



Canberra – becoming a restorative city

Final report

OCTOBER 2018

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Reference 5

October 2018

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Abbreviations

ACAT	The ACT Civil and Administrative Tribunal
ACT	Australian Capital Territory
ADACAS	ACT Disability, Aged, Carer Advocacy Service
AHO	Aboriginal Housing Office
AIHW	Australian Institute of Health and Welfare
ALRC	Australian Law Reform Commission
ANU	Australian National University
CJR	Centre for Justice and Reconciliation
CYP Act	<i>Children and Young People Act 2008</i>
CPYS	Children and Youth Protection Services
DART	Defence Abuse Response Taskforce
FACS	New South Wales Family and Community Services
FGC	Family Group Conference/Conferencing
Health Directions Act	<i>Medical Treatment (Health Directions) Act 2006 (ACT)</i>
Housing ACT	Housing and Community Services (ACT)
Human Rights Act	<i>Human Rights Act 2004 (ACT)</i>
LRAC	ACT Law Reform Advisory Council
Mental Health Act	<i>Mental Health Act 2015 (ACT)</i>
MDP	Multi-Disciplinary Panel
NDIS	National Disability Insurance Scheme
NDIS Act	<i>National Disability Insurance Scheme Act 2013 (Cth)</i>
NZ	New Zealand
OOHC	Out-of-home care
Power of Attorney Act	<i>Power of Attorney Act 2006 (ACT)</i>
QLRC	Queensland Law Reform Commission
RAC	Regional Appeals Committee
RCT	Randomised Control Trial
RegNet	The School of Regulation and Global Governance at the ANU
RJC	Restorative Justice Council
ROGS	Productivity Commission's Report on Government Services
The Council	ACT Law Reform Advisory Council
The Guardianship Act	<i>Guardianship and Management of Property Act 1991 (ACT)</i>
UC	University of Canberra
UK	United Kingdom
UN Convention	United Nations Convention on the Rights of Persons with Disability
VLRC	Victorian Law Reform Commission
WA Housing	Western Australia Department of Communities - Housing

Part 1: The ACT Law Reform Advisory Council

The Council was established by the former ACT Attorney-General, the Hon Simon Corbell MLA, to provide expert advice and recommendations to the Attorney-General. The Council operates as a collaborative undertaking between the ACT Government and the ANU College of Law at the Australian National University, which together provide the funds, resources, infrastructure and staff necessary for the Council's operation.

Acknowledgements

Members of the Council are appointed by the Attorney-General for a period of up to three years, on the basis of their relevant and varied experience and expertise. Members contribute to the work of the Council on a voluntary basis. The Council is supported by a part-time Executive Officer Dr Fiona Tito Wheatland.

Council members at the time of the report were:

- > Professor Tony Foley (Chair)
- > Mr Stuart Pilkinton SC
- > Professor Lorana Bartels
- > A/Comr. Justine Saunders APM
- > Justice John Burns
- > Ms Louise Taylor
- > Mr David Heckendorf
- > Chief Magistrate Lorraine Walker
- > Mr Martin Hockridge
- > Dr Helen Watchirs, OAM
- > Mr John Kalokerinos
- > Ms Heidi Yates

The Council acknowledges the support and effort of Dr Tito Wheatland (who sought out and engaged with community groups and relevant individuals, conducted the vast majority of consultations, carried out a series of case studies and who has written much of the report). We also acknowledge Dr Stephen Tang (a research assistant in the latter period of the inquiry who wrote sections on the restorative framework and the use of restorative justice in child protection) and Ms Hannah Cannon (a research assistant who assisted in various consultations in the early period of the inquiry). Additionally, the Council acknowledges the input from ANU law students including Ms Madeline Verge (an intern who researched the use of restorative justice in child protection), Ms Shivant Benerjee (an intern who researched the use of restorative justice in public housing) and Mr Colin Watson (an intern who researched the use of restorative justice in on campus sexual assault and harassment complaints).

The Council acknowledges the input and assistance received from submissions by various bodies and individuals which are listed in Appendix A. The wisdom and direction we gained from these submissions and from briefing and information gathering sessions has proven invaluable in formulating our recommendations. Meetings were held with organisations and individuals including the following – the Canberra Restorative Community Network; the Director General and Executives responsible for Housing and Child Protection; the Australian Federal Police; the Elder Abuse Prevention Taskforce; key individuals, Julie Tongs OAM the CEO of Winnunga Nimmityjah Aboriginal Health Service, and Jon Stanhope AO, previous Chief Minister of the ACT. We also met with groups directly affected by the two focus areas of the report – disability groups, public housing tenants, Winnunga Nimmityjah Men’s and Women’s Groups, ACT Housing staff, and Child Protection staff.

Professor Tony Foley

Chair, ACT Law Reform Advisory Council

Part 2: Executive summary and recommendations

In 2016 the ACT Legislative Assembly called on the Canberra community

to work towards the declaration of Canberra as a restorative city, which will confirm its commitment to exploring and implementing creative solutions to shared problems using restorative process and continue the ACT's vision for safety, more connected communities.

In this context, the Attorney-General asked the Law Reform Advisory Council to inquire into and report on:

- > what it would mean for Canberra to be a restorative city, with a focus on the legal and justice dimensions;
- > how the ACT should prioritise its efforts to make Canberra a restorative city; and
- > how the ACT Government can appropriately affirm the community working to establish Canberra as a restorative city through the Canberra Restorative Practices Network.

Restorative justice is both a social movement and a particular way of implementing, managing and addressing disputes, conflicts or actions, one that focuses on harm prevention and redress. As such, it does not readily lend itself to change through legislative means. The solution the Council has recommended is to suggest a framework for such change. It recommends, first, the development of a set of 'restorative values and principles' to guide all government action towards restorative ends. The report provides a number of examples of such values and principles used internationally. However, these should be a starting point only. The ACT Government should develop a set of restorative values and principles unique to Canberra through community consultation. The Council suggests three models of how this framework might be implemented:

1. a non-statutory but whole-of-government statement of restorative values and principles;
2. a statutory statement of restorative values and principles in each relevant piece of ACT legislation; and/or
3. a new piece of legislation containing common restorative values and principles applying across the ACT.

The second part of the recommended framework is the creation of alternative forms of engagement and dispute resolution that are restorative. We give a number of models, depending on whether restorative processes are to be used to address systemic issues or conflicts, discrete areas or issues of dispute, or the implementation of government actions.

All this is designed to provide the ACT Government with a framework model for implementing legislative or policy change in any particular area of its endeavour that can move Canberra towards its restorative city aim.

The Council then makes recommendations about two focus areas – child protection and public housing – where it considered restorative practices would have the greatest impact on the lives of the most marginalised members of our community. The recommendations here are more specific. The core recommendation is that both Children and Youth Protection Services (CYPS) and Housing & Community Services ACT (Housing ACT) commit to managing conflicts and disputes and implementing actions in a restorative way, consistent with the developed set of values and principles. In the case of child protection, we further recommend that the existing option of Family Group Conferencing (FGC) contained in the *Children and Young People Act 2008* (ACT) (the CYP Act) become the default option for addressing issues concerning the management of children. The essence of FGC is that it is a family-led and collaborative approach to decision-making in relation to the welfare and care of a child. In the case of public housing,

we recommend a model of restorative practice that ‘brings together all affected persons to decide collectively on a resolution’ be used as the primary method of conflict resolution.

The Council makes the following recommendations:

Recommendation 1

The ACT Government, in consultation with the community, should create a framework of restorative values and principles to move Canberra towards a restorative future. Options for embedding such values and principles into the ACT regulatory and policy environment include:

- > a statutory statement of restorative values and principles in each relevant piece of ACT legislation;
- > a non-statutory but whole-of-government statement of restorative values and principles; and/or
- > a new piece of legislation containing common restorative values and principles applying across the ACT.

It is the Council’s view that the first of these options should be the preferred option, given that, where possible, matters relating to particular subject matter should be contained in the specific legislation governing that matter.

Recommendation 2

The ACT Government should develop an implementation and evaluation framework for the use of restorative practices which should contain two distinct components:

- > robust accountability measures so that relevant agencies disclose what steps they are taking towards implementing the management of any dispute, conflict or action through the use of restorative practices; and
- > transparent and prospective evaluation of the outcomes of the use of restorative practices.

Recommendation 3

The problems identified by the Human Rights Commission relating to a lack of rights to external review of the actions or decisions of government agencies and authorities, especially where there are questions about failure to comply with human rights obligations be addressed through access to restorative processes, where appropriate. In particular, the *Human Rights Act 2004* and the *Human Rights Commission Act 2005* be amended to provide access to conciliation as the first level of redress for Human Rights Act complaints.

Recommendation 4

The ACT Government facilitate the use of restorative processes aimed at

- > addressing the wrongs suffered by Indigenous people, and acknowledging and honouring the history and heritage of our first peoples; and
- > providing (and funding) services in areas such as health, imprisonment, drug and alcohol addiction, family violence and education to redress disadvantage and/or over-representation of Indigenous people.

Recommendation 5

A commitment to adhere to the set of values and principles outlined in Chapter 2 be inserted in the *Children and Young People Act 2008* under Part 1.2, ‘Objects, Principles and Considerations’.

Recommendation 6

The use of FGCs using the framework contained in Chapter 3 of the *Children and Young People Act 2008* become the default form of response for child protection in the ACT.

Recommendation 7

Evaluation and research, including a series of randomised controlled trials, be conducted to examine the effectiveness of FGCs, using the framework provided in Chapter 3 of the *Children and Young People Act 2008*.

Recommendation 8

The FGC Standards under section 887 of the *Children and Young People Act 2008* be amended, as informed by the result of any research carried out and in line with the set of values and principles outlined in Chapter 2 of this report.

Recommendation 9

A commitment to adhere to the set of values and developed principles outlined in Chapter 2 be inserted in the *Housing Assistance Act 2007* under Part 2 'Objects and Important Concepts'.

Recommendation 10

An Aboriginal Cultural Capability Framework be published as an operational guideline under the Public Housing Assistance Program, authorised under Part 4 of the *Housing Assistance Act 2007*, 'Housing Assistance Programs'.

Recommendation 11

The *Housing Assistance Act 2007* be amended to require that the use of restorative practices is considered and, where appropriate, adopted in management of any dispute, conflict or action involving public housing in the ACT.

Recommendation 12

A restorative form of inquiry be the preferred option when a public inquiry or review is proposed. Where a response process is established or required following an inquiry or review, it should be restorative in form.

Recommendation 13

The ACT Government, in consultation with the ACT Chief Magistrate, consider a trial of the use of a restorative form of response in coronial processes.

Recommendation 14

The ACT Government, including the Education Directorate, explore options for expanding current restorative efforts across the whole school curriculum, including developing relationship-based skills.

Part 3: Report

Chapter 1: Introduction

1.1 Context

Canberra was a pioneer city in legislating specifically for restorative justice and has an even longer history of experimenting with restorative justice. The Attorney-General's terms of reference, as set out below, asked for a wider look at the idea of restorative approaches.

On 21 November 2016, ACT Attorney-General Gordon Ramsay gave the opening address to a workshop titled 'Restorative Practices in the Criminal Justice System'. He emphasised the importance the ACT Government attached to the concept of restorative practices:

Restorative practice is something that is the foundation of a global social movement... Restorative practice implies the use of restorative principles: the principles such as participation, accountability, fairness, inclusion and shared problem-solving. These principles help to build trust and equitable relationships between people so that we can create a peaceful and productive workplace and beyond.

Restorative practice is an important reminder to us that we don't live in an economy where the aim is to balance the books and to get enough assets to balance out the deficit, but instead we live in a community based on relationships and the aim is for all people to have the opportunity to live a decent life.¹

This and subsequent discussions between the ACT Law Reform Advisory Council (the Council or LRAC) and the Attorney-General have shaped this reference in important ways.

1.2 Terms of Reference

The Terms of Reference for the Restorative Practices Inquiry are to inquire into and report on:

- > what it would mean for Canberra to be a restorative city with a focus on the legal and justice dimensions;
- > how the ACT should prioritise its efforts in relation to making Canberra a restorative city; and
- > how the ACT Government can appropriately affirm the community working to establish Canberra as a restorative city through the Canberra Restorative Practices Network.

The Terms of Reference were forwarded to the Council by the then-Attorney-General, Simon Corbell MLA, on his last day as Attorney-General before the commencement of the caretaker period for the 15 October 2016 ACT election. He asked the Council to 'undertake an inquiry into how to make Canberra a restorative city'. The Council commenced the background research for this reference during the caretaker period.

On 31 October 2016, Gordon Ramsay MLA was appointed as the new Attorney-General and subsequently endorsed the Terms of Reference. The new Attorney-General also asked the Council to give priority in its work to areas where it considered restorative practices would have the greatest impact on the lives of the most marginalised members of the ACT community. The Council chose two areas in which such people are affected by the management of relationships and by dispute resolution frameworks to which the ACT Government is a party: child protection and public housing.

1.3 Conduct of the Inquiry

The Council released its first publication related to the inquiry, titled *Canberra – Becoming a Restorative City*, in June 2017, setting a deadline for receipt of submissions of 25 August 2017. That date was subsequently extended to the end of September 2017, and consultations also continued beyond that date. The Council initially intended to rely solely on written submissions. However, it became clear this would leave marginalised members of the community – including Aboriginal and Torres Strait Islander people and people affected by age, poverty, mental and/or physical illness, imprisonment, drug and/or alcohol addiction and social isolation – without a voice in the process. The Council therefore approached various community organisations to facilitate engagement with these groups.

The Council is aware that these consultations and those we engaged with later are not comprehensive and that, to some extent, this is only a small part of the picture. However, within our resources, the views and experiences of the people most affected by both the systems and various disadvantages provide a richer picture and supplement the organisational voices of advocates and others. These various processes of consultation included 14 submissions, 10 meetings and five case studies.

A progress report on the outcomes of the first round of consultations, titled *Canberra – Becoming a Restorative City - Progress Report on Community Ideas from Preliminary Consultations*, was released on 8 December 2017. The content of this report was the subject of further consultation over the first six months of 2018, including meetings with 17 community and government organisations, work groups and individuals and attendance at 13 conferences, workshops and meetings organised by others. While some of these relate to the focus areas chosen by the Council, there was a strong interest in a restorative approach across a wide range of areas, as noted in Chapter 5 of this report. These consultations also provided the Council with some idea of what services, training and structures already existed to provide a basis for moving towards a more restorative Canberra community, as discussed in Chapter 6.

The Council has had the benefit of working with the University of Canberra in its Yarning Circles with the United Ngunnawal Elders Council and attending a United Ngunnawal Elders Council. We also met with the dedicated staff of Winnunga Nimmityjah Aboriginal Health Services and visited with some of their groups, as well as meeting with Ms Katrina Fanning, the Chair of the Aboriginal and Torres Strait Islander Elected Body. We are grateful for discussions with the chair of the Steering Committee for the Review of Aboriginal and Torres Strait Islander Children involved with Child Protection, Ms Barbara Causon. That review was commissioned in June 2017 by ACT minister Rachel Stephen-Smith, who has responsibilities for both child protection and Aboriginal and Torres Strait Islander Affairs, to look at the over-representation of Aboriginal and Torres Strait Islander children in the ACT's child protection system. The review was established using principles of co-design and self-determination, and the steering committee members are all Aboriginal and/or Torres Strait Islander people.²

Supporting the work of the Council, the Canberra Restorative Community Network and its supporters, such as like Relationships Australia, the School of Regulation and Global Governance (RegNet) at the Australian National University (ANU) and the University of Canberra held other functions on their own initiative, including:

- > a two-day conference in February 2018, which considered what Canberra as a restorative city might look like, attended by expert visitors from New Zealand and the UK cities of Hull and Leeds.
- > a University of Canberra-sponsored visit by a Maori contingent from the Whanganui Health Service in mid-May 2018, which formally met and yarned with members of the Ngunnawal Elders Council and other Ngunnawal people about the Whanganui journey towards a more restorative health service that better meets the needs of the Maori and other disadvantaged citizens; and

- > visits, public lectures and workshops by Professor Jennifer Llewellyn, the Director of the Restorative International Learning Community, from Schulich School of Law at Dalhousie University, in Nova Scotia, Canada, and Emeritus Professor Gale Burford, Distinguished Visiting Scholar of Restorative Justice at Vermont Law School Justice Consortium.

The Council is deeply indebted to the individuals and organisations who organised these events and supported them financially and otherwise. Without the work of the Network and its members, the work on this reference would not have been as widely accessible to the Canberra community. The rich informal conversations from these and related events, including the meetings organised twice a month to discuss restorative initiatives and create relationships across Canberra, are also reflected in this report. The continued work of the Network in promoting the principles and practices of relational and restorative approaches within the community, provides a rich civil society basis for a more restorative Canberra in the future.

The ongoing learnings and motivational support from the members of the International Restorative Learning Community have also richly informed this report and underpin a set of connections which should be fostered and encouraged in the Canberra journey. Similarly, the related work being done in other places in Australia, such as Newcastle, has provided lessons, support and conversations, that have informed the Council's report.

1.4 The Scope of this Report

The scope of this report is as broad as the Council's discussions have been and some areas are more developed than others. The Council has sought to do as much as it could in the time available, within the constraints of a part-time Chair and Executive Officer and volunteer Council members.

While the Council discusses the legal and justice work that might enable or oblige working in a more relational way, many of the actions towards becoming a more restorative city do not require legislation or legislative change. Instead, they require a willingness to listen and learn from each other, and to work together to create strong and healthy relational bonds. They also require examination of what is needed to promote family and individual well-being for everyone in our community. The ACT community is in a strong position to expand its efforts in this way because:

- > it has a strong backbone of civil society organisations which create an existing web of social relationships that can support such a move;
- > the Government, community members, practitioners and academics have already been coming together to discuss how to strengthen our democracy;
- > Canberra's history of thinking and innovation in the early development of restorative approaches in justice and schools in the 1990s-2000s provides a bank of knowledge in our citizens, which provides social capital, as well as skills; and
- > the active Canberra Restorative Community Network provides a source of skills and enthusiasm to move forwards.
- > It is hoped that this report will provide ideas and suggestions for how this journey may be progressed, within the government, public sector, courts, private sector and community.

Chapter 2: Restorative Canberra

2.1 Introduction

The same questions arose many times in the Council's consultations: 'What is a restorative city?' What would it look like to someone living here? How would it be different from what exists now?

Submissions received by the Council examined these questions, as did some of the forums that helped inform this report. This chapter explores the idea, its history and some pathways forward. A detailed history of restorative justice in the ACT is provided at Appendix A. What is apparent from examples both here and internationally is that communities shape the idea to fit their own contexts, within a broadly consistent values framework.

'Restorative justice' and 'community' are said to be old concepts and practices, exemplified by some First Nations' dispute resolution processes.³ For the ACT specifically, this is a place where our relationships with one another, from our most intimate family relationships to those between government and the people, are able to be healthy and positive. Professor Jennifer Llewellyn describes these relationships as those based on 'equal respect, concern/care and dignity'.⁴

Wanting a 'restorative city' requires us to consciously craft a future in which we choose a better way of acting and living. A restorative city, at its heart, recognises that relationships are at the centre of all societies, communities and cities. Healthy, respectful relationships are important in every part of our lives – family, work, our interactions with each other and our institutions. These do not automatically exist. Some actions, structures and processes can be inimical to healthy relationships. The aspiration to become a restorative city requires consciously working towards strong, healthy, respectful and caring relationships to create a place where all people can flourish.

2.1.1 Restorative Justice to Restorative Cities

The concept of a restorative city emerged from the philosophy and ideals that underpin restorative justice in the criminal sphere. Within this values framework, a crime is seen as a breach not only of the law (ie a breach of an obligation imposed by the state or the Crown) but, more fundamentally, as a breach of relationships between people. These breaches create obligations on the part the person(s) who carried out the harm towards the person(s) who were harmed and to the community. Restorative criminal justice, therefore, moves from a model in which the state punishes someone who has offended the law of the state, to one that focuses on healing the relationships harmed by the wrongdoing. 'Restorative Justice seeks to heal and put right the wrongs'.⁵ This broader idea of healing and putting things right can be applied well beyond the criminal context.

2.1.2 Can our current *Crimes (Restorative Justice) Act* be extended to create a restorative city?

Given the broad impact of these kind of harms, the first question is whether the existing legislative system for restorative justice in the ACT can provide a base for expanding non-adversarial, relationship-based processes beyond the criminal law. Attachment A includes a description of the current legislation, the *Crimes (Restorative Justice) Act 2004*, and its operation. An interesting aspect of The Act is that it does not directly define what a restorative approach to justice means.

The full title of the Act, 'An Act to provide a process of restorative justice for victims, offenders and the community, and for other purposes', positions it clearly in a criminal or wrongdoing context, where there are 'victims' and 'offenders'. The legislation includes an objects section (section 6), which includes the idea of repairing harm and of empowering victims in a safe environment.

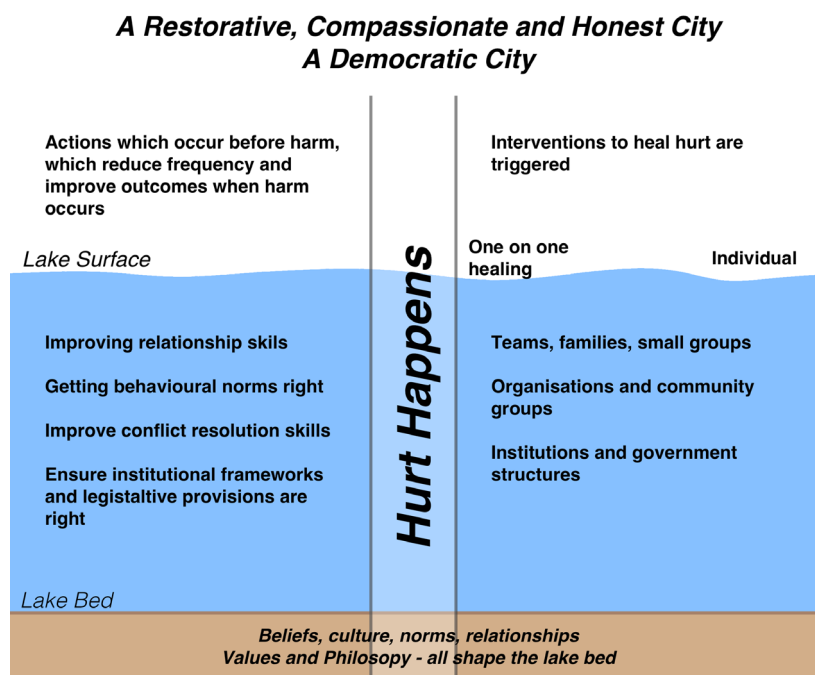
The legislation does not directly enunciate values that can be described as ‘restorative’ or describe what a restorative approach in other areas may look like. Framed clearly in a criminal justice context, in the Council’s view it is not suitable to simply expand that legislation into other areas.

2.2 Why a ‘restorative city’?

In a 2018 presentation at the Newcastle Restorative City Symposium, Professor Llewellyn said that to become a restorative city, we first needed to understand the ‘why’ question; only then could we answer the ‘how’ question (the means to make that happen) and the ‘what’ question (what such a city would mean for us). The ‘why’ question is a values question, the answer to which must go to the core of who we are and how we are with one another – what really matters to us collectively as a community.

A restorative city is at its core a ‘relational’ city, one in which relationships and the social capital they produce are policy priorities. The desire or commitment to become a restorative city means that the creation of positive, healthy relationships – where we can all flourish – must become a central goal. This is part of the answer to the ‘why’ question.

Commentators such as Peter Block argue that impediments to good relationships and connections are barriers to achieving a restorative community, and that achieving a shift in values and practices requires questioning the impact on our relationships of everything we do and believe.⁶ This requires us to consciously hold relational goals in mind when considering what we should do. We must work towards building strong positive relationships in our city and develop ways of resolving conflict which preserve or strengthen such relationships when things go wrong. Some commentators have suggested assessing relational impact as part of formally evaluating government policies, in much the same way as we have environmental impact statements and regulatory impact statements.⁷ This sense that there must be a floor or foundation of respectful values is captured in the following diagram from the submission of Canberra Alliance for Participatory Democracy to the Council.⁸ It is modelled on the idea of Lake Burley Griffin at the centre of Canberra City, where values and philosophy (including beliefs, culture, norms and relationships) underpin everything else:



Building healthy relationships, where people act with compassion, empathy and honesty, builds trust and safety. This is the business of political leaders, public institutions and services, civil society, families, friends

– in fact, it is everybody’s business. Similarly, we need to explore how we can change the things that work against healthy relationships and a more restorative city. We need to see where other places have succeeded and see what they have done.⁹ In the ACT, we have our own examples which provide strong foundations for the future, as set out in Chapter 5.

2.3 The characteristics of a ‘restorative city’?

2.3.1 Encouraging healthy positive relationships

Creating the conditions to maximise opportunities for building and maintaining respectful, healthy relationships is a key function in building a more restorative city. Restorative Practices Whanganui expresses their idea of a restorative approach through the acronym ‘Circles’:

Community: recognise our need to belong to community such as: family, work, sports, religious, neighbourhood, city

Inclusion: collaborative problem solving, and future planning together

Responsibility: accepting our own part in relationships

Care: empathy, tolerance and respect for ours and others’ wellbeing

Listening: intentional listening and acknowledgement

Equality: fair and transparent interactions

Support: receiving and providing support for each other

Some of these elements are already reflected in the values and obligations in the ACT *Human Rights Act 2004*. The ACT Human Rights Commission argued in its submission that

implementing a best practice human rights jurisdiction in the ACT ... is the most important step to be taken in efforts to make Canberra a restorative city. It would also allow the ACT to ground restorative practices and values in an established and substantial framework.¹⁰

Within this broad human rights and obligations framework, a relational focus at a city level would seek to ensure that priority is given to practices, policies and procedures.

2.4 The Implementation of Restorative Values, Principles and Practices

2.4.1 Overview

This section considers the implementation of restorative practices in ACT law and policy. It anticipates the development of a common and adaptable framework that can be implemented across different directorates and agencies. The three components of this framework are:

1. **Restorative values and principles:** the development of a well-defined and accepted set of core beliefs and norms to guide the reform of legislation and policy for restorative practices;
2. **Restorative practices:** the implementation of a set of practical ways in which restorative principles can be given effect, and how those practices and processes are best supported through legislation, policy and operational guidelines; and

3. **Evaluation and trials of restorative practices:** an approach to monitoring, assessment and reporting on how restorative practices are being implemented, including through systematic small-scale trials; and evaluation of the extent to which these practices are making progress towards restorative values and principles in the ACT.

2.4.2 Restorative Values and Principles

There is no single definition of what a ‘restorative city’ looks like, nor is there a definitive prescription for what restorative practices might entail. These are complex and multi-faceted concepts. There is, therefore, a risk that adopting one definition or approach may exclude others. Moreover, restorative practices are necessarily relational: they address fundamental human needs and social motivations in ways not typically anticipated by legislation and policy. Nevertheless, if these practices are to be encouraged in any clear way, they must be grounded in an explicit set of restorative values and principles.

Two concepts need to be differentiated when we speak of values and principles. *Restorative values* are the underlying, shared and cross-cutting aims and purposes of restorative practices. These values are necessarily broad and extend beyond the mechanics and immediate outcomes of restorative principles themselves, looking instead at what good outcome is ultimately being sought. A clear set of restorative values protects against unintended or adverse consequences by ensuring that restorative practices are always tied to these common values, rather than being co-opted by other agendas and values.

These values are given expression through *restorative principles*, which in their turn set out ways in which restorative practices should be conducted to best realise the restorative values. Restorative principles are, therefore, the operational and procedural goals common to most restorative practices – for example, the principle that restorative practices must be voluntary and collaborative. Restorative principles are thus not the restorative practices themselves but provide the concrete set of norms linking aspirational values to the restorative practices themselves.

There are two parts to developing restorative values and principles for the ACT. The first task is to consider the content of each. The second task is to consider how the decided restorative values and principles might be integrated into ACT law and policy. Each will be considered in turn below.

2.4.3 Content of Restorative Values and Principles

Statements of restorative values and principles can be found across several sources: in standalone statements by peak bodies and government agencies, in training and educational materials and in the academic literature. These resources can usefully inform the ACT’s development of its own values and principles, with the important caveat that any local statement must be co-designed with the community and carefully tailored to the local ethos and expectations. The legitimacy of the principles, and of a restorative culture itself, depends on collaboration and consensus – themselves core restorative principles.

The Centre for Justice and Reconciliation (CJR), an international body that works within the criminal justice setting, is one of the few bodies to turn its attention to both restorative values and principles. It set out four broad restorative values, which are each underpinned by two or more operational values (akin to restorative principles in the present discussion).¹¹ These are, in summary:

- > **Peaceful social life:** the experience of contentment, harmony and security, not just the absence of conflict, which is underpinned by:
 - > *Resolution* – care for people and addressing of issues related to conflict, and
 - > *Protection* – physical and emotional safety of affected parties;
- > **Respect:** that all people are worthy of consideration, recognition care and attention, underpinned by the operational values of inclusion and empowerment – the invitation to all to engage with restorative processes and to directly shape processes and responses;

- > **Solidarity:** a sense of agreement, support and connectedness among members of the group or community, operationalised by:
 - > *Encounter* – parties are invited, but not compelled, to participate in decision-making to respond to the harm;
 - > *Assistance* – parties are helped to become contributing members of their communities; and
 - > *Moral Education* – reinforcing and internalising of community standards; and
- > **Active responsibility:** a responsibility that emerges from the person, rather than responsibility imposed passively by others, which is enabled by:
 - > *Collaboration* – solutions through mutual and consensual decision-making; and
 - > *Making amends* – those responsible for harm also bearing the responsibility for repairing it.

Few other statements of restorative values have this level of directness, clarity and ambitious hopefulness. For this reason, these values may represent a good starting point for discussion and refinement by the ACT community.

More prosaic statements, often prioritising principles and leaving values implicit, are readily found. For example, the Restorative Justice Network (RJN) in New Zealand adopted an extensive set of values and processes in 2003.¹² Together with a definition of restorative justice and guidance about restorative practices, the document sets out eight core values of restorative justice. These values are more akin to restorative principles in the present approach but are not incompatible with the CJR's restorative values described above. In condensed form, these are:

- > Participation;
- > Respect;
- > Honesty;
- > Humility;
- > Interconnectedness;
- > Accountability;
- > Empowerment; and
- > Hope.

This list emphasises the human needs and relational processes underlying restorative practices. These should be strongly affirmed in the ACT setting. However, there is little in this formulation about the restorative aims of such practices, such as repairing harm or the restoration of affected people into their respective communities. This is an important value that should be expressly stated.

In 2015, the Restorative Justice Council (RJC) in the United Kingdom (UK) set out six 'principles of restorative practice' as norms for restorative justice practitioners in their work.¹³ These principles echo those of the RJN, but expressly mention the restoration of harm in the first objective:

1. **Restoration:** the primary aim of restorative practice is to address and repair harm.
2. **Voluntarism:** participation in restorative processes is voluntary and based on informed choice.
3. **Neutrality:** restorative processes are fair and unbiased towards participants.
4. **Safety:** processes and practice aim to ensure the safety of all participants and create a safe space for the expression of feelings and views about harm that has been caused.
5. **Accessibility:** restorative processes are non-discriminatory and available to all those affected by conflict and harm.

6. **Respect:** restorative processes are respectful to the dignity of all participants and those affected by the harm caused.

The acknowledgment of the primacy of restoration is important, but a narrow approach is taken. Restoration, especially in criminal justice settings, does involve addressing and repairing harm, but it also involves the restoration of communities and the person into their community.

Other statements of restorative justice principles focus more on the conduct of restorative practices themselves. These tend to emphasise procedural safeguards and the rights of parties over normative and relational values. Such an approach was taken by the Canadian Department of Justice in 2004, in its *Values and Principles of Restorative Justice in Criminal Matters*, and by the United Nations in its 2000 *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*. Again, while some of the principles identified are suitable for guidance at the practice level, it is important to ensure that such principles relate to an inclusive, optimistic and rights-promoting (rather than merely rights-protecting) set of values.

To that end, Professor John Braithwaite's delineation of three sets of restorative principles is informative.¹⁴ Although these principles are expressed across an extensive academic literature, their framework provides some needed nuance about values and their limits and, importantly, about how values are and are not achieved. Braithwaite distinguishes between:

- > **Constraining values:** necessary limits on processes and parties' behaviour (such as respectful listening, accountability and respect for fundamental rights) to achieve restorative outcomes;
- > **Maximising values:** positive values and behaviours (such as dignity, safety, compassion and caring) to be encouraged through restorative practices; and
- > **Emergent values:** positive values and behaviours (such as remorse, apology, forgiveness and mercy) that cannot be forced and must emerge on their own through a supportive process.

An important conceptual lesson can be drawn from this formulation. Restorative principles must balance both positive and negative components: what are the behaviours to be elicited by the process, and what reasonable limits on behaviour and rights are to be imposed to allow restoration to flourish? Furthermore, moving towards restorative values cannot be achieved by prescribing and forcing certain behaviours from parties. To do so not only undermines the likelihood of success, but it robs restorative practices of their moral power and legitimacy. Remorse and forgiveness cannot be legislated or even expected; restorative systems can only be carefully designed to give these positive outcomes the best chance to emerge. As such, the ACT's restorative values and principles must recognise the constraints and limitations of restorative practices, while also aspiring towards a full meaning of restoration in line with positive human and societal values.

2.4.4 Embedding Restorative Values and Principles into ACT Law and Policy

To be effective in guiding practice, changing culture and acting as a meaningful reference point, restorative values and principles must be stated in an authoritative and accessible way. The Council proposes three mechanisms for embedding restorative values and principles into the ACT's regulatory and policy environment to guide the implementation of restorative practices and further reform:

1. A non-statutory but whole-of-government statement of restorative values and principles;
2. A statutory statement of restorative values and principles in each relevant piece of ACT legislation; and
3. A new piece of legislation containing common restorative values and principles applying across the ACT.

The first option is to create a non-statutory statement of values and principles. Such a statement may be similar to such documents as the recent *ACT Volunteering Statement* (and associated Action Plan),¹⁵ or

the older *ACT Charter of Rights for People who Experience Mental Health Issues*.¹⁶ Such a statement of restorative principles and values should be developed together with relevant stakeholders in the ACT and have the endorsement of Cabinet.

The advantage of this minimal approach is that no new legislation is required. Implementation is then driven by policy mechanisms and regulatory reform by each agency, affording flexibility and adaptability while maintaining a central reference point. Some notable disadvantages are that the absence of the Legislative Assembly's involvement means the statement could become politicised. Moreover, the absence of clear mechanisms for implementation and development may, after a period of initial enthusiasm, result in the statement dropping down list of strategic policy priorities.

The second option is to include a statutory statement of restorative values and principles in each relevant piece of legislation. For example, the *Children and Young People Act 2008* could be amended to insert sections stating the restorative values and principles as they apply to child protection or youth justice. This statement could be prefaced by a requirement that decision-makers consider the values and principles whenever exercising a function under the legislation (see, for instance, section 6 of the *Mental Health Act 2015*, which sets out the principles that apply to that Act).

This approach gives the values and principles statutory visibility, at least in an expressive form of law, rather than creating significant new obligations. There is also some flexibility to tailor the values and principles to the subject matter at hand. The amendment of legislation to include the values and principles also acts as a clear public statement that the relevant Directorate or agency intends to give effect to it.

However, these advantages must be balanced against the real potential for incremental inconsistency in the values and principles across legislation over time, which may result in the lack of a uniform approach and set of norms. This option must also be recognised as the likely *de facto* approach if there is limited whole-of-government appetite for reform, with individual Directorates and agencies taking – or not taking – their own steps towards restorative practices and norms.

The third option is to develop a separate piece of legislation, such as a *Restorative City Act*, which would set out a common set of restorative values and principles. These values and principles would generally apply to ACT public sector agencies, unless expressly excluded or limited in the legislation or regulations. A scheme for private or community sector organisations to opt in, or be required to comply beyond a certain threshold could also be developed to increase uptake of restorative practices across the ACT community. The principles and values themselves could be directly stated in the legislation, annexed as a Schedule to the Act, or made as a legislative instrument (i.e. a Notifiable Instrument or Disallowable Instrument) under the Act.

This approach, which has limited precedent, would attract the most visibility and potentially mark the ACT as a world leader in embracing restorative practices, but would also require the most commitment and resources.

2.4.5 Restorative Practices

Essential Elements

The most commonly cited definition of 'restorative justice' suggests the nature of its practices:

Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.¹⁷

The formulation of 'restorative process' endorsed in United Nations instruments is slightly different, but highlights similar distinct commitments:

‘Restorative process’ means any process in which the victim and the offender, and where appropriate, any other individuals or community members affected by a crime participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.¹⁸

A distinction is often made between restorative justice and restorative practice, with the first referring to the use of restorative justice in criminal settings and the latter to its use more broadly.

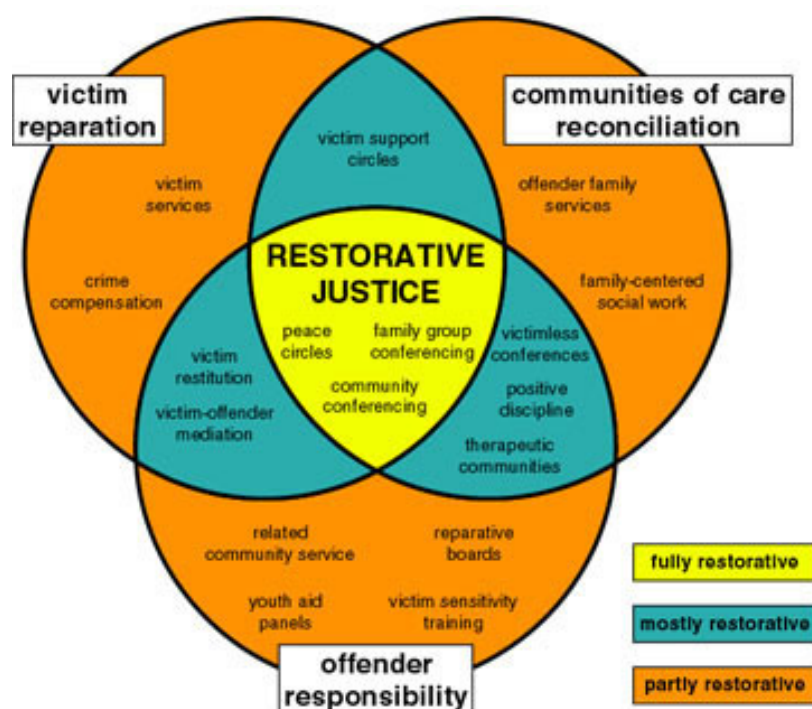
The emphasis here is on *practices*, as we attempt to move application beyond the criminal sphere. The two definitions can be combined and reworked slightly to emphasise the essential elements of such practice:

Restorative practice is a process that brings together all persons affected by a relationship to consider such wrongdoing and the harm caused, and to decide collectively on a consensual basis how to deal with its aftermath.

The three highlighted elements of the definition represent what is essential for formal or informal processes to be considered restorative.

Brings Together

The ‘bringing together’ of the parties expresses a commitment to creating a forum that directly involves all affected persons as participants, rather than merely as observers. This element may be better expressed as providing an ‘opportunity’ for all persons affected to attend if they wish. In some cases, for instance, the number of persons adversely affected may be huge and individual attendance may need to be replaced by representative appointment. A fundamental part of any restorative practice is, therefore, some form of ‘encounter’ between persons affected. In various practices this encounter may involve direct face-to-face engagement or variations of indirect engagement. The level of the encounter can be categorised by its degree of ‘restorativeness’. Paul McCold and Ted Wachtel capture this in their ‘restorative practices typology’:¹⁹



Where all three groups (in the criminal sphere, offender, victim and community) are actively involved (as they are most usually in the peace circles, family group conferencing and community conferencing options

which appear in the ‘restorative justice’ sector of the model), the process is rated as ‘fully restorative’. Other forms are classified as ‘mostly restorative’ and ‘partly restorative’; while they remain part of restorative practice more broadly, they potentially involve less ‘bringing together’ and, as a consequence, potentially less immediacy and restorative potential.

Persons Affected

The ‘persons affected’ notionally consists of those affected by a dispute or its aftermath. The identification of a broader ‘community affected’ can be troubling. Even if such a community can be ‘found’, there will potentially be significant issues of conflict, power, difference and inequality inherent in the existing community relationships of the group that will need to be accommodated. There is also the reality that these communities may not be ‘the havens of reciprocity and mutuality, nor ... utopias of egalitarianism’ and their negativity may need to be controlled.²⁰ In pragmatic terms, this may mean artificially building a community around those directly affected by the dispute.

Collectively

‘Collectively’ implies the reaching of a mutual decision in which all ‘persons affected’ have a say in ‘how to deal with the aftermath’ and arrive at some consensus about what needs to be done. In this collective sense, all those affected are a core part of the decision-making. This raises the risk that each side’s obvious partiality may curtail or interfere with the right to a fair hearing of views which the law may mandate. This right expresses a fundamental principle of justice which should not be overlooked.

Form

Any restorative practice must address each of these elements. The form the practices take can vary widely, depending on the setting or purpose. Rather than suggesting any prescriptive form of restorative practice, the framework model sets out a series of processes which can be tailored to suit particular needs or settings. These include:

Community Conferences

Community conferencing is a process that brings together those affected by a dispute, conflict or action to discuss the nature of the action and the impact that it has had upon people. Its major focus is more likely to be on resolving some underlying conflict in a broad sense, rather than on single-issue disputes. So, for instance, community conferencing might be used in attempting to resolve a multi-party environmental or planning dispute.

Peace Circles

Peace circles have their origins in North American Indigenous communities, where the community gets together for decision-making processes. Depending on the model being used, the community participants may range from state personnel to anyone in the relevant community affected by an issue. Everyone present is given a voice in the proceedings. Participants typically speak as they pass a ‘talking piece’ around the circle. Each circle is led by a ‘keeper’, who directs the movement of the talking piece. Only the person holding the object is allowed to speak, ensuring that each person has an opportunity to be heard. As the talking piece makes the rounds of the circle, the group discusses the issue and its likely effects. When effective, the circle provides an opportunity to explain the issue’s impacts economically, physically, and emotionally. Through this process of sharing, the participants are able to develop a strategy for addressing a dispute or an intended action.²¹ A peace circle has been used to address discrete aspects involving endemic child sexual abuse in a Manitoba Indigenous community.

Restorative Inquiries

Restorative inquiries and restorative responses following a tragedy or disaster or the revelation of systemic harm over a significant period of time have been used in Australia, Canada and some other jurisdictions.

In general, these inquiries have been developed to deal with the effect of harm on people and their relationships, the loss of trust in systems and organisations because of what has occurred, and as a means to seek better ways to drive broader institutional and cultural change to prevent harm occurring again in the future. As an example, there have been proposals for using a restorative approach in emergency management inquiries.

Family Group Conferences

Family Group Conferences (FGCs) are a family-led and collaborative approach to decision-making in relation to the welfare and care of a child. FGCs bring together the child or young person together with family members and relevant professionals (including child protection services) to make decisions and develop and implement a plan. This process is guided by an independent facilitator, who has no direct input or veto power over the plan, although they must be satisfied that agreement has been reached. In child protection matters, the FGC will often consider what kind of support is most appropriate for the child and the family and how to provide this support (including through changes to living arrangements or parental responsibilities).

Restorative Dispute Resolution

In some jurisdictions, community members are actively involved as trained volunteers in restorative dispute resolution at a community level. In the ACT, the Conflict Resolution Service, for instance, conducts training for people who wish to do this professionally, as well as community mediation under a number of different programs. However, we were told that the number of available trained facilitators does not meet demand. There are positives and negatives to both funded and volunteer-based services. In Canberra, we also have great human capital in our senior citizens who may have retired, but who have extensive experience to draw upon and who may be interested in this kind of contribution.

Restorative Conversations

At its simplest, restorative practice means conducting individual conversations, both formal and informal, in ways that are consistent with the values and principles enumerated above. Learning the skills of restorative conversation, for instance, is part of the curriculum in New Zealand schools. The ACT could provide similar opportunities to learn the skills of effective restorative resolution in and outside home from an early age.

The Implementation of Restorative Practices

The transition towards a restorative city is a significant task containing many unknowns and many lessons to be learned. It is therefore imperative that there be a high level of rigour around what is attempted, why, and what outcomes are understood as possible – positive, negative or neutral. For this reason, the ACT Government should develop an implementation and evaluation framework for the use of restorative practices which should therefore contain two distinct components:

- > Robust accountability measures, so that relevant agencies disclose what steps they are taking towards implementing the management of any dispute, conflict or action through the use of restorative practices; and
- > Transparent and prospective evaluation of the outcomes of the use of restorative practices.

Reporting against Restorative Values Implementation

Regardless of how the restorative values and principles are designed and embedded into the legislative and policy environment, relevant ACT Government agencies should be required to periodically provide a report on what progress they are making towards restorative practice.

One relatively straightforward possibility may be to require public sector bodies, as part of their annual reports, to disclose and comment on their work towards becoming a restorative city. This could be achieved by adding a requirement to the Annual Report Directions, which are annexed to the *Annual*

Reports (Government Agencies) Notice in force at any given time, to include a Restorative City Statement. It would be anticipated that some agencies will have very little to say initially, but as the concept and significance of restorative practice takes root, the report would provide a summary of best practice and key learnings to help shape wider implementation and uptake across the ACT. Over time, the content of these retrospective reports would also identify agencies which may require more explicit 'nudges' towards restorative cultural change and improvement.

A further option may be to require Bills introduced to the Legislative Assembly to contain a statement of compliance with restorative values and principles. A similar approach is required under the *Human Rights Act 2004*, with statements being included in the Explanatory Statement and with the Bill being reviewed by a standing committee (under section 38 of the *Human Rights Act*). Requiring an analogous statement for restorative practices would significantly elevate the status of the restorative values and principles. While this may be seen as disproportionate, it would also clearly signal the Government's commitment to restorative practice across areas of public regulation, consistent with Canberra being a 'restorative city'. Such a step requires enabling legislation to mandate the tabling of a statement and subjecting it to appropriate review, together with appropriate funding for review.

Evaluating the Effectiveness of Restorative Practices

The implementation and use of restorative practices must also be robustly evaluated. The extent to which practices are achieving the values and principles must be expressly tested, rather than merely assumed. A practice will not necessarily lead to restorative outcomes consistent with the values and principles just because it is intended to be restorative or is labelled as being restorative. This is the case even if the practices are informed by evidence or successful use in other jurisdictions. The evidence base for restorative practices is often still under development and mixed results are common at the level of meta-analyses of systematic reviews.²² Moreover, restorative practices are typically translational and apply theory and past findings to a local policy, legislative and cultural setting. There is always something new and untested in this translation. This inherent uncertainty must be positively acknowledged. This is not as a reason to diminish implementation efforts, but to recognise that the evidence is still growing and that learnings from successes, failures and unintended outcomes are a vital part of the process of change and development.

Policy makers and programme developers must always be attuned to the possibility that restorative practices have no positive effect. They are not a panacea. Overall, there could be a net negative effect if zero impact, once cost and other issues are taken into account. There is also the possibility that restorative practices cause harm or lead to other unintended adverse effect. Some of these findings are discussed further in Chapter 3, in relation to FGCs in child protection. Even when positive findings are observed, there will always be opportunities to identify what processes are most and least effective and to continue to refine and develop practices. In sum, restorative practices are never neutral, and only a sound evaluation framework will be able to identify the changes produced with integrity.

Moreover, a well-designed evaluation framework ensures that outcomes are assessed against the developed set of restorative values and principles, as opposed to other policy objectives. This keeps restorative outcomes at the focus of policy development and regulatory reform, rather than other achievements. While those other achievements may themselves be positive, they do not specifically advance the principled and values-led development of a restorative city.

A good evaluation method must therefore be designed prospectively, rather than just conducted after the fact. Evaluation measures and processes must be built into the program design, so that relevant data can be collected as practices are rolled out and adequate thought is given to the resources required for a successful evaluation. The *ACT Government Evaluation Policy and Guidelines* provide some informative guidance and should be complied with as a minimum standard.

Beyond these guidelines, this is a good opportunity to develop a culture of conducting trials of restorative practices before they are implemented more widely or become default or mandated practice. The use of experiments to test policy initiatives and to measure effectiveness before full-scale implementation is increasingly commonplace as the core business of government.²³ One common methodology is to conduct a randomised control trial (RCT), in which one or more variations of a new initiative or programme can be directly compared with business as usual in terms of causal effect. To do this, people eligible for the programme are randomly allocated to either a treatment (new programme) group or the control (business as usual) group and the relevant outcomes measured and compared statistically. With a sufficient sample size, any difference in outcomes can be causally attributed to the intervention; in the present context, this would enable identification of what practices would be more conducive to the restorative values. Conversely, it would also then be easy to identify when interventions have no benefit, compared with business as usual.

Building a culture of evaluation and controlled experimentation requires a degree of regulatory flexibility from the outset. Where the evidence for a restorative practice is still emerging, it may be premature to mandate its use through legislation or a policy directive. Such legislative requirements may also prevent the running of small-scale trials before full implementation. In such cases, therefore, it may be prudent instead to withhold legislative intervention and allow for policy directives to be made so that evidence for the most effective way of achieving restorative outcomes through innovative practices can be identified.

The Council makes the following two recommendations. Firstly, as to the embedding of a developed set of restorative values and principles into the ACT's regulatory and policy environment. Secondly, the implementation and use of restorative practices to manage any dispute, conflict or action involving government or its agencies.

Recommendation 1

The ACT Government, in consultation with the community, should create a framework of restorative values and principles, to move Canberra towards a restorative future. Options for embedding such values and principles into the ACT regulatory and policy environment include:

- > a statutory statement of restorative values and principles in each relevant piece of ACT legislation;
- > a non-statutory but whole-of-government statement of restorative values and principles
- > a new piece of legislation containing common restorative values and principles applying across the ACT.
- > It is the Council's view that the first of these options should be the preferred option, given that, where possible, matters relating to particular subject matter should be contained in the specific legislation governing that matter.

Recommendation 2

The ACT Government should develop an implementation and evaluation framework for the use of restorative practices which should contain two distinct components:

- > robust accountability measures so that relevant agencies disclose what steps they are taking towards implementing the management of any dispute, conflict or action through the use of restorative practices; and
- > transparent and prospective evaluation of the outcomes of the use of restorative practices.

2.5 Law and Justice – Foundations and a Values Framework

The ACT already includes some of the values and principles detailed above in its *Human Rights Act 2004*. The Human Rights Commission's submission noted the nature and extent of this overlap. 'Restorative practices and values have significant overlap and connection with human right principles and law. The human rights regime is based on the premise that all human beings have inherent dignity, value and freedoms by virtue of being human: an idea that dovetails nicely with the values underlying restorative practice.'²⁴ The submission lists those provisions under the *Human Rights Act* that give effect to restorative practices and values as including but not limited to:

- > Section 8 – the right to equality;
- > Section 16 – the right to freedom of expression, which includes the right to seek, receive and impart information;
- > Section 17 – the right to take part in public life and the conduct of public affairs;
- > Section 21 – the right to a fair hearing; and
- > Section 11 – the entitlements of children to all of the human rights listed in the legislation

This submission also raises an important legal framework issue, the practical effectiveness of both the human rights legislation and any future legislation to oblige compliance by government agencies and government-funded service providers with obligations to work in more relational and restorative ways. While it is hoped that the creation of an enabling framework would mean that such organisations would embrace and enact these ideas, there is evidence that this is not always the case. As we have noted, there needs to be some mechanism to oversee areas of government function which act outside the normal administrative obligations of natural justice and other human rights obligations. Where agencies currently hold extensive powers, with little public accountability, transparency or external review, a restorative approach requires that these issues be addressed to create a more just basis for a respectful relational framework for citizens affected by the exercise of these powers. In some cases, the current remedy for review when a government decision is seen as breaching their human rights obligations is action in the ACT Supreme Court. This creates a significant barrier to access for justice for most people.

The Human Rights Commission's submission drew attention to these and other concerns:

- > The need for greater access to dispute resolution processes under the Human Rights Act 2004, where such mechanisms are insufficient or absent, for example, in relation to breaches of human rights obligations, victims of crime complaints and child protection matters (discussed further in Chapter 5);²⁵
- > The need for greater support for, and removal of barriers to, the success of existing restorative practices, eg in relation to the limitations on the provision of support to families engaging in the Indigenous FGC pilot;²⁶
- > The need for greater promotion of a best practice human rights culture at a government and institutional level, through training in human rights and restorative practices, and policies that explicitly refer to and engage with human rights obligations.²⁷

The Council makes the following recommendation to address these concerns.

Recommendation 3

The problems identified by the Human Rights Commission relating to a lack of rights to external review of the actions or decisions of government agencies and authorities, especially where there are questions about failure to comply with human rights obligations, be addressed through access to restorative processes, where appropriate. In particular, the *Human Rights Act 2004* and the *Human Rights Commission Act 2005* be amended to provide access to conciliation as the first level of redress for Human Rights Act complaints.

2.6 Making Right our Primary Indigenous Relationship

The Council met with both the Aboriginal and Torres Strait Islander Elected Body and the United Ngunnawal Elders Council. The United Ngunnawal Elders Council was firmly of the view that before Canberra could establish itself as a restorative city, it must make right its relationship with the traditional owners of this land. The Uluru Statement of the Heart described sovereignty as 'a spiritual notion, the ancestral time between the land or 'mother nature' and the Aboriginal and Torres Strait Islander peoples who were born therefrom, remain attached thereto, and must one day return thither to be united with our ancestors'.²⁸

These are wrongs which must be addressed in the move to Canberra becoming a more restorative city, in partnership with the Ngunnawal Elders Council and the Aboriginal and Torres Strait Islander Elected Body. The Ngunnawal Elders Council proposed to the Council that, in the absence of action at the Commonwealth level, the ACT look to establish a treaty that recognises their original and continuing sovereignty and connection to their land, the content of which should be negotiated with the Council. The Council notes that in June 2018 the Victorian parliament legislated to create a framework for negotiating a treaty with Aboriginal people. The Northern Territory is moving in a similar direction.

There is also the urgent need to provide adequate funding for Aboriginal health and community services, including services to assist in resettlement after imprisonment, to deal with the health issues relating to drug and alcohol addiction, to prevent family violence and to support families to keep their children safe in their families.

A starting point for the Canberra community is to acknowledge, learn and honour the history and heritage of our first peoples and start to answer their call for justice and self-determination, as set out in the Uluru Statement of the Heart. A strong message in submissions was that the Canberra community commit to working with them to preserve what is left of their traditional knowledge and culture, and work to keep it a living culture for the benefit of all of us.

The Council makes the following recommendation for the ACT to make right its relationship with the traditional owners of this land.

Recommendation 4

The ACT Government facilitate the use of restorative processes aimed at addressing the wrongs suffered by Indigenous people, and acknowledging and honouring the history and heritage of our first peoples; and providing (and funding) services in areas such as health, imprisonment, drug and alcohol addictions, family violence and education to redress disadvantage and/or over-representation of Indigenous people.

Chapter 3: Child Protection – Focus Area 1

3.1 Introduction

Chapters 3 and 4 outline what was discovered through research and consultations in the focus areas of the reference. As noted in the Council's Issues Paper:²⁹

The Attorney asked the Council to give priority in its work to the discernment of areas which it considers have the greatest impact on the lives of the most marginalised people in our community and where restorative practices could make the biggest impact. The Council has chosen two areas in which the day-to-day lives of such people are affected by the management of relationships and the existing arrangements for dispute resolution in which the ACT government is a party. These focus areas are child protection and public housing matters.

Chapter 3 on child protection and Chapter 4 on public housing provide insights into the experiences of people affected by decisions in these areas which appear to put too little focus on creating strong relationships to prevent problems arising. In both focus areas, the Council sees fertile grounds for the use of more restorative approaches. These could better meet the needs of the people affected by the relevant services and the Canberra community generally, as well as making the lives and jobs of people working in housing and child protection more satisfying and less traumatic.

At the outset, it must be acknowledged that child protection is a topic that prompts strong personal and policy reactions, often centring on the proper role of the state in the lives of children and families. Although options for reform are as varied as these experiences, this section will only illustrate how restorative values, principles and practices can be implemented into the ACT's child protection framework, building on current law and policy.

Fundamental reforms of policy, service design or culture in the child protection system are outside the scope of the present reference. There have been a number of inquiries focused on the child protection system in the ACT which have made recommendations which could be considered restorative and, which to the Council's knowledge, have not been implemented. A similar inquiry of the NSW Parliament reported in 2017.³⁰ Of course, a restorative approach to child protection necessarily requires a development of a restorative culture. For now, this will be considered primarily in relation to how this can be achieved through the increased use of extant provisions in the legislation relating to Family Group Conferences.

3.2 The ACT's Current Legislative Policy Framework

The child protection system in the ACT is enabled by the *Children and Young People Act 2008* ('CYP Act'). This is a sizeable piece of legislation covering multiple areas relating to the lives and wellbeing of children and young people. Child protection matters occupy a significant proportion of the Act (Chapters 10 to 19), along with criminal and youth justice matters (Chapters 4 to 9).

The objects of the CYP Act are set out in section 7. These objects include:

- a. *providing for, and promoting, the wellbeing, care and protection of children and young people in a way that—*
 - i. *recognises their right to grow in a safe and stable environment; and*
 - ii. *takes into account the responsibilities of parents, families, the community and the whole of government for them; and*
- b. *ensuring that children and young people are provided with a safe and nurturing environment by organisations and people who, directly or indirectly, provide for their wellbeing, care and protection.*

These objects are supplemented by principles to be considered by decision-makers under the CYP Act, which are set out in section 9. In the child protection context, a more specific set of principles is found in section 350. These principles include recognition that:

- a. the primary responsibility for providing care and protection for the child or young person lies with the child's or young person's parents and other family members; [and]
- b. priority must be given to supporting the child's or young person's parents and other family members to provide for the wellbeing, care and protection of the child or young person.

Taken together, this collection of objects and principles is not inconsistent with restorative values which the Council suggests be developed in the ACT, even if they do not have an expressly restorative intention.

Two issues therefore emerge for the present reference. Firstly, how can these extant legislative objectives be aligned with a common set of restorative values and principles? Secondly, what restorative practices can be employed to fulfil both the broader set of restorative objectives as well as the more specific legislative objects?

The remainder of this section will consider both issues through an exploration of the use of FGCs in child protection matters. The rationale for this focused discussion of FGCs is that they are a mechanism already contained within ACT legislation, but not used as part of ordinary practices, despite their restorative potential. As will be discussed below, there are also potential counter-restorative implications if FGCs are misapplied.

3.3 Human Rights in Relation to Children and Families

Under the ACT *Human Rights Act 2004*, there is a range of human rights which specifically apply to children and families and which arise because of the nature of the child protection system.³¹ Some practices and actions in child protection may infringe such rights. The need for an effective means to address such infringements can be a significant issue. Section 40B of the Act states that it is unlawful for public authorities to act in a way that is incompatible with a human right or to make a decision which fails to give proper consideration to a relevant human right. However, the only way this can be enforced is through an application to the Supreme Court. The Human Rights Commission's submission to the Council³² suggested that this was an unnecessarily cumbersome and costly option, which in most cases left a person whose rights had been infringed without a remedy or way of enforcing the right. Restorative options in the early stages could allow agencies and applicants to understand each other better and avoid litigation. Such restorative practices and processes can be useful in minimising the need to resort to litigation.

3.4 ACT Child Protection Data

The ACT Child Protection system as it operates under the CYP Act is administered by the Community Services Directorate through the Office of Children, Youth and Family Support. The following section briefly summarises publicly available data on the children who are subject to child protection services and how the child protection system is performing. This data is from the Australian Institute of Health and Welfare (AIHW)³³ and the Productivity Commission's Report on Government Services (ROGS).³⁴ While released in 2018, the data in these reports relate to 2016-2017.

3.4.1 Children and Families and Child Protection Services

The AIHW data shows that there were 939 children in out-of-home care (OOHC) in the ACT at some point in 2016-2017.³⁵ The number of children and young people in out-of-home care at 30 June 2017 was 803.³⁶ This latter figure is used in most of the analysis in both the AIHW and ROGS reports. Each year between

2012-13 to 2016-17, the number of children and young people in care over the year exceeded those in care on 30 June that same year.³⁷

The numbers of children who were subject to investigation after a notification, or who were on care and protection orders or in out of home care in 2016-17 in the ACT was 2,008.³⁸ For children 14 and under, this means about 3% of ACT children in this age range are involved in some direct way with child protection services.³⁹ This means that the actions of child protection services touch many lives.

There was a significant increase of 44% in the number of ACT children in out-of-home care between 2012-13 and 2016-17.⁴⁰ This increase comes from a number of sources:

- > 32% increase in the number of children and young people living under care and protection orders;⁴¹
- > the proportion of orders that result in children or young people being placed in out-of-home care has risen from 83% in 2012-13 to 90% in 2016-17;⁴²
- > the numbers of children and young people being admitted on care and protection orders has consistently increased, with a 47% increase over the period;⁴³
- > in 2012-13, the number of children and young people whose care and protection orders were discharged exceeded the number who were admitted to orders. Every year since then, the numbers of discharges have been significantly lower than the numbers of admissions to orders.⁴⁴

3.4.2 Indigenous Children and Families and Child Protection Services

Of the 803 children in out-of-home care at 30 June 2016-17, 227 were Indigenous and 576 were non-Indigenous.⁴⁵ The 2016 census showed that 1.6% of the ACT population is Aboriginal or Torres Strait Islander. Fewer than 3% of children in the ACT are Aboriginal and Torres Strait Islander children or young people.⁴⁶ This compares to the Jervis Bay Territory,⁴⁷ to which ACT laws apply, where there is a much higher representation of Aboriginal people. The two census local areas in the Jervis Bay Territory are Wreck Bay⁴⁸ and Jervis Bay.⁴⁹ Wreck Bay had a population of 193 people at the 2016 Census, 80.7% of whom were Indigenous Australians. Jervis Bay had a population of 189, 26.9% of whom were Indigenous Australians.

An important source of information on Aboriginal and Torres Strait Islander children and young people and the child protection system is the work of the *Our Booris, Our way* review, commissioned by Minister Rachel Stephen-Smith in June 2017. The August 2018 *Our Booris Our Way* Interim Report noted it was undertaking 'a detailed analysis of the cases of all 350 Aboriginal and Torres Strait Islander children and young people who were engaged with the child protection system on 31 December 2017'.⁵⁰ Data in that report also show that there were 146 emergency actions taken by ACT child protection services between July 2017 and June 2018, 38 of which involved Aboriginal and Torres Strait Islander children. The data also shows that there were 110 new admissions to out-of-home care over that same period, 29 of whom were Aboriginal or Torres Strait Islander children (26%).⁵¹ Each of these figures confirms an ongoing increase in the number of children and young people in care, as well as a continued over-representation of Aboriginal and Torres Strait Islander children and young people.

AIHW data show that the number of Aboriginal and Torres Strait Islander children and young people in out-of-home care in 2016-17 was 90.1 per 1,000 children. This compares to 6.5 per 1,000 for non-Indigenous children.⁵² The rate ratio of Indigenous to non-Indigenous removals in the ACT was the third highest in Australia. An Aboriginal or Torres Strait Islander child or young person was almost 14 times more likely to be in out-of-home care than their non-Indigenous counterpart.⁵³

This differential is reflected in the ROGS data. One of the ROGS performance standards relates to 'disproportionality', which is defined as 'the extent to which a group's representation in the child protection services system is proportionate to their representation in the child protection services target population (0-17 year old)'. In the case of Aboriginal and Torres Strait Islander children and young people, the target population for calculating disproportionality is 0-17 years old. If the proportion of Indigenous children in

care as a proportion of Indigenous children in the population is the same, the disproportionality ratio would equal 1.⁵⁴ In the ACT in 2016-17, the disproportionality rate for Aboriginal and Torres Strait Islander children and young people across all child protection activity points⁵⁵ ranges from 4.33 to 10.23. The ratios of disproportionality of Aboriginal children and young people in out-of-home care has consistently increased over the ROGS reporting period from 2010-11 to 2016-17 and the latest ratio is 40% higher than the ratio at the beginning of this period.⁵⁶ The ACT's disproportionality rate for both care and protection orders and for placement in out-of-home care is excessive and is the second highest in Australia, behind Victoria.⁵⁷

The difference continues right across the range of activity points. For example the rate of notifications of Aboriginal and Torres Strait Islander children to ACT care and protection services is 7.6 times the non-Indigenous rate; the number of investigations undertaken in relation to these notifications is 10.8 times greater for Indigenous than non-Indigenous children; the numbers of substantiations of abuse or neglect is 13.1 times greater for investigations involving Indigenous children and young people; and the rate at which these matters proceed to care and protection orders is 13.9 times greater.⁵⁸ Once there is a notification, the path towards removal for many Aboriginal and Torres Strait Islander children appears inexorable.⁵⁹

3.4.3 Nature of 'Harm' and 'Risk of Harm'

When most people think about the reasons for child protection intervention in the life of a child and family, they are likely to think of physical or sexual harm. The ACT data shows that, for all ACT children where abuse or neglect is substantiated, only 17.7% of substantiations related to these categories. In 2016-17, there were 12 substantiations relating to sexual abuse and 44 relating to physical abuse. The substantiations by ACT care and protection services mostly related to emotional abuse (46.4%) or neglect (36.0%). Emotional abuse includes witnessing domestic violence. A number of concerns raised in consultations about the investigation processes, the categorisation of events or alleged events, the meaning of substantiation and the consequences of these substantiations are discussed below.

3.5 Consultation in Child Protection

The consultation in this part of the work of the Council included case studies (as discussed in the Progress Report), submissions, and meetings and other face-to-face consultations with various organisations and individuals. It also included contact with people at various public forums organised by the Canberra Restorative Community Network, by universities and civil society organisations, with ACT hospital staff and with Aboriginal and Torres Strait Islander people and organisations. Where information came from published sources, we have cited their information in the conventional way. Where people or organisations were happy to be described through a group membership, but not as named individuals, we have sought to honour this as well.

The ACT child protection system has been subject to many reviews over the past 15 years, since *The Territory as Parent* Report (sometimes called 'the Vardon Report') was undertaken in 2004.⁶⁰ Alongside these reviews, a major research initiative commenced in 2006, called Community Capacity Building in Child Protection. Initially funded through an Australian Research Linkage Grant, the principal researchers were Dr Valerie Braithwaite and Dr Nathan Harris from the ANU's RegNet. There were a significant number of reports from this work,⁶¹ many of which have examined the way to assist child protection services to operate in a more restorative way to better enable parents to build their capacities.

As a consequence of this and other reports there have been reform agendas and strategies, the most recent of which is A Step up for Kids from 2015-2020. This strategy has the following aim:

The ACT's five year strategy A Step Up for Our Kids – One Step Can Make a Lifetime of Difference responds to the challenge of rising demand for out of home care places and difficulties in attracting and retaining foster carers.

The data set out above do not seem to indicate that the vision is achieving reality for many families. At its launch, the then Ministers⁶² expressed the view that these efforts would all lead to a reduction in numbers of children and young people coming into care. The important work in forming the Our Booris Our Way Steering Committee as a self-determining body and co-creating that review with the people affected is an important model of addressing this falling short through restorative means. In many ways, the problems identified by those who talked with the Council appear to reflect long-standing cultural issues. Looking at some of these through the lens of a restorative city may well be a way of addressing underlying problems, which are continuing to undermine the visions for something better.

3.5.1 Issues Raised

1. *Removal of Children*

During the consultations, the Council heard about children and young people who were extremely disturbed by being removed, often without warning and in traumatic circumstances, for example, with police involvement or removal occurring from school). The families who spoke to us said that the removed children had lost their sense of security within the family and school even after they had returned to the family. This resulted in severe anxiety, for example, when strangers visited, and often impacted negatively on their behaviour at school, due to hypervigilance. Whenever a caseworker would visit, it was reported that the children would hide and run away to a friend's house. Random visits by caseworkers were the most disruptive for children and families, because this often brought back memories or flashbacks of the previous removal.

The opacity of removal practices makes them appear arbitrary and random. We heard from people in agencies who advocate for people with specific needs, such as people with disabilities, that care and protection workers often have a 'reverse onus' attitude that someone with a disability needs to prove they will be able to parent, with the assumption being that they cannot. We were told there often seems to be a rush to remove and then gather information to retrospectively justify the decision to remove.

Anecdotally, it appears that child removals often happen on a Friday afternoon, which means it is harder for parents to get legal help or other assistance immediately after the removal. The Council was told that people were asked by care and protection staff to sign legal documents, at the time of a removal, when they did not understand the consequences or purposes of the documents. People are also often provided with paperwork 'at the door of the court' and do not have a real opportunity to address the matters raised. People in the case study interviews often had significant factual issues with the documents presented to the court but felt unable to have their voices heard in the court setting. These issues continued to upset them long after the court decision had been made.

Where people reported feeling disempowered and threatened by these processes, as well as fearful for their children, they sometimes expressed anger. This can be seen as disrespectful and held against them. The court processes are not very 'consumer-friendly', which adds to parents' feeling under threat. Particularly for those who might have been before the court for a criminal matter previously, where the formality of the court plays an important symbolic role, reappearances at the same forum can itself be traumatic.

A more restorative system with respectful processes and a concern for the parent and family, as key people in the life of the child, may address common underlying issues related to physical and mental health (including drug and alcohol addiction), poverty, unemployment, a lack of connections to enhance wellbeing and insecure housing.

2. *Interpretation of the Best Interest Concept*

There are principles to guide the determination of what 'best interests of the child' means, in sections 7, 8, 9, 349 and 350 of the CYP Act. However, as reported to us, the approach most often taken seems to

be to see a child more as a standalone individual, rather than a dependent person requiring the love and support of a family and others for healthy development. There are some special principles that appear to recognise relationships more for Aboriginal and Torres Strait Islander children, but they are still framed in a manner which sees them as being freestanding individuals.

In this mindset, the concept of 'in the child's best interest' can be interpreted through many different lenses. Given the preponderance of removals for 'neglect' and 'emotional abuse', there is likely to be a great degree of subjectivity in the formation of these beliefs. The greater the stress on a worker, the more likely they are to determine that a risk is high.

In these situations, the worker may form the view that it is better to remove the child 'just in case', relying on the safeguard of court oversight. However, as reported to us, this generally does not work as a simple pause to consider what to do. This instead creates a cascade of intervention in a family, where they are plummeted into a new level of chaos, even less within their control.

There are many examples of restorative programs designed to take a different approach to assist families. An excellent summary of these is in Mary Ivec's report, *A Necessary Engagement: An International Review of Parent and Family Engagement in Child Protection*.⁶³ An effective restorative system for child protection must help the parents and family to develop their capacity to care for their child or children. In some cases reported by Ivec, it may simply be that the system needs to recognise that people have a range of ways of living, and children grow and flourish in many different home environments.

3. Specific Indigenous Concerns

The Council supports the initiative of ACT minister Rachel Stephen-Smith to conduct the Our Booris Our Way Review. We met with the Review's Chair and Principal Professional, as well as the head of the Aboriginal and Torres Strait Islander Elected Body, the United Ngunnawal Elders Council, the Chief Executive Officer of the Aboriginal Medical Service Winnunga Nimmityjah and with some of the Social Health team and the groups which meet there.

The Council received a strong message about the strong interconnections felt by Aboriginal and Torres Strait Islander people between the racism they experienced daily in Australian society, issues with mental illness and the lack of support for their continuing culture, including the lack of recognition of their connection to the land. This, coupled with many people's ignorance of the history of Indigenous dispossession, drug and alcohol addiction, other major community health issues, poverty, incarceration and policing all played a part. These interconnections require much more holistic ways of thinking than have occurred in the past. Stopping child protection removals from their communities was seen as a high priority.

The United Ngunnawal Elders Council also noted that Ngunnawal children are their future and proposed that Ngunnawal children should remain on Ngunnawal land. Where this has not happened, the United Ngunnawal Elders Council consider that the Government should ensure that children of Ngunnawal descent are given information and education on their Ngunnawal heritage. As part of this, they argued that the Government should provide assistance to allow them to visit their country and their kin, to help them maintain a knowledge and understanding of their country, their heritage and their identity. Where children have been placed out of the ACT's jurisdiction, the view was expressed that the ACT Government should negotiate for this with the relevant state government to allow the child or young person to attend cultural activities and kinship contact on Ngunnawal land.

4. Infants Taken Into Care At Birth

The Progress Report noted that Council had heard a number of stories about the removal of babies from their mothers at birth from the Canberra Hospital. The Council met with various professionals at the hospital, including social workers and staff from the Aboriginal Liaison area. These people confirmed that this practice occurred, as did some of the advocacy organisations and lawyers who had represented

mothers trying to have their children returned. Aboriginal mothers, young mothers and those with disabilities, drug and alcohol addiction and/or mental illness are said to be more affected by this practice.

The Council was informed that in the ACT, health professionals, including social workers, were required to submit a prenatal report to the Director-General of Community Services, under section 362 in Division 11.1.3 of the CYP Act, when they believed a woman, presenting for prenatal care, had such issues in her life. This Division relates to 'Prenatal reporting of anticipated abuse and neglect'. People who participated in this practice in the hospital were unsure about the legal basis of their responsibility. Several noted that Aboriginal and Torres Strait Islander women composed more of the identified 'at risk' pregnancies.

The Council was also informed that sometimes pregnant women with disabilities were contacted by child protection services to indicate an intention to remove the baby at birth. This was because they did not believe the woman would be able to care for the child. This was mostly the case with women with intellectual disabilities, but the 'assumption of inability' was sometimes applied to other forms of disability as well. There were also stories of hospital staff (midwives and social workers) who opposed removals in specific cases, where the mother and baby were doing well, but their views were disregarded.

3.6 Options for Achieving a More Relationally Focused Child Protection System

The Council has identified a number of options to achieve a more relationally-focused child protection system which may help to address some of these issues. As flagged, the primary restorative process is some form of Family Group Conference (FGC).

3.6.1 Family Group Conferences

FGCs are a family-led and collaborative approach to decision-making in relation to the welfare and care of a child. FGCs bring together the child or young person together with family members and relevant professionals (including child protection services) to make decisions and develop and implement a plan. This process is guided by an independent facilitator, who has no direct input or veto power over the plan, although they must be satisfied that agreement has been reached. In child protection matters, the FGC will often consider what kind of support is most appropriate for the child and the family, and how to provide this support (including through changes to living arrangements or parental responsibilities).

FGCs are often convened where court orders would otherwise have been sought in relation to a child's wellbeing and living arrangements. As such, FGCs have represented a significant innovation in child protection practice since their introduction in Aotearoa New Zealand in 1989, through the *Children, Young Persons and Their Families Act 1989* (NZ). Since that time, FGCs have been also increasingly used outside child protection matters.

FGCs contain a set of distinctive characteristics which set them apart from other interventions in child protection:

- > FGCs are *family-led*. The assumption is that families and their immediate communities have both the expertise and responsibility for the care of children. They, rather than an outside decision-maker or other representative of the state, are better able to make decisions and solve problems in a way which is not only likely to result in better outcomes but is also likely to be implemented.⁶⁴ This requires listening to and respecting the contribution of family members and the child, rather than regarding them as passive recipients of services.
- > FGCs are *strengths-based*. The conference and resulting plan are designed to seek out positive outcomes and develop the available strengths and capabilities of the parties. FGCs are intended to empower the people involved, including the children themselves, not just to resolve conflict in a narrow sense.

- > FGCs are *independently facilitated and supported by the state*. Although they are led by the family, they are given support through resources provided by the state (including an independent facilitator) and have the backing of a formal outcome legally recognised by the child protection system.

The restorative potential of FGCs lies in these characteristics, underpinned by two sets of intentions. One is an expectation that the FGC process leads to more restorative outcomes for children and their families, compared with formal justice interventions (eg court orders). In particular, FGCs are assumed to lead to lower incidences of out-of-home care, which is considered to be a more restorative outcome by maintaining the integrity of the family unit. Alternatively, the process of holding a FGC may also be itself restorative, independent of the outcomes attained. Beyond addressing the dispute or legal decision at hand, the collaborative and strengths-based processes underpinning the FGC may strengthen the family's capacity for peaceful and positive relationships, and therefore assist with the reintegration of the child to the family and the family to the wider community, beyond the resolution of immediate problems.⁶⁵ These assumptions are critically evaluated below.

As a cautionary note, the origins of FGCs are multifaceted and should not be simplified to a single narrative. Some of the literature runs the risk of mythologising FGCs⁶⁶ and elevating their benefits beyond what the evidence indicates. Particular care is required in evaluating claims about the cultural underpinnings of FGCs: particularly the claim that the processes of holding a conference emulate practices in Indigenous or other non-Western cultures and therefore are particularly suitable for these cultural groups. Instead, there is a cogent argument that, if implemented poorly, FGCs can represent yet another 'predominantly Eurocentric, state-dominated intervention that marginalizes [people] and their cultural philosophies and practices'.⁶⁷ FGCs should therefore not be regarded as a panacea and are not in and of themselves necessarily restorative.

3.6.2 Regulation of FGCs

There is no uniform method for the regulation of FGCs. FGCs can either be implemented as a non-statutory policy initiative, or under statute. Different regulatory frameworks exist in different places. For example, in New Zealand, the *Oranga Tamariki Act 1989* requires FGCs to be convened in a range of situations before decisions can be made. By contrast, in the UK, the legislation is silent about FGCs, but a strong policy framework exists for their widespread use. The implementation of FGCs across Australian jurisdictions has been inconsistent though the readily available data on this is somewhat dated.⁶⁸

Provisions enabling the conduct of FGCs in the ACT are contained in Chapter 3 of the CYP Act. These provisions were first introduced in the *Children and Young People Act 1999* (the predecessor to the 2008 CYP Act) and were modelled on the provision in New Zealand's *Children's and Young People's Well-being Act 1989* (now known as the *Oranga Tamariki Act 1989*).

Under the CYP Act, the convening of FGCs in the ACT is voluntary and discretionary. As explained by the Explanatory Statement to the 1999 Bill, the framework is consistent with the legislation's 'emphasis on cooperative and inclusive support that the government can give to children, young people and their families'.⁶⁹ The Explanatory Statement also emphasises the collaborative and relational intent of FGCs:

In the child protection area there is an emphasis at all points on cooperation with and support for children and young people, from infancy through to adolescence, and their families. To this end a new concept of voluntary 'family group conferencing' is introduced to facilitate agreement amongst families about the alternative ways they can continue to care for children and young people in their midst.

The 2008 CYP Act extended these provisions to allow a FGC to be arranged for a person subject to youth justice interventions under the Act, in addition to in relation to child protection matters. The core principles and intent of the legislation remained intact. However, despite these legislative efforts, there has been minimal uptake of FGCs in the ACT, either in relation to child protection or youth justice matters. The only

exception is a recent CYPs pilot project, announced in 2017, conducted by local Indigenous organisation Curijo.⁷⁰ This 12-month pilot aims to engage Aboriginal and Torres Strait Islander families to attempt to reduce out-of-home care and improve outcomes for families. At the time of this report, no progress updates or reports were available publicly about the progress of this trial.

The lack of uptake for FGCs in the ACT despite clear enabling provisions in the CYP Act can be explained by two factors. Firstly, although the CYP Act contains detailed provisions about how FGCs are convened and how they are to be run, the Act does very little to prescribe when they should be used or considered. That is, there are very few entry points into the FGC process,⁷¹ especially when compared with the New Zealand scheme or the legislation of other Australian jurisdictions. Secondly, other than the Curijo trial, there has been no policy directive, that we are aware of, within Child Protection Services CYPs to use FGCs as part of its ordinary business.

3.6.3 Effectiveness of FGCs

Much has been written about FGCs as a transformative practice in child protection. Many advocates cite the experience of FGCs in New Zealand and subsequently in the UK as an example of successful implementation.⁷² Initial reviews were based largely on post-hoc evaluation, qualitative feedback and small or uncontrolled case studies. While these are important sources of information, they do not necessarily provide a full and balanced picture of FGC's efficacy. More recently, FGCs have been subject to more rigorous evaluation, including through prospective studies and RCTs. These studies compare the outcomes of families who participated in FGCs with those subject to traditional child protection practices.

Some of this newer evidence tempers the assumption that FGCs are always and inevitably a positive innovation. For example, a meta-analysis of 14 controlled studies on FGCs by Professor Dijkstra and colleagues in 2016 found on the whole, FGCs were no better than traditional child protection practices in reducing maltreatment, out-of-home care and the involvement of support agencies. Concerningly, the meta-analysis showed that older children and children from minority culture groups who were involved in FGCs had more and longer out-of-home care placements, compared with families in the non-FGC child protection pathway.⁷³

One limitation of a meta-analysis like this is that it is necessarily based on a limited number of RCT studies. This is a reminder that if FGCs were to be introduced in the ACT, a high-quality evidence base for their effectiveness would be crucial. Although the use of RCTs to evaluate FGCs is itself not without controversy, such trials are nonetheless a strong and persuasive source of data from which policy decisions should be influenced after taking into account their limitations.⁷⁴

Though they sound a note of caution, these empirical findings do not repudiate the restorative potential of FGCs. Rather, these studies highlight that FGCs are not necessarily restorative in the ways we have described in this report. This gives the ACT an opportunity to ground its use of FGCs expressly in restorative values and principles and with fidelity to restorative practices.⁷⁵ This would provide a strong set of standards against which FGCs can be evaluated and tested, as well as establishing a clear rationale and justification for why FGCs should be used and what outcomes should be sought in the child protection area.

Evidence of the restorative efficacy of FGCs in the ACT will need to be developed locally, informed by rigorous evaluation. One suggested way to do this is a series of initial trials of FGCs that can also identify when FGCs seem unlikely to lead to restorative outcomes and, if so, what other practices and programmes should be used instead to promote restorative outcomes.⁷⁶

3.6.4 FGCs as a Restorative Practice

The Council suggests that prospective trials and the enhanced use of FGCs is the way to start restorative practices in ACT child protection matters. This should be predicated on the existence of a clear and testable rationale for why this practice is used and sufficient resources for its implementation.

A core restorative value is voluntarism, yet the New Zealand model mandates the use of FGCs. The Council's view is that the use of FGCs should stop short of mandating its use. Instead, FGCs should be encouraged, such that the FGC is considered the default option unless parties actively opt out. However, removing the autonomy of parties to choose not to participate would be inconsistent with core restorative values and may be counterproductive.

Restorative outcomes cannot be coerced simply through the convening of a FGC. But proper resourcing, evaluation and adaptive regulation can provide the optimal conditions for FGCs to succeed in restoring relationships and opportunities for a good life for children and their families. Support and advocacy for families and carers who have contact with child protection systems exist in abundance. How statutory child protection systems engage with parents ultimately affects the outcomes for children, including safety, a sense of security and wellbeing. While social work practices that emphasise people's self-determination and strengths are recognised as fundamental to eliciting change in parents when care standards have faltered, there is widespread acknowledgment of the struggle child protection authorities have to meaningfully engage parents and families.

3.7 Suggested Restorative Initiatives

The processes and practices of Child Protection Services are open to the restorative framework detailed in Chapter 2. The Council makes the following specific recommendations:

Recommendation 5

A commitment to adhere to the set of values and principles outlined in Chapter 2 be inserted in the *Child and Young People Act 2008* under Part 1.2, 'Objects, Principles and Considerations'.

Encouraging the use of FGCs as the default form of response for child protection in the ACT using the framework provided in the CYP Act.

Recommendation 6

The use of FGCs using the framework contained in Chapter 3 of the *Children and Young People Act 2008* become the default form of response for child protection in the ACT.

Conducting randomised controlled trials to examine the effectiveness of Family Group Conferencing using the framework in provided in the Children and Young People Act 2008 -

Recommendation 7

Evaluation and research, including a series of randomised controlled trials, be conducted to examine the effectiveness of FGCs, using the framework provided in Chapter 3 of the *Children and Young People Act 2008*.

Amending the Family Group Conference Standards under section 887 of the Children and Young People Act 2008 as informed by the result of any such trials and evaluations and in line with the core restorative values and principles -

Recommendation 8

The FGC Standards under section 887 of the *Children and Young People Act* be amended, as informed by the result of any research carried out and in line with the set of values and principles outlined in Chapter 2 of this report.

Chapter 4: Public Housing – Focus Area 2

4.1 Background Data

4.1.1 Introduction

Housing is recognised as a crucial requirement for personal and family security and is a pre-requisite for a good life. The government body within the ACT responsible for public housing is Housing and Community Services ACT (Housing ACT). Housing ACT recognises its function of providing access to adequate housing is imperative to ensuring that all individuals can lead a dignified existence.⁷⁷ To ensure this, Housing ACT must act as both a government agency and administrative decision maker whose decisions and interactions are transparent, accountable and consistent.⁷⁸

The Council has received submissions and conducted consultations and case studies to gain insight into the scope for restorative practices in the public housing system in the ACT. It has also consulted with Housing ACT staff and its Tenants Consultative Group. This part of the report outlines key issues raised in those consultations about the current challenges facing ACT Housing and ideas as to how these might be addressed by restorative means.

4.1.2 Housing and Human Rights

The ACT *Human Rights Act 2004* does not include the right to housing in its current range of rights.⁷⁹ Nonetheless, adequate, secure housing is one of the social determinants of health, as well as other human necessities.⁸⁰ Access to housing is therefore considered a fundamental human right crucial to the dignified existence on which human rights are premised. Without adequate housing, other rights such as health, education or employment are compromised or curtailed. Many disadvantaged groups, especially Aboriginal and Torres Strait Islander people and people with disabilities, do not have the means to obtain private housing and are reliant on social housing.

The ACT Government has recognised this reliance by creating a social housing agency to provide ‘support for people who are disadvantaged or experiencing crisis’. The Government has been developing a Housing Strategy with community consultation, after releasing a Discussion Paper entitled *Towards a New Housing Strategy: An ACT Community Conversation discussion paper* in July 2017. The extensive consultations were documented in the Engagement Summary Report was released in February 2018. A Housing Summit was held in October 2017, where some early initiatives were launched. These were:

- a. Introducing new housing targets for public, community and affordable housing in Government greenfield and infill developments;
- b. Introducing eligibility criteria for purchasers of dedicated affordable housing;
- c. Establishing a database of eligible registrants for people interested in purchasing affordable housing;
- d. Rebasing the affordable home purchase price thresholds; and
- e. Establishing an Innovation Fund for affordable housing which includes a grants program to assist in introducing or expanding an affordable housing real estate management model, a home sharing program and a design led co-housing model.⁸¹

ACT Housing’s remit as a social landlord therefore gives rise to a distinct set of policy and practice obligations. In meeting⁸² its obligation to make the right to housing accessible and realisable its practices and procedures require the highest levels of transparency, accountability and consistency, often beyond that which might be expected of a standard government agency. A number of submissions suggest this higher onus is not always met. Such submissions suggest it could be better met through restorative means.

4.1.3 Overview of Public Housing Experiences in the ACT

In the 2016 Census, the ACT had the largest population increase of all states (11.2% since 2011) and a 10.2% increase in the number of privately occupied dwellings. It also had the highest median level of weekly income (\$998 compared to the national average of \$662), but also high levels of housing costs, both for renters and mortgage holders.⁸³ At the same time, the Census showed that the ACT rate of homelessness was 40.2 per 100,000 population – in the middle ranks of homelessness in Australia.⁸⁴ This had been a decrease since the 2011 Census.

In May 2018, the Australian Homelessness Monitor released its 2018 report,⁸⁵ which had done further analysis of the census data.⁸⁶ This showed that while the overall number of homeless people had decreased by 8% over the period 2011-2016, the number of people sleeping rough had increased from 28 to 54. This was reported to have been accompanied by nearly \$5 million decrease in ACT government spending on homelessness services between 2012-13 and 2016-17, and an 80% decrease in investment in social housing over that same period.⁸⁷

Public housing has traditionally played an important role in providing housing in the ACT. Originally, the Commonwealth Government built housing for people moving from interstate to work in the new capital.⁸⁸ Over the past four decades, with changes in policy at both the Commonwealth and the Territory/State level,⁸⁹ public housing has become a housing option for not only low income earners but for people who have other significant barriers to housing. The current income tests and eligibility criteria are on the ACT Housing website.⁹⁰

Eligible people who apply for public housing are categorised into three categories for the waiting list, according to the intensity of their needs. The numbers of people on the three lists at 3 September 2018 are included in brackets:

- > Priority Housing (40 applicants);
- > High Needs Housing (970 applicants); and
- > Standard Housing (768 applicants).

The waiting list times in each category for new applicants are:

- > Priority Housing (207 days)
- > High Needs Housing (607 days)
- > Standard Housing (1035 days)

People in public housing sometimes seek a transfer. This may be to accommodate changed family circumstances, or as a result of problems with neighbours or domestic violence. For those already in public housing who are seeking transfers, the numbers on waiting lists and waiting times are also significant. At 3 September 2018, there were:

- > 169 Priority transfer applicants, with an average wait-time of 463 days;
- > 293 High Needs transfer applicants, waiting 695 days; and
- > 193 Standard transfer applicants, waiting 990 days.⁹¹

The public housing system in the ACT has both positives and challenges. Similar to other government agencies, ACT Housing benefits from being in a jurisdiction that has legislation providing specific statutory protection to a broad range of human rights. The obligation to act in a way consistent with a human rights framework provides a strong foundation upon which to build a restorative approach. Nonetheless, the Council's review included submissions which point to the need for ACT Housing to approach social problems within its remit in ways that are more creative, inclusive, and transparent.⁹²

In particular, there were significant gaps identified in Housing ACT's competence in addressing needs of vulnerable people, specifically people with disabilities and Aboriginal and Torres Strait Islander people. It

was submitted, for instance, that there were currently no Aboriginal liaison or cultural support officers to assist Aboriginal clients in general or at the time of housing crisis.⁹³ Similarly, there were no explicit policies or practices to address the needs of applicants/tenants with disabilities.

4.2 Information from Consultations

4.2.1 Need to Ensure Transparency and Consistency

Housing ACT's policy and practices in regards to initial and on-going interactions as well as dispute management are outlined in their operational guidelines.⁹⁴ These guidelines are often not in an easily accessible form or in language that would be easily understood by applicants/tenants. Housing ACT has sought to develop a number of policies that aim to provide for such transparency, specifically dispute resolution processes that prevent and address issues at an earlier stage. One such policy is the client service visit policy. It enables tenants to voice concerns and allows Housing ACT to identify potential issues at an earlier stage, with the aim of developing a good working relationship with tenants.⁹⁵ However, there were suggestions that Housing ACT employees do not consistently apply these policies resulting in strained relationships between Housing ACT and applicants/tenants ⁹⁶

There was a view expressed in some submissions and consultations that many of the policies and procedures used by Housing ACT, particularly in its assessment and review processes, are opaque and confusing. Tenants, particularly tenants who are vulnerable, reported finding it difficult to engage with the processes. The decision-making processes of the Multi-Disciplinary Panel for priority listing, for instance, were identified as being unclear. The process for internal review was seen as opaque as the reviewer did not appear to be open to further information from the tenant but relied heavily on the information provided by ACT Housing. Applicants reported being removed from the decision-making process leading to feelings of disempowerment and frustration.

4.2.2 Need for Accountability in Review Processes

The application process, for instance, for Priority Housing/Transfers is a three-stage process moving from an initial determination by an approving officer, review by a management team and referral to the Multi-Disciplinary Panel (MDP). The tenant is not able to participate at all levels of this process, with the MDP review described as opaque, lengthy and inefficient.⁹⁷ These decisions are subject to internal review at the level of the original approving officer and, if unsuccessful, by referral to the Housing Assistance and Tenancy Review Panel (HATRP). Submissions suggest HATRP only receives information from the assessing team and not from the tenant. The HATRP process was described by some as inefficient, biased and incomplete.⁹⁸

Internal review decisions by Housing ACT can be referred to the ACT Civil and Administrative Tribunal (ACAT) for external review. Although ACAT was seen as providing a transparent and fair review of decisions, some submissions highlighted that some of ACAT's processes remained inaccessible to public housing tenants. Submissions suggested that proceedings are treated more as an adversarial contest. Some submissions highlighted that the evidentiary burden adopted by ACAT has increased significantly, undermining what was seen as the benefits of its informal, problem-solving approach. Many tenants were reported as struggling to satisfy this higher burden.

4.2.3 Meeting the Needs of Vulnerable People

As noted many public housing clients are among the most vulnerable in the community. They include people with a range of disabilities including mental illness, those escaping family violence, people from the Aboriginal and Torres Strait Islander community and those from culturally and linguistically diverse backgrounds. Submissions and consultations noted that these vulnerable people often struggle in engaging with Housing ACT or in meeting the requirements for their tenancy. Some submissions

highlighted that there are existing, effective policies that support those escaping domestic violence or experience a disability or trauma, but that these practices are not automatically employed and are sometimes only triggered through advocacy work on the part of community organisations.

People experiencing chronic homelessness are often unable to prove their capacity to sustain a tenancy by virtue of their situation, nor are they always able to engage with front-line services while they prioritise finding a place to sleep. Some submissions advocated a Housing First Solution to address these issues, with accommodation provided first and engagement with services following.⁹⁹

4.2.4 Meeting the Needs of People with Disabilities

A 2014 government initiative, Future Directions: Towards Challenge, sought to improve the ACT Government's policy framework regarding opportunities for Canberrans who identify as having a disability. The framework gives priority to areas of disability policy and service delivery in the ACT.¹⁰⁰ Currently in the ACT 95.6% of people who identify as having a disability, access supported accommodation services in regards to the activities of their daily living, which includes HACT.¹⁰¹

Advocacy for Inclusion, an organisation that represents marginalised and isolated people with disabilities, submitted that the current level of marginalisation in Canberra requires changes to ingrained attitudes as well as supporting people with disabilities to exercise their self-determination through self-advocacy support.¹⁰² Similar submissions were made on behalf of people whose health has been impacted by mental illness or trauma and whose capacity to navigate the Housing ACT processes was as a consequence impaired. Submissions were made that there were mechanisms in place in Housing ACT that could facilitate a restorative practice approach, but these were not automatically triggered.

4.2.5 Meeting the Needs of Aboriginal and Torres Strait Islander People

In 2013, the ACT Human Rights Commission worked with the ACT Aboriginal and Torres Strait Islander community on the promotion of human rights.¹⁰³ One of the issues raised through that project was that of service delivery for Aboriginal and Torres Strait Islander people and their families. The project identified that Indigenous Australians experience a disproportionately higher risk of homelessness and inadequate housing. Areas identified for improvement included access to services that were not judgmental or labelling.¹⁰⁴ Services that were more refined to individual needs and differences in cultures and directed to improved cultural safety and cultural care plans through better training of staff around cultural issues were seen as most effective. There was also a desire for improvement in relationship and partnership building in the community.

Overall, it was reported that there was a lack of understanding about ongoing grief and loss experienced by Aboriginal and Torres Strait Islander people and trans-generational trauma.¹⁰⁵ There were suggestions that services need frontline Aboriginal staff assessing and consulting on Aboriginal issues as well as cultural mentors for non-Indigenous staff and an increase in the number of Aboriginal and Torres Strait Islander mental health professionals.¹⁰⁶

The Council received very similar responses in our consultations with Aboriginal people and Torres Strait Islander people who were public housing residents. They raised significant concerns about the quality of maintenance services, which at that stage were provided by Spotless. These included four-day response rates in a case where water was leaking from a tenant's kitchen ceiling into a live light socket and when a contractor damaged furniture, clothing and precious objects while painting a tenant's house. The Council also heard about a tenant who had to rely on emergency relief food parcels for her children during the two weeks it took for a response after her freezer was unplugged during maintenance. The Council understands a new contract has been awarded for the maintenance of the 11,800 properties occupied by 23,000 tenants in ACT Public Housing, and the tender winner, Programmed Facilities Management, will fulfil this role from 1 November 2018.¹⁰⁷ It is hoped that these kinds of problems will be more effectively dealt with and that tenants will be treated with respect when lodging concerns.

Other concerns included being tenants being subject to more frequent inspections after raising complaints about an ACT Housing service. People saw this as 'payback' for raising legitimate matters. Another concern was a consequence of the split responsibilities between the Commonwealth and State in relation to rent assistance in public housing. Paperwork delays within ACT Housing, (after tenants had lodged the paperwork in time), resulted in people's eligibility for rent assistance not being completed on time. This meant people were not eligible for subsidised rent, and their rent was significantly increased to market rates with no notice. Because of the auto-payment processes that tenants used to avoid late payment, tenants' bank accounts were automatically 'swept' by ACT Housing. This left people without any money in their account to buy food or medicine or any other necessities, while the agencies 'sorted it out'.

There were other concerns about being required to attend ACT Housing, rather than having the option of using the phone or online services. One person said that when ACT Housing staff arrived for an inspection, she was told that her rent was in arrears by 20 cents. She noted that the payments were made by automatic renewal, but the ACT Housing Officer said he could not do the inspection until her rent was up to date. She had to take her small children by bus from her home to ACT Housing to pay the 20 cents, because she was told it could not be paid online.

Another tenant was told she needed to be at home on a specific date for repairs. She took time off work to do this, but no one turned up. She called about their no-show and was told she would be notified when someone would be there. She received no phone call, but sometime later, someone came when she was at work. ACT Housing charged her a call-out fee for failing to be present. When she raised a concern, she was told she would have to come in during working hours to submit her complaint. In the end, she paid the call out fee because she felt powerless to sort it out, but still had not had the visit to address her maintenance concerns.

People also raised concerns about what they saw as racism and disrespect in some of their interactions with ACT Housing staff. They identified situations when they became angry, due to long wait times and disrespectful behaviour, and were then threatened with police, or told they would not be served. As a comparison, in other high public contact areas overseas, where restorative approaches have included de-escalation strategies, these incidents of aggression have almost ceased entirely.¹⁰⁸

There was praise for some ACT Housing staff, who were seen to work to understand what the tenant was seeking and then worked with them on a solution. This was seen as a model of how a restorative approach could work.

4.2.6 Meeting the Needs Staff

Many submissions highlighted that the interaction with Housing ACT was highly dependent on the senior staff member involved. Some staff regularly used what were seen as restorative practices when interacting with tenants, but this response lacked consistency. Often good work by particular staff members was seen as lost in staff turnover. The pressures faced by ACT Housing staff was widely recognised in submissions and consultations and issues of staff well-being were highlighted.

4.3 The Scope for Restorative Practices in Public Housing

A number of submissions made the point that the laudable aims of restorative practice to support community groups to build a more cohesive and respectful society require something more than legislation. In the case of people with disabilities, reducing barriers to their effective exercise of self-determination requires changing both attitudinal and environmental barriers.¹⁰⁹

There are some examples from other jurisdictions where restorative practices have explicitly been introduced to address issues in public housing or where existing practices can be seen as restorative in approach.

4.3.1 UK Housing Ltd

In 2006, The UK's Housing Ltd adopted the Restorative Justice Council's (RJC) core restorative principles into its policies and procedures and trained its staff in their use. The six 'principles of restorative practice' were:

1. Restoration – the primary aim of restorative practice is to address and repair harm.
2. Voluntarism – participation in restorative processes is voluntary and based on informed choice.
3. Neutrality – restorative processes are fair and unbiased towards participants.
4. Safety – processes and practice aim to ensure the safety of all participants and create a safe space for the expression of feelings and views about harm that has been caused.
5. Accessibility – restorative processes are non-discriminatory and available to all those affected by conflict and harm.
6. Respect – restorative processes are respectful to the dignity of all participants and those affected by the harm caused.

Adopting these principles in a social housing setting has brought benefits in terms of stability within neighbourhoods and in the restoration of relationships with tenants.¹¹⁰

4.3.2 WA Housing

The Western Australia's Department of Communities – Housing (WA Housing) provides an accessible platform of appeal and review of housing decisions through a two-tiered system.¹¹¹ The first tier provides for an independent review conducted by a senior officer of WA Housing who was not involved in the original decision making process in a way similar to Housing ACT. The second tier allows for appeal to the Regional Appeals Committee (RAC), which comprises a senior WA Housing officer (not involved in the original decision-making) and two independent community representatives. The three members have equal standing and their decision is binding on WA Housing, with decisions subject to judicial review at the Magistrates Court. There are aspects of this review process that clearly encompasses restorative practices including the role of independent community representatives with equal standing and the scope to identify and make recommendations on systemic issues with its policy or procedure.¹¹²

4.3.3 NSW Aboriginal Housing Office

The New South Wales Family and Community Services (FACS) has an explicit commitment 'to providing safe, low cost and culturally appropriate housing and tenancy services for Aboriginal people living in NSW'.¹¹³ To this end, there are two types of housing managed by FACS – public housing and Aboriginal Housing Office (AHO) homes. AHO homes are properties owned and managed by that office in conjunction with FACS. FACS has also set a priority to building Aboriginal cultural capability within their workforce and have developed a number of strategies that reflect restorative practices. These include mandatory cultural capability training for staff to improve cultural understanding so communication and engagement is more attuned to Aboriginal needs. FACS has developed an Aboriginal Cultural Capability Framework to guide their work with the aim of increasing cultural capability of all their staff including senior executives. This framework has similar restorative principles as the UK's restorative principles, specifically in ensuring safety, accessibility and respect. Similar initiatives in public housing processes in other states for Aboriginal and Torres Strait Islander people which could be seen as restorative include:

- > The NT's Indigenous Housing Authority model of integrated public housing systems that offer community involvement in the construction, maintenance and management of public housing; and
- > Victoria's mechanisms for failed applications being reviewed through the Aboriginal Housing Board.

4.4 Scope of Restorative Practices in Public Housing in the ACT

In many submissions and in our consultations with Housing ACT staff and clients, the potential benefits of using restorative practices to better engage with tenants and to work for better outcomes for all involved was recognised. The Human Rights Commission's submission highlighted that Housing ACT already had many good restorative policies and practices in place though issues were raised as to their consistent application. Other submissions pointed to effective existing policies seen as restorative, for example, ACT Housing's Domestic Violence Policies and its mechanisms to better engage with people with disabilities or those who have experienced trauma. Once again, there were issues about the consistent application of these policies.

Consultations with Housing ACT clearly showed a refreshing openness to the potential of restorative approaches in their practice. Concerns were raised about how to engage restoratively with tenants, given that formal notices were sometimes seen as necessary following repeated refusal to engage by tenants. Further concerns was raised that the 'quiet enjoyment' protections in the *Residential Tenancy Act 1997* may hinder efforts in communicating with tenants, even in a restorative manner.¹¹⁴

4.4.1 Restorative Dispute Processes

The Human Rights Commission identified three specific areas of ACT Housing practice that could benefit from a more restorative approach:

- > the operation of its rental rebate system,
- > its practice where tenants are incarcerated, and
- > its practice where tenants die and their loved ones have been living in the property and wish to remain.

The ACT Civil and Administrative Tribunal which has jurisdiction for external review of public housing disputes has legislative objectives that promote restorative outcomes. It implements these objectives through the use of informal and flexible processes. However, ACAT noted that it has resource limits, which restrict its ability to ensure a restorative approach in every case. Areas of dispute which ACAT believed could be suitable for a greater use of restorative approaches, subject to resourcing, included:

- > actions brought by ACT Housing for injunctions or specific performance orders e.g. in 'hoarding' cases, and
- > actions brought by tenants alleging that ACT Housing has not adequately maintained a rental property.

These types of disputes were identified as often being the culmination of a lengthy dispute and 'the relationship between the parties may be tenuous or characterised by mistrust, particularly on the part of the tenant'.

4.4.2 Restorative Staff Training

Submissions suggested that staff training that focuses on awareness-building of the existing policies and legislation, as well as training in how to interact with tenants in a respectful and empathetic manner, could better promote restorative outcomes. Training should also focus on restorative outcomes for staff, especially those working on the front line. Staff are often exposed to traumatic experiences and need opportunities to debrief in a safe and supportive environment which is restorative.

4.4.3 Restorative Engagement with Tenants

Housing ACT reported that many issues with engagement are due to communication breakdowns or with vulnerable clients, who experience difficulty with eligibility requirements for their tenancy. A restorative approach that builds a respectful, empathetic relationship from the first interaction could help prevent these communication breakdowns or could allow Housing ACT to work with tenants to help them understand their requirements.

Current engagement practices are generally through letters (often multiple), phone calls (often multiple) and sometimes through home visits when there is an issue involving their tenancy. Housing ACT recognised that many tenants find these interactions confusing and intimidating. However, many tenants were reported as reluctant to engage with Housing ACT in the absence of potential formal notice. Housing ACT agreed that the best approach is preventing issues before they arise, but that there were time and cost implications in building the desired ongoing relationship.

Canberra Community Law's submission noted that often the lack of supportive approaches and relationships mean that 'applicants consistently struggle with engagement with Housing ACT and as a result of repeated negative interactions, abandon engagement altogether'. It notes that while adoption of restorative approaches is unusual 'when this approach is taken it has far reaching [positive] impact on the experience of clients and the outcome of cases.'¹¹⁵

Submissions and consultations highlighted the therapeutic benefits of allowing tenants to tell their stories and to feel listened to. Some submissions suggested this did not always occur. There was a suggestion in submissions that a formal 'Hearing Day' where tenants are given the opportunity to tell their stories may provide the listening opportunities that build trust and respectful relationships.

4.4.4 Improving Transparency

As noted, the review and assessment processes used by Housing ACT are seen by tenants as opaque and confusing. One option that arose in consultations was that all policies and procedures should be publicly available in a clear and understandable format. Where a client or their advocate needs information about their individual case files, a restorative approach would be to allow tenants and their advocates or representatives easy access to their own information.

4.5 Suggested Restorative Initiatives

The processes and practices of Housing ACT are open to the restorative framework detailed in Chapter 2. The Council makes the following specific recommendations:

Inserting a requirement to adhere to the set of restorative values and principles formulated as recommended in Chapter 2 in the management of any dispute, conflict or action involving public housing is recommended as a means to ensure the processes of Housing ACT develop further in a restorative direction -

Recommendation 9

A commitment to adhere to the set of values and developed principles outlined in Chapter 2 be inserted in the *Housing Assistance Act 2007* under Part 2 'Objects and Important Concepts'.

Inserting a provision that includes an Aboriginal Cultural Capability Framework as an operational guideline modelled on the NSW FACS's Aboriginal Cultural Capability Framework.¹¹⁶ A provision should be published as an operational guideline under the Public Housing Assistance Program, authorised under *Part 4*

Housing Assistance Programs in the ACT. Operational Guidelines outline the processes and practices utilised by HACT, hence implementing this framework as an Operational Guideline ensures it use -

Recommendation 10

An Aboriginal Cultural Capability Framework be published as an operational guideline under the Public Housing Assistance Program, authorised under *Part 4 Housing Assistance Programs of the Housing Assistance Act 2007*, 'Housing Assistance Programs'.

The *Housing Assistance Act 2007* should be amended to add a requirement to encourage the use of restorative practices in a manner to satisfy their purpose and aims. Section 6(2) currently provides that any person administering the Act must have regard to the objects of the Act to the extent of the resources available to the person. This section should be amended or a subsection should be added specifically endorsing the use of restorative forms of dispute resolution -

Recommendation 11

The *Housing Assistance Act 2007* be amended to add a requirement to ensure that the use of restorative practices is considered in management of any dispute, conflict or action involving public housing in the ACT.

Chapter 5: Other Possible Areas for Restorative Action

5.1 Introduction

This chapter looks at areas potentially open to restorative approaches, which have come to the attention of the Council during its research and consultation period, and which are within the direct influence of the ACT Government.

5.2 Restorative Inquiries

When a tragedy or a disaster happens or there is a revelation of systemic harm over a significant period of time, there is often a call for a public inquiry or a Royal Commission to find out what happened and why. The ACT has two Acts which can be used to initiate inquiries, the *Inquiries Act 1991* and the *Royal Commission Act 1991*.

Restorative type inquiries and/or restorative responses following standard inquiry processes have been used in Australia and elsewhere as an alternative to this traditional public inquiry process. In general, these have been developed in response to deal with the effect of the harm on people and their relationships, the loss of trust in systems and organisations because of what occurred, and to seek better ways to drive broader cultural change to prevent harm occurring again in the future.

Professor Llewellyn has written extensively about such an approach. She noted restorative inquiries provide a flexible approach based on dialogue ‘to facilitate sharing of truths, experiences and perspective to develop understanding of what occurred’. She described the common characteristics of a restorative inquiry, as:

- > having a relational focus;
- > being holistic and comprehensive, understanding the harms in the broader context, causes and circumstances;
- > justice seeking;
- > inclusive and participatory;
- > collaborative;
- > supporting healing and doing no harm, ie being sensitive and responsive;
- > future focussed; and
- > action orientated.

An Australian example of using restorative processes as the response mechanism following a standard form of inquiry is the approach taken following the Review of Allegations of Sexual and Other Forms of Abuse in Defence where a report was provided to the Minister for Defence in 2011-2012.¹¹⁷ Following the release of the Review, the Minister announced the formation of the Defence Abuse Response Taskforce (DART).

DART’s work was ‘to determine, in close consultation with complainants, the most appropriate outcome in individual cases, relating to allegations of abuse by Defence personnel ranging from workplace discrimination, harassment and bullying to physical abuse resulting in bodily or mental injury, to the most serious cases of sexual assault’.¹¹⁸

DART established a 'Restorative Engagement Program'¹¹⁹ in response, and over 650 restorative conferences were delivered in its three years of operation (2013-2016). The Taskforce described the operation of that program in the following way.

Restorative engagement is a response to institutional abuse and mismanagement based on restorative conferencing practice where the complainant meets a senior leader of the institution to tell them their personal account of abuse, its impact, the ongoing implications and to receive a meaningful, individualised acknowledgement of the abuse and resulting harm.¹²⁰

The ACT Government should consider whether to include references to the use of the restorative inquiry approach in the various inquiry-related legislation and any other forms of review to enable the use of the restorative principles in the design of the various statutory and non-statutory forms of inquiries in the ACT.

Recommendation 12

A restorative form of inquiry be the preferred option when a public inquiry or review is proposed. When a response process is established or required following an inquiry or review, it should be restorative in form.

5.3 Emergency Management Inquiries

There have also been proposals for using a restorative approach in relation to emergency management inquiries. The Australian Bushfire and Natural Hazards Cooperative Research Centre has been exploring the idea of using restorative inquiries in the context of natural disasters. In 2016, Associate Professor Michael Eburn and Professor Stephen Dovers released a Discussion Paper entitled *Learning for Emergency Services - Looking for a new approach*.¹²¹ This outlines a number of options such as the no-blame model of aviation accidents and conducting restorative inquiries. This discussion paper describes what it sees a post-disaster restorative inquiry doing:

Following an emergency event those affected – people who have lost loved ones, property, economic activity, natural assets which carry an emotional attachment as well as responders and those thought responsible for the event (if anyone) – would after sufficient time, come together with a trained mediator/facilitator to hear each persons perspective on the event. 'The mediator's role is not to impose his or her interpretation or solution upon the parties..., but to encourage them to tell their stories, express their feelings, ask questions of each other, talk about the impact and implications ... and eventually come to an agreement ...' about what happened, why and how it happened, how the community might respond differently in future and allocate and accept responsibility for future planning and preparation.¹²²

A one-day workshop was held in Newcastle in early June 2018. Many of Australia's experienced emergency service inquiry directors discussed how restorative inquiries might be used to heal communities after a disaster, at the same time as working out what had happened with the future focussed intention of preventing harm recurring if and when similar circumstances arise. Roger Strickland described a process called a Facilitated Learning Analysis, which created a no-blame environment where everyone could tell their story and errors were seen as learning opportunities based on the 'Learning Review' concept developed by Ivan Pupulidy of the US Forest Service.¹²³ This process bore many of the characteristics of a restorative inquiry, and was similar to the model which hospitals are seeking to use in the investigation of unexpected patient outcomes in medicine. There was considerable enthusiasm among emergency managers to explore these options for the future.

5.4 Coronial Processes

The Council was approached in its second phase consultations by both the Coronial Reform Group (a group of mothers whose adult children had died and whose deaths were the subject of coronial inquiries) and by a number of others who had been involved in the coronial process, surrounding the loss of a relative. Its submission is reproduced as Appendix B.

The Council provided the families with material about restorative processes and, having considered much of this, the Coronial Reform Group developed a detailed submission about what they needed a process to look like. They saw that proposed reform of the coronial process provided an ideal opportunity to trial a restorative inquiry model for reform, using an engagement process with families who have experienced the existing system. They also saw that a more restorative coronial system might well be able to address some of their significant concerns. The principles set out in their submission, which they believed should guide the reform process were: participation, voice, validation, vindication, accountability and prevention, and that the work generally be guided by the aims of truth, justice and accountability.¹²⁴

The submission suggests that many of the problems of the current coronial approach – expense, delay, adversarial nature and cost effectiveness – may be able to be addressed by a restorative approach. The Council recommends that the Attorney-General trial a restorative process, involving the Coronial Reform Group and other family members with experience of the coronial system, as well as other representative stakeholders, from the very beginning. The overall task of the reform process would be to design a new more restorative approach to the coronial system in the ACT, to address concerns experienced by families and others under current arrangements.

Recommendation 13

The ACT Government, in consultation with the ACT Chief Magistrate, consider a trial of the use of a restorative form of response in coronial processes.

5.5 Education and Training

5.5.1 Current Efforts in the ACT

The Council approached the Education Director-General about the use of restorative approaches in schools in Canberra. The Council had become aware of its use in specific public and private schools, but it was not certain about the breadth of use across the ACT, so we asked for some advice. The ACT Education Directorate provided the following information about the current use of restorative approaches in Canberra public schools, and the Council thanks the Directorate for its advice that it is exploring further the opportunities for this approach, given the importance of relationships in school communities.

Relationships are at the heart of the educational experience. Schools that nurture a safe, inclusive school culture based on positive, trusting relationships create an environment in which all members of the school community can thrive. While restorative practices were initiated in the justice system, the person centred, compassionate and empowering nature of the approach makes it highly applicable for school communities.

Many schools in the ACT would consider they employ restorative methods to foster school cultures of inclusion and respect and use restorative practice in conflict situations to address concerns relating to student behaviour e.g. bullying.

The Education Directorate is currently exploring how restorative practices are being used in schools and how current initiatives align with restorative principles such as participation,

fairness, shared problem solving and values such as equity, respect and inclusion. It is apparent that Restorative Principles underpin many existing student wellbeing initiatives and there is potential to expand further to intentionally embed restorative practice principles in relevant policies, procedures and programs. Exploring how schools can be supported to effectively implement restorative practices is identified as a necessary part of this process.

In the ACT, restorative principles are evident in the *National Safe School Framework* and local policies and programs. The National Safe Schools Framework provides school communities with a vision, a set of guiding principles and the practical tools and resources that will help build a positive school culture. The vision is supported by guiding principles for safe, supportive and respectful teaching and learning communities. The Framework is aligned to the Australian Curriculum and the individual national, state and territory initiatives, policies and legislative frameworks currently in place to support students' safety and wellbeing.¹²⁵

5.5.2 Future Potential Developments

The Restorative City Conference conducted by the Canberra Restorative Community Network and Relationships Australia in February 2018 included a morning workshops by the school leadership from Hull, Estelle MacDonald and Joanne Faulkner, about the experience of introducing restorative approaches in the schools in Hull.¹²⁶ These models have also been used in Nova Scotia and New Zealand. There have been particularly promising outcomes in schools where economic disadvantage gives rise to complex social problems, and where children may have had educational difficulties or behavioural difficulties. In Hull, no child is suspended from school, and families are deeply connected into the school community. The Leeds experience of establishing a Child Friendly City also seeks to maximise connection to education as one of its main goals.

Recommendation 14

The ACT Government, including the Education Directorate explore options for expanding current restorative efforts across the whole school curriculum including developing relationship-based skills.

5.6 Other Areas of Government Responsibility Where Restorative Approaches Might Assist

5.6.1 Health and Community Care

The relational nature of health care and many community care services means that skills to establish strong, respectful relationships that build trust, as well as restorative ways of responding when things go wrong are integral. People in a community need to be aware of the requirements of those around them, who may be sick or in need of help. Checking on such people and/or offering assistance is part of being in relationship in a community. Hugh MacKay, in his most recent book *Australia Reimagined*, argues that the act of caring and recognising the need for care generates the same sort of virtuous cycle discussed earlier. 'When we belong to a community characterised by mutual care and respect, that experience will develop our capacity for compassion towards others.'¹²⁷

Using restorative values and principles where people are provided with health or community services could improve the quality of services. Using restorative processes when things go wrong, could also be consistent with best practice. Restorative principles in health and community care management, in inter-professional relationships and in the provision of care are all important in delivering the best health care possible .

5.6.2 Town and Service Planning

Concerns about an adversarial approach to planning decisions and failure to engage people in conversations and decisions were raised in submissions and consultations. Where people had concerns, they sometimes expressed the view that what they believed were their legitimate questions or concerns were seen as ‘not in my backyard’ prejudices. People felt that they needed to have good information and that it needed to be clear how their concerns were to be included in the decision-making. People often felt ambushed or kept in the dark, and this led to poor relations and community divisions, which might have been avoided by a slower, more engaged, restorative approach to decision-making.

The Government's efforts in ‘Have your say’ was seen as an important development, but people noted that keeping across everything that was being consulted upon was time-consuming, and still did not actually ensure that people were provided with information about changes that might impact on their lives. These concerns related not only to town planning decisions, but also to service and program planning decisions.

Adoption of restorative values and principles and recognition of relationships of trust and listening are likely to be beneficial for these kinds of planning processes.

5.7 Other Areas of Potential Relational Tension Where Restorative Approaches Might Assist.

5.7.1 Domestic Relationships

People have many relationships which are important to their well-being, and which may require the use of restorative practices. These can include relationships with family, friends and neighbours. Family can include, partners, parents and children, elders and others. There is a need to recognise the importance of these skills through school and adult education opportunities and to help people to develop these in the context of specific disputes.

5.7.2 Work Relationships

Similarly, positive work environments rely on good relationships and having a restorative approach when problems arise. An early resort to adversarial processes is likely to lead to further breakdowns of relationships and unhappy work environment. There is extensive evidence that such workplaces are less productive, and workers suffer from greater ill health through associated stress and trauma. Where a workplace wants to either establish a positive culture, or address a damaging one, the kind of restorative principles set out in our recommendations could foster a climate that will allow this to occur.

Chapter 6: Existing Foundations for Canberra Moving Towards a Restorative City

6.1 Introduction

Chapter 5 dealt with some other areas, beyond the focus areas discussed in Chapters 3 and 4, where efforts could be made by government or citizens, to move Canberra towards becoming a more restorative city. This final chapter outlines a number of areas, where government and citizens are already working to create a more restorative and relational Canberra.

The consultations and submissions drew attention to many existing people and organisations who purposefully pursue these principled relationships and actions. Recognising, promoting and strengthening these examples will help strengthen our community. Often these civil society groups only need co-operation with Government, either through the relevant minister or senior directorate staff, and for their work to be acknowledged and encouraged. In addition to this intangible support, there may be occasions requiring other practical supports that have minimal cost, such as venues to hold public discussions or administrative supports such as photocopying.

On other occasions, resources may be needed to help bring people to Canberra to speak or help train people. For example, the Attorney-General in last year's Budget, provided resources to progress the work of the Canberra Restorative Community Network that included the employment of a Government Administration/Liaison Officer to help support the Network. This network has more than 600 members across the community, and this support will facilitate learning and research into how existing restorative practices evident in the community can be improved and expanded. This grant coincided with a provision of funds to assist the Conflict Resolution Service to expand its work, to provide training for people to learn restorative approaches to conflict solving.

6.2 Government Services

6.2.1 The Restorative Justice Unit

The ACT's Restorative Justice Unit has been a key centre for the development of restorative justice in the legal system. The Unit holds much of the history of the first 25 years of restorative justice in the ACT within its corporate memory, as reflected in Appendix A to this Report.

As well as taking on the expanded legislative bases required of it over the past 2-3 years, the Unit has been formally involved in fostering wide public discussion of Canberra as a restorative city, since the first Restorative Communities Conference in 2015, as discussed in Appendix A. This work has included a series of workshops over 2016-2017, looking at the application of restorative practices across different aspects of vulnerable people's lives in Canberra. Workshops were well attended and covered areas such as the use of restorative practice in schools, health care, disability services, the criminal justice system and sexual offending, and how the lives of older people in Canberra can be improved through restorative practices. Transcripts of most of these workshops are available on the Canberra Restorative Community website¹²⁸. The findings from these inclusive participatory events have led to a number of restorative projects and initiatives that have benefited the ACT community.

6.3 Canberra Restorative Community Network and the International Learning Community

Canberra Restorative Community arose from the efforts of a number of citizens who had seen what was happening overseas in the use of restorative approaches. These people encouraged visits by members of the International Learning Community formed to learn from each other's experiences in restorative and relational principles. Importantly, they were advised by internationally renowned local academics at ANU's RegNet, especially Professors John and Valerie Braithwaite, and an international community of scholars.

The inaugural meeting of the Canberra Restorative Community Network was held in November 2015, with more than 70 people present.¹²⁹ The Network oversaw, with the Restorative Justice Unit, a series of presentations and discussions over the following 18 months (2016-2017) about the applicability of restorative practices.

The Canberra Restorative Community Network has a website¹³⁰ and an active Facebook page.¹³¹ The Network to date has operated with a volunteer convenor (Mary Ivec) and a small informal committee of individuals, who often have initiated their own projects.¹³² The ANU School of Regulation and Global Governance (RegNet), provides voluntary support to the Network, including helping organise public forums and presentations by overseas visitors and Aboriginal and Torres Strait Islander people.

With the support of one of its member organisations, Relationships Australia National Office, the Network held a workshop on 22-23 February 2018 titled *What is Canberra's potential as a restorative city?* The stated purposes of the Workshop were:

- > to raise awareness of the value and benefits of restorative practice approaches in Australia;
- > to progress Canberra's journey towards becoming a restorative city; and
- > to benefit from the opportunity to share the knowledge of leading international restorative practice experts.¹³³

International speakers gave presentations on how their cities had transformed communities into restorative communities, starting in schools,¹³⁴ in the children's service/child protection arena¹³⁵ and, in New Zealand, working with Maori in the context of social services and child protection.¹³⁶ There was also a presentation on the NSW Practice First initiative in child protection.¹³⁷

The second submission to the Council from Relationships Australia summarised the views expressed in a follow-up survey of the 115 people who attended the workshop.¹³⁸ Survey respondents almost unanimously supported Canberra's journey towards a restorative city. The Relationships Australia submission recorded the suggestions for the next steps for the shift towards Canberra becoming a restorative city, in the order that they were most often reported, in the following way:

- > commitment from the ACT government, such as trialling a restorative approach; acting on problems in child protection; supporting existing initiatives; training ACT government staff; and buy-in from ACT government directorates;
- > increase opportunities for information exchange and continue discussions around methodology, process and an action plan for engaging/lobbying government;
- > develop a catch phrase like 'Child-friendly' (Leeds) and common language and definitions for Canberra;
- > identify ways of bringing people together and increase community consultation, including involving culturally diverse and other vulnerable people in the community;
- > leadership, including workshops for leaders in all sectors, increasing buy-in from government and non-government leadership, identifying the right community champions and encouraging them to lead;

- > identify barriers to ACT public servants feeling able to act restoratively and develop strategies to remove them; and
- > seek commitment to linking up social services around school populations.

The submission also noted that 'more than 50% of respondents reported that they considered restorative practices could positively impact on a broad range of social issues, particularly child protection, justice, Indigenous affairs, disability and family violence'. While survey respondents were unsure about what changes to the law might be needed to assist Canberra to become a more restorative city, the Submission noted that individual comments centred around:

- > a framework that describes what is needed and the obligations that flow from this;
- > restorative practices should be included in commonwealth and state and territories legislation and there should be requirements for more mediated outcomes, increased accountability and transparency, and changes to incentives;
- > mandated independent conferences as a presumption in all legislation in the ACT where regulation of people and communities (justice, planning, HR, social services etc) by the Government occurs;
- > requirements for restorative practice in government funding agreements;
- > legislating for a less intrusive system that addresses equity of access, victim blaming and moves away from punitive practices to restorative;
- > revisions to the Children and Young People ACT 2008 to increase checks on the powers of delegates of the Director General and to ensure transparency and consistency in being responsive to the family as a whole, in practice; and
- > law makers should look at the aspects of the law restorative practice would impinge on: punishment, bail conditions, child removals, restorative practice in juvenile crime.

The Network and its members have continued to organise events about restorative practice issues for interested people and the public. The commitment of funds to support the work of the Network by the ACT Government is used for this purpose. Some of the funding is to create a position in the Justice and Community Safety Directorate to help further the Network's activities. The Network will then be in a position to develop, support and help progress more of the restorative initiatives arising in the community.

6.4 University of Canberra Collaborative Indigenous Research Initiative and Restorative Hospital Project

The University of Canberra (UC) Collaborative Indigenous Research Initiative has funded a project, titled 'Introducing restorative health practices to give voice, accountability and healing value for Aboriginal and Torres Strait Islander families/communities in hospitals'. This project involves a team of Indigenous and non-Indigenous researchers from a number of states and territories, local Ngunnawal leaders and other Aboriginal and Torres Strait Islander people based in Canberra, as well as Maori Elders from Whanganui and the Whanganui Health Board and hospital staff.

The project is built upon the understanding that the significant gap between the health outcomes of Indigenous and non-Indigenous people occurs in part because of a history of racism and cultural barriers where health services do not integrate an Aboriginal and Torres Strait Islander voice into the design and delivery or governance of health services. The then-forthcoming opening of the University of Canberra Hospital provided an ideal opportunity to look at better ways of doing this.

The Restorative Hospital project team began working with Indigenous people in Yarning Circles over many months, to explore barriers for Indigenous people to access or use current health services and systems, and what could make it easier for Indigenous men and women to use appropriate services when they needed them. After this first stage, a research team visited Whanganui Hospital and Health

Board in September 2017, to talk to staff and members of the Maori community, to see Restorative Health in practice, and to better understand how they transformed their hospital into a restorative hospital. Restorative Health has been able to develop better health outcomes for Maori people through, among other things, the use of Patient Navigators (called Haumoana) who are available to all patients and staff (Maori and non-Maori) 24 hours a day, 7 days a week.¹³⁹

Other outcomes to be completed as part of the Restorative Hospital Project are likely to benefit not only Aboriginal and Torres Strait Islander people, but all other users of the health care system, particularly those who are often marginalised in health care. Many of these are likely to be of benefit to all consumers and carers in generating a more consumer and carer focused health system and create a prototype for new ways of engaging with Indigenous and non-Indigenous consumers and carers. The outcomes of the project are also likely to assist the hospital in its accreditation processes. From 1 January 2019, the revised National Safety and Quality in Health Service Standards, which are used for accreditation and are required of all hospitals and health services who receive government funding, will require six new actions specific to Aboriginal and Torres Strait Islander people.¹⁴⁰ Many of the practical outcomes of the project will allow the University of Canberra Hospital to meet these requirements, and could provide some models for use in other hospitals in the ACT and throughout Australia.

A number of other important developments have already flowed from the participatory action research methodology of the Restorative Hospital Project.¹⁴¹ At the University of Canberra, one has been the use of Yarning Circles as a core part of a course on contemporary issues in Indigenous health. The Yarning Circles are a compulsory part of the course.¹⁴² Yarning Circles are co-facilitated by an Indigenous and non-Indigenous teacher, and are used to form a safe space, in which to develop relationships between the students, Indigenous and non-Indigenous, where they can discuss challenging content regarding Australian healthcare history and contemporary practice in relation to Aboriginal and Torres Strait Islander people. It encompasses the use of reflection and listening skills. The creation of respectful spaces, where they can listen to different views and learn, is modelled in the Yarning Circle method used, and these skills can be applied in their personal and professional lives.

6.5 Use of Peace Education Programs in ACT Corrections Facilities

The most recent Australian Bureau of Statistics Corrections data (in the June quarter 2018) shows that over the last three years, the average daily number of people in fulltime custody in the ACT has risen 37% to 504. This is double the rate of increase for Australia as a whole. The issue of imprisonment also came up in consultations with the Council with Aboriginal people and in discussions among Council members. Some of the issues identified were:

- > high rates of Aboriginal and Torres Strait Islander rates of imprisonment;¹⁴³
- > a lack of transitional support processes for prisoners leaving prison;
- > violence and anger as a consequence of what happens in prison;
- > higher rates of recidivism than in any other Australian jurisdiction;¹⁴⁴ and
- > linkages between prisoners, mental health, addiction health issues and the removal of children from families, particularly in the Aboriginal community.

Some members of the Canberra Restorative Community Network have taken a special interest in this area. There are proposals specifically related to Aboriginal and Torres Strait Islander people, to break the cycle of imprisonment as early as possible. University of Canberra PhD candidate and Aboriginal man Wayne Applebee has developed an intervention model called Circuit-breaker to achieve this. For Aboriginal and Torres Strait Islander people who have addiction health issues and have committed an offence, the United Ngunnawal Elders Council believes the Bush Healing Farm can provide an Aboriginal-led program to reduce addiction and reoffending, through among other things, cultural healing.

One action has been for volunteers to run a pilot Peace Education Program in the women's section of the prison. The Peace Education Program is a 10-week media-based program that helps people draw on their inner resources under 10 themes: Peace, Appreciation, Inner Strength, Self-Awareness, Clarity, Understanding, Dignity, Choice, Hope, and Contentment. Many of the elements that are taught about and thought about in the course are core elements of a restorative and relation approach. The program has been used successfully in prisons in many places, and the most recent evaluation of the program has strongly demonstrated its efficacy.¹⁴⁵

6.6 Sexual Assault on ACT University Campuses

At the request of 39 Australian universities, the Human Rights Commission conducted 'a national, independent survey of university students to gain greater insight into the nature, prevalence and reporting of sexual assault and sexual harassment at Australian universities'. The survey also looked the effectiveness of services and the policies that address these issues on campus.¹⁴⁶ The survey showed that 51% of all university students had been sexually harassed at least once in 2016 and that almost 7% of students had been sexually assaulted in 2015 or 2016.

The research also showed that the vast majority of students who were sexually assaulted or sexually harassed in 2015 and 2016 did not make a formal report or complaint to their university. There appeared to be structural and attitudinal barriers to making a complaint. Where students did report, they were often unhappy with the response of the university. The Human Rights Commission concluded that more work needed to be done to 'improve universities' response to sexual assault and sexual harassment ... [and] to increase the students' awareness of available responses'.¹⁴⁷

It is widely recognised that the usual ways of dealing with these matters – through formal complaint or the criminal justice system – often fail to meet the needs of the person assaulted or harassed. These approaches do little to change the behaviour or attitudes of those who caused the harm or the culture in which it occurs.

Restorative approaches have been used to tackle both the individual and systemic causes of sexual harassment on campus in Canada (the Dalhousie Dentistry School inquiry in Nova Scotia) and in the USA.¹⁴⁸ A report on the Dalhousie experience concluded the impact of the restorative process seems to have led to a shared understanding among participants and the taking of responsibility for the harms caused by the students, the faculty and the university.¹⁴⁹

The University of Canberra and the Australian National University are continuing to work on their responses to the Human Rights Commission's Report. Through the efforts of a number of students and former students who experienced sexual assault on university campuses in the ACT, restorative processes are being explored with the goal of changing the culture to reduce sexual harassment and assault and to better meet the needs of people assaulted or sexually harassed on campuses.

6.7 Training and Resources

6.7.1 Skills for Resolving Conflicts in a Restorative Manner

The ACT has rich community resources for people who want to deal with a specific conflict in a way that mends relationships. There are also a number of organisations that offer specific restorative skills training into the ACT from other jurisdictions.

One local example is the Conflict Resolution Service, which was inspired by the model of Community Justice Centres in NSW and commenced in 1988. The Service provides training on conflict resolution and mediation in the ACT. Its organisational Vision is 'A restorative Canberra built on relationships that

positively transform conflict.’ Its Mission is ‘to repair and strengthen relationships by preventing, managing and resolving conflict’.¹⁵⁰ The Service receives recurrent funding from the ACT Government through the Community Services Directorate, Community Service Program. At present, its training and use of restorative approaches is at a developmental stage.

In its submission to the Council, the Conflict Resolution Service noted that there is a strong need in the community ‘to equip people with ways of being able to manage conflict hurt and pain, and to pass these ways of being onto their children’. They used the expression ‘social first aid’ as a term for acting restoratively with each other when harm occurs. The submission noted the importance of alternative narratives, recognising that ‘it is difficult for people to operate simultaneously in an adversarial process and in cooperative problem solving’.

6.7.2 Circles of Support

Circles of Support are a tool to help build relationships around a person or a group of people, such as a family, who might be at risk of social isolation or need help at a specific time. These are made up of friends, family and others with whom the person might interact. It is a voluntary network of support built always with the person’s approval and involvement and meeting as determined by the person supported. A person can have several circles of support for different purposes. The model has been used with people at risk of social isolation and could be useful for many different people - young people, older people, vulnerable families, people transitioning from care or prison or other institutional situations.

Training on how to create Circles of Support for people with disabilities is available from time to time in Canberra, for example, through the Youth Coalition of the ACT.¹⁵¹ One course was run in April 2018 by Imagine More, based in Melbourne. There are also community-run programs, for example, through the YWCA.¹⁵²

6.7.3 Dialogue Training

There are opportunities to learn about dialogue, through deep listening and respectful conversations. These include community courses, such as The Art of Hosting¹⁵³ which is ‘an emerging set of practices for facilitating group conversations of all sizes, supported by principles that: maximize collective intelligence; welcome and listen to diverse viewpoints; maximize participation and civility; and transform conflict into creative cooperation.’ There is also a monthly meeting of the ANU Dialogue for people interested in learning more about dialogue skills.¹⁵⁴

6.8 Restorative Organisations

6.8.1 Relationships Australia

Relationships Australia, an active member of the Canberra Restorative community, has been conducting national surveys about people’s understanding of restorative practice every two years since 2015. Its first survey looked at restorative approaches to domestic violence.¹⁵⁵ The September 2017 survey looked at community understanding of and attitudes to restorative justice.¹⁵⁶

Relationships Australia works with their staff and others in a relational way, modelling the skills they are teaching and using with clients. They also run skills courses for members of the public, as well as counselling for couples and families,¹⁵⁷ all of which can help build better relationships.

Appendix A: Restorative Justice in Response to Criminal Conduct in the ACT

A.1 History before Legislation in 2004

Restorative approaches have been used in the ACT and in Australia over the past three decades, usually in the criminal justice context or to divert particularly young people from the criminal justice system.

In 1994 restorative justice practice was introduced to Canberra by ACT Policing through pre-court diversionary conferencing. This was part of a national shift in policing, particularly in relation to young offenders. The Australian Law Reform Commission noted in its 1997 report on children in the legal system that family group conferencing was increasingly being used by Australian states and territories to divert young offenders from the courts or as a sentencing option. The Commission noted that 'Conferences are a type of restorative justice – a means for the offender to accept responsibility and make amends to the victim'.¹⁵⁸ The Report noted the first Australian pilot of this kind started in 1991 in the NSW rural town of Wagga Wagga.¹⁵⁹ This initial model was based on the 1989 legislative model established in New Zealand under the *Children, Young Persons and Their Families Act 1989* (NZ).

The ACT Policing trial developed into a formal randomised research trial, with a comprehensive evaluation framework, managed by the ANU's Regulatory Institutions Network between 1995 and 2000. The methodology used police to determine cases, which were eligible for both court and conferencing, then the ANU team allocated the cases to one or the other stream. The researchers were blinded to the characteristics of the individual offender. The project became known as the Canberra Re-integrative Shaming Experiments¹⁶⁰ or RISE project. Data comparing standard court processes with a diversionary conference for four categories of offence was collected from the program between 1995 and 2000. The offences were:

- > drink driving over 0.8 Blood Alcohol Content (at any age);
- > juvenile property offending with personal victims (under 18 years);
- > juvenile shoplifting offences detected by shop security staff (under 18 years); and
- > youth violent offences (under 30 years).¹⁶¹

The 3 hypotheses which the RISE project tested were:

- > both offenders and victims would find conferences to be fairer than court;
- > benefits to victims will be greater in conferences than in court; and
- > there will be less repeat offending after a conference than after court.

The first two of these hypotheses were demonstrated in the results of the experiments, detailed in the project's Final Report.¹⁶² The results in relation to the last hypothesis are more complex and less clear. They are covered in a second report.¹⁶³ Recidivism rates were lowest with those convicted of youth violent offences and subject to a restorative justice conference, rather than court. There was no difference in recidivism rates between those who attended conferences vs court in the stealing and shoplifting groups. There was small increase in the rate of repeat offence in drink drivers who went to conference rather than court.

A.2 Preparation for Legislation

Following the preliminary analysis of the program, the ACT Labor Party's Election Platform in 2001 proposed that:

Labor will examine how the scheme could be extended, and will look at other innovative schemes that could keep young people out of trouble and out of the courts.¹⁶⁴

The Labor Party formed government in October 2001. A review of existing restorative justice arrangements was proposed in the *ACT Criminal Justice System Strategic Plan 2002-2005*, released by the new Government. This recommended that 'within the framework of the Sentencing Review' a review of 'diversionary conferencing and restorative justice measures' be undertaken.¹⁶⁵

The Sentencing Review Committee formed a Restorative Justice Sub-committee that released an Issues Paper in 2003.¹⁶⁶ The Sub-committee unanimously supported a legislative framework for the extended system. The model was to allow access to restorative justice 'from the initial point of arrest through to imprisonment and parole', with multiple referring agencies, including the police, the Director of Public Prosecution, the Courts at multiple stages, Corrective or Youth Services, or in the course of a community-based sentence. The Issues Paper put forward four administrative options in relation to the legislative scheme, and the Government chose to implement a separate Act to expand the restorative justice program in the ACT, under the administration of a centralised administrative scheme through establishing the Restorative Justice Unit in the Justice and Community Safety Directorate.¹⁶⁷ This Unit continues to assess the suitability of cases referred to it by any of the agencies involved in the criminal justice process.

When it was introduced to the Assembly, by the then-Attorney General Jon Stanhope, the explanatory statement for the *Crimes (Restorative Justice) Act 2004 (ACT)* stated that:

The key tool used in the government's Bill to achieve the objectives of restorative justice is a facilitated conference between the victim and the offender to discuss the offence, the impact of the offence and what can be done to repair the harm to the victim, the community, or both.¹⁶⁸

The circumstances where this process could be used have evolved over the past 12 years. While the legislation picked up the multi-referrer model of the Issues Paper, the applicability of the scheme to different offences was more limited in the Act as passed in 2004. Its operation initially only covered young offenders 10-18 years old),¹⁶⁹ in relation to less serious offences. 'Less serious offences' were defined under section 12 as ones which were not defined as 'serious offences', and excluded all domestic violence cases. 'Serious offences' were defined as property or money offences where the maximum term of imprisonment exceeded 14 years and in all other offences, where it exceeded 10 years. The original Act specifically excluded less serious sexual offences and any domestic violence offences and proposed that extensions beyond the first tranche commence at a later date determined by the Government (the 'phase 2 application day').¹⁷⁰

In 2015, the ACT Legislative Assembly's Standing Committee on Justice and Community Safety¹⁷¹ recommended, among other things, that the ACT restorative justice scheme be extended by the Attorney-General proclaiming a 'phase 2 application day'. However, the Committee recommended that the expansion be stepped,¹⁷² with the first steps being to extend the program to serious offences by young offenders and less serious offences by adult offenders. The intention to pursue this extension was announced on 16 July 2015, with a corresponding expansion of funding for the Restorative Justice Unit. The Attorney-General Simon Corbell announced a four year, two stage expansion, which was somewhat broader than the proposal of the Standing Committee:

The expansion of the Restorative Justice Unit to include adults makes sense considering the positive impact the program has consistently produced dealing with juveniles. ...Phase 2 creates opportunities for more victims in the ACT to participate in restorative programs,

especially those in vulnerable groups such as women, those with a disability and Aboriginal and Torres Strait Islanders. The program will be expanded to adults and more serious crimes in 2016 and recruitment and training will also take place in order to expand the program further to manage domestic violence and sexual offences from 2018.¹⁷³

The *Crimes (Sentencing and Restorative Justice) Amendment Bill 2015* to implement these changes was presented by the Attorney-General to the Assembly on 19 November 2015,¹⁷⁴ and was passed on 11 February 2016.¹⁷⁵ The passage of the legislation occurred the day after the Restorative Justice motion¹⁷⁶ was moved by the Government and unanimously supported by all members. The motion, which was moved by Mary Porter MLA stated:

That this Assembly:

1. notes:
 - a. the long and fruitful history of restorative approaches in Canberra, starting with ACT Policing-led conferencing in the 1990s and including the ground-breaking RISE (Re-Integrative Shaming Experiments) which led to a global proliferation of restorative justice programs and research;
 - b. the success of the ACT Government delivering phase one of the restorative justice scheme which enabled the Restorative Justice Unit to manage referrals for young people who have committed less serious crimes;
 - c. more than a decade of valuable service from the Restorative Justice Unit to people affected by crime in the ACT community;
 - d. the funding commitment of \$2.1 million over four years for phase two which will allow the Restorative Justice Unit to manage referrals for young people and adults, including for serious matters;
 - e. the ongoing efforts of the ACT Government to expand restorative justice into the ACT community as a viable alternative to traditional responses to conflict and harmful behaviour;
 - f. the ongoing efforts of ACT schools adopting restorative practices to promote effective and peaceful conflict resolution in these primary sites of socialisation; and
 - g. the success of the Restorative Communities Conference in July 2015, and the well attended inaugural Restorative Communities Network meeting in November 2015, which demonstrated an international and local enthusiasm to see Canberra continue as a leading innovator of restorative practices; and
2. calls on the ACT Government to work towards the declaration of Canberra as a restorative city, which will confirm its commitment to exploring and implementing creative solutions to shared problems using restorative processes and continue the ACT's vision for safer, more connected communities.¹⁷⁷

In supporting this motion on 10 February 2016, the then Attorney-General expressed his vision for something that went beyond the justice system:

But beyond the justice system there is potential for restorative practices to expand also. Restorative practice can be defined as a whole community philosophy, an active philosophy, which places respectful relationships at the heart of justice, education and community services. It builds and maintains inclusive networks of positive relationships among community members and promotes mutual accountability and shared responsibility. ... The outcomes we expect to see for a restorative communities approach include increased trust, inclusiveness, better communication, less crime, more victim-initiated and community-led approaches, improvements in relationships, reduced levels of exclusion, raised attainments, fewer family breakdowns and less workplace conflict. Taking a restorative approach can also promote greater social cohesion, greater understanding and respect.¹⁷⁸

The introduction of the legislative amendments to the restorative justice scheme the next day was described by one of the members of the Assembly as ‘another step towards a restorative city’.¹⁷⁹ Part 4 of the Crimes (Sentencing and Restorative Justice) Amendment Bill 2015 included the amendments to the *Crimes (Restorative Justice) Act 2004*.

The phase 2 provisions were amended by substitution of new provisions covering the application of the Act under sections 14 and 15. From the day after notification (24 February 2016), the Restorative Justice Unit could include matters which involved serious and less serious offences by adult or young offenders. Domestic violence offences and sexual offences remain covered by the legislation. Phase 3 legislation was passed on 18 September, 2018 in a package of other amendments detailed below, and will commence on 1 November 2018.

A.3 Provisions of the *Crimes (Restorative Justice) Act 2004*

This description of the provisions of the Act relate to the Act as amended to February 2017. Amendments were passed on 18 September 2018, but the provisions were awaiting notification at the date of completion of this Report, so they are set out separately in the next section of this Appendix.

The objects of the Act are set out in section 6:

- a. to enhance the rights of victims of offences by providing restorative justice as a way of empowering victims to make decisions about how to repair the harm done by offences;
- b. to set up a system of restorative justice that brings together victims, offenders and their personal supporters in a carefully managed, safe environment;
- c. to ensure that the interests of victims of offences are given high priority in the administration of restorative justice under this Act;
- d. to enable access to restorative justice at every stage of the criminal justice process without substituting for the criminal justice system or changing the normal process of criminal justice;
- e. to enable agencies that have a role in the criminal justice system to refer offences for restorative justice.

Where the objects and other provisions refer to ‘offences’, section 12 notes that it includes alleged offences that have not been tried or proven. However, in the case of serious offences section 15 requires that the offender have been charged and either pleaded guilty or having been found guilty of the offence to be eligible to participate in restorative justice. In all situations, offences which are sexual offences or domestic violence offences, are excluded from coverage until the phase 3 date is specified.

To participate in a restorative justice conference, a victim or their immediate family members must be at least 10 years of age and be capable of agreeing to take part in restorative justice (section 17). Immediate family members include parents, siblings, guardians and foster parents (section 17(4)). There are also eligibility requirements on offenders. The first is that the offender must accept responsibility for commission of the offence, with similar age and capability requirements (section 19). In both cases, they must agree to take part. Section 20 makes it clear that an offender may accept responsibility for an offence without pleading guilty.

Section 7 provides that a referring entity may consider whether it is appropriate to refer an offence for restorative justice before considering any other action. Referrals are covered by Part 6 of the Act, and ‘referring entities’ are listed in Table 22. These include:

- > Police officers, including the Chief Police Officer;
- > Various Directors-General of a number of government directorates, relating to young offenders, restorative justice and corrections;
- > Victims of Crime Commissioner (since 2016 only);

- > Director of Public Prosecutions;
- > Magistrates Court;
- > Children's Court;
- > Supreme Court; and
- > Sentence Administration Board

Once a referring entity refers a suitable offender who had committed an eligible offence and there is an eligible victim, then the Director-General with responsibility for restorative justice assesses whether the matter is suitable for a restorative conference under Part 7. This is generally done through an exercise of delegated authority by the Restorative Justice Unit. This is a 3 part process, set out in section 32(2). – considering the general considerations in section 33; the suitability of an eligible victim or parent under sections 34 and 35; and a suitable offender under section 36.

Section 33(1) requires the following considerations to be taken into account when determining suitability of an offence for restorative justice:

- a. any government or administrative policy relating to the treatment of offences of the relevant kind;
- b. the nature of the offence, including the level of harm caused by or violence involved in its commission or alleged commission;
- c. the appropriateness of restorative justice at the current stage of the criminal justice process in relation to the offence;
- d. any potential power imbalance between the people who are to take part in restorative justice for the offence;
- e. the physical and psychological safety of anyone who is to take part in restorative justice for the offence.

In determining the suitability of victims and parents under sections 34 and 35, the decision-maker must consider: the victim's (and parent's) personal characteristics that might affect the outcome of restorative justice; their motivations for taking part in restorative justice; and the impact of the offence as perceived by the victim (and the parent). Where a parent is involved, the decision-maker must also look at the relationship between the parent and the child. In determining the suitability of offenders under section 36, the decision-maker must consider the extent (if any) of the offender's contrition or remorse, the offender's personal characteristics that might affect the outcome of restorative justice, their motivation for taking part and the impact of the offence as perceived by the offender. Personal characteristics are defined for the Part in section 29.

Participation of any party is and remains at all stages voluntary, and there is an obligation both to explain the process (section 32A) and seek written consent from both victims and offenders to participate (section 32). Once a suitability decision is made by the Director-General, a convenor of a restorative justice conference is appointed. The provisions covering conferences and agreements are in Part 8 of the Act. The qualifications for a convenor is set out in section 40 and what they are to do is set out in detail in section 41:

41. 1) The convenor of a restorative justice conference, subject to this part, may do anything necessary or desirable to be done in relation to calling the conference, including the following:
- a. consulting a person with knowledge of or experience in a particular culture;
 - b. inviting a person to take part in the conference;
 - c. deciding whether the conference should require the participants to meet in person, or to communicate in any other way;
 - d. fixing a time for the conference, and for any continuation of the conference;
 - e. fixing a venue for the conference, if the participants are to meet in person;
 - f. identifying the issues that should be addressed at the conference;
 - g. facilitating the conference;
 - h. warning participants about the potentially incriminating nature of any statement to be made, or being made, at the conference;
 - i. facilitating an agreement between the participants;
 - j. ensuring that this Act is complied with in relation to the conference and any agreement;
 - k. any other function required by regulation.
41. (2) The convenor must carry out the functions mentioned in subsection (1) in a way that ensures that no-one's safety, rights or dignity is compromised.

The requirements under section 41(2) establish a framework of respect, as well as providing an environment where power relationships are equalised as much as possible (thus honouring the underlying principal that characterises restorative approaches, sometimes called 'non-domination'.

Under section 42, participants in a conference must include a victim, parent or an approved substitute participant and the offender. Substitute participants are defined in section 43. Others may also be invited by the convenor under section 44, such as an informant police officer; a parent, family member or domestic partner of the victim or offender, anyone else that the victim or offender considers can provide emotional or practical support for them; and anyone that the convenor considers would help to promote the objects of the Act. Under section 45 there is a detailed explanation required to be given by the convenor to participants before the conference begins 'in language that can be readily understood'. There is also a range of ways that the conference can occur to best facilitate interaction between the participants under section 46. The Act provides a non-exhaustive list of examples under this section:

- > Face-to-face meeting;
- > Exchange of written or emailed statements between participants;
- > Exchange of pre-recorded videos between participants;
- > Teleconferencing; and
- > Videoconferencing.

Under section 47, a conference may be discontinued either before it occurs or during the process, if the convenor determines that 'there is no significant prospect of promoting the objects of the Act' by continuing or holding the conference.

Once a conference is concluded, a convenor must report back to the referring entity, on the outcomes of the conference under section 48. The convenor must report on details of the conference and when it ended, as well as indicate whether a restorative justice agreement was entered into. Division 8.4 relates to restorative justice agreements, which must 'include measures intended to repair the harm caused by the

offence' (section 51(1)) and must be fair and likely to be able to be carried out (section 51(3)). Section 51(2) states that an agreement may include 1 or more of the following:

- a. an apology by the offender to any victim or parent of a victim;
- b. a plan to address the offending behaviour of the offender;
- c. a work plan to be carried out by the offender for the benefit of any victim or parent of a victim;
- d. a work plan to be carried out by the offender for the benefit of the community or a part of the community;
- e. financial reparation to be paid by the offender to any victim or parent of a victim;
- f. anything else that each required participant and substitute participant in the conference agree would help repair the harm caused by the offence.

Any agreed action must not be unlawful, require the detention of an offender, be degrading or humiliating of the offender or anyone else or cause distress to the offender or anyone else (section 51(4)). The agreement must also last for no longer than 6 months from the starting date as set out in section 51(5). The agreement must be in writing and signed by each required participant (section 52) and the convenor must explain the effect of the agreement before such an agreement is signed (section 53). Notices of the restorative justice agreement are given to each required participant and the referring entity.

Division 8.5 deals with monitoring compliance with such agreements. This is the duty of the Director-General with restorative justice responsibilities. If there is non-compliance, the Director-General must report this to the referring entity, and if there is full or substantial compliance this must also be reported to the referring entity (section 57). Division 8.6 deals with how and when statements made at restorative justice conferences can be used as evidence. Part 9 covers the administration of the scheme, and includes information about information-sharing, secrecy and reporting requirements. Part 10 relates to the exercise of delegated functions, approved forms and the making of regulations.

A.4 Amendments passed on 18 September 2018

The scheme has generally been seen as a significant success.¹⁸⁰ However, there have been some limitations that have become apparent and have been addressed by the amending legislation, as well as providing the enabling provision for Stage 3. The provisions of the amending Act the *Crimes (Restorative Justice) Amendment Act 2018* are due to commence on 1 October 2018 (section 2 – commencement). The Scrutiny of Bills Report summarised the purposes of this Act as follows:

This Bill will amend the Crimes (Restorative Justice) Act 2004 to improve access to restorative justice in the Territory by: reducing the administrative burdens involved with referring a matter to a restorative justice process; making it possible to refer a matter to be considered for restorative justice without the need for the offender to be involved at the point of referral; making it easier for participants with physical limitations to indicate consent; reducing the threshold for young offenders of needing to take responsibility for their offences; and the requirements involved with reporting to the court.¹⁸¹

The Explanatory Statement for the passage of the Bill includes a long section on the Human Rights implications of the legislation.

Appendix B: Coronial Reform

Group submission

SUBMISSION FROM THE CORONIAL REFORM GROUP TO THE ACT LAW REFORM ADVISORY COUNCIL'S RESTORATIVE PRACTICES INQUIRY (2016/619)

1. BACKGROUND TO THE CORONIAL REFORM GROUP

The Coronial Reform Group (CRG) was established in the ACT in 2016. Our members are people from bereaved families who have been involved in coronial processes in the ACT. The aim of the group is to advocate for improved coronial processes across Australia to ensure the families and/or carers of those who have lost their lives can have an equal voice in the coronial process. We see reform as essential to ensure systemic failings can be identified and acted on in a timely manner so lives can be saved.

2. WHY CORONIAL REFORM IN THE ACT IS REQUIRED

The ACT *Coroners Act 1997* holds that an inquest into a person's death must recognise the interests of the person's immediate family to have all reasonable questions about the circumstances of the person's death answered along with the right to be kept informed of important developments throughout the inquest.

The Act also maintains the nature of the Coroner's Court is to be inquisitorial and non-adversarial in nature and that coronial findings should protect public health and safety by reducing the risk of death. There is a clear public expectation that the work of the Coroner's Court in identifying matters of public safety should be done in a timely manner.

We do not see that the Coroner's Court is meeting the above stated objectives of the Act and see that this calls into question the very capacity of the Court.

As Ian Freckelton has noted, in an article titled 'Minimising the Counter-Therapeutic Effects of Coronial Investigations: In Search of Balance' and published in the QUT Law Review:

It has become apparent that disenfranchisement from the (coronial) process by inadequate communication from the court, by excessive inhibitions on providing information to a court, by lack of legal representation, and by delays and erroneous or unclear findings are experienced as toxic by many family members. Similarly, a failure to respect cultural and religious sensibilities and a propensity to prioritise throughput and resolution of cases over acknowledgment of the sensitive and individual circumstances of a death can arrest and distort grief, giving a fillip to anger and a propensity to make accusations and allegations, some of which may be based more in suspicion than in fact. Such experiences can disillusion family members, causing them to doubt the authenticity of the coroner's role and the rigour, thoroughness and independence of a coronial inquiry.

3. WHAT IS RESTORATIVE PRACTICE?

Restorative justice is a community-based response to crime that aims to hold offenders to account for their offending and, as far as possible, repair the harm they've done to the victim and the community. Participation in restorative justice is voluntary and centres on an independently facilitated meeting where the offence and its effects are talked about, which can, in itself, be restorative for the victim/s. The process also involves reaching agreements as to the agreed actions that the offender/s will undertake to repair or reduce the harm done.

The effectiveness of restorative justice processes has led to restorative approaches being applied in contexts outside of criminal justice. Restorative approaches bring those harmed in a range of settings together with those responsible for the harm – normally in face-to-face meetings. Being in communication enables everyone affected by a particular incident or circumstance to play a part in repairing the harm and finding a positive way forward.

Restorative approaches acknowledge that relationships are at the heart of all our dealings with each other and are a powerful way of addressing not only the material and physical harms but the social, psychological and relational harms that have occurred as well.

Restorative approaches can only be accomplished through cooperative processes that include all those affected in transparent and equitable ways that seek to develop shared and agreed understandings and an acceptance of responsibility for harms done and the consequences of those harms.

The success of restorative approaches is measured by how much the harm done to the relationships of those involved has been repaired and how well any future harms have been prevented.

4. THE ARGUMENT FOR EXPLORING OPTIONS FOR CORONIAL REFORM THROUGH RESTORATIVE PRACTICE

The ACT Legislative Assembly has supported the concept of Canberra moving to become a restorative city. CRG believes coronial reform should be investigated as a possible field for restorative practices for the following reasons:

- The process is currently ineffective, expensive for all parties involved and extremely time consuming. (Jack Waterford in his article in *The Canberra Times* requests *a more efficient system premised on producing answers with a few months of the death*, *The Canberra Times*, 18 May 2018).
- The process is unnecessarily adversarial. It does not provide a real opportunity for open discussion about what has happened in relation to a death. In many cases lengthy, expensive legal processes could be avoided. The focus for most families is to find out what happened and to ensure that the same sequence of events does not happen to someone else. Families generally want to see that when there have been systemic failings that those failings are acknowledged and that change is implemented in a timely manner. Most families do not wish to pursue litigious action, however the current adversarial nature of the coronial process either forces them into such a process or means they simply are not able to participate.
- Currently there is an engaged, articulate and vocal community group in the ACT who have ‘lived experience’ of the coronial system and its impact and are prepared to share their expertise and work with relevant parties to investigate if restorative practice might provide some solutions..
- There is considerable vocal community discontent with the process (See *Inquests are wasting our time*, *The Canberra Times*, 18 May 2018. Jack Waterford talks about coronial inquests as “a very unimpressive advertisement for the Canberra justice system”).
- The process does not achieve what it sets out to do. It is not an effective or cost effective way to identify matters of public safety in a timely manner.
- The current process is not restorative. Families and friends of the deceased are often re-traumatised by the legal processes and the lack of consultation with families.
- Bereaved families do not have adequate opportunity to tell how the death of their loved one has impacted on them.

- The coronial process appears to be very one-sided. The coroner can decide not to make adverse comments about witnesses but the deceased person's reputation is not always valued and families have no recourse to correct untrue, distressing and judgmental information presented in court, which then remains on the public record.
- Restorative justice processes have been demonstrated to be an effective means to resolve other somewhat similar processes overseas. (Prof Jennifer Llewellyn from Dalhousie University in Nova Scotia recently spoke in Canberra about a successful restorative process relating to a death in custody).
- The current process may be breaching the ACT Human Rights ACT.
- Negative experiences of coronial processes can be understood as an expression of unmet justice needs of the families involved and the broader community.
- Recent cost benefit analyses conducted by University of Canberra academics Emeritus Professor Anne Daly and Greg Barrett have identified that restorative approaches deliver significant benefits that far exceed their costs.

A 2013 paper by the Federation of Community Legal Centres Victoria revisited the need for coronial reform in Australia. It identified that despite the therapeutic ideals of coronial frameworks, for many families and communities the experience of the process was 'neither fair nor healing'.

The Centre for Innovative Law at RMIT has noted that:

- Restorative justice conferencing should not prohibit parties from accessing formal rights of appeal and review. Restorative justice conferences can complement appeal and review processes. However, the introduction and timing of such conferences would have to be factored into any decisions regarding how long appeal rights should be observed.
- Restorative justice conferences cannot take the place of a coronial investigation or inquest, or substitute formal appeal and review processes. However, conferences can complement coronial processes to enable outcomes that better respond to the needs of all parties, including non-family members. The availability of an alternative, complementary forum may also help to reduce appeals, preserving the finality of coronial findings and improving efficiency, while serving to protect the integrity of the conventional coronial processes, functions and purposes.
- Restorative justice researchers have established a framework for identifying needs relevant to victims' sense of justice. While this framework originated in research about the needs and interests of victims of criminal offending in the context of criminal justice processes, it provides a good model for understanding the needs and interests of participants in other justice processes, including families involved in coronial processes. Researchers have identified that those involved in justice processes often have unmet 'justice needs'. 'Justice needs' have been defined to include a need for 'participation, voice, validation, vindication, and accountability'. Restorative justice provides a useful framework for identifying the needs of families.

The table below drawn from the work of the Centre for Innovative Law at RMIT describes negative experiences families have experienced which arise from justice needs, which have not been met by the coronial process.

Coronial system processes that contribute to negative experiences for families	Justice needs/interests that, if met, would improve the experience of families..
<ul style="list-style-type: none"> - Formality of proceedings - Processes that exclude participation - Delay between the time of death and a coroner's findings - Backlog of cases and resource limitations - Formality of communication from the court: lack of sensitivity and compassion - Lack of understanding about what to expect from the proceedings - Lack of information and preparation prior to the inquest - Limited opportunity to contribute to decisions, such as whether the deceased's name is used in the coroner's findings - Conduct of the inquest: lack of confidentiality and sympathy - Lack of clarity about the role and function of the coroner and other personnel - Lack of regular follow-ups with the court 	Participation
<ul style="list-style-type: none"> - Barriers to having a voice in proceedings - Lack of knowledge about legal rights and the right to representation - Lack of access to free legal representation 	Voice
<ul style="list-style-type: none"> - Lack of opportunity to tell their story - Lack of acknowledgment of their loss - Lack of adequate support services - Funding and access to counselling services - Failure of the court to accommodate cultural and spiritual sensibilities - Carrying out of autopsies in cases where there is no suspicious circumstances - Inability to view or touch the body while it is in the coronial jurisdiction 	Validation
<ul style="list-style-type: none"> - Lack of resolution from inquest findings - Inadequate case investigation or inability to have case investigated by coroner - Unanswered questions and lack of explanation - Inability to say how the death has affected them - Feeling that certain parties have not been made accountable 	Vindication
<ul style="list-style-type: none"> - Steps not taken to ensure similar event will not happen again - Inability to see how recommendations of the court are being implemented and monitored - Failure of coronial decisions to address systemic issues 	Accountability / Prevention

A restorative process to deliver coronial reform should deliver the following to families and other community stakeholders	Justice needs or /interests
<ul style="list-style-type: none"> • The engagement and involvement of facilitator/s and independent experts should be done in consultation and with the clear and informed consent of the families and other stakeholders to the process. • An inclusive and welcoming process that recognises and seeks the knowledge and experience of families and carers in achieving reform that meets the justice needs of all involved should be implemented. • Respectful, sensitive and compassionate communication that acknowledges the harms that the current coronial process has had for families and carers. • Clear agreement with families and carers as to how the process for determining coronial reform will be undertaken 	Participation
<ul style="list-style-type: none"> • Opportunity to contribute to all decisions, relating to coronial reform. • Resources should be provided to enable families, carers and other poorly resourced stakeholders to participate in the restorative process to deliver coronial reform. 	Voice
<ul style="list-style-type: none"> • Opportunity to tell their story of the coronial process if they wish • Acknowledgment of the harms experienced by families and carers of their experience of previous coronial processes. • Access to support services including legal and counselling services • Opportunity to identify cultural and spiritual sensibilities missing from the coronial process as it currently operates 	Validation
<ul style="list-style-type: none"> • Opportunity to explore the consequences of the lack of resolution from inquest findings • Opportunity to explore options for restorative processes when the matter is not investigated by coroner • Opportunity to explore the consequences of unanswered questions and lack of explanation from coronial processes • Opportunity to explore the importance of saying how the death has affected them • Opportunity to explore the consequences of feeling that certain parties have not been made accountable through the coronial process as it currently operates. 	Vindication
<ul style="list-style-type: none"> • How to ensure steps are taken to ensure similar event will not happen again • How to ensure coronial recommendations are being implemented and monitored • How to ensure coronial decisions address systemic issues 	Accountability / Prevention

5. CRG's KEY ISSUES FOR CORONIAL REFORM IN THE ACT

In the table below, we outline our groups key concerns with the ACT coronial process. We reflect on possible options for reform and highlight issues that could find resolution through restorative practice.

ISSUE	COMMENTS	SUGGESTED REFORM
a) Families need to be supported and guided through the coronial process and its aftermath.	<p>Counsel Assisting the Coroner's role is to assist the coroner, not the family. In our experience this person is usually appointed just before the inquest so is not on hand to support and guide the family through the inquest process and its aftermath.</p> <p>Counselling services do not provide guidance or advice through legal procedures and the coronial process overall. They are often short term and do not assist families to navigate the process nor its impacts.</p>	<p>A family liaison person, with a background in the coronial process and bereavement support, needs to be available to support the family from soon after the death, to after the implementation (or otherwise) of the recommendations arising from the inquest.</p> <p>A restorative approach could support this.</p>
b) Unacceptable time gap between the death and the coronial.	<p>Families can wait for 3 years or more, for a coronial inquest to be held. This is unacceptable. Families are left in limbo, and mostly in the dark about where the investigation is up to. Also witnesses often say they cannot remember what happened and documents are lost after such a lengthy delay. Any action arising from the inquest does not occur in a timely manner, putting more lives at risk. This is particularly important in regards to matters of public safety.</p>	<p>A dedicated coroner needs to be appointed in the ACT which should shorten wait times for coronial inquests. Coronial inquests also need to be given a higher priority.</p> <p>Round table restorative discussions could be held prior to the commencement of formal coronial processes to determine if a particular case needs to go through a formal coronial inquest.</p>
c) Prohibitive cost of coronial inquests for families	<p>For families to be fairly represented at coronial inquests in the ACT they need to get independent legal representation. The process is completely new for most families, often adversarial, certainly intimidating and time consuming. Written documents need to be</p>	<p>The ACT Government needs to fully fund the costs of independent legal representation for those involved in coronial inquests.</p> <p><i>Funding needs to be provided at a level that is consistent with the level of legal representation accorded to government and other</i></p>

	<p>produced, medical records often up to 3,000 pages need to be read and understood and often complicated family stories/ opinions need to be clearly presented in court. The usual cost from our experience is \$30,000 and up.</p> <p>Many families feel that the onus falls primarily on them to ‘come up with evidence’, produce documents, find witnesses, make the case and follow the process through.</p>	<p><i>institutional parties.</i> (ref p.70 <i>Saving Lives by Joining Up Justice</i>, March 2013, Australian Inquest Alliance).</p> <p>Restorative practices should explore alternatives to achieve the key objectives of the Coroner’s ACT whilst defraying costs for all involved.</p>
d) The coroner needs to have the power to investigate cases fully. At present he/she only can look at events ‘proximate’ to the death.	Frequently this means that the full story is not investigated.	Amend the ACT Coroner’s Act to remove this restriction.
e) There needs to be more pressure on the government to act on coronial recommendations.	Coroners in the ACT are very reluctant to make recommendations. When they do, they are often not implemented and no explanations are provided to families or the community about why this decision was taken.	<p>Change to ACT Coroners ACT required and current practice.</p> <p>When recommendations are not accepted by the minister, information explaining this decision should be formally provided by the government to all parties involved and should be publicly available.</p> <p>When recommendations are approved, families/ interested parties should be regularly informed of the progress of implementation.</p> <p><i>Families and Australian communities need to see the preventative system actually working, and so must be kept informed about what recommendations have been made, how those recommendations are being implemented and how implementation will be monitored.</i> (p21. <i>Saving Lives by Joining Up Justice</i>. March 2013, Australian Inquest Alliance).</p>

<p>f) Factually incorrect information is sometimes included in coronial findings in the ACT. That is damaging or distressing to families and results in errors being published in the local media and through other channels.</p>	<p>The Coroners ACT 1997 says <i>55.1 A coroner must not include in a finding or report under this Act (including an annual report) a comment adverse to a person identifiable from the finding or report unless the coroner has, making the finding or report, taken all reasonable steps to give to the person a copy of the proposed comment and a written notice advising the person that, within a specified period (being not more than 28 days and not less than 14 days after the date of the notice), the person may—</i></p> <p><i>(a) make a submission to the coroner in relation to the proposed comment; or</i></p> <p><i>(b) give to the coroner a written statement in relation to it.</i></p> <p>Families have no similar opportunity to comment on incorrect information that will be published in coronial findings. In the ACT there is no right to appeal to findings other than going to the Supreme Court. This situation is inequitable and breaches Australia’s international treaty arrangements and the ACT Human Rights ACT 2004.</p>	<p>Families need to be provided with the opportunity to comment on / correct inaccuracies in coronial findings before they are published.</p> <p>A restorative approach could support this.</p> <p>Families/interested parties should have the right to appeal against inaccuracies in the coronial findings without needing to go to the Supreme Court.</p> <p>A restorative approach could support this.</p> <p>There should be a formal process by which families/other interested parties have the right to make a formal complaint about a coroner.</p>
<p>g) Opportunities for real systemic change are lost when a coroner is reluctant (unable?) to make adverse comments against individual professionals and government systems when there is clearly evidence that there are issues of public safety.</p> <p>It seems that the same concerns do not apply when making adverse comments about the deceased person.</p>	<p>It is evident from the coronial findings in some instances that there is an unwillingness to make adverse comments about the practices of government agencies and the staff working in them. Teams of lawyers work to shield government agencies from censure.</p> <p>The ACT Health Directorate and other agencies are only mandated to respond to the formal recommendations. Contributing factors to the death identified during the</p>	<p>The adversarial system needs to be dispensed with. We need to move to a more open and flexible process with all parties working together to see what changes need to be implemented to avoid further deaths.</p> <p>A restorative approach could support this.</p> <p>In the UK many coronial inquests are now conducted in a ‘round table’ environment not a traditional court room setting.</p> <p>A process should be established</p>

	<p>inquest are rarely addressed and valuable information that may prevent further loss of life is missed.</p> <p>Family members who have died are at times dehumanised in the coronial process and there is a culture of blame the victim rather than looking at how to improve practices and systems to prevent further deaths. This lack of empathy causes further grief to families.</p>	<p>whereby ‘contributing factors’ arising during coronial inquests are seriously considered and acted upon (i.e. not just formal recommendations).</p> <p>A restorative approach could support this.</p> <p>NSW Coronial findings/reports are documented in a more considerate and respectful way. At the beginning of the findings the deceased is ‘introduced’ so there is some understanding of the background and life of the person who has died. The ACT Coronial system should adopt a similar approach.</p> <p>A restorative approach could support this.</p>
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6. CRGs INVOLVEMENT

If a conversation about how restorative practices and coronial reform might work for coronial reform is to be initiated by the ACT Government, CRG would be keen to be involved if:

- an independent facilitator is selected with the consent of all parties to oversee the process
- family and community members are involved from the beginning as equal stakeholders
- there is no expense to the families of those involved and other community stakeholders
- the principles of participation, voice, validation, vindication, accountability and prevention guide the process.

Rosslyn Williams; Eunice Jolliffe; Ann Finlay

Coronial Reform Group
Truth, justice and accountability

8 August 2018

APPENDIX C: List of Submissions received

1. Catherine Settle - Individual
2. Advocacy for Inclusion
3. Human Rights Commission
4. The ACT Civil and Administrative Tribunal
5. Canberra Community Law
6. ANU School of Regulation and Global Governance (Regnet)
7. Relationships Australia
9. Professor Bob Douglas - individual
10. David Moore - Committee of the Victorian Association for Restorative Justice
11. CD (Pseudonym) - individual
12. Conflict Resolution Service - Preliminary
13. AB (Pseudonym) - individual
14. Canberra Alliance for Participatory Democracy (CAPAD)
15. Conflict Resolution Service - No. 2
16. Canberra Community Law - No. 2
17. Relationships Australia - No. 2
18. Barnardos
19. Valerie and John Braithwaite – ANU School of Regulation and Global Governance
20. Coronial Reform Group

(Numbering is not consecutive as certain submissions were confidential)

Endnotes

- 1 Ramsay G. Transcript of Opening Address to *Restorative Practices in the Criminal Justice System*, 21 November 2016, Leo Notaras Canberra.
- 2 The details of the establishment and membership of the Steering Committee is at https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/rachel-stephen-smith-mla-media-releases/2018/steering-committee-for-review-of-aboriginal-and-torres-strait-islander-children-involved-with-child-protection
- 3 Braithwaite J. Restorative Justice: Assessing Optimistic and Pessimistic Accounts. 1999 *Crime and Justice*, volume 25, pages 1-127. Some of the broadest claims about the genealogy of restorative justice are disputed – see, eg, Daly K. Restorative justice: the real story; paper revised from that delivered to the Scottish Criminology Conference, Edinburgh, 21-22 September 2000. See also Daly K. Immarigeon R. The past, present and future of restorative justice: some critical reflections. 1998 *Contemporary Justice Review*, volume 1, pages 21-45.
- 4 Llewellyn J. Being a Restorative City – Towards Restorative Community – the importance of Governance, Leadership and Learning. 2018 *Newcastle as a Restorative City Symposium*, 14-15 June 2018
- 5 Zehr H. Mika H. Fundamental concepts of restorative justice. 1998 *Contemporary Justice Review*, volume 1, pages 47-55, at page 51
- 6 Block P. *Community – the structure of belonging*. 2009 Berrett-Koehler, Oakland (California): page 47.
- 7 See: Shepanski P. Schluter M. Ashcroft J. Hurditch B. *Stating the Obvious? The case for integrated public policy*. 2007 Relationships Forum Australia and Relationships Foundation (UK), Sydney: available at http://www.relationshipsforum.org.au/assets/downloads/rfa_stating_the_obvious_main_report.pdf Relationships Foundation. *The Triple Test – Integrating economic, environmental and social policy*. January 2009 Relationships Foundation, London: available at <http://www.relationshipsfoundation.org/its-time-for/its-time-for-the-triple-test/>
- 8 Submission 14 – see LRAC website <http://www.justice.act.gov.au/page/view/565/title/current-inquiries>.
- 9 For example, there are some highly successful societies which have not chosen neo-liberal economics as their gold standard, have much lower levels of income and social inequality, and strong engagement in their communities. They have been able to create conditions that appear to encourage a more relationship-friendly state. See e.g. Lakey G. *Viking Economics – how the Scandinavians got it right and how we can too*. 2017 Melville House, New York.
- 10 Submission 3.
- 11 Centre for Justice and Reconciliation, *Tutorial: Introduction to Restorative Justice – Lesson 2: Values* <<http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-2-values/>>
- 12 Restorative Justice Network, *Restorative Justice Values and Processes* (June 2003) <<http://restorativejustice.org/10fulltext/restorativejusticenetwork.pdf>>.
- 13 Restorative Justice Council, *Principles of Restorative Practice* (2015) <<https://restorativejustice.org.uk/sites/default/files/resources/files/Principles%20of%20restorative%20practice%20-%20FINAL%2012.11.15.pdf>>.
- 14 John Braithwaite, 'Principles of Restorative Justice' in Andreas von Hirsch et al (eds), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms* (Bloomsbury Publishing, 2003) 1.
- 15 ACT Government Community Services Directorate, *ACT Volunteering Statement* (2018) <http://www.communityservices.act.gov.au/home/strategic__policy/act-volunteering_statement>.
- 16 ACT Government Health Directorate, *The ACT Charter of Rights for People who Experience Mental Health Issues* <<http://health.act.gov.au/our-services/mental-health/charter-rights>>.
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- 18 United Nations Office on Drugs and Crime (UNODC) 2006. Handbook on restorative justice programmes. Criminal Justice Handbook Series. New York: UNODC
- 19 McCold, P., & Wachtel, T. (2003, August). In pursuit of paradigm: A theory of restorative justice. Paper presented at the XIII World Congress of Criminology, Rio de Janeiro, Brazil
- 20 Crawford, A. 'The State, Community, and Restorative Justice: Heresy, Nostalgia, and Butterfly Collecting' In, Lode Walgrave, ed., *Restorative Justice and the Law*. Devon, UK: Willan Publishing, 101-129, page 110
- 21 <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-3-programs/circles/> accessed 25 October 2018
- 22 See the Australian Institute of Criminology summary <https://aic.gov.au/publications/rpp/rpp127/impact-restorative-justice>, accessed 25 October 2018
- 23 See for example, the work of the Behavioural Economics Team of the Australian Government (BETA) <<http://behaviouraleconomics.pmc.gov.au/>>, the behavioural insights units in other Australian states and territories and, in the ACT, the expertise and resources within the Chief Minister, Treasury and Economic Development Directorate.
- 24 Submission 8, page 3.

25 Submission 8, pages 4-7.

26 Submission 8, page 7.

27 Submission 8, pages 8-9.

28 <https://www.referendumcouncil.org.au/final-report#toc-anchor-ulurustatement-from-the-heart>, accessed 25 October 2018

29 ACT Law Reform Advisory Council (LRAC). *Canberra – becoming a restorative city – Issues Paper on legal and justice issues relating to restorative practices*. June 2017 LRAC, Canberra: page 5.

30 See the Child Protection report of the NSW Legislative Council, <https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/ReportAcrobat/6106/Final%20report%20-%20Child%20protection.pdf> accessed 25 October 2018

31 The right to protection of the family under section 11(1); The right to protection of children and young people under section 11(2).

32 Submission 3.

33 The Australian Institute of Health and Welfare (AIHW) report for the current period is : AIHW. *Child protection Australia 2016-2017*. Child Welfare Series Number 68. Cat. No. CWS 63. 2018 AIHW, Canberra (AIHW 2018), and its data compendium: AIHW. Data tables: *Child protection Australia 2016-2017*. Child Welfare Series Number 68. Cat. No. CWS 63. 2018 AIHW, Canberra (AIHW Data collection 2018).

34 The Productivity Commission Report for the current period is: Productivity Commission. *Report on Government Services 2018*, Part F - Community Services volume, Chapter 16 – Child Protection. (ROGS 2018). And its data compendium: Productivity Commission. *Report on Government Services 2018*, Part F - Community Services volume, Chapter 16 A– Child Protection Services – Attachment. (ROGS Data attachment 2018)

35 AIHW 2018 –Table 2.1, page 10.

36 AIHW Data collection 2018 – Table A1.

37 This higher number of cases is consistent across the previously 5 years. Comparing the annual figure for children in out-of-home care in Table 2.1 over each of the years from 2012-13 to 2016-17, the figures are 765, 776, 831, 879 and 939 respectively, which are significantly higher each year than those in care on 30 June each year (558, 606, 671, 748 and 803 respectively). This data also shows that an increasing proportion of the numbers of children and young people in care at some time in the year remain in out-of-home care each of these years at the 30 June. (The annual figure for in care at any time was 131% of those in care at 30 June 2013 and the corresponding figure for 2017 was 117%)

38 AIHW 2018 –Table 2.1, page 10. Table S3 provides an age breakdown of children and young people receiving these services. These include 3 unborn children; 208 babies aged less than 1; 516 children aged 1-4 years; 599 aged 5-9; 470 aged 10-14; and 210 young people aged 15-17; and 2 of unknown age.

39 Census data age groups do not coincide with the age groups used in the AIHW Child Protection collection data, after 14 years of age, so this is not a complete comparison.

40 AIHW Data collection 2018 –Table S55.

41 AIHW Data collection 2018 –Table S33.

42 The compares the figures noted above in note 9 for children in care at 30 June each year (Table A1), and those on child protection orders at 30 each year (Table S33).

43 There were 128 children admitted to care and protection orders in 2012-2013 and 188 in 2016-17. AIHW Data collection 2018 – Table S31.

44 AIHW Data collection 2018 – Tables S31 and S32: The figures for admission to child protection orders between 2012-13 and 2016-17 were 128, 141, 176, 180 and 188. The figures for discharges from orders for those same years were 175, 111, 131, 111 and 127 respectively.

45 AIHW Data collection 2018 – Table S43.

46 Our Booris, Our Way Steering Committee. *Our Booris, Our way Interim Report*. August 2018. Available at: https://www.strongfamilies.act.gov.au/__data/assets/pdf_file/0003/1240428/Borris-Intrim-Report.pdf (Our Booris Interim Report) : page 3.

47 The Jervis Bay Territory is a separate Commonwealth territory, originally surrendered by NSW in 1915 to the Commonwealth government, so that the new capital of the ACT would have access to the sea. This was done under the *Jervis Bay Territory Acceptance Act 1915*, which also said that the laws from time to time in force in the ACT would apply to the Jervis Bay Territory (section 4(2) For further information on the creation of the Jervis Bay Territory, see: <https://www.foundingdocs.gov.au/item-did-112-aid-1-pid-95.html> , For information on how it is administered as a Commonwealth Territory, see http://regional.gov.au/territories/jervis_bay/governanceadministration.aspx

48 Wreck Bay is SA1 9100302. For information on the population of the area from the 2016 Census, the interactive IRSAD map is useful: <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2033.0.55.001~2016-Main%20Features~IRSAD%20Interactive%20Map~16>

49 Jervis Bay is SA 1 9100301. For information on the population of the area from the 2016 Census, the interactive IRSAD map is useful: <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2033.0.55.001~2016-Main%20Features~IRSAD%20Interactive%20Map~16>

- 50 Our Booris Interim Report – see note 18: page 2.
- 51 Our Booris Interim Report – see note 18: page 2, bottom boxes.
- 52 AIHW Data collection 2018 – Table S43.
- 53 AIHW Data collection 2018 – Table S43.
- 54 ROGS 2018 – see note 6: Box 16.2 pages 16.7-16.8.
- 55 The activity points are Notification, Receiving Intensive Family Support Services, Investigation; Substantiation, Care and protection Orders and Out-of-home care.
- 56 ROGS Data attachment 2018 – see note 6: table 16A.8. page 3 of Table 16A.8.
- 57 ROGS Data attachment 2018 – see note 6: table 16A.8. pages 1 and 3 of Table 16A.8.
- 58 ROGS Data attachment 2018 – see note 6: table 16A.1.
- 59 It should be noted the ALRC recently recommended that ‘the Commonwealth Government should establish a national inquiry into child protection laws and processes affecting Aboriginal and Torres Strait Islander children’ – see Pathways to Justice, Rec 15-1. https://www.alrc.gov.au/sites/default/files/pdfs/publications/final_report_133_amended1.pdf, accessed 25 October 2018
- 60 Vardon C. *The Territory as Parent- Review of the Safety of Children in Care in the ACT and of ACT Child Protection Management*. Report by the Commissioner for Public Administration. May 2004. Later Reports included:
- Murray G. *The Territory's Children – ensuring safety and quality care for children and young people*. Report of the Audit and Case Review. July 2004.
- Phillips A. Medway D. *Review of the Emergency Response Strategy for Children in Crisis in the ACT. Interim Report*. October 2011.
- Phillips A. Medway D. Corby. W. McGhie S. *Who is looking after the Territory's Children? - Review of the Emergency Response Strategy for Children in Crisis in the ACT*. ACT Public Advocate, May 2012.
- ACT Auditor General's Office. *Performance Audit Report: Care and Protection System Report No. 1/2013*. March 2013.
- Glanfield L. *Report of the Inquiry: Review into the system level responses to family violence in the ACT*. April 2016.
- 61 In addition to these two reports below, the publications both existing and forthcoming, from that research are on the Community Capacity Building in Child Protection website at: <http://www.protectingchildren.org.au/> In addition there is a range of other related resources.
- Hamilton S. Braithwaite V. *Complex lives, Complex needs, complex service systems: Community worker perspectives on the needs of families involved with ACT care and protection services*. 2014(a) RegNet Occasional Paper 21, RegNet, ANU, Canberra
- Hamilton S. Braithwaite V. *Parents and Family Members Matter: A Charter of Rights and Responsibilities for Parents and Family Members with Children in the Care of Child Protection Services in Australia*, 2014b RegNet, ANU, Canberra. http://regnet.anu.edu.au/sites/default/files/publications/attachments/2015-05/Occasional%2520Paper_22_Hamilton_Braithwaite_0.pdf
- 62 See eg, statements by Chris Bourke (who had responsibility for Indigenous affairs) <https://uniting.org/about-uniting/newsroom/a-step-up-for-our-kids> and Mick Gentleman (Minister with responsibility for children and families <http://www.communityservices.act.gov.au/ocys/children/child-and-youth-protection-services/out-of-home-care-strategy-2015-2020/new-services-for-families>
- 63 Ivec M. *A Necessary Engagement: An International Review of Parent and Family Engagement in Child Protection*. 2013 Social Action and Research Centre, Anglicare Tasmania. Available at: <https://www.anglicare-tas.org.au/research-library/report/necessary-engagement>
- 64 Rosalie N Metze, Tineke A Abma and Rick H Kwekkeboom, ‘Family Group Conferencing: A Theoretical Underpinning’ (2015) 23 *Health Care Analysis* 165.
- 65 Tali Gal, ‘Restorative Child Protection’ (2015) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2694399>.
- 66 Paora Moyle and Juan Marcellus Tauri, ‘Māori, Family Group Conferencing and the Mystifications of Restorative Justice’ (2016) 11 *Victims and Offenders* 87; Marie Connolly and Judith Masson, ‘Private and public voices: Does family group conferencing privilege the voice of children and families in child welfare?’ (2014) 36 *Journal of Social Welfare and Family Law* 403; Marie Connolly, ‘A Perspective on the Origins of Family Group Conferencing’ (2004) *American Humane FGDM Issues in Brief*.
- 67 Moyle & Tauri, *ibid*, 101.
- 68 Nathan Harris, ‘Family Group Conferencing in Australia 15 Years On’ (2008) 27 *NCPC Issues*.
- 69 Explanatory Statement, Children and Young People Bill 1999 (ACT), 22.
- 70 Rachel Stephen-Smith MLA, ‘ACT to pilot program aimed at keeping families together’ (Media Release, 27 July 2017) <https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/rachel-stephen-smith-mla-media-releases/2017/act-to-pilot-program-aimed-at-keeping-families-together>.

- 71 Section 80 of the CYP Act grants the Director-General a discretionary power to arrange for a FGC if they are satisfied that a FGC may 'may help to promote the wellbeing and best interests of the child or young person' or if the Director-General believes on reasonable grounds that the child or young person is in need of care and protection and arrangements should be made to secure the child's or young person's care and protection. Apart from this general power, the CYP Act only expressly refers to the convening of a FGC in two places: s 360(4)(f) (the Director-General may call a FGC if acting on a child concern report) and s 361(3)(f) (the Director-General may call a FGC if acting on a child protection report).
- 72 See eg, Carolyn Henwood and Stephen Stratford, *New Zealand's Gift to the World: The Youth Justice Family Group Conference* (Henwood Trust, 2014).
- 73 Sharon Dijkstra et al, 'The Effectiveness of Family Group Conferencing in Youth Care: A Meta-Analysis' (2016) 62 *Child Abuse and Neglect* 100; see also Dana M Hollinshead et al, 'Effectiveness of family group conferencing in preventing repeat referrals to child protective services and out-of-home placements' (2017) 69 *Child Abuse & Neglect* 285; cf Matthew C Lambert et al, 'The impact of family group decision-making on preventing removals' (2017) 78 *Children and Youth Services Review* 89.
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- 75 For the importance and evaluation of fidelity to principles, see Mary Elizabeth Rauktis et al, 'Family Group Decision Making: Measuring Fidelity to Practice Principles in Public Child Welfare' (2003) 35 *Children and Youth Services Review* 287.
- 76 See, eg, Claudia E van der Put et al, 'Identifying Effective Components of Child Maltreatment Interventions: A Meta-analysis' (2018) 21 *Clinical Child and Family Psychology Review* 171.
- 77 ACT Government Community Services Directorate, *Housing & Community* (July 2018) <<http://www.communityservices.act.gov.au/hcs>>.
- 78 ACT housing tenants council focus group.
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- 80 Australian Institute of Health and Welfare (AIHW). *Australia's Health 2016*. Australia's health series No 15. Cat No. AUS199. 2016 AIHW, Canberra.
- 81 All of these documents and further information on the development of the Strategy can be found at: <https://yoursay.act.gov.au/affordablehousing>
- 82 ACT housing tenants council focus group
- 83 Australian Bureau of Statistics. Australian Capital Territory records the nation's largest population growth. Media Release 070/2017, 27 June 2017. Available at <http://www.abs.gov.au/ausstats/abs@.nsf/lookup/Media%20Release8>. For those who have mortgages, our average is the second highest (despite a drop since 2011), and for renters, ACT shares the highest cost.
- 84 Australian Bureau of Statistics. *Census of Population and Housing Estimating Homelessness 2016*. Catalogue No. 2049.0, released 14 March 2018: available at <http://www.abs.gov.au/ausstats/abs@.nsf/PrimaryMainFeatures/2049.0?OpenDocument>
- 85 Pawson H. Parsell C. Saunders P. Hill T. Liu E. *Australian Homelessness Monitor 2018*. 2018 Launch Housing, Melbourne. https://www.launchhousing.org.au/site/wp-content/uploads/2018/05/LaunchHousing_AHM2018_Report.pdf A summary report and other information is available on <https://www.launchhousing.org.au/australianhomelessnessmonitor/>
- 86 The data had also been supplemented Australian Institute of Health and Welfare Data and Productivity Commission data.
- 87 Foden B. Rough sleeping almost doubles in the ACT as government spending falls. 2018 *Canberra Times*. 14 May 2014. Available at: <https://www.canberratimes.com.au/national/act/rough-sleeping-almost-doubles-in-the-act-as-government-spending-falls-20180514-p4zf3n.html>
- 88 An interesting summary of the history of public housing in Canberra can be found in Wright B. Cornerstone of the Capital: History of public housing in Canberra. 2000 ACT Housing, Woden. Available at the National Library or an almost complete version on line at <https://web.archive.org/web/20050709201205/http://www.dhcs.act.gov.au/hcs/Publications/NewLetters/ACTHOUS3.PDF>
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- 91 http://www.communityservices.act.gov.au/hcs/services/social_housing/waiting_lists
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- 94 Housing Assistance Act 2007 (ACT), s 19(1) (Housing Assistance Public Rental Housing Assistance Program 2013 (No 1)).

- 95 ACT Government Community Services Directorate, Client Service Visits Policy (April 2018) <http://www.communityservices.act.gov.au/hcs/policies/client_service_visits>.
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- 98 Submission 5, p5
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- 108 Research undertaken by University of Canberra in Whanganui New Zealand on Restorative healthcare in Whanganui Hospital.
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- 110 *Restorative Justice Champions* (Restorative Justice Council, 1st ed, 2015) <<https://restorativejustice.org.uk/sites/default/files/resources/files/Restorative%20justice%20champions%20portfolio.pdf>>.
- 111 Government of Western Australia Housing Authority, Housing Appeals Mechanism (October 2017) <http://www.housing.wa.gov.au/HousingDocuments/Appeals_Mechanism.pdf>.
- 112 Government of Western Australia Housing Authority, Housing Regional Appeals Committee Recruitment Kit (June 2016) <http://www.dhw.wa.gov.au/currenttenants/publichousing/Documents/Appeals_Recruitment_Kit.pdf>.
- 113 Government of New South Wales Family and Community Services, How we work with Aboriginal people, families and communities (October 2017) <<https://www.facs.nsw.gov.au/about/Aboriginal-people/how-we-work>>.
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- 118 <https://www.defenceabusetaaskforce.gov.au/Aboutus/Pages/default.aspx>
- 119 For more detailed information about the operation of DART, see the Restorative Engagement Program Protocol at https://www.defenceabusetaaskforce.gov.au/Outcomes/Documents/RestorativeEngagementProgram_protocoldownload.pdf. For details of the provisions for affected individuals, see <https://www.defenceabusetaaskforce.gov.au/Outcomes/Pages/default.aspx> and for the progress on cultural change arising from the process, see <http://www.defence.gov.au/PathwayToChange/>
- 120 This description comes from <https://www.defenceabusetaaskforce.gov.au/key-documents/Pages/restorative-engagement-program.aspx>. See also the description of the Restorative Engagement Program at <https://www.defenceabusetaaskforce.gov.au/Outcomes/Pages/default.aspx>
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- 127 MacKay H. *Australia Reimagined : Towards a more compassionate, less anxious society*. 2018 Pan MacMillan Sydney. Chapter 2: The epidemic that affects us all: page 68
- 128 These are available at <http://www.canberrarestorativecommunity.space/blog/2017/6/27/transcripts-of-our-restorative-community-network-workshops-and-associated-reports> .
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- 130 <http://www.canberrarestorativecommunity.space/>
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- 132 See article by the convenor about the Network. Ivec M. A Canberra Restorative Community. 2017 *ANU Reporter*, volume 48, issue 2 (Winter) available at: <https://reporter.anu.edu.au/canberra-restorative-community>
- 133 Submission 17, page 3.
- 134 Estelle McDonald, Head Teacher at Collingwood Primary School and a National Leader of Education in the United Kingdom, and Joanne Faulkner, Family Project Leader for Hull Centre for Restorative Practice and the Hull Collaborative Academy Trust.
- 135 Nigel Richardson, former Director of Children's Services at Leeds City Council, and Saleem Tariq, Deputy Director Children's Services, Leeds City Council.
- 136 Paul Nixon, Deputy Chief Executive, Chief Social Worker and Director of Professional Practice at Oranga Tamariki , Ministry for Children, New Zealand.
- 137 Kate Alexander, Executive Director, Office of the Senior Practitioner at Department of Family and Community Services (NSW)
- 138 Submission 17, page 4.
- 139 https://www.nzherald.co.nz/wanganui-chronicle/news/article.cfm?c_id=1503426&objectid=11489721
- 140 The new standards that are specific to Aboriginal and Torres Strait Islander people are :
- Partnering with Consumers Standard:
- Action 2.13 - The health service organisation works in partnership with Aboriginal and Torres Strait Islander communities to meet their healthcare needs
- Clinical Governance Standard:
- Action 1.2 - The governing body ensures that the organisation's safety and quality priorities address the specific health needs of Aboriginal and Torres Strait Islander people
- Action 1.4 - The health service organisation implements and monitors strategies to meet the organisation's safety and quality priorities for Aboriginal and Torres Strait Islander people
- Action 1.21 - The health service organisation has strategies to improve the cultural awareness and cultural competency of the workforce to meet the needs of its Aboriginal and Torres Strait Islander patients
- Action 1.33 - The health service organisation demonstrates a welcoming environment that recognises the importance of cultural beliefs and practices of Aboriginal and Torres Strait Islander people
- Comprehensive Care Standard:
- Action 5.8 - The health service organisation has processes to routinely ask patients if they identify as being of Aboriginal and/or Torres Strait Islander origin, and to record this information in administrative and clinical information systems
- The Australian Commission for Safety and Quality in Health Care has developed a User Guide for hospitals to help them implement the new standards, which commence on 1 January 2019. <https://www.safetyandquality.gov.au/wp-content/uploads/2017/12/National-Safety-and-Quality-Health-Service-Standards-User-Guide-for-Aboriginal-and-Torres-Strait-Islander-Health.pdf>
- 141 The Project leader, Dr Northam, describes the action research methodology as underpinned by relational theory, Yarning Circle methodology and Structuration Theory. Structuration theory is a theory developed by Anthony Giddens and others. It argues that there is a dynamic interaction between the structures in a society and our capacity to exercise our free will (our "agency"), with each influencing the other.
- 142 The pedagogy is framed using Yarning Circle and relational theory, underpinning restorative practice, and is consistent with the philosophical approach of the curriculum. (per Dr Holly Northam)

- 143 The most recent imprisonment data shows that on average 23% of full-time prisoners in custody in the ACT are Aboriginal or Torres Strait Islander people. (Australian Bureau of Statistics. *Corrective Services Australia. June quarter 2018*. Cat. No. 4512.0 Released 6 September 2018. : Table 11 and Table 1). The Aboriginal and Torres Strait Islander population in the ACT at the 2016 Census was 1.6% of the population. Given that the corrective services data only relates to adult prisoners, and more than 31% of the Aboriginal population counted in the Census was under 15, the proportional over-representation of adult Aboriginal and Torres Strait Islander people is higher than the figure indicated.
- 144 The data for 2017 showed that the ACT had the highest rate of prisoners who had been in prison previously (a measure of recidivism). This was highest for indigenous males (91% compared to 77.3% Australian average) but also significantly above the Australian average for non-Indigenous men (72% compared to 50%) and across all female prisoners. Australian Bureau of Statistics. *Prisoners in Australia 2017*. Cat No. 4517 OD 002 – Released 8 Dec 2017.
- 145 See eg, Damooc J. *The impact of Peace Education Program around the World – A program designed and implemented by the Prem Rawat Foundation*. June 2014. This evaluation covers the program's utility in a wide range of settings and people, including prisoners and parolees, civic and government groups, community and civil society, education at all levels, health and wellbeing programs, veterans and seniors and retirement communities.
- 146 A copy of the report can be found at: https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_2017_ChangeTheCourse_UniversityReport.pdf
- 147 Human Rights Commission 2017 – see note 20: at page 12.
- 148 The Skidmore College Project <https://www.skidmore.edu/campusrj/>
- 149 Llewellyn JJ, MacLissac J, MacKay M.(prepared on behalf of the participants) *Report for the Restorative Justice Process at the Dalhousie University, Faculty of Dentistry*. May 2015 Available at: <https://cdn.dal.ca/content/dam/dalhousie/pdf/cultureofrespect/RJ2015-Report.pdf>
- 150 <http://www.crs.org.au/about.htm>
- 151 See eg, Circles of Support training was run by Imagine more, a Melbourne -based company in April this year. While the training related to people with disabilities, the model could be used for many other circumstances as well.
- 152 <https://ywca-canberra.org.au/community-services/circlesofsupport/>
- 153 An on-line community on this method is at <http://artofhosting.ning.com/> . There are many other web-sites that provide information and videos as well.
- 154 For information about the Dialogue Group, contact the convenor Mark Spain on 0404411353 or come along on the 3rd Wednesday of the month, at the Tea Room, ground floor, Old Forestry Building 48, next to the Frank Fenner Building, Linnaeus Way, ANU campus. Email Mark first to ensure there are no changes mark@globallearning.com.au
- 155 <https://www.relationships.org.au/what-we-do/research/online-survey/november-2015-restorative-practices>
- 156 <https://www.relationships.org.au/what-we-do/research/online-survey/september-2017-restorative-practice>
- 157 A number of skills development and counselling services are provided in our community, see: <https://www.racr.relationships.org.au/courses>.
- 158 Australian Law Reform Commission. *Seen and heard: priority for children in the legal process*. ALRC Report 84: see paragraphs 18.45 and following.
- 159 A full outline of the development of that pilot can be found in Moore DB, O'Connell TA. Family Conferencing in Wagga Wagga: A communitarian model of justice in Alder C. Wundersitz J. *Family Conferencing and Juvenile Justice: the way forward or misplaced optimism?* 1994 Australian Institute of Criminology, Canberra. Available at: <http://www.aic.gov.au/publications/previous%20series/lcj/1-20/family.html> : see pages 45-86.
- 160 The concept of 're-integrative shaming' was a theory developed by Professor John Braithwaite: Braithwaite J. *Crime, shame and reintegration*. 1989 Cambridge University Press, Cambridge (UK). He argued that while shame was a necessary part of creating criminal responsibility, such shame must be generated about the offender's behaviour, not about the characteristics of the offender themselves. Shame which stigmatizes the individual was seen as having negative consequences such as social exclusion and increasing the likelihood of reoffending. Effective shaming was argued to reintegrate the person whose behaviour was disapproved of through respect for the individual, reintegration into the group and forgiveness. This theory arose in response to the public shaming approaches which had become popular in some US jurisdictions in the 1980s.
- 161 Strang H, Sherman LW, Woods D, Barnes G. Experiments in restorative policing: Final Report on the Canberra Reintegrative Shaming Experiments (RISE). 2011 Australian Institute of Criminology, Canberra. Available at: http://aic.gov.au/criminal_justice_system/rjustice/rise/final.html
- 162 Strang et al 2011, see note 4
- 163 Sherman LW, Strang H, Woods DJ. Recidivism patterns in the Canberra Reintegrative Shaming Experiments (RISE), November 2000 Research School of Social Sciences, the Australian National University Canberra (Australia).
- 164 ACT Labor. *ACT Labor Policy – ACT Labor's Plan for Justice and Community Safety*, Diversionary Conferencing section. This was accessed through the National Library's archived website repository at <http://pandora.nla.gov.au/pan/21606/20011020-0000/www.act.alp.org.au/policy/pdpjust170801.html>
- 165 ACT Criminal Justice System Strategic Plan 2002-2005, Aim number 17.

- 166 Restorative Justice Sub-committee of the Sentencing Review Committee. *Restorative Justice Options for the ACT Issues Paper*. October 2003, ACT Government, Canberra.
- 167 The model was set out in Figure 1, page 33 of the Issues Paper – see note 9.
- 168 Legislative Assembly for the ACT *Crimes (Restorative Justice) Bill 2004 Explanatory Statement*, circulated by the authority of Jon Stanhope MLA, Attorney General: page 3.
- 169 Defined in section 12 of the *Crimes (Restorative Justice) Act 2004* (2004 RJ Act).
- 170 2004 RJ Act – at note 12: see eg, sections 14(4), 15(4) and (5).
- 171 Standing Committee on Justice and Community Safety. *Inquiry into Sentencing*. Report Number 4. March 2015 ACT Legislative Assembly, Canberra. At http://www.parliament.act.gov.au/__data/assets/pdf_file/0019/707212/JACS-Ctee-report-for-Inquiry-into-Sentencing-FINAL.pdf. (2015 Sentencing Report)
- 172 2015 Sentencing Report – see note 14: recommendation 47, paragraph 8.169, page 371.
- 173 *Restorative justice scheme enters phase 2*. Released 16/07/2015. Simon Corbell MLA Media Releases. www.cmd.act.gov.au/open_government/inform/act_government_media_releases/corbell/2015/restorative-justice-scheme-enters-phase-2.
- 174 Legislative Assembly for the ACT. *Debates – Weekly Hansard*. Eighth Assembly. 19 November 2015: Mr Corbell MLA, pages 4215 – 4219.
- 175 *Success leads to restorative justice expansion*. Released 11/02/2016. Simon Corbell MLA Media Releases. http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/corbell/2016/success-leads-to-restorative-justice-expansion.
- 176 This motion is referred to, in part, in the Terms of Reference of this inquiry.
- 177 Legislative Assembly for the ACT. *Debates – Weekly Hansard*. Eighth Assembly. 10 February 2015: Ms Porter MLA, pages 122-123. See full debate: pages 122-136.
- 178 Legislative Assembly for the ACT. *Debates – Weekly Hansard*. Eighth Assembly. 10 February 2015: Mr Corbell MLA, pages 126-128, at page 127.
- 179 Legislative Assembly for the ACT. *Debates – Weekly Hansard*. Eighth Assembly. 11 February 2015: Ms Porter MLA, page 283. See full debate: pages 276-285.
- 180 Peake R. Restorative justice program in the ACT a success, *Canberra Times*, 27 February 2015.
- 181 Standing Committee on Justice and Community Safety (Legislative Scrutiny Role). *Scrutiny Report 21*. 11 September 2018. Available at https://www.parliament.act.gov.au/__data/assets/pdf_file/0010/1247158/Report-21.pdf : page 4.

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