



MINISTRY OF  
**JUSTICE**  
*Tabū o te Ture*

# Restorative Justice

Best Practice in New Zealand



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# Part A: Introduction

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## Background

The need for guidance on the use of restorative justice processes is recognised. Basic principles adopted by the United Nations in 2002 encourage States to develop guidelines and standards to govern the use of restorative justice programmes.

Although some concern has been expressed that such guidance may inappropriately restrain restorative justice practice (which is constantly developing and changing), there is also recognition that there are some fundamental principles which should always be upheld. If these principles are not recognised and endorsed, restorative justice as an alternative response to offending and victimisation may potentially be placed at risk.

The overall agreement that exists about best practice in restorative justice is illustrated by the two documents presented in this publication. The Principles of Best Practice for Restorative Justice Processes in Criminal Cases were prepared by the Ministry of Justice, following a consultation process with restorative justice practitioners over 2003. The Statement of Restorative Justice Values and Processes was prepared and adopted at the same time by an association of community providers known as the Restorative Justice Network.

Although written from different perspectives, the documents reflect an internal consistency about the values and principles that should inform restorative justice practice. Both documents focus on quality service delivery, while allowing flexibility of practice within cultural and contextual variation. The decision to publish the Principles and Statement together demonstrates the collaborative working relationship between the government and community that is vital for the continued development of restorative justice in New Zealand.

The reprinting of this publication will enable it to continue to be a valuable resource for all those working with, or participating in, restorative justice processes.

## What is Restorative Justice?

Restorative justice is both a way of thinking about crime and a process for responding to crime.<sup>1</sup> It provides “an alternative framework for thinking about wrongdoing”<sup>2</sup> which, along with the values and principles underpinning this framework, suggests new ways of responding to offending and victimisation. Although restorative justice processes are not unique to Māori, they have strong alignment with Māori values such as reconciliation, reciprocity and whānau involvement.

There is no agreed definition of restorative justice processes. A number of definitions have been suggested, most of which focus on a process which involves all those affected by an offence and aims to repair the harm caused by the offending. The following is one of the many working definitions that have been developed:

**“Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible.”<sup>3</sup>**

There is no one way that restorative processes should be delivered. Instead, “the essence of restorative justice is not the adoption of one form rather than another; it is the adoption of any form which reflects restorative values and which aims to achieve restorative processes, outcomes and objectives”<sup>4</sup>. Further discussion of the values, outcomes, and objectives of restorative justice is provided throughout this publication.

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<sup>1</sup> New Zealand Restorative Justice Trust (2000) New Zealand Restorative Justice Practice Manual, pg. 13

<sup>2</sup> Zehr, H. (2002) The Little Book of Restorative Justice. Good Books, Intercourse, PA, pg. 5.

<sup>3</sup> Zehr, H. (2002) The Little Book of Restorative Justice. Good Books, Intercourse, PA, pg. 37.

<sup>4</sup> Morris, A. (2002) Critiquing the Critics: A Brief Response to Critics of Restorative Justice. British Journal of Criminology, 42: 596-615, pg. 600.

## Restorative Justice in New Zealand

The application of restorative justice principles and practices in New Zealand as a response to offending and victimisation began with the introduction of Family Group Conferences for young offenders through the Children, Young Persons, and Their Families Act 1989. Over the 1990s, similar principles and practices began to be applied on an ad hoc basis to cases involving adult offenders. However, it was not until the passage of the Sentencing Act 2002, Parole Act 2002, and the Victims' Rights Act 2002 that there was any statutory recognition of restorative justice processes in the formal criminal justice system.

Together, these three Acts:

- give greater recognition and legitimacy to restorative justice processes
- encourage the use of restorative justice processes wherever appropriate
- allow (and require) restorative justice processes to be taken into account in the sentencing and parole of offenders, where these processes have occurred.

Although restorative justice processes can operate in a variety of ways at different stages in the criminal justice system, pre-sentencing conferencing of referrals from the District Court and the Police Adult Diversion Scheme are the most common restorative justice processes in New Zealand. The majority of District Courts now have access to restorative justice services.



# **Part B: Principles of Best Practice for Restorative Justice Processes in Criminal Cases**

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## Introduction

The Principles of Best Practice for Restorative Justice Processes in Criminal Cases provide guidance for how restorative justice processes should be used in the criminal justice system. The Principles were developed following a consultation process in 2003 with restorative justice providers, the judiciary, relevant nongovernment organisations and others working with, or participating in, restorative justice.

Care has been taken to ensure that the Principles protect the inherent flexibility of restorative justice processes, but also provide clear guidance about the use of these processes in a safe and appropriate way. The eight fundamental principles that have been identified should always underpin restorative justice practice in criminal cases.

The Principles focus on the use of restorative justice processes pre-sentence, and do not apply to the use of these processes after sentencing. However, the Principles are likely to be broadly applicable to the use of restorative justice processes at any point in the criminal justice process, as well as in other sectors.<sup>5</sup>

The Principles of Best Practice are part of a broader Ministry of Justice work programme to facilitate the continuing development of restorative justice processes in New Zealand.

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<sup>5</sup> The Principles do not apply to family group conferencing, which is legislated for in the Children, Young Persons, and Their Families Act 1989

## Principles of Best Practice for Restorative Justice Processes in Criminal Cases

### 1. RESTORATIVE JUSTICE PROCESSES ARE UNDERPINNED BY VOLUNTARINESS

Participation of the victim and offender must be voluntary throughout the restorative justice process

A restorative justice process cannot take place without the informed consent of the victim and the offender.

Neither the victim nor the offender should feel coerced into giving their consent and both have the right to withdraw consent at any time (including during a conference). Facilitators should end the process if either the victim or the offender indicates their unwillingness to continue. The offender's consent to participate is usually obtained before the victim is contacted.<sup>6</sup>

Both victims and offenders may seek independent advice before agreeing to participate.

Outcomes must be arrived at voluntarily and reflect the agreed view of the victim and offender

Outcomes must be developed and agreed by the victim and offender (as the primary participants) without coercion.

Facilitators must ensure that the victim and the offender understand what has been agreed to, including what is required for agreed outcomes to be completed. Reaching agreement on outcomes should not be the sole focus of the restorative justice process.

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<sup>6</sup> In many cases, Victim Advisers, who are responsible for informing the victim of the progress of the court case, will have informed the victim of the possibility of a restorative justice process when seeking their consent to pass their contact details on to the restorative justice provider.

## 2. FULL PARTICIPATION OF THE VICTIM AND OFFENDER SHOULD BE ENCOURAGED

The victim and offender are the primary participants in the restorative justice process

Although there may be many other people who participate in the restorative justice process (for example, members of the community), the interaction between the victim and offender is at the centre of the process. Other participants should encourage the victim and offender to participate at a level at which they feel comfortable.<sup>7</sup>

Victims must determine their own level of involvement in the restorative justice process

While the offender's presence and participation in a restorative justice process is always required, victims should not be pressured to participate in the process or personally attend a conference.

Although full participation by the victim is the ideal, some programmes allow restorative justice processes to proceed so long as the victim agrees to the process taking place and the victim's views are represented.<sup>8</sup> If a victim does not wish to participate in a restorative justice process in any way, it should not take place.

Where a case involves multiple victims and offences, each victim must be given the choice about whether to participate in that process and, if so, whether they would prefer a joint or separate conference. That one victim does not agree to a restorative justice process taking place should not prevent a process being undertaken for other victims to address the harms caused by the offence(s) committed against them. The facilitator(s) should work these issues through with victims at the pre-conference stage (see principle 3).

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<sup>7</sup> For example, the victim or offender may prefer that a support person speak for them at certain times.

<sup>8</sup> For example, through a facilitator, Victim Support worker, family member, or friend. That person must be able to adequately express the views of the person they are representing. The victim must also be informed of what took place.

The 'community' may be represented during the restorative justice process

What is meant by 'community' is likely to differ from case to case. It will most often include support people for the victim and offender (for example, a friend, family member or community support person) but could also include others affected by the offence. A balance is required between all relevant people attending the conference, and not overloading the conference or overwhelming participants.

Facilitators should always encourage victims and offenders to have support people present at the conference. The attendance of community members at the conference should be discussed with the victim and offender at the pre-conference stage (see principle 3).

'Professionals' (police officers, probation officers, and defence counsel) may attend a restorative justice conference, but on a carefully prescribed basis

'Professionals' have a significantly different role in a restorative justice process to that usually played in conventional court processes. They may (but are not required to) attend a conference. If they do attend, they may offer advice and support but are not parties to any agreement and should not dominate discussion.

Facilitators should discuss the attendance of 'professionals' with the victim and offender at the pre-conference stage (see principle 3). Consent of the victim and offender to their attendance may be required. Neither defence counsel, nor their client, should make direct contact with the victim before or after the conference (for example, to seek agreement to a restorative justice process taking place).

### 3. EFFECTIVE PARTICIPATION REQUIRES THAT PARTICIPANTS, PARTICULARLY THE VICTIM AND OFFENDER, ARE WELL-INFORMED

Participants in restorative justice processes must be well prepared for the conference

Pre-conference meetings should be held with participants, particularly the victim and offender. Participants will typically require information on the nature of the process, including:

- the procedures to be followed
- who will be there and ground rules
- realistic options for dealing with the offence
- the benefits and risks to them of participating
- limits to confidentiality and
- their role and rights in the process.

The defence counsel, probation officer and police officer (if they plan to attend the conference) should also receive information about their role, and how this differs from conventional court processes.

Participants must have reasonable expectations of the process and outcomes

Participants must be realistic about what can be achieved through the restorative justice process. In particular, both victims and offenders must be aware that how a court ultimately deals with an offender may or may not reflect agreements made in a restorative justice process. The facilitator(s) should discuss participants' expectations during the pre-conference meeting.

## 4. RESTORATIVE JUSTICE PROCESSES MUST HOLD THE OFFENDER ACCOUNTABLE

The offender must acknowledge responsibility for the offence before a case can be referred to, or accepted for, a restorative justice process

A case should not be referred to, or accepted for, a restorative justice process unless an offender has acknowledged responsibility for the offence. A plea of guilty, which may be accompanied by an agreed Statement of Facts, will provide the clearest indication of an offender's acknowledgement of responsibility.

It may sometimes be appropriate for a restorative justice process to be undertaken after an offender has changed their plea from not guilty to guilty. Providers and facilitators should be aware of, and put in place appropriate measures to mitigate, the additional risks to the victim and offender when restorative justice processes are undertaken in cases where a guilty plea has not been entered or when there has been a change in plea.

Agreed outcomes should provide an appropriate and realistic response to the offending

There are no outcomes that must always result from a restorative justice process. Instead, outcomes should reflect what participants think can be done to put right the offending. This will depend on a range of factors, including the needs of the victim and offender and circumstances of the offending. Agreed outcomes should be fair, realistic, achievable, and credible, and be able to be completed within an identified, appropriate timeframe (in most cases, within a maximum of six months and in all cases as quickly as possible).<sup>9</sup>

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<sup>9</sup> When considering the extent to which any offer, agreement, response, or measure to make amends should be taken into account in an offender's sentence, the court must consider whether or not it is genuine and capable of fulfilment, and whether or not it has been accepted by the victim as expiating or mitigating the wrong (section 10, Sentencing Act 2002). Where possible, therefore, these factors should be considered as agreements are reached.

To the extent possible, participants should try and ensure that agreed outcomes are not overly harsh or overly lenient. The court may be more likely to confirm agreed outcomes if they are not significantly out of line with current sentencing practice.

#### Agreed outcomes must be monitored

Conference participants should develop a conference plan that clearly identifies agreed outcomes and their timeframes and includes specific information on monitoring arrangements. The plan should be signed by the victim, offender, facilitator(s), and the person(s) responsible for monitoring. If a judge receives an agreed plan that does not identify who is responsible for monitoring each agreed outcome, he or she may request that inquiries be made about the availability of such a person before deciding how that case should be dealt with.

#### Action should be taken when an agreed plan breaks down

The most appropriate way to address lack of compliance with a plan will largely depend on how the case has progressed through the court.<sup>10</sup>

Conference participants should discuss what action should be taken if a plan breaks down as well as the status of agreed outcomes if they are not reflected in the offender's sentence or in any other way that the court chooses to deal with the offender. The victim should always be informed if the plan breaks down.

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<sup>10</sup> For example, the conference may agree that certain outcomes will be completed before sentencing, the case may have been adjourned to allow a plan to be completed (eg under s10(4) of the Sentencing Act 2002), the offender may have been ordered to come up for sentence if called upon (under s110 of the Sentencing Act 2002), or agreed outcomes may have become part of an offender's sentence.

The court should be informed about what took place in the restorative justice process

The restorative justice provider (or facilitator) should prepare a report on the restorative justice process before the case returns to court. The report should be as succinct as possible and provide an accurate reflection for the court of what took place. Although there is no standard format for these reports, basic information to meet the needs of the court will include when the conference was held, who attended and in what capacity, what process was followed (including pre- and post-conference), what outcomes were agreed and how these will be monitored.

The court should also be informed if the process only took place in relation to specific victims or offences in cases involving multiple victims. Care will always be required to protect privacy and confidentiality when preparing the report (for example, the victim's home address should not be identified). It will usually be the restorative justice provider's responsibility to ensure that the report is forwarded to the appropriate people (for example, the victim and offender, police prosecutor, offender's counsel, probation officer (if applicable), and Victim Adviser (if applicable)).

The restorative justice process should only respond to the offence(s) that is the subject of the original referral

Although offending disclosed at the conference that has not come to the attention of authorities before may be relevant to the appropriateness of an agreed plan,<sup>11</sup> it should not be specifically addressed in the current process.<sup>12</sup>

Some offences will be sufficiently serious (for example, violent or sexual offending or when someone's safety or well-being continues to be at risk) that the Police should be informed. Participants, particularly the offender, should be aware that the Police may be informed if other offending is disclosed. Where there are multiple victims, the restorative justice process should only address the effects of the offence(s) committed against the victim(s) participating in that process.

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<sup>11</sup> For example, where the conference discovers that other offending has taken place to finance a drug addiction, the plan may also identify steps to address that addiction.

<sup>12</sup> If only because the victim(s) of that offending will not usually be present.

## 5. FLEXIBILITY AND RESPONSIVENESS ARE INHERENT CHARACTERISTICS OF RESTORATIVE JUSTICE PROCESSES

Restorative justice processes should be guided by restorative justice values

Best practice requires that particular steps always be undertaken in a restorative justice process (for example, a pre-conference meeting). Within those requirements, restorative justice processes should be flexible and responsive to the needs of participants, particularly the victim and offender.

Restorative justice values provide an underpinning framework within which flexibility and responsiveness can be exercised. These values include:

- physical and emotional safety of participants
- respect and dignity for all involved
- safeguarding of offenders' and victims' rights
- balance and fairness
- voluntariness
- transparency (of process and outcomes), and
- empowerment of participants.

Restorative justice processes must be appropriate and responsive to the culture of participants

Facilitators should identify whether participants, particularly the victim and offender, would like particular cultural practices or needs to be accommodated within the restorative justice process. A range of strategies can be used to ensure that restorative justice processes respond to the culture of participants. These include:

- seeking advice from kaumatua, elders, or cultural advisers (who may attend a conference if necessary)
- using facilitators of the same ethnicity as participants
- ensuring that facilitators are aware of and know how to accommodate participants' cultural practices
- using an interpreter

- holding the conference at a culturally significant venue (eg a mārae), and / or
- ensuring that participants are aware of cultural differences and how these may or may not be accommodated.

Although the victim's preference should usually prevail, discussion and negotiation will be required when the victim and offender are of different cultures or have different preferences about how their cultural practices or needs should be reflected.

Decisions about how the restorative justice conference will operate, including arrangements for when and where it will be held, should be responsive to participants

The arrangements for, and procedures at, a restorative justice conference should respond as much as possible to the wishes of participants, particularly the victim and offender. This includes the order of proceedings at the conference, the use of particular ceremonies such as karakia and the conference time and venue.<sup>13</sup> Although the victim's preference should usually prevail, facilitators should try and resolve conflicts about these issues between the victim and offender through discussion and negotiation.

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<sup>13</sup> Although there may sometimes be restrictions on the venue, for example, if the offender is in custody.

## 6. EMOTIONAL AND PHYSICAL SAFETY OF PARTICIPANTS IS AN OVER-RIDING CONCERN

Restorative justice processes should be safe for participants at all times

Participating in a restorative justice process has potential risks for the victim and offender that must be carefully managed. The restorative justice process should be discontinued at any time if the facilitator(s) consider it inappropriate or unsafe to continue.

If a conference is adjourned or stopped, reconvening and continuing with the conference at a later date may be possible in some cases. Facilitators should discuss their concerns with participants at the time the concerns arise. The court will need to be informed if the process is discontinued.

The privacy and confidentiality of participants must be protected and respected to the extent possible

Personal information (for example, a victim's contact details or an offender's criminal history) is always private to the individuals concerned and must not be disclosed without their consent.<sup>14</sup> Restorative justice processes always take place in private and the consent of participants will be required for non-participants (for example, observers such as media representatives) to attend.

Information about what occurred during the restorative justice process may be disclosed to non-participants but only with participants' consent. Facilitators must make participants aware of the limits to confidentiality before a conference is held. For example, judges may refer to the conference report in open court and the disclosure of other offending may be reported to the Police. While there may be agreement before the conference to respect confidentiality, participants need to be aware that this agreement cannot be legally enforced.

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<sup>14</sup> The Privacy Act 1993 imposes a range of obligations on restorative justice providers in respect of the collection, storage, and use of personal information. This includes, for example, taking reasonable security safeguards to protect against loss, unauthorised access, use, modification or disclosure, and other misuse (section 6, Information Privacy Principle 5).

## Participants may require some form of follow-up after the conference

Follow-up with participants after a conference, particularly the victim and offender, will usually be required. This should be appropriate to the needs of the individuals concerned (and may therefore be minimal in some cases).

Purposes of follow-up include:

- to gain feedback on the effectiveness of the process
- to check that conference plans are being carried out and to keep the victim or offender informed, and / or
- to ensure that both the victim and offender are “okay” following the conference and determine whether either party requires support or assistance from other agencies.

Methods of follow-up can vary and may include a conference evaluation form, phone call, letter, home visit, and/or the convening of another conference. Other justice sector personnel (for example, the Victim Adviser) may also be in contact with the victim in accordance with their responsibilities under the Victims’ Rights Act 2002.

## 7. RESTORATIVE JUSTICE PROVIDERS (AND FACILITATORS) MUST ENSURE THE DELIVERY OF AN EFFECTIVE PROCESS

Robust internal management systems are required that include appropriate and transparent procedures and processes<sup>15</sup>

Appropriate and transparent procedures and processes are required that:

- screen potential facilitators at the time of their initial appointment and select facilitators appropriate to the case that has been referred (for example, having regard to the particular circumstances / characteristics of the victim and offender)
- monitor the performance of facilitators and address performance issues
- ensure regular supervision and training of facilitators, including debriefing, peer review and professional supervision
- maintain the safety of participants and the provider and
- manage complaints.

High-quality facilitators are critical to an effective restorative justice process

Facilitators should act in accordance with restorative values (see principle 5) and demonstrate competencies in the following areas<sup>16</sup>:

- **Skills:** highly developed communication skills (including an ability to maintain and encourage dialogue with a wide variety of people), an ability to manage strong emotion and conflict, and an ability to deal with diversity in terms of class, culture and gender.
- **Knowledge:** a good understanding and knowledge of local cultures and communities (including the community services and organisations that may be useful in developing or carrying out the potential plan), an understanding of the criminal justice system and restorative justice processes, and knowledge of victim and offender issues (for example, potential trauma experienced by victims after an offence).

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<sup>15</sup> These principles assume that restorative justice processes will be delivered by a provider group rather than a sole practitioner.

<sup>16</sup> See Restorative Justice Facilitator Induction Training and Accreditation at [www.justice.govt.nz](http://www.justice.govt.nz)

- **Personal qualities:** honesty, openness and accountability, integrity, respect for people including those who are different, the ability to be objective and not take sides, professionalism and self-awareness (including an ability to identify when they are not able to act impartially and to critique their own performance). Facilitators should not be aligned with the victim or offender, nor be an employee of a justice sector agency, for example, the Police. A co-facilitation model may be appropriate to enhance the safety and control of the conference, enable one person to facilitate while the other takes notes and prepares a draft conference plan, and to allow immediate debriefing after the conference.

Evaluation and review of restorative justice processes should be supported and encouraged

Formal evaluation of programmes (for example, to determine the effectiveness of different models and practices) should be supported and encouraged wherever possible. Restorative justice providers should also monitor their own practice on an ongoing basis, with a view to modifying and improving their practice where required.

## 8. RESTORATIVE JUSTICE PROCESSES SHOULD ONLY BE UNDERTAKEN IN APPROPRIATE CASES

The use of a restorative justice process in a particular case must be carefully considered

A range of factors should be taken into account when considering whether a case is appropriate for a restorative justice process (for example, after a judge has adjourned a case to allow that possibility to be investigated). These factors include:

- the type of offence
- the willingness of the victim and offender to participate and
- participants' suitability, including their maturity and ability to participate effectively and in a voluntary capacity.

A case will proceed through conventional court processes if it is not considered suitable for a restorative justice process (or if either the victim or offender does not give their consent to the process taking place). The restorative justice provider should inform the court that a restorative justice process could not be undertaken, but not provide the reason(s) for this.<sup>17</sup>

The use of restorative justice processes in cases of family violence and sexual violence must be very carefully considered

The use of restorative justice processes in family violence and sexual violence cases will not always be appropriate. The particular dynamics of family violence and sexual violence, including the power imbalances inherent to this type of offending, can pose significant risks to the physical and emotional safety of the victim.

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<sup>17</sup> Providing the court with the reason for a process not going ahead may place additional pressure on the victim and offender and be inconsistent with the voluntariness of the process. Relevant information about the offender's motivation may be included in pre-sentence reports, where appropriate.

Family violence offending, in particular, is often cyclical and reflects deeply entrenched attitudes and beliefs. Offenders may be more manipulative and have offended seriously and repeatedly. A one-off intervention may therefore not be effective or safe.

Where a restorative justice process does take place, providers must ensure that facilitators possess the specialised skills and experience required to facilitate these cases and that additional safety and support measures are in place. Advice from those knowledgeable in responding to family violence and sexual violence should always be sought.

Particular consideration should be given to the appropriateness of restorative justice processes when the victim is a child or a young person

The age and maturity of the child or young person will often determine the appropriateness of a restorative justice process in a particular case and the extent of their participation (for example, very young victims may not attend the conference). Parents/caregivers should be fully involved in the process, including giving their consent to the process taking place, and participating with, or for, the child.

There will be inevitable power imbalances arising from an adult offender and young victim. Therefore, if a restorative justice process does take place, restorative justice providers and facilitators must take particular care to ensure that the child or young person is safe and supported and understands what is taking place.

# **Part C: Statement of Restorative Justice Values and Processes**

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## Introduction

Restorative justice in New Zealand has always been firmly anchored in the community sector and the following statement of restorative justice values and processes was developed in 2002 by the Restorative Justice Network, an informal association of community groups and agencies throughout New Zealand involved in offering restorative justice services.

From the outset, community providers have been conscious of the need to develop processes to monitor and improve facilitation practice. This values-based approach of defining standards of practice was adopted in June 2003 and intended to be used in conjunction with the Ministry of Justice Principles of Best Practice. Both documents complement and enrich each other and together provide an important regulatory framework for restorative justice practice in this country.

The publication of both statements together in this publication is representative of the co-operative and respectful partnership between State and community which is essential to the future development of restorative justice in New Zealand. The combination of the two documents underscores the importance of all parties in the restorative justice scene consciously endeavouring always to deal with one another on the basis of the core values of restorative justice.

# Statement of Restorative Justice Values and Processes

## Introduction

Restorative justice is a generic term for all those approaches to wrongdoing that seek to move beyond condemnation and punishment to address both the causes and the consequences – personal, relational, and societal – of offending in ways that promote accountability, healing, and justice. Restorative justice is a collaborative and peacemaking approach to conflict resolution, and can be employed in a variety of settings (home, business, school, judicial system, etc.). It can also use several different formats to achieve its goals, including victim-offender dialogue, community or family group conferences, sentencing circles, community panels, and so on.

For the purposes of this document, “restorative justice” refers to a process whereby those affected by an incident of wrongdoing come together, in a safe and controlled environment, to share their feelings and opinions truthfully and resolve together how best to deal with its aftermath. The process is called “restorative” because it is concerned primarily with restoring, insofar as is possible, the dignity and well-being of those harmed by the incident.

From this it follows that justice processes may be considered “restorative” only inasmuch as they give expression to key restorative values, such as respect, honesty, humility, mutual care, accountability, and trust. The values of restorative justice are those values that are essential to healthy, equitable, and just relationships.

It cannot be emphasised too strongly that process and values are inseparable in restorative justice. For it is the values that determine the process, and the process that makes visible the values. If restorative justice privileges the values of respect and honesty, for example, it is crucially important that the practices followed in a restorative justice meeting exhibit respect for all parties and give ample opportunity for everyone present to speak their truth freely. On the other hand, as long as these values are honoured, there is room for a diversity of processes and a flexibility of practice.

It is this emphasis on deep human values and virtues on the one hand, and flexibility of practice on the other, that affords restorative justice such cross-cultural utility. Different cultural and ethnic communities may employ different processes in order to actualise common restorative values and achieve similar restorative outcomes.

For this reason, “best practice” does not just refer to a prescribed process or set of procedures to be followed by facilitators. Crucially, it also behoves all involved to:

- recognise the values and virtues that inspire the restorative justice vision
- understand how these ideals find expression in concrete standards of practice
- identify the skills practitioners need in order to initiate and guide interactions that express restorative justice values
- affirm that restorative justice values and principles should shape the nature of relationships between restorative justice providers and all other parties with a stake in the field, including government agencies which contract restorative justice services from community providers.

## 1. Core Restorative Justice Values

The vision and practice of restorative justice are shaped by a number of key values which distinguish restorative justice from other, more adversarial approaches to justice and conflict resolution. The most important of these values include:

- **Participation:** Those most affected by the incident of wrongdoing – victims, offenders, and their communities of interest – ought to be the principal speakers and decision-makers in the process, rather than trained professionals representing the interests of the State. All present in a restorative justice meeting have something valuable to contribute to the goals of the meeting.
- **Respect:** All human beings have inherent and equal worth irrespective of their actions, good or bad, or of their race, culture, gender, sexual orientation, age, beliefs or status in society. All therefore deserve to be spoken to and treated with respect in restorative justice settings. Mutual respect engenders trust and good faith between the participants.
- **Honesty:** Truthful speech is essential if justice is to be done. In restorative justice, truth entails more than clarifying the facts and establishing guilt within strict legal parameters; it requires people to speak openly and honestly about their experience of offending, their feelings, and their moral responsibilities.
- **Humility:** Restorative justice accepts the common fallibility and vulnerability of all human beings. The humility to recognise this universal human condition enables victims and offenders to discover that they have more in common as flawed and frail human beings than what divides them as victim and victimizer. Humility also enables those who recommend restorative processes to allow for the possibility that unintended consequences may follow from their interventions. Empathy and mutual care are manifestations of humility.

- **Interconnectedness:** While stressing individual freedom and accountability, restorative justice recognises the communal bonds that unite victim and offender. Both are valued members of society, a society in which all people are interconnected by a web of relationships. Society shares responsibility for its members and for the existence of crime, and there is a shared responsibility to help restore victims and reintegrate offenders. In addition, victim and offender are uniquely bonded together by their shared participation in the criminal event, and in certain respects they hold the key to each other's recovery. The social character of crime makes a community process the ideal setting to address the consequences (and causes) of the offence and to chart a restorative way forward.
- **Accountability:** When a person deliberately inflicts wrong on another, the perpetrator has a moral obligation to accept responsibility for having done so and for mitigating the consequences that have ensued. Offenders demonstrate acceptance of this obligation by expressing remorse for their actions, by making reparation for the losses inflicted, and perhaps by seeking forgiveness from those whom they have treated disrespectfully. This response by the offender may pave the way for reconciliation to occur.
- **Empowerment:** All human beings require a degree of self-determination and autonomy in their lives. Crime robs victims of this power, since another person has exerted control over them without their consent. Restorative justice seeks to re-empower victims by giving them an active role in determining what their needs are and how these should be met. It also empowers offenders to take personal responsibility for their offending, to do what they can to remedy the harm they have inflicted, and to begin a rehabilitative and re-integrative process.
- **Hope:** No matter how severe the wrongdoing, it is always possible for the community to respond in ways that lend strength to those who are suffering and that promote healing and change. Because it seeks not simply to penalise past criminal actions but to address present needs and equip for future life, restorative justice nurtures hope – the hope of healing for victims, the hope of change for offenders, and the hope of greater civility for society.

## 2. Restorative Justice Values In Practice

Most restorative justice processes involve a meeting or “conference” between the victim, offender, and other members of their immediate and wider community. For such a gathering to be truly restorative in character, the processes employed must evidence key restorative justice values.

Many of the values-based processes listed below are, in fact, relevant to all levels of relationship in the restorative justice field – between individual facilitators, within and between Provider Groups, between Provider Groups and other community agencies and funding bodies, and between Provider Groups and the State.

A conference process may be considered “restorative” if it:

- **Is guided by competent and impartial facilitators:** To ensure that the process is safe and effective it should be guided by neutral, impartial, and trusted facilitators. The participants should understand and agree to the process which the facilitators propose, and the facilitators should strive to deliver on expectations created by them in the pre-conference process. Pre-conference preparation should be undertaken with all who will attend the conference.

*The process is **not** restorative if the facilitators do not ensure that power imbalances are managed appropriately and that interactions between the parties are effectively facilitated, or if the facilitators impose opinions or solutions on participants or allow any other party to do so.*

- **Strives to be inclusive and collaborative:** The process should be open to all parties with a personal stake in what has happened. Such participants should be free to express their feelings and opinions, and to work together to resolve problems. Justice professionals, such as police and legal counsel, may be present, but they are there to provide information rather than to determine outcomes.

*The process is **not** restorative if key participants are required to remain silent or passive, or where their contribution is controlled by professionals who intrude their own agenda.*

- **Entails voluntary participation:** No one should be coerced to engage or remain in the process, or be compelled to communicate against their will. Restorative processes and agreements should be voluntary. Reaching agreed outcomes is desirable but not obligatory; a well-managed process itself has value for the parties, even in the absence of agreements.

*The process is **not** restorative if the participants are present under duress or are expected to speak or act or decide on outcomes in ways contrary to their desires.*

- **Fosters an environment of confidentiality:** Participants should be encouraged to hold in confidence what is disclosed at the conference and not to pass it on to parties who have no personal stake in the incident. While the commitment to confidentiality cannot be absolute, since there may sometimes be compelling legal or ethical or cultural considerations that override it, in every other situation what is shared at a conference should be confidential to those in attendance.

*The process is **not** restorative if information disclosed in confidence is relayed to people who were not present at the conference so as to inflict further shame or harm on the person who, in good faith, disclosed it.*

- **Recognises cultural conventions:** The process should be appropriate to the cultural identity and expectations of the participants. No one should be required to participate in a forum that violates their cultural or spiritual convictions.

*The process is **not** restorative if it is culturally inaccessible or inappropriate to the key participants or if it significantly inhibits the ability of participants to speak freely and truthfully.*

- **Focuses on needs:** The process should foster awareness of how people have been affected by the incident of offending. Discussion should aim to clarify the emotional, material and consequential harm that has been suffered and the needs that have arisen as a result.

*The process is **not** restorative if it is preoccupied with allocating blame or shame rather than addressing the human consequences of the incident, especially for the victim, or if it focuses solely on monetary compensation without regard to the value of symbolic reparation, eg apology.*

- **Exhibits genuine respect for all parties:** All participants should be accorded fundamental respect, even when their prior behaviour is condemned as blameworthy. The process should uphold the intrinsic dignity of everyone present.

*The process is **not** restorative if the participants engage in personal abuse or show contempt for a participant's ethnic, cultural, gender or sexual identity, or if they refuse to listen respectfully when others are speaking, for example, by constantly interrupting.*

- **Validates the victim's experience:** The victim's feelings, physical hurts, losses, and questions should be accepted without reproach or criticism. The wrong done to the victim should be acknowledged and the victim absolved of any unjustified blame for what happened.

*The process is **not** restorative if the victim's experience is ignored or minimised or trivialised, or if victims are made to shoulder undue responsibility for what occurred, or are pressured to forgive.*

- **Clarifies and confirms the offender's obligations:** The offender's obligations to the victim and to the wider community should be identified and affirmed. The process should invite, but not compel, the offender to accept these obligations and should facilitate identification of options for their discharge.

*The process is **not** restorative if the offender is not held accountable for what happened and for addressing the consequences of their wrongful actions or is forced to assume responsibility involuntarily.*

- **Aims at transformative outcomes:** The process should aim at outcomes that meet present needs and equip for the future, not simply at penalties that punish past wrongdoing. Outcomes should seek to promote the healing of the victim and the reintegration of the offender, so that the former condition of both may be transformed into something healthier.

*The process is **not** restorative if the outcomes are irrelevant to the victim or aimed solely at hurting the offender.*

- **Observes the limitations of restorative processes:** Restorative justice is not a substitute for the criminal justice system; it is a complement to it. It cannot be expected to meet all the personal or collective needs of those engaged in it. Participants should be informed of how restorative processes fit into the wider justice system, what expectations are appropriate for the restorative justice process, and how restorative outcomes may or may not be taken into account by the court.

*The process is **not** restorative if it is exploited by participants to achieve unfair personal advantage, or arrives at manifestly unfair or disproportionate outcomes, or ignores considerations of public safety, or attempts to subvert society's interest in having criminal offending dealt with in an open, fair, and just manner.*

### **3. Core Values In The Restorative Justice Community**

Restorative justice values should underpin all relationships between people working in the justice domain with a restorative justice purpose. The values identified above can assist the advancement of the restorative justice movement in New Zealand if those engaged in the movement, whether in the community or within government agencies, endeavour to deal with one another through conscious application of restorative values.

Restorative values should govern relationships within and between community groups. They should also shape relationships with government agencies, with those who exercise funding or administrative roles, in relationships with judges, victims' advisers, restorative justice co-ordinators, the police, probation and prison officers, and so on. The cause of restorative justice is advanced when all such partners treat each other restoratively.





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