



# The Restorative Justice Conference Bringing Justice and Community Together

## Abstract of Papers and Speaker Profiles in order of Presentation

### **The Hon Rob Hulls**

Conference Opening  
Deputy Premier and Attorney-General, Member for Niddrie

### **Michael King**

Michael S King is a senior research fellow in the Faculty of Law at Monash University where he is working on non-adversarial and comprehensive approaches to justice. From 2005-2007 he was Perth Drug Court Magistrate and from 2000 until 2005 he served as a magistrate at Central Law Courts in Perth and then at Geraldton. Before his appointment to the bench, he practised extensively as a lawyer with Legal Aid WA, in private practice and with Aboriginal Legal Service (WA). In 1990, during his time with ALS, he served as counsel in charge of a unit representing families before the Royal Commission into Aboriginal Deaths in Custody. He is regarded as an international expert in therapeutic jurisprudence, has published extensively in the field, presented at conferences in Australia, the UK and the USA on the topic, undertaken a leadership role in organising several national and international conferences on therapeutic jurisprudence and been involved in establishing three therapeutic jurisprudence based projects while Geraldton magistrate. He has also extensively used restorative justice approaches while a magistrate.

**"Towards a More Comprehensive Resolution of Conflict: The Role of Restorative Justice".**

Essentially I would aim to locate RJ as a key development in an emerging approach that includes TJ, ADR, RJ, problem solving courts etc that seeks to deal with multiple dimensions of conflict and avoid the negative side effects that can arise from a purely adversarial approach. These approaches emphasise values such as participant voice, validation, respect, self-determination and collaboration/cooperation. I would aim to stress that one size does not fit all and that it is important to identify the right method to suit the problem and the needs of the people involved. RJ has a particular role in promoting healing between parties and in restoring or transforming relationships as a part of the resolution of conflict.

### **Paul Ban**

One of Australia's most experienced family group practitioners the following is a summary of his experience in this area:

- a) Facilitated over two hundred family group conferences on a contract basis for government and non-government agencies.
- b) Convener of three bi-annual Australian National Workshops on family group conferencing (1996, 1998, 2000) and one national tour with speakers from New Zealand and England in 2003.
- c) Provided training to government and non-government agency staff in all States of Australia since 1993.(ongoing)

- d) Provided training internationally since 1997. Countries included England, Scotland, Northern Ireland, Hungary, Hong Kong and the United States, including Hawaii.
- e) Spoken at numerous national and international conferences as either a keynote speaker or as a workshop presenter.
- f) Written numerous published articles on family group conferencing, including a chapter in each of two international books on this topic.
- g) Member of the Victorian Association of Restorative Justice since its inception in 2005 to provide a link between family group conferencing and restorative practices.

### **Family Group Conferencing**

While family group conferences are planning meetings where extended family are able to make informed decisions about a vulnerable member at a time of crisis or impending crisis, they are also instrumental in helping heal existing conflict within the family network. Since their development in New Zealand in the late 1980s, family group conferences now take place throughout the United States, the United Kingdom, Europe (including Scandinavia, Eastern and Western Europe) and Australia as well as partially in a range of other countries. The healing aspect of families coming together at times of crisis to protect their children, aged members and other vulnerable parties has not generally been highlighted in the literature on this area of practice. This presentation will discuss the importance of the extensive preparation phase prior to the three stage meeting as being the key to ensuring family members are able to overcome their intra and inter-personal conflicts and focus on the greater good of the family network as a whole.'

## **Natalia Blecher**

Research Associate to Professor Arie Freiberg, Dean of Law, Monash University. Natalie is an outstanding scholar in both arts and law. She is a holder of the following academic prizes:

### **Law**

- (1). Monash Law School Prize for Elements of Forensic Medicine (2008)
- (2). Monash Law School Prize for Legal Issues in Medicine (2008)
- (3). Monash Law School Prize for Non-Adversarial Justice (2008)
- (4). Monash Law School Prize for Comparative Criminal Law (2007)
- (5). Brian Benjamin Prize for Trusts (2007)
- (6). Hunt & Hunt Prize for Property A (2006)
- (7). Hunt & Hunt Prize for Property B (2006)
- (8). Clayton Utz Prize for Torts A (2006)
- (9). Thompson Legal & Regulatory Prize for Torts B (2006)
- (10). Blake Dawson Waldron Prize for Contract Law (2005)
- (11). OPP Prize for Criminal Law & Procedure (2004)

### **Arts**

- (1). Faculty of Arts Dean's Recognition Award (2006)
- (2). Penguin Short Story Competition – Second Prize
- (3). Highest mark in Spanish Studies 3 (2005)
- (4). Highest mark in Spanish Studies 1 (2004)
- (5). Highest mark in Politics Unit – “Nature, Law & Revolution” (2004)

### **SORRY JUSTICE: THE PROMISES AND PERILS OF APOLOGY IN AUSTRALIAN RESTORATIVE JUSTICE CONFERENCING**

The paper flows on from Daly's empirical work on the South Australian Juvenile Justice Project ('Mind the Gap: Restorative Justice in Theory and Practice') and aims to determine the possible causes of the disjunction between RJ theory and practice. Daly found that the widely-acknowledged lustre of RJ theory may not always carry through to practical application. The paper aims to take this analysis one step further by examining what might be responsible for this 'gap', using apology as the analytic lens. Because the notion of apology is so central to reintegrative shaming theory, it forms a useful axis of the analysis. It is through examining the psychological complexities bound up in the apology/forgiveness ritual that potential trouble spots in RJ practice are revealed.

After providing a précis of the theory underpinning RJ and a comprehensive definition of apology, the paper goes on to evaluate how the apology/forgiveness ritual plays out in the context of Family Group Conferences. It is here, in the transposing of social psychology literature onto the legal framework, that the possible causes of the theory/practice gap are finally illuminated. Many of these causes can, in turn, be traced back to a defect in the apology/forgiveness process. There is the possibility of a defective apology. A failed apology – one that neglects to give a comprehensive account of the offence, or which is phrased in passive language ('I'm sorry your property was stolen'), or which uses conditional phrasing ('I'm sorry if I hurt you') is unlikely to satisfy victims that the offender is truly remorseful and thus deserving of forgiveness. Alternatively, an apology that is technically complete but uttered by an unrepentant offender is unlikely to facilitate victim forgiveness or offender rehabilitation. The victim may be unable or unwilling to issue forgiveness and thus complete the restorative cycle. S/he may feel that an apology downplays the gravity of the harm suffered, may be unable to empathise with the offender by reason of socio-economic variance, or may be simply unwilling to let go. A further potential trouble spot lies in the conference process itself: has the process been convened too early or too late in the day for forgiveness and reintegration to be realistic objectives? Is the offence simply too grave to warrant non-adversarial treatment? Does the reparation agreement signed by the offender provide an adequate follow-up to the verbal apology offered in the conference setting? Each of these psychologically-rooted questions directly and profoundly impact upon RJ's practical operation and efficacy.

While the paper vigorously defends the overall value of RJ, it sounds a note of caution about the situations in which RJ may fail or be otherwise inappropriate. With criminal justice increasingly relying on non-adversarial alternatives, evaluation is as critical as ever.

## Adam Broomfield

Adam Broomfield is a Leading Teacher with the Department of Education Victoria and is currently employed at his second school with the strategic goal of the implementation of Restorative Practices. He is a committee member of the Victorian Association for Restorative Justice and has consulted with numerous schools in relation to their implementation of restorative practices, whole school student management and behaviour modification and factors that affect schools in economically disadvantaged areas.

He is completing a Masters in School Leadership at Monash University and the focus of his Action Research project is on School Connectedness: Factors that increase student's connectedness with school.

In this workshop Adam proposes to have a "brief" look at some of my own and the empirical evidence for the case towards a more restorative approach in schools. This workshop will provide snapshots and then provide time for participants to discuss their own schools and experiences.

## Arthur Bolkas

### Victim Awareness

*Victim Awareness* is the only program of its kind in the Victorian prison system. Based on the *Sycamore Tree Project* – an international restorative justice program that brings crime victims into prison to meet with unrelated offenders – *Victim Awareness* teaches offenders about the 'cycle of victimization': victims of personal and social abuse in turn victimizing others. Using systematic teaching, victims' recorded testimony, and group discussion, offenders are sensitized to the fact that their victims are *real* people, and that for every victim of crime there is a 'ripple effect' of associated victims – including the perpetrators themselves and their own families. The program objective is to raise offenders' awareness of both their behaviour and their victims, to become empathetic people who are more responsible for their actions and less likely to harm others. A unique feature of *Victim Awareness* is the background of its founder/facilitator, himself a former prisoner whose life has been a journey of restoration.

The presentation will address:

- Our criminal justice system – retributive v. restorative
- The story of Zacchaeus – a biblical paradigm of restoration or ‘bad guy comes good’
- The victim-offender paradox – breaking the ‘cycle of victimization’
- No more ‘buck-passing’ – taking responsibility:
  - acknowledging the ‘ripple effect’ of crime
  - personal responsibility to victims
  - responsibility essential to behaviour change
- Saying sorry – acting sorry
- Confession & repentance
- Forgiveness – of oneself & others
- Restitution – implications for (ex-)offenders & society
- Program anecdotes and personal reflections
- International experience & challenges for the future

## Bronwyn Egan

Bronwyn has worked at the Catholic Education Office Melbourne since 2004 in the area of Student Wellbeing. Student wellbeing supports both primary and secondary schools in developing prevention frameworks for a whole school approach to wellbeing and managing critical incidents.

Some of the initiatives Bronwyn is personally involved in include Restorative Practices in Catholic schools, School Attendance, National Safe Schools Framework and the inaugural Student Wellbeing Drama Festival.

Prior to joining the CEOM she taught in secondary schools in both the government system and the Catholic system, mainly in the areas of drama and English. She has held positions of responsibility as House Coordinator, Head of Campus and Head of School.

Bronwyn is also a VCE examiner in drama and theatre studies and judges amateur musicals for the Lyrebird Awards.

### **Restorative Practices in Catholic School Communities: A System-based Approach**

The Catholic Education Office, Melbourne has committed to restorative practices across its primary and secondary schools. Eighty schools are currently involved in the initiative. Schools are encouraged to demonstrate behaviour that reflects an integration of gospel teachings through restorative practices. Facilitators from the Student Wellbeing Unit support schools by working with teams in each school to develop individual Annual Action Plans, which emanate from School-Improvement Plans. Professional learning is offered to school staffs to introduce, embed, and sustain the initiative.

This session will discuss how the process links across a whole system and will examine different paths schools have taken. There will also be video interviews from principals about the effects of introducing restorative practices and discussion of results from a project evaluation. The Australian Government’s National Safe Schools Framework also forms part of the student wellbeing strategy for schools, and its relationship to restorative practices will be discussed.

## Tony Foley

Tony Foley holds qualifications in law and dispute resolution. He is a practising lawyer and a senior lecturer at the ANU College of Law. Tony is completing his Ph.D in law examining justice responses to criminal wrongdoing through the lens of restorative justice under the supervision of Professor John Braithwaite.

### **Restorative justice and due process protections**

This paper reports on the approaches taken to protect procedural due process in restorative practices in a number of jurisdictions in Australia and overseas.

The paper compares how due process protections operate in practice in relation to specific issues including:

- The gateway to restorative justice – the trigger of acceptance of responsibility or pleas of guilt
- Admissions made in restorative conferences – providing blanket or partial inadmissibility protections
- Right to counsel – admitting or excluding lawyers from conferences.

The majority of jurisdictions mandate a plea of guilty as the trigger to open a restorative pathway. But some schemes accept a lesser threshold, such as the ACT's 'acceptance of responsibility for the offence in order to take part in restorative justice' and the NZ youth justice practice of 'decline to deny'. Do these lower thresholds jeopardise the legal process rights of offenders or victims?

Jurisdictions also differ markedly as to how they treat admissions made by the offender in the course of preparatory stages or during conferences. While some schemes provided for blanket inadmissibility of such disclosures in any criminal or civil proceedings (as is the case in a number of Canadian jurisdictions), others provide for more limited protection (such as the ACT's requirement that the admission relate to a 'less serious offence').

In all jurisdictions the offender has a statutory entitlement to a right to counsel before agreeing to participate in restorative processes. But the presence of a lawyer at the conference is either excluded or specifically limited to an 'advisory' role in a number of jurisdictions. The Victorian provisions are unique in mandating the presence of a lawyer as one of the persons who must attend group conferences under the Children, Youth and Families Act. Is there a preferable and workable path?

The maintenance of such adequate and effective due process protections for offenders is essential to the growth of the acceptability of restorative practices. The paper considers the adequacy of such protections in the context of the human rights legislation now in place in the ACT and Victoria.

## **Louise Bassett**

Louise Bassett qualified as a lawyer before working in international aid, primarily in the criminal justice sector, in Cambodia, Indonesia, Papua New Guinea and Vietnam. She has designed and managed reform programs in the justice sector ranging from community engagement in crime prevention to the young adult group conferencing program at the Neighbourhood Justice Centre in Collingwood, Victoria. Louise is currently working on the development of a restorative justice policy framework for the Department of Justice.

## **Hieng Lim**

B Sc., Grad Dip Imm, LLB - Research in Immunology at Monash Medical Centre  
Articled Clerk and Solicitor at Hunt and Hunt Lawyers, Melbourne - Commercial and Commercial Litigation Associate, Burrell Solicitors, NSW - Commercial and Commercial Litigation Mediator, Dispute Settlement Centre of Victoria Project Officer and Lead Trainer, Dispute Settlement Centre of Victoria Mediation Coordinator at Neighbourhood Justice Centre, Dispute Settlement Centre of Victoria Project Manager, Neighbourhood Justice Centre

### **Restorative Justice and the Neighbourhood Justice Centre**

The first Neighbourhood Justice Centre (NJC) in Australia opened in Victoria in March 2007. Located within the inner urban and diverse Yarra municipality, the NJC was inspired by the vision of the Victorian Attorney General, Rob Hulls, who visited similar centres in the US (Redhook Centre, NY) and UK (Liverpool). The NJC is a one stop shop incorporating a multi jurisdictional court that houses onsite services for victims, defendants, civil litigants and the local community. It focuses on both civil and criminal legal issues in an effort to reduce re-offending and crime rates, to enhance community perceptions of safety and confidence in the justice system and to assist in the re-energization of communities affected by individual and systemic disadvantage.

The NJC draws on and extends the concepts already developed in other specialist court divisions in Victoria, such as the Children's Court, the Drug Court and Koori Court. These jurisdictions have already demonstrated that courts adopting *problem-solving/therapeutic* approaches cannot only work *effectively* as court models but can *work* within an existing court structure. For the first time in Victoria, the NJC's commitment to the restorative justice is enshrined in legislation. The NJC acknowledges the importance of restorative justice in enhancing access to justice and local ownership of crime and safety issues and community engagement also underpins the operations of the NJC, providing a unique platform for the trial of a restorative justice conferencing pilot at the NJC and further exploration of the role of the community in restorative justice.

## **Dr. Derek Brookes**

Derek Brookes is a Restorative Justice Trainer and Consultant who has recently moved to Melbourne. Previously he worked in Scotland for 7 years, developing national RJ referral protocols, best practice standards, training packages and an evaluation and monitoring system. He trained over 800 RJ practitioners in the contexts of youth justice, schools, prisons, residential units, anti-social behaviour and police warnings. Prior to Scotland, he worked as an accredited RJ practitioner in NSW, and helped to develop an in-prison restorative justice program in Washington DC. Derek has a PhD from the Australian National University, and has been a university lecturer and/or research fellow in Australia, America and Scotland.

### **The Relationship between Restorative Justice and Criminal Justice: A Defence of Parallelism**

The criminal justice system is primarily designed to serve the public interest. Restorative justice is designed to address the personal, private needs of individual citizens. These distinct aims require such different processes that any attempt to integrate restorative justice within the criminal justice system will invariably undermine the quality and effectiveness of both. The optimal relationship between the two is therefore one of maximum independence. Restorative justice is therefore likely to be best situated as a post-sentence voluntary option.

## **Greta Clarke**

Research Officer, Victorian Aboriginal Legal Service Co-operative Limited

### **Indigenous Australian perspectives on Restorative Justice**

Space should be created for restorative justice options for Indigenous Australians in a number of contexts, such as criminal and family issues, including family violence in appropriate circumstances. However, there are challenges to creating space for restorative justice, such as fear of the unknown. Ways to overcome this will be discussed, such as a National Indigenous Strategy to challenge a trend towards being punitive.

An overview of the strengths, weaknesses, opportunities and threats of restorative justice will be considered from an Indigenous Australian organisation's perspective. Also discussion will occur about a finding of research, commissioned by the Victorian Aboriginal Legal Service: Indigenous Australians prefer a restorative justice approach to family violence over a criminal justice response, whilst the preference for non-Indigenous Australians is the opposite. VALS' proposed model of a Koorie Dispute Resolution Service that attempts to implement the findings of this research will be discussed.

## **Marg Thorsborne**

Margaret Thorsborne is the Managing Director of Margaret Thorsborne and Associates, a consultancy committed to increasing job satisfaction and productivity by improving

workplace and community relationships. With a background in education and counselling, Margaret pioneered the use of Community Conferencing in schools in Queensland in the mid 90's. She continues to train conference facilitators and restorative practices in education, police and justice sectors across Australia, New Zealand, United Kingdom, USA and Canada. She remains involved in this important reform in schools. Margaret has continued to widen the use of restorative measures by applying the principles and philosophy of conferencing in workplaces in private and public sectors to rebuild relationships in the wake of a wide range of difficulties, including workplace bullying and high level conflict. Visit her website at [www.thorsborne.com.au](http://www.thorsborne.com.au)

### **What Makes a Difference**

In her work across a wide range of schools in different countries, common themes and issues around implementation have emerged. This presentation will explore what it is about those schools which are successfully implementing restorative practice that is making a difference.

## **David Moore**

David Moore is a Melbourne-based consultant in constructive communication, conflict management and organisational governance. He is also a Principal with Sydney-based *Primed Change Consulting*.

David has taught in politics at the University of Melbourne, in history and politics at Charles Sturt University and in law at La Trobe University. In the first half of the 1990s, David was centrally involved in internationally influential reforms using the Conferencing process in the justice and education systems. He subsequently worked in the Queensland Premier's Department before co-founding Transformative Justice Australia (TJA). From 1996 – 2002, David trained facilitators in Australia, Canada, the USA, Scandinavia and the UK, and provided conflict management and training services to Australian organisations across key industries, and in the community and government sectors. This work inspired David Williamson's Jack Manning Trilogy of plays: *Face to Face, A Conversation, and Charitable Intent* (1999 - 2001).

**“Brining Together the Threads” Final Plenary of the Conference – David will chair the final plenary where all conference delegates will be brought together to share views and report back from earlier sessions.**