostering, overtime, and leave. However, the Inspectors also noted ongoing problems relating to the size of the centres' population, concerns about security, and the governance of the units. Their recommendations led to increased funding, especially for the Centres' behaviour support teams, covering the related areas of education, psychology, speech pathology, and restorative practices, to help shift away from residual practices based on *retribution*, to an effective model of detention as a circuit breaker, using evidence-based practices to deliver therapeutic reform.

Our Association (AARJ) was invited to provide technical advice on a Restorative Practice Project was undertaken in the Brisbane Youth Detention Centre (BYDC) between March 2016 and September 2018. Our core advice was that restorative *practice* would be most effective if understood *not* simply as an *add-on* to current practice, and if *not* used solely for dealing with incidents of undisputed harm. In a residential setting – including the artificial residence of youth detention – restorative *practices* offer an effective system of *relationship management*:

- Restorative practices can help create opportunities for learning the life-skill of effective self-regulation, and social skills for building, maintaining, and repairing relations:

- Continually supporting young people to increase their capacity for self-regulation, and to maintain healthy relationships, can make each unit within the centre more manageable.
- Consistent approaches to issue resolution enable more stable group dynamics, and a reduction in fear- and force-based behaviour management methods, including overt force and the collective punishments of locking-down, splitting-up, removing privileges. (These methods all foster the legitimate complaint that “we’ve got no voice”, and drive cycles of oppositional defiance.)
- Increasing young people’s capacity for self-regulation and their skills for managing relationships, *and* planning for their release with their community of care, reduces the likelihood of young people returning to youth detention or adult prison.

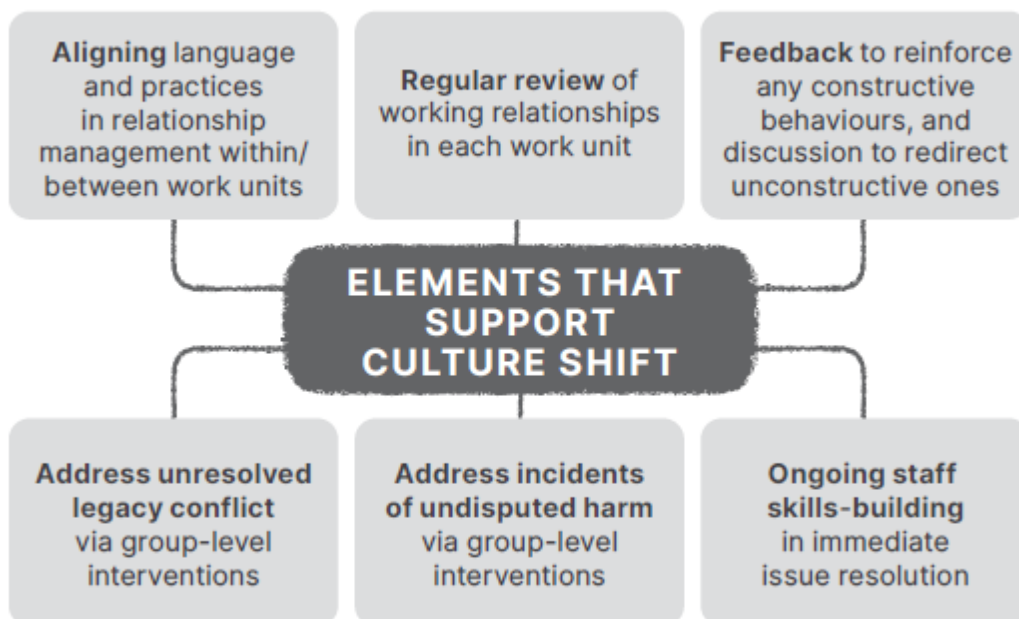


Figure 4.10 from SRR

In 2019, the Queensland Department of Child Safety, Youth and Women conducted a *Process and Outcome Evaluation* of the BYDC Restorative Practice Project. Most young people who were involved with restorative practice were 15–16-year-olds young men, Aboriginal and/or Torres Strait Islander, and at high or very high risk.

The *quantitative* results from the project were striking: the rate of incidents involving young people significantly reduced after their involvement in a group conference. Rates of serious reoffending for young people involved in some form of restorative practice reduced by nearly 50% six months after their involvement. High or very-high risk young people showed a significant decrease of *more than 50%* in rates of serious reoffending. (By contrast, the rates of reoffending for a *matched comparison group* of young people who were *not* involved with restorative practice increased by 20% and rates of serious reoffending increased by 45%.)

Every young person referred through the ‘not-to-mix’ list (*i.e.* exhibiting high-risk behaviour) was removed from that list following their involvement in a large group conference, and each of them re-engaged with school and other detention centre programs.

Qualitative analyses confirmed that robust project implementation contributed to these positive project impacts, including ‘buy-in’ from staff and young people, positive relationships between young people and staff, and young people re-engaging with programs. The Process and Outcome Evaluation identified, as key areas for driving continuous improvement in outcomes: training for staff in restorative practice facilitation skills in the detention centre, and data capture of referrals and meetings.

Queensland’s youth detention centres in Brisbane and Townsville each still have a restorative practices coordinator. As is often the case, that reform exercise seems to have inspired more vigorous reform in another jurisdiction: Victoria’s Youth Justice Commissioner, aware of the results from Queensland, is actively supporting *restorative Communities of Practice* among staff working in Victoria’s Parkville and Cherry Creek centres.

5) Restorative Practice provides mechanisms for justice reinvestment

Early *justice reinvestment* reforms sought to effect change *inside* the justice system, targeting administrative rules concerning parole, probation, and prisons. However, a review of the contemporary literature by the Australian Institute of Criminology suggests that justice reinvestment:

- makes better sense with **‘the logic’ of restorative justice**, which actively engages communities of care, and - by strengthening social support and relations - has the effect of preventing crime.

Moreover, justice reinvestment:

- makes still *more* sense with **the logic of restorative practices** in communities **outside the justice system**, and
- *really* makes sense when restorative *justice* and *practices* are **linked and coordinated** in a program of **regional services reform**:

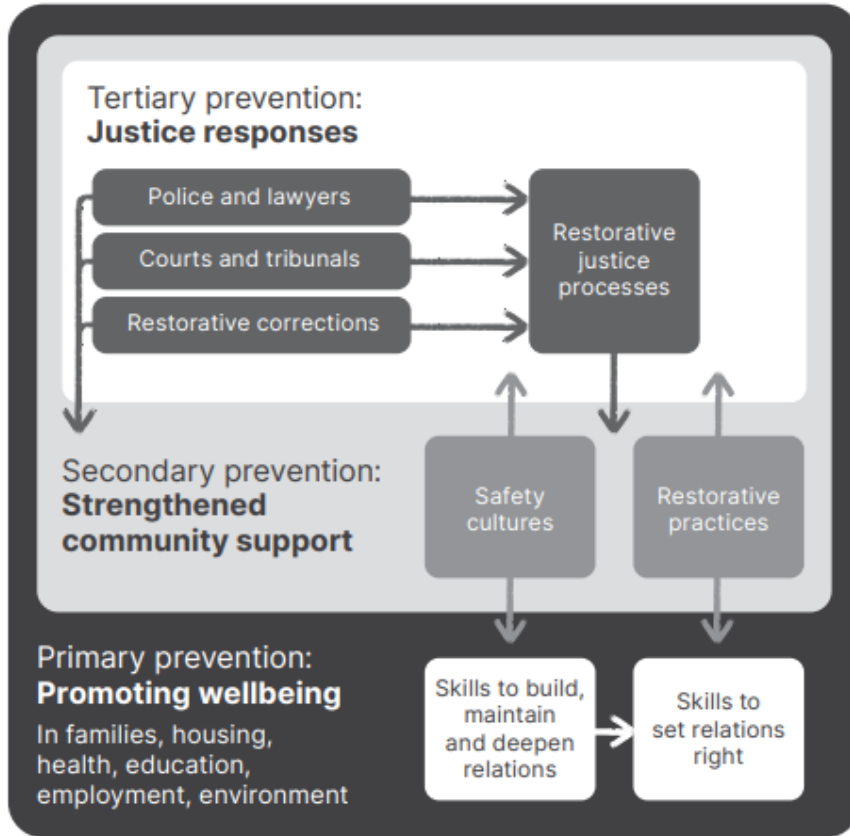


Figure 3 from SRR

The Australian Association for Restorative Justice wishes members of the Legal & Constitutional Affairs References Committee all the best as you work to deliver a final report on this very important issue. Members of our Committee will be happy to provide further technical advice as required.

Sincerely

*Dr David Moore
 President, Australian Association for Restorative Justice
 on behalf of the AARJ committee
 Melbourne, October 2024*





Australian Association
for Restorative Justice

APPENDICES

APPENDIX 1: Varieties of restorative practice³

Restorative practice is the generic term for approaches to issue resolution that are guided by the foundational restorative principles of *doing no further harm* and *working with people to set relations right*. By providing the optimal restorative process for a presenting situation, a facilitator can support those involved to (i) reach a *shared understanding* of their current circumstances, then (ii) negotiate an *agreement* to improve those circumstances, such that relations between the parties are:

- *restored* [to something positive]
- deepened
- *neutralised* [and thus no longer involving intense conflict]
- formally *ended* [and thus effectively *non-existent*], &/or
- *established* [between participants meeting for the first time].

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

- **Restorative Justice:**
which respond to harm with healing at various points in the *justice system*
- **Restorative Practices:**
which use processes & techniques that help to *build, maintain, deepen, & repair* relations in communities that include schools, workplaces, extended families, neighbourhoods, towns, and whole regions
- **Restorative Engagement:**
which links *individual* recovery & *institutional* reform in a program seeking redress for a legacy of institutional harm.

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

- 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 use slightly different criteria for *referral*. Some programs *augment* criminal justice processing, others offer an *alternative*, or stand-alone program, which may or may not influence other criminal justice processing.

³ Core concepts in this appendix are likewise adapted from David B Moore & Alikki Vernon (2024) *Setting Relations Right in Restorative Practice: Broadening Mindsets and Skill Sets*, Routledge

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

Successfully implementing restorative practices requires ongoing *reviewing, fine-tuning, & aligning of communication-and-decision-making practices* across the community in question. Community members improve their *communication-and-decision-making* skills through experiential learning cycles: <experiencing, reflecting, conceptualising, and experimenting>. To increase the quality and consistency of communication-and-decision-making requires some individual or group to be formally responsible for *coordinating* this *system* of experiential learning.

A coordinated learning system can then increase the ability of the community to change adaptively. In short: restorative practices can be understood as a *system-for-improving systems*.

Restorative engagement involves an exchange between a person-or-people harmed by an institution, and one-or-more managers of that institution. A restorative engagement *process* is typically provided by a *program-within-a-(larger)-program* of redress for a cohort of people harmed within &/or by the institution.⁴ 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.

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. 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 both a public *and* a personal apology.⁵

⁴ The Australian Defence Abuse Response Taskforce (DART) (2012-2016) developed the first Restorative Engagement program. At the conclusion of the Taskforce in 2016, the Defence Restorative Engagement program was reestablished, 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, which has operated an in-house program for staff affected by the 'RoboDebt' (2023-), with *restorative engagement* renamed *Listen to Learn*.

⁵ 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*

Restorative practice shares with *trauma-informed* practice the understanding that a narrative account of what has happened can reveal meaning – including the origins and underlying logic of rules-&-routines, or *habits*.

Habits operate at the levels of:

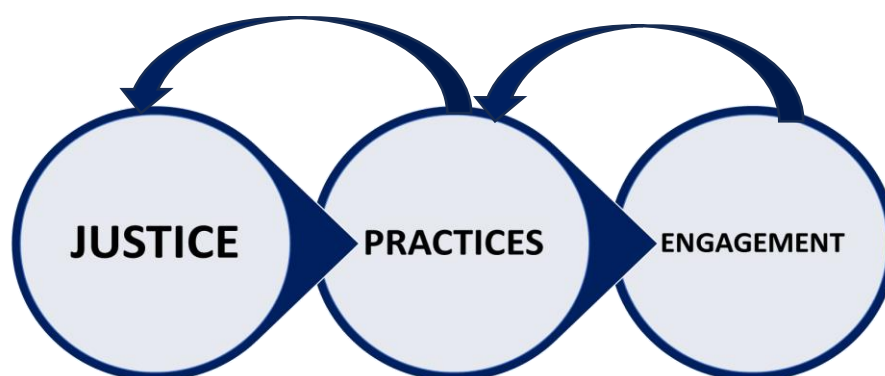
- individual personality,
- relational patterns of interaction,
- group culture, and
- organisational policies-and-procedures.

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. Some restorative engagement meetings now involve multiple survivors, &/or supporters, &/or institutional representatives. These more complex configurations enable more extensive discussion about the rules-&-routines that need to change, and how to change them.

APPENDIX 2: Institutional applications of restorative practice

The evolution and proliferation of redress schemes offering restorative engagement has recently also begun to effect more general *systemic change*. Many senior organisational representatives who have participated in restorative *engagement* are now considering the broader potential for:

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



Again, the common element across these different types of programs is the use of *facilitated group processes* that support participants to reach a *shared understanding*, then negotiate an *agreement* on how to improve their circumstances: *working with, to set relations right*.

Criminal justice systems provide multiple rationale(s) for imposing *punishment* on people who have been judged to have caused harm. The key rationales include: (i) individual *deterrence*, (ii) *collective* deterrence, (iii) restoring *moral balance*, and (iv) demonstrating appropriate *authority*. All these goals seem desirable. Social science suggests that *punishment* is not the most effective way:

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

A growing body of evidence confirms that officials can exercise appropriate authority, not be imposing an outcome, but 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 (i) complement *retributive* responses to harm, or (ii) provide an alternative that is better aligned with good practice in education and public health.⁶

⁶ 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

GROUP CONFERENCE FORMATS

A *group conference* is the generic term for the most widely-used restorative process. Different formats of group conference 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 most widely known as restorative *engagement*, and is used as primarily in redress schemes.

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, to (i) *diagnose* each case accurately, (ii) *define* the best process to address it, (iii) *prepare* participants, (iv) ask *questions* so that each participant can relate their experience effectively, (v) *negotiate* an agreement that supports all participants, and (vi) engage in *reflective practice*, supporting participants to follow-through on agreements and fellow-professionals to learn from experience.

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

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.

- 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.

APPENDIX 3: Evaluations of restorative practice

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 – 2013.⁷ 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.

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

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

Researchers from Swinburne University in Melbourne have subsequently conducted important research on *how* the group conferencing works. The Swinburne study used life-course methodology to identify what factor(s) in a group conference *most* causes behavioural change:⁸ Researchers 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
YES, it *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.

⁷ 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

⁸ Bonett, R.J.W., Lloyd, C.D., Stone, A.G., & Ogloff, J.R.P. (2024) 'Group Conferencing is associated with lower rates of repeated recidivism effects on youth recidivism and there are enhanced effects based on who attended the Conference' *Youth Violence and Juvenile Justice* 2024 DOI: 10.1177/15412040241258952

These findings indicate very strongly 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.⁹ Similar findings are emerging from recent evaluations of group conferences used for more complex cases, including family violence.¹⁰ *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 than evaluating a single process, because restorative *practices* involve a *program* and *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 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*.¹¹ 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.¹²

However, the broader benefits of restorative practice have yet to be applied very widely to workplaces. The key reason seems to be that a *system for improving systems* requires both (i) a learning system to develop and support a cohort of skilled facilitators, and (ii) 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 inertia tends to be strongest in organisations and *professions* that are not subject to competitive pressure to change adaptively.

⁹ Bolitho, J. (2015) *Putting justice needs first: a case study of best practice in restorative justice*. *Restorative Justice*, 3(2)

¹⁰ 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

¹¹ Reimer, K.E. (2019) *Adult Intentions, Student Perceptions How Restorative Justice is Used in Schools to Control and to Engage*,

¹² Dekker, S. Oates, A. & Rafferty, J (2022) *Restorative Just Culture in Practice: Implementation and Evaluation*

While many organisations and regulatory systems in the community, government, and corporate sector continue to *function as monopolies*, many *professions* persist with a model of humanity that assumes individuals are motivated primarily by:

- (i) self-interest, and
- (ii) a rational assessment of punishments and rewards.

This flawed model of humanity underplays:

- (i) the importance of people's *relational* commitments, and
- (ii) the role of *emotions* in motivation. Policies and practices informed by this flawed model tend to be ineffectual or counterproductive.

APPENDIX 4: Capacity-building for facilitators & 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. 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 being adopted in YJGC programs with AARJ's support.

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