



# **The Present State and Future Direction of Restorative Justice Policy in New Zealand**

Roundtable Discussion, 16-17 October, 2014

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## Summary of Proceedings

The present and future shape of restorative justice practice in New Zealand was the subject of a major multi-agency roundtable discussion convened by the Diana Unwin Chair in Restorative Justice at Victoria University on 16-17 October, 2014. Held with funding support from the Australia and New Zealand School of Government (ANZSOG) and co-hosted with the University of Waikato, the event brought more than 80 invited guests to the table, representing restorative justice provider groups, non-government organisations, representatives from the New Zealand Defence Force, the New Zealand Police, the Department of Corrections, Child Youth and Family, and the Ministries of Education, Social Development and Justice, as well as academics and members of the judiciary.

Participants were asked to discuss the most important restorative practice initiatives underway within their sectors, along with three or four major challenges that need to be addressed, in policy and in practice, over the next three to five years in order to extend the reach and enhance the quality of restorative approaches in New Zealand.

American criminologist Professor Howard Zehr, considered to be one of the pioneers of the modern concept of restorative justice, was invited to deliver a concluding comment on the day. In his evaluation, Professor Zehr said the event was “probably the most substantive and energising restorative justice conference I’ve been a part of in a long time”.

“It does feel like New Zealand is at an important new stage in developing restorative justice in a variety of sectors,” he said. “I am interested in that, not only for New Zealand but for the important role New Zealand can continue to play in the international field of restorative justice.”

During the two-day event, 18 panellists and four panel chairs each spoke for five minutes, with plenty of time allocated for audience engagement. There were separate sessions on restorative practices in the Justice, Education and Social Development sectors, as well as a session on restorative cities, focusing specifically on an initiative underway in Whanganui.

A major goal for the day was to create an opportunity for those involved in different parts of the restorative justice movement to come together and share their work. In this respect the conference provided a unique cross-agency networking opportunity.

The following report is not a verbatim account of all that was discussed at the Roundtable; rather it provides a summary of the key themes and challenges that emerged from each of the sessions. Although each panel dealt with a different sector, there were many commonalities.

## **The Justice Sector**

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### **Capacity Building**

There is an urgent need to build capacity in the provider community. A strong warning was sounded that increased government funding for pre-sentence conferences does not automatically translate into increased capacity to provide high quality services. The facilitator pool is limited and it takes time to recruit and train competent practitioners. More time and effort need to be invested in basic and enhanced skills training.

Building capacity is an essential priority at this time as restorative justice moves from the “experimental” to becoming “business as usual”. It is not just a matter of doing more restorative justice conferences but of improving the quality of what is done.

### **Quality Assurance**

Panellists and participants frequently commented on the challenge of maintaining quality whilst meeting the increased demand for restorative justice, particularly in anticipation of the likely impact of amendments to s.24a of the Sentencing Act, which come into force in December.

It was noted that training rounds for facilitators currently occur only twice a year and require a significant time commitment of five full days. Many who attend are volunteers.

The shortage of accredited facilitators was also highlighted, since accreditation is not a mandatory requirement for practice. Some speakers mentioned the need for prescribed standards of practice. One contributor, whilst acknowledging the value of accreditation, stressed the importance of maintaining creativity and avoiding too much centralised control.

A concern was also expressed about gaps in professional supervision of practitioners, largely due to a lack of funding. It

was acknowledged that there is little oversight of what is happening in the restorative justice field beyond the delivery of simple case numbers.

In terms of task-specific training, some panellists emphasised the need for more training around the screening and assessment of participants in family violence cases to guarantee safety. A better flow of information is needed between restorative justice providers, domestic violence specialists and criminal justice agencies to ensure safe and constructive practice.

## **Victim Engagement/Focus**

The challenge of engaging victims also came to the fore in discussions, particularly in relation to post-sentence restorative justice.

The length of time between an offence and the engagement of the victim in post-sentence conferencing was cited as a significant barrier to victim engagement. By the time the opportunity for a conference arises, too much water has often passed under the bridge and victims are no longer interested. One suggestion was to engage more conscientiously with victim agencies as a source of referrals.

Physical barriers, such as the inaccessibility or distance of certain prisons, also hamper victim involvement. It was suggested that measures like electronic monitoring could be used more effectively to enable prisoners to participate in conferences in the community rather than in prison.

Victims also need to have a voice in the deciding on a date and time for restorative processes rather than being controlled by court imposed deadlines.

The need to maintain a victim focus in practice was strongly emphasised. The tendency to measure the success of restorative justice by measuring recidivism rates tends to skew the focus towards offenders. There is a need for the development of a new basket of evaluative tools that measure what we want to achieve through restorative justice processes rather than being restricted by politically favoured measures.

## **Engaging with Maori**

Maori are over-represented in the criminal justice system, and there is an urgent need to close the gap between Maori and non-Maori. The development of Iwi Justice Panels, which work alongside iwi infrastructure, is one initiative for doing this.

*“How do we mesh the gears of Government and the community together to create an environment of change? We need to understand that we are not fighting against each other, we are working together”*

Throughout society, community groups and organisations struggle to engage with Maori at a flaxroots level. Although a range of organisations at the Roundtable were represented by Maori spokespersons, one panel member commented on the lack of Maori representing Maori.

## **Time constraints**

Time is a continual challenge in restorative justice processes. The challenge lies in trying to find a balance between the demands of the system and the personal needs of the people involved. One contributor highlighted differences between Maori and Pakeha views of time. Maori understand time as a domain in which processes and relationships are formed in a particular way, with the processes and relationships being more important than the hands on the clock.

## **Building Social Support**

Many spoke of the need to improve the public perception and understanding of restorative practices and consolidate social support for it. Academic research and scholarship can help to validate and support practice – with the establishment of the Diana Unwin Chair in Restorative Justice as one means to this end.

## **Role of the State**

Some speakers said the government could and should play a positive, enabling role in restorative justice – especially in terms of funding training, accreditation and professional supervision.

Some felt there was a need for greater dialogue between the government and the restorative justice community to develop a more effective working relationship and sharing of goals. Others, however, expressed a fear about the “colonisation” of restorative justice by the public sector, with restorative justice principles and values being subordinated to institutional priorities.

## **Risk of Complacency**

Although restorative justice in New Zealand has reached a new highwater mark, it is important not to become complacent. There are still huge challenges to meet and huge opportunities for further development.

# The Education Sector

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## Defining Restorative Practices

Panellists talked about the need to put more definition around restorative practices in schools. There is often a misconception that “RP” only applies when things have gone wrong. Communities need to be informed that it is about being solutions focused, mana enhancing and respectful. It was also said that teacher training programmes need to include a greater emphasis on restorative practice.

## Quality Assurance

Quality assurance is also a key challenge for restorative practices in the education sphere. The question is how do we increase delivery and scale while maintaining quality? Panellists talked about the need to look at pre-service learning and development, what is being taught in universities, and what continuing professional learning and development opportunities exist for teachers.

There was discussion on what constitutes a “restorative school”. It is not just a matter of putting up a sign claiming to be one. A restorative school must tick four boxes: positive interpersonal relationships, a culture of care, cultural responsiveness and individuals taking responsibility for their own behaviour.

*“Restorative practice is not a programme; it is a way of being, a way of living, a way of what we do in our schools.”*

## Developing Evaluation Tools

The evidence base for restorative practice in schools needs to be strengthened. If it is fundamentally about respectful relationships, evaluative tools need to be developed to measure the extent to which such relationships exist. These tools need to be formative as well as summative.

The Ministry of Education is currently doing work that will mean the progress of restorative schools can be tracked from implementation. This analysis will give validity and guidance for the education sector and could inform other sectors as well.

## Culture Change

The need for restorative practices to be accompanied by a thoroughgoing culture change in schools was repeatedly made during discussions. This involves a fundamental change in power relations in the way schools build and maintain relationships for learning. This change needs to be long term, not just another programme initiative. In some instances “defaults” need to be changed. One panellist referred to his task as “changing adult behaviours in schools”.

## Time Constraints

Restorative practices are time intensive. It takes time to implement, embed and maintain them. The shift from linear top-down power relations to restorative practice does not happen overnight. Change occurs through “bite sized” implementation over time. The challenge is to create tools and systems to enable schools to build as they go.

## Engaging Maori Communities

The need to engage successfully with Maori communities was emphasised. One panellist commented that Maori participation is usually found in places where the invitation isn’t – in activities where kids enjoy success and gain mana, such as in kapa haka or sports. Securing greater Maori engagement means facilitating situations where students feel they earn mana.

Another panellist commented on the need to develop culturally appropriate ways of working with Maori students. One barrier to this is that decision-making power is usually vested in the institution, meaning that what is “culturally appropriate” is defined by the school rather than by Maori.

There is a need to ensure that cultural leaders have the power to make decisions that affect their children.

Perhaps the biggest challenge is to achieve change on a societal level. As one participant said, “We can work within a classroom, we can work with a student, but if we aren’t working at a society level change, then we are only working with a microcosm. What does society say about New Zealand Maori? You only have to watch TV to see the answer to this.”

*“Culturally appropriate practices aimed at collaboration and cooperation are often co-opted. They’re co-opting Maori ways of being by saying, ‘Yes that’s culturally appropriate’ ‘Yes we’re doing the right things’, ‘Yes we were consulting’... But it is still being run within the institution and the power sits there to define what it is.”*



## **Improving Educational Outcomes**

In discussions on how to improve educational outcomes for children, the notion of “connectedness” featured prominently. We need to build stronger connections between all members of the school community, relationships that look akin to *whanaungatanga*. These are relationships that place high expectations on children but care for them as culturally located beings. Creating a positive school environment has a significant impact on the behaviour of students and leads a better community.

The panel discussed the challenges of connecting with children in care who come into schools. Much work is required to help these children deal with the baggage they carry before they can start achieving in school. More collaboration and information sharing between agencies is required. Current funding models tend to separate social agencies rather than bringing them together.

## **Social Development and Youth Justice Sectors**

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### **Time Constraints**

Time pressure was a common theme in this session as well. A good family group justice conference takes time, as it requires personal bonds to form between people, but this stands in tension with the institutional need for efficiency. One panelist observed that we have become enslaved to the need to get things done within 21 days. Speed may be valued by the system, but sometimes it is at the expense of quality.

### **Victim Involvement and Focus**

Victim engagement was another recurring theme. Research shows that less than 30% of victims participate in youth justice conferences in any way (e.g. by letter), and the figure is much lower if attendance is measured by personal presence. But bringing victim and offender together lies at the heart of restorative justice and the most effective conferences are those where victims are directly involved. This raises the question of whether a youth justice conference counts as “restorative” when the victim is absent.

More emphasis needs to be placed on providing victims with information and opportunities to participate. Working with victim agencies would be one way of increasing awareness of restorative justice. The challenge is to change wider society so that restorative justice participation is considered normal behaviour. That said, victims must always have the freedom not to be involved.

## **Maori Over-representation and Under-engagement**

Maori make up 60% of those who go through family group conferences and the question was raised whether the FGC system is working as well it should be for Maori. The model was launched by, and was full of hope for Maori but it is questionable whether that vision has been delivered. The assumption that the current FGC model is culturally neutral needs to be tested to see whether delivery should be be rejigged.

CYF has made some encouraging steps toward engaging with Maori better – moving FGC’s out of the office and onto the marae; creating MOUs with iwi which have led to the development of a whakapapa research facility in the Ministry; and collaborative work on developing evaluation processes.

There was also discussion on how to ensure sound decisions are made when considering what are the most appropriate interventions. The introduction of Rangitahi Courts, while not a magic bullet, is a step in the right direction. Consolidating and growing iwi and Pasifika courts is a good area of focus for the immediate future.

## **Collaboration**

Collaboration was cited as a constant challenge in the youth justice arena. How can the various restorative justice providers, educators, reformers and government stakeholders collaborate to provide a unified strategy and build collective capacity? Agencies are currently working in silos. How can we shorten the distance between these groups so that they work together more effectively in the best interests of children and whanau? It was noted that being more efficient doesn’t necessarily mean being more effective.

A multi-sector approach was called for, with greater cross-agency funding and information sharing between stakeholders. What is needed is a form of cross-agency “restorative

*“What we need is community owned and prioritised, and government supported, better life outcomes”*

governance". The Youth Action Plan was cited as a model for achieving such collaboration.

One contributor commented that rather than investing in a plethora of new initiatives, we should commit to those that have an evidence base and stop those doing that do not.

## **Quality/Accreditation**

Questions were raised around inconsistent practices in FGCs, with one contributor saying that while he had seen some excellent facilitators, he had also seen some woeful ones. There is a need to develop consistent accreditation and practice standards for co-ordinators.

## **Giving Voice to Young People**

Enhancing the voice of young people in restorative justice processes was highlighted as a key challenge. It must be remembered that young people are individuals in their own right, not simply objects of social concern. Young people should have an equal part to play in restorative processes rather than having adults making decisions for them.

*"One young person said, talking about FGCs, nothing should be decided about me without me"*

## **Neuroscience, Empathy and Trauma Cycle Research**

A concern was expressed about the prevalence of neuro-developmental disorders in young offenders and the challenge this posed for their participation in FGCs. Neuroscience and related developmental and attachment theories have much to offer restorative practitioners. It is also important to understand that social/psychological trauma is not just personal experience but also a societal, historical and intergenerational reality.

One contributor suggested that restorative justice may not be appropriate for young people, as empathy does not develop until late teens. Others contested this suggestion, and worried that appeals to science could be used to justify doing nothing.

# Restorative Cities

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## Wider Connections

Building a restorative city is about building relationships and connections, locally, nationally and internationally. It is about being part of a wider learning community where knowledge is shared.

Whanganui has forged a learning relationship with several other cities around the world that are seeking to achieve the same sort of restorative transformation. The initiative involves a wide range of community groups and non-government and government organisations, and places high value on connecting with indigenous peoples. The challenge is how these cities can continue to support each other in their journey and share their learning.

## Raising Awareness

Raising awareness about the Whanganui restorative city initiative through conversations, presentations, brochures, e-newsletters, and conferences is an ongoing challenge. The panel highlighted the contagious nature of sharing success stories as an effective way of promoting awareness and igniting individual action. Workshops also served to promote the philosophy and tools of restorative practice and provided an opportunity to make connections. Yet when attendees returned to work they often felt isolated.

## Support from Civic Leadership, Iwi and Workplaces

Lack of civic leadership can be a barrier to social change. Whanganui's restorative city initiative has gained support from its current Mayor, from local iwi, and key leaders from the education, justice, NGO, business and health sectors sit on the advisory board. Cross-sector connections are strengthened with each meeting and members become advocates of restorative approaches in their own work places (though in some cases this is not possible because of national office guidelines).

Getting commitment from workplaces is crucial to progressing the vision. Organisations provide the evidence of effectiveness that is needed for raising awareness and attracting the resources needed to sustain the work. Once again, time is a challenge because such changes do not happen overnight.

*“[The concept of restorative cities] moves away from the idea that you can only apply restorative approaches where harm has occurred. A restorative city is one that holds at its core the idea of respect, care and community, that builds social capital in order to produce a resilient community that can manage diversity and conflict and when harm occurs, one in which the use of restorative tools is second nature, the default position”*

## Connecting with Private Enterprises

The Whanganui restorative city project has had difficulty in gaining support from private enterprises. The drive for profit sometimes makes it difficult for private companies to see the benefit of relational approaches in the workplace. One participant stressed the importance of emphasising the cost effectiveness of restorative practices in dealing with workplace disputes to encourage greater interest.

*“The art of walking on water is knowing where the rocks are. The art of building a restorative city is knowing where your friends are. We’ve made friends with people we know are interested in this”*