Restorative Justice – Notes

‘Restorative justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.’

Changing lenses
Retributive justice: ‘Crime is a violation of the State, defined by law breaking and guilt. Justice determines blame and administers pain in a contest between the offender and the State directed by systematic rules.’

Restorative justice: ‘Crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender and the community in a search for solutions which promote repair, reconciliation and reassurance.’

Restorative Justice v Mediation
The focus of mediation is:
- The resolution of a dispute or conflict
- Level moral playing field
- Opposing parties feel entitled to something

The primary purpose of a mediation process is to establish agreement on how parties will move on and relate to one another in the future, and to avoid future conflicts.

RJ principles
- Restoration – subjective, meaningful
- Participation – those most affected can determine a mutually acceptable response, voluntary, informed, honest.
- Reparation – meeting the needs of victims
- Reintegration – opportunity to develop/enhance social & personal connections
- Accountability/responsibility – wrongdoer is made accountable through: admitting the behaviour, understanding and acknowledging the harm caused, negotiating a way to repair the harm.
- Safe process – no further harm
- Impartial facilitation
- Fair (procedure and outcome) – Tom Tyler – procedural justice
- Achievable, meaningful outcomes
- Culturally appropriate

Results – Childrens Court of Qld Annual report 2012-2013
- 94% of the 1478 conferences held during the year reached an agreement
- 99% of participants said the conference was fair
- 99% of participants were satisfied with the agreement
- 99% of participants would recommend conferencing to a friend

WEEK 2
RJ developments in Australia
- Influenced by the growth of family group conferencing in New Zealand, following passage of the NZ Children and Young Persons and their Families Act 1989.
- First conferencing trial in Australia appeared in Wagga Wagga NSW in 1991, a police-run scheme.
- First legislated restorative justice conferencing scheme established in SA in 1994, after passage of the Young Offenders Act 1993
- SA adopted the New Zealand model, for administering family conferences, where other professionals (not police) convene conferences.
Today, restorative justice conferencing is legislated in all Australian jurisdictions and most run New Zealand model conferences. The exceptions are the ACT, Tasmania and NT. These jurisdictions run "dual" systems, where both police and civilian staff convene conferences.

- New Zealand model conferencing was trialled in SE QLD in 1997, following amendments to the Juvenile Justice Act 1992
- Conferencing in Qld is a middle range response to (admitted) youthful offending.
- Young offenders are referred from police as a diversion from Court or from the Youth Court in lieu of sentencing or as a condition of sentencing. Until January 2013 when amendments to the Youth Justice Act 2006 removed the Children’s Court as another referral pathway to youth justice conferences.

What we know about RJ

- Strong evidence from research conducted in Australia to suggest that victims and offenders judge RJ conferences as procedurally fair and are largely satisfied with outcomes. There is a high degree of consistency in research findings on how victims and offenders rate conferences.
- Less evidence to show that RJ process is restorative.

Australian research

NSW (Trimboli 2006)
Surveyed offenders, victims and offender supporters across 391 conferences convened in 16 department of Juvenile Justice regions throughout the State from April – August 1999.
90% (n=30) of offenders and 79% (N=256) of victims satisfied with how their cases were dealt with by conference. 95% of offenders and 97 of victims felt the conference was fair for offenders.

Western Australia (Cant and Downie 1998)
Surveyed 265 offenders, victims and offenders supporters attending family meetings from 1996-1997. 90% - 95% felt the family meeting process was fair, 82% - 92% were satisfied with outcomes.

QLD (Hayes, Prenzler and Wortley 1998)
Surveyed 351 offenders, victims and offender supporters across 76 conferences convened from April 1997 to May 1998 in two southeast pilot programs. 98% of offenders and 98% of victims felt the conference was fair. 99% of offenders and 97% of victims were satisfied with conference outcomes. High percentages of restorativeness. 99% of offenders and 91% of victims felt doing the conferences was just what I needed to sort things out.

SA-SAJJ (Daly 2011)
Surveyed 93 young offenders and 79 victims attending a family conferences from March through June 1998. 90% of offenders and 73% of victims felt satisfied with how their cases were handled in a family conference. Observers rated the process of deciding conference outcomes as fair in 89% of conferences. Restorativeness (mutual appreciation and positive movement between offender and victim was present in only 30-50% of cases.

ACT-RISE (Strang et al 1999)
95% (n=48) of juvenile personal property, 93% (n=44) of juvenile property (security) and 89% (n=26) of youth violence offenders reported overall fair treatment with process of police run conferences. 80% (n=35) of juvenile personal property victims and 56% (n=25) of youth violence victims felt satisfied with outcomes.

- Compared conferences with courts for different offence types
Restorative Justice Practice

- Introduces participants (and their role)
- Sets expectations re:

Purpose – discuss offence, negotiate a restorative agreement
Process – hear from everyone in turn, regarding what happened, the effects, then negotiate agreement
Roles – convenor is impartial
Behaviour expectations – respectful, honest
Confidentiality – stays in the conference
Accountability – read charge, check admission

Setting up and introduction

1. Map setting up
2. Write and perform introduction

Offence: Assault occasioning bodily harm

Ashley is Sam’s teacher
Same punched Ashley in response to being admonished during class. Sam was suspended for 4 weeks. Ashley went home and has not returned to work.

Wrongdoer: Sam
Wrongdoer support: Sam’s mother Janet
Victim: Ashley Gibb
Victim’s support: Ann Gibb (Ashley’s wife)
Guidance officer: Jane McGee
One punch can kill advocate: Jim Myers

Encouraging communication: Active listening

Non-verbal:
- Posture
- Eye contact
- Nodding
- Smile
- Mirroring (being congruent)
- Minimise distraction

Verbal:
- Minimal encouragers
- Positive reinforcement
- Reflection
- Remembering
- Summarisation
- Clarification
- Questioning

Silence