Canberra – becoming a restorative city

Issues Paper

JUNE 2017
Canberra – becoming a restorative city

Issues Paper on legal and justice issues relating to restorative practices

Reference 5

June 2017
Make a submission

The ACT Law Reform Advisory Council (LRAC) has been asked by the Attorney-General, Gordon Ramsey MLA, to consider the feasibility of Canberra as a restorative city. We would welcome your views about this proposal and about the specific questions asked in the Issues Paper. You can send us your submission by:

Post

ACT Law Reform Advisory Council
c/o ANU College of Law
The Australian National University
5 Fellows Road
Acton ACT 2601 Australia

Email: lrac@anu.edu.au

If you would like to make a submission, please complete the ANU Ethics Committee form on the next page and send it in to us with your submission. It would assist us if you could provide an electronic version of your submission. Alternatively, you can make a submission online at surveymonkey.com/r/LRACRestorativeCityIP, where the ethics form is built in. If you have questions about the ethics or submission process please email or call (02) 6125 0812.

The closing date for submissions is: Friday 25 August 2017.

Use of submissions and confidentiality

We generally publish submissions on our website and refer to them in our publications.

Please let us know if you do not want us to publish your submission, or if you want us to treat all or part of it as confidential. We will endeavour to respect your request.

About the ACT Law Reform Advisory Council

The ACT Law Reform Advisory Council (the Council) is a 12-member expert Ministerial Advisory Council to the Attorney General. The Council is a collaborative project between the Australian National University College of Law and the ACT Government. The Council’s role is:

- To provide expert advice and recommendations to the Attorney-General on terms of reference dealing with law reform matters referred to it by the Attorney-General.

For more information about the Council and its processes, see our website:

> lawreform.act.gov.au

I look forward to hearing from you.

Professor Tony Foley
Chair, ACT Law Reform Advisory Council
WRITTEN CONSENT

People and organisations making submissions

Restorative Practices Inquiry

I have read and understood the Participant Information about the Inquiry at Attachment A to the Issues Paper. I have had any questions and concerns about the inquiry addressed to my satisfaction.

I understand that there are a number of ways I can participate in the Inquiry, including making a submission, having an interview or participating in a group discussion. Completing the questions in this Paper and forwarding my answers to the Council is one way of making a written submission. I can also complete these on-line.

I wish to participate through making a written submission. ☐ YES ☐ NO

Please mail the submission to:
Restorative Practices Inquiry Submissions
ACT Law Reform Advisory Council
c/o ANU College of Law
ANU CANBERRA ACT 0200

Or please email submissions to:
lrac@anu.edu.au

When the ACT Law Reform Advisory Council reports the findings from the various possible forms of participation, I understand that much of it may not be personally attributed. However, where it is, I agree to be identified in the following way:

Individual/Organisation name ☐ YES ☐ NO __________________________ Name to be used

Pseudonym (by Council) ☐ YES ☐ NO

Not to be individually identified ☐ YES ☐ NO

Signature:…………………………………….. Date:…………………………..

If you are under 18 years old, can you please ask your parent, carer or guardian to co-sign the consent below.

I am the parent, carer or guardian of the above participant and I give my consent to their participation in the Law Reform Advisory Council’s Restorative Practices Inquiry as indicated above.

Signature:…………………………………….. Date:…………………………..

The Australian National University | Canberra ACT 0200 Australia | CRICOS Provider No. 00120C
Part 1: Introduction

The reference in context

On 21 November 2016, the newly appointed ACT Attorney-General, Gordon Ramsay gave the opening address to a Workshop entitled “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. It is not just a latest fad. It is something that is sweeping through and carrying us and allowing new perspectives. 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.

This and subsequent discussions between the ACT Law Reform Advisory Council and the Attorney have shaped this reference to focus on the scope for the expansion of restorative practices into some specific areas.

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.

This issues paper is intended to provide some background to help people think about these issues and to contribute their stories, experiences and ideas for reform at an early stage. The terms of reference which follow are to be read in this context.

Terms of Reference

In September 2016, the then Attorney-General, Simon Corbell MLA, asked the Council to “undertake an inquiry into how to make Canberra a restorative city.” The Terms of Reference for the Restorative Practices Inquiry are as follows:

On February 2016, the ACT Legislative Assembly called 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 process and continue the ACT’s vision for safety, more connected communities.

The Legislative Assembly also noted:

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 behaviours.
I, Simon Corbell MLA, ask the ACT 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 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 Council commenced the background research for this reference during the caretaker period, between receiving the Terms of Reference and the ACT Government elections on 15 October 2016.

Gordon Ramsay MLA was appointed as the new Attorney-General on 31 October 2016. The Attorney has expressed strong support for the reference and provided additional clarification about the focus of the advice he is seeking from the Council.

**Purposes of this Issues Paper**

This issues paper has two purposes:

> to provide background information to help inform how people think about what a more restorative Canberra would look and feel like to the people of our community; and
> to seek answers to a series of questions about the scope for restorative practices in Canberra.

This issues paper asks for people’s views about Canberra as a restorative city and about restorative approaches in the two specific focus areas discerned by the Council. The Council is also keen to hear about other areas in which people believe restorative practices might play a meaningful role. The questions appear in the text and are listed separately on the next two pages as well.

In the first instance, individuals and organisations are encouraged to make written and on-line submissions to the Council. After receipt of these first submissions, the Council will prepare an Interim Report as requested by the Attorney. This will provide a second opportunity for more focussed submissions and public consultations around the interim proposals set out in that report. At the second stage, the Council will work with interested community groups to conduct appropriate consultations with stakeholders and interested people and organisations. These will be advertised in the community, on our website and on social media.

Individuals and organisations may choose whether to be identified when they provide a submission. This is consistent with the ethics requirements of the Australian National University (ANU) before Council consults with the public. The consent form requires a person or organisation making a submission to choose whether their name is to be included or they wish their contribution to be identified by a pseudonym. People or organisations making submissions can also ask that their contribution remain anonymous, though the information can be used in the work of the Council. Participant information is also at Attachment A.

Where individuals or organisations also wish to participate in consultation meetings or to provide information via an interview, a further set of consent forms will need to be completed. Opportunities will be made for individual interviews or for organisations to host public or private consultation meetings in the second phase of consultation. Please contact the Council’s Executive Officer, Fiona Tito Wheatland, via email on lrac@anu.edu.au or on 02 6125 0812 if you wish to flag your wish to arrange an interview or if your organisation would like to host a consultation meeting later in the second stage. Please note that the office is only attended 2 days a week, but email contact can be accessed at other times.
General Consultation Questions

1. What does restorative justice mean to you?

2. What restorative justice values discussed here do you think would help make our community more restorative?

3. If you have participated in a restorative justice process in the ACT or elsewhere, what was the experience like? Please let us know whether your role in the process was as a victim, an offender, or a support person, along with any good or bad things about the experience.

4. (a) What programs, projects and organisations are you aware of that may contribute to the transition of Canberra to being a more restorative city?
   (b) Are there any barriers to these programs, projects or organisations promoting restorative practices in our city?
   (c) What steps or measures would best support these programs, projects or organisations to continue, or grow, their work?

5. If the ACT was to become a more restorative community, what do you think that would look like?

6. (a) What characteristics or values do you consider are necessary for our community to become more restorative?
   (b) Do these characteristics or values need to be formally established e.g adopted by the Legislative Assembly or introduced in legislation?

7. What changes might be needed to make our City more restorative?

8. What barriers prevent our community from becoming more restorative and how can we overcome these?

Focus Area Consultation Questions

9. The Council seeks the views of people with lived experience of the child protection system. In relation to your experience with the child protection system:
   (a) Have you felt respected and fairly treated in your interaction with the child protection system?
   (b) Have you felt listened to and heard in your interactions?
   (c) Have you felt fairly treated in the process, in your participation and in your access to information?
   (d) Do you think a more restorative approach could improve the system? If so, how?

10. The Council seeks the views of providers of CYPS services and of support workers, community agencies, lawyers and police working in the child protection area.
   (a) What has been your experience of the child protection system and its approach to participants in the system?
   (b) What could be done differently to reduce any trauma associated with the provision of these services?
   (c) If the government is minded to change the way these services are provided, what legislative, procedural or other changes could be made to deliver services in a more restorative manner?

11. The Council seeks the views of people with lived experience of the ACT public housing system:
   (a) In relation to your experience with the ACT public housing system, have you felt respected and fairly treated in your interaction with that system?
   (b) Have you felt listened to and heard in your interactions with Housing ACT and/or the ACT Civil and Administrative Tribunal?
   (c) Have you felt fairly treated in the processes, in your participation and in your access to information about Housing ACT’s decisions?
   (d) Do you think a more restorative approach could improve the system? If so, how?
12. The Council seeks the views of public and community housing providers, support workers, community agencies and lawyers working in the public housing system.
   (a) What has been your experience of the public housing system, including your observation of the way housing applicants or tenants are treated by the system?
   (b) What, if anything, could be done to reduce hardship or trauma to applicants or tenants associated with the provision of public housing services?
   (c) If the government is minded to change the way public housing services are provided, what legislative, procedural or other changes could be made to deliver services in a more restorative manner?

13. Are there other areas which should be considered as priorities for attention in moving towards a more restorative city?
Part 2: General Information on Restorative Practices

What is ‘restorative justice’?

Restorative practices begin with the principles of restorative justice. Restorative justice argues that all wrongdoing is at its foundation a breach of a relationship obligation. The three fundamental principles of restorative justice, first developed by Howard Zehr and Harry Mika in 1998, reflect this:

1. crime is fundamentally a violation of people and interpersonal relationships;
2. violations create obligations and liabilities; and
3. restorative justice seeks to heal and put right the wrongs.

The beginnings of restorative justice can be traced back to Kitchener in Ontario, Canada in the 1970s. The concept has since spread widely over the next three decades throughout North America, New Zealand, Australia and Europe.

The principles of restorative justice were formally recognised by the United Nations Social and Economic Council in 2002 in the following definition, which the Council will use as a conceptual guide:

Restorative justice is an evolving response to crime that respects the dignity and equality of each person, builds understanding and promotes social harmony through the healing of victims, offenders and communities.

A useful description of restorative justice in the Australian context comes from Michael King (a magistrate in Victoria) and his colleagues:

(ref is Michael King et al, Non-Adversarial Justice (Federation Press, 2nd ed, 2014) at 41)

Restorative justice has been commonly associated with mediated encounters between victims and offenders – and in some cases their supporters – where they discuss what happened in relation to harmful behaviour and why it happened and determine what offenders will do to make amends. More broadly, restorative justice comprises of principles that promote the more inclusive, comprehensive and satisfying resolution of the effects of harmful behaviour. It seeks the restoration of victims, offenders and society through the application of these principles in processes dealing with the aftermath of wrongful behaviour generally. The most well-known and widespread application is within, or in cooperation with, modern criminal justice systems. There is growing evidence that there is value of this approach for victims, offenders and the justice system.

Professor John Braithwaite, an important Canberra-based scholar of restorative justice, sees two aspects of restorative justice as important and these may provide a useful framework for looking at what a restorative city might look like. He describes firstly a ‘process conception’ of restorative justice, where ‘all the stakeholders affected by an injustice have the opportunity to discuss the consequences of the injustice and what might be done to put them right’.

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Underpinning the process, he describes a ‘values conception’ of restorative justice, against which any such process must be judged:

The key value is that because injustice hurts, justice should heal. Responding to pain with ‘another spoonful of pain’ is seen as a less satisfactory response than responding with healing or repair.

He explains that there is a practical reason for this focus:

… hurt tends to beget hurt, creating a vicious spiral of retribution and feuding. Alternatively, it is possible to flip this dynamic into one of healing begetting healing – a virtuous cycle.

While acknowledging the various different expressions of restorative processes, Braithwaite argues that the necessary prerequisites for something to be restorative are few and that different processes that exhibit these can all be seen as varieties of restorative justice. His pre-requisites are:

> non-domination through correction of power imbalances;
> empowerment of all parties to speak and express themselves;
> respectful listening; and
> a process where all stakeholders have an opportunity to tell their stories about the effect of the injustice and what should be done to make them right.

The values reflected include equity and value in relationships, reciprocity, equal opportunity, fairness, respect, inclusion, and a focus on repair and healing in the context of justice.

These values are also representative of the values expressed in the ACT’s human rights legislation and framework. These values need therefore not be limited to the criminal justice system, or to dispute resolution processes. They can provide a goal or a vision to underpin all actions in a society. The concept of right relationships, of respect and compassion, of listening to and acting on concerns to promote a more just and inclusive society can all be seen as aspects growing from and expanding the idea of restorative justice to a restorative city.

Question 1

What does restorative justice mean to you?

Question 2

What restorative justice values discussed here do you think would help make our community more restorative?

What are ‘restorative practices’?

At a personal level

Being more restorative can be practised at a personal level through being or acting in certain ways in your relationships. For example, it can be a way of conducting yourself, your personal and family relationships, and your relationships with neighbours and strangers, which is respectful, fair and just. It can also be seen as a civic responsibility, where the legislature, government agencies, public and private institutions all act
in a similar manner designed to build respectful relationships, democratic governance and community dialogue which is respectful and fair.

Some examples of different actions which may be useful in creating and maintaining a more restorative city through personal action include:

- learning to listen to other people and to be able to put your own views in a respectful manner; practising skills of non-violent communication; exercising compassion when dealing with others; treating others as you would like to be treated; and developing and practising ‘right relationship’ skills, such as treating each other respectfully and kindly;
- learning and practising respectful communication with family members and neighbours; practising compassion; ensuring relationships that are valued are given enough time and priority; and
- learning to interact with acquaintances and strangers (such as at work, in the shops, on the streets etc.) by practising kindness and offering assistance where it is necessary; and looking out for other people around you and not being judgemental about them, particularly from a position of ignorance of others’ circumstances; and acting compassionately and seeking to understand them.

At a government or institutional level

Being more restorative can be practised by governments, government agencies and/or private organisations. The same respectful, fair and just principles apply to relationships between these organisations and individuals.

Some examples of different actions which may be useful in creating and maintaining a more restorative city through government or institutional action include:

- where government and government agencies interact with citizens – having compassionate and respectful processes and communications; providing early and full access to necessary information, so people can be involved in decisions which affect them; ensuring there are fair and transparent processes where decisions may affect someone; ensuring people are assisted to understand what is happening and what their options are; making sure that people have real rights to be heard and involved in decisions that affect them; and where a matter must be determined by an independent body, ensuring that people can access these in a fair and equitable manner; and
- where other institutions interact with citizens – providing complaints processes where people can be heard and have their voice affect any resolution; and providing processes which are respectful and compassionate.

In all circumstances, restorative approaches will be focused on reducing harm done to, and by, people to themselves and others, and reducing the occurrence and recurrence of harmful conduct and practices in the community. A first step to becoming more restorative can be for individuals, governments and organisations to reflect on their actions to see whether they are likely to cause harm to someone or to a relationship. Another starting step may be to model behaviour which is respectful and involves listening to others and communicating needs in a compassionate and collaborative manner.

At a city level

Creating a restorative community requires action at a city level. A number of cities worldwide have embarked on this action. Some examples of how these communities have done this are useful.

Bristol

The city of Bristol in the United Kingdom (UK) describes itself as ‘Restorative Bristol’. Marion Liebmann, a Restorative Bristol Board member, says the city’s aim is to be one in which ‘organisations and institutions are all trying to resolve conflict in a restorative rather than a punitive way, by using mediation and other restorative practices’. This reflects the focus of their restorative efforts on traditional areas for application
of restorative justice in conflicts. The Bristol approach has been to bring together established, like-minded organisations and institutions, uniting for the purposes of forging a restorative community. These organisations then work together to promote the uptake of restorative approaches more widely across the city. Liebmann says that this approach ‘involves much negotiation between organisations which may have quite different origins and practices, despite having similar aims’.10

Hull

The UK city of Hull describes itself as a ‘Restorative City’. Its approach is to develop a restorative city ‘organically’ from a single source with ‘restorative ideas spreading through expanding training in restorative practice to successive groups and departments, and then embedded in the way of working’.11 The focus of Hull’s restorative efforts is on personal and institutional conduct:

Put simply, the restorative city looks to explicitly address [positive everyday behaviours], so individuals, groups, communities and larger complex groupings of people use these positive behaviours and the development of relationships as a default position. The restorative city looks to create, not only the context for these positive relationships to thrive, but to also create opportunities for people to develop the skills and understanding to lead their own lives in a way that is considerate of both theirs and others’ needs.12

Hull aims to become the first fully restorative city in the world.13 Its goals to achieve this are:

> building and repairing relationships to work in ways that are respectful and engaging;
> empowering individuals, groups and communities to build confidence and control over their own lives;
> developing mutual accountability to allow those who harm to be accountable to those they have harmed;
> adopting culturally sensitive practices to enable participants to conduct processes and meeting in line with their own traditions and culture;
> sharing responsibility, knowledge, skills and resources for the wellbeing of children and young people; and
> implementing outcome- and solution-focused processes to increase the pro-social skills of those who have harmed others, to address underlying causes and to enable people to build on their strengths.14

Whanganui

The city of Whanganui in New Zealand sees their process as transitionary towards restorative processes.15 Their approach is to move towards being a restorative city with a focus on the cultivation of positive relationships. This vision is captured in their slogan – ‘Whanganui: Towards a Restorative City’. They aim to create the environment for people to thrive and succeed together through respectful relationships. They focus on a restorative city as one where people:

> enjoy a safe, calm environment;
> value relationships based on equal respect, concern, care and dignity;
> enjoy positive cultural identity;
> understand both the negative impact and positive impact of their behaviour;
> take responsibility for their actions and repair harm they may have caused others; and
> have their voices heard and are tolerant of differing views.
How do we become a ‘restorative city’?

Whichever of these approaches are followed, all of these communities see the change required as a change in attitudes, not necessarily a change in legislation. Attitudes can be changed through education and skill building – for example through schools, work-based training and adult education. Legislation may not be necessary.

Creating a more restorative community may require instead the establishment of venues or processes which can provide the right environment for dialogue on complex issues. This can also be done non-legislatively. For example, the people who started the first modern victim/offender restorative practices in Kitchener, Ontario in Canada went on to establish non-statutory community mediation services for resolving neighbourhood and interpersonal disputes outside the legal system. At other times, such processes may best be established legislatively. One example like this is the model of family group conferencing used for all young offenders in New Zealand, established by the Children, Young Persons and Their Families Act 1989 (NZ).

To create a more restorative city is likely to require action in all these spheres. Legislation may be required for different reasons in different spheres. Legislation may be needed to:

- enable certain actions or remove certain barriers to action;
- establish rights to restorative processes or to remove processes which thwart those rights; and/or
- ensure there is a framework of actions and values to enable a more restorative community to flourish.

The law is one tool which can, where appropriate, facilitate the transition to a more restorative city, but it cannot do this alone. Creating a restorative city requires action at a number of levels. Some may require education and skill building – for example through schools, work-based training and adult education.

Restorative practices in action – an example from education

Restorative practices have been used in various ways in schools in the United Kingdom, New Zealand, Nova Scotia, Canberra and other places. These are used ‘to prevent relationship-damaging incidents from happening and to resolve them if they do happen’\textsuperscript{17}. These efforts have not required any legislative change but they are claimed to ‘alleviate problems such as bullying, class room disruption, truancy and poor attendance, antisocial behaviour, disputes between pupils, their families and members of staff’.\textsuperscript{18}

In Nova Scotia, between September 2012 and August 2015, the Restorative Approaches in School’s Project piloted a restorative approach to education and inclusion. This was a collaboration between government, communities and schools and was not legislative. It was based on the following approach:

- A restorative approach in schools is founded on the belief that in order to build safe and healthy school communities we must strengthen and support our social relationships through community participation, respectful dialogue and sustainable processes that build and strengthen relationships.\textsuperscript{19}

Experiences in schools have shown that:

- To be effective, restorative approaches must be in place across the school. This means all pupils, staff (including non-teaching staff), management and the wider school community must understand what acting restoratively means and how they can do it. As a result, restorative schools adopt a whole-school approach to restorative methods.\textsuperscript{20}

In some places, these practices have been spread across the whole education system. Such an approach has been used in a systematic way through the Positive Behaviour for Learning (PB4L) Restorative Practices Kete\textsuperscript{21} in the New Zealand School system, set out in three comprehensive, supporting books.\textsuperscript{22}
Current restorative practices in Canberra

In criminal cases

At its base, restorative justice seeks to ‘put things right’ in a fair and respectful manner. This was the foundation of the ACT’s *Crimes (Restorative Justice) Act 2004*, the objects of which include ‘enhanc[ing] 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’.

The ACT method involves a voluntary conference, involving all relevant parties as discussed below. Stage 1 of the Act, which came into effect in 2005, covered young offenders and less serious offences. In 2016, the legislation was extended to Stage 2, namely, adult offenders and serious offences other than sexual or domestic violence offences, which are seen as Stage 3. Stage 3 is expected to commence in mid-2018.

The Act requires an eligible offence, a suitable victim and offender, the voluntary and informed participation by the victim and the offender, and the capacity for a conference to be physically and psychologically safe for all participants.

There is also a range of ways that the conference can occur to best facilitate interaction, including:

- face-to-face meeting;
- exchange of written or emailed statements between participants;
- exchange of pre-recorded videos between participants;
- teleconferencing; and
- video-conferencing.

Between 2005 and February 2017, there were 1,897 referrals to the Restorative Justice Unit, the branch of the ACT Justice and Community Safety Directorate that manages restorative justice conferences. These covered 3,357 victims and 2,412 offenders involved in 4,496 offences. A total of 1,306 conferences were held, with 807 being face-to-face and 499 being indirect. With the commencement of Stage 2 in February 2016, there have been an increasing number of referrals overall, including in the areas covered by Stage 1. Since Stage 2, there have been 108 adult offender referrals and three serious offence young offender referrals.

**Question 3**

*If you have participated in a restorative justice process in the ACT or elsewhere, what was the experience like? Please let us know whether your role in the process was as a victim, an offender, or a support person, along with any good or bad things about the experience.*

In non-criminal areas

Restorative justice ideas can be used outside the criminal justice context. This is particularly so in the management of relationships in other areas where physical, emotional or other harm can be done, or where there is a perception of a breach in a relationship. Experience indicates that restorative justice practices are useful in many different contexts, beyond the realm of criminal law.

For example, the underlying principles, skills and actions associated with restorative justice can be used in a community, or relationship, before a problem arises. This approach can often avoid potential harm and strengthen relationships.
This idea was discussed in the ACT Legislative Assembly debate on restorative justice on 10 February 2016. The then Attorney-General said:

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 community 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.23

All communities, societies and cities exist through webs or networks of relationships. Relationships occur in families, friendships, workplaces, neighbourhoods, places of spiritual connection, civil society organisations, childcare and shopping centres – in fact, everywhere where people engage with each other. Relationships are not, by definition, always positive, or indeed mainly positive, and may involve, for example, significant power differentials, exploitation or even violence. Restorative practice encourages relationships that are based on ‘equal respect, care/concern and dignity’.24

In the ACT, there are a range of organisations engaged in activities which, while not necessarily labelled as restorative, are consistent with this aim. For example, there are groups that help people to talk to each other, and to government, about important issues. Some of these are linked to faith-based communities, while others may be broadly labelled as civil society organisations. Bodies engaged in advocacy for marginalised people are another kind of organisation working towards a more inclusive society, where everyone has a voice and can participate in conversations affecting them and the community. The existing Canberra Restorative Practices Network actively seeks to build a commitment to extending restorative values and ideas to other dispute areas in the ACT community.

Question 4

(a) What programs, projects and organisations are you aware of that may contribute to the transition of Canberra to being a more restorative city?
(b) Are there any barriers to these programs, projects or organisations promoting restorative practices in our city?
(c) What steps or measures would best support these programs, projects or organisations to continue, or grow, their work?

Question 5

If the ACT was to become a more restorative community, what do you think that would look like?
Question 6
(a) What characteristics or values do you consider are necessary for our community to become more restorative?
(b) Do these characteristics or values need to be formally established e.g adopted by the Legislative Assembly or introduced in legislation?

Canberra as a future restorative city

There are many connections between restorative practices and the concept of a ‘restorative city’. From experiences in other places, restorative cities are likely to be places where:

> respectful, constructive, just relationships are the norm;
> all people are valued and treated in a socially just and inclusive manner;
> non-violent communication and skills about talking together when problems arise are learned and practised everywhere;
> governments, public and private institutions model these forms of behaviour; and
> fair, respectful dispute resolution processes are spread throughout the community, its economy and its institutions.

Gathering these thoughts together, and looking at our city, it seems likely that we already have some of the elements needed. For example, our cityscape has been planned with a focus on neighbourhoods and communities. We also the Human Rights Act 2004 (ACT), which sets out a vision for an inclusive community, characterised by equality and social equity within a rights-based framework.

However, it is also clear that there are some in our community who remain marginalised, often subject to discrimination and social and economic disadvantage. It is also clear that there are missing or broken links in some of our systems, so that people do not feel heard or included. People may feel particularly excluded by processes that are not transparent, or where a person cannot seek review of a particular government decision.

Mark Finnis, who was one of the pioneers for restorative practices at the city-wide level in the UK, notes that for a restorative city to really have an impact on a community:

We need a shared vision and strategy for building a restorative community – a bold vision, which is owned by everyone. The vision needs to be understood by all, and clearly communicated with strong leadership.  

He notes that restorative principles need ‘to become the central delivery concept in everything a community does’. They need to be owned by all, and to operate as the ‘glue’ that binds services together, and build bridges between professionals and communities.

Question 7
What changes might be needed to make our City more restorative?

Question 8
What barriers prevent our community from becoming more restorative and how can we overcome these?
Part 3: Focus Areas

Why focus areas?

Canberra already has some important elements of restorative practice in place. These include:

- the Crimes (Restorative Justice) Act 2004 and the Restorative Justice Unit;
- the Human Rights Act 2004 and the work of the Human Rights Commission;
- the Canberra Restorative Practices Network;
- civil society organisations, many of which aim to work in restorative ways or for greater participation and social inclusion;
- a baseline of social capital and faith- and values-based organisations that work to increase social justice;
- organisations that seek to increase public participation in decision-making; and
- organisations that seek to increase social inclusion and advocate for those who are marginalised.

As can be seen above, a restorative city is a very broad concept. Making the ACT a restorative city will require action both inside and outside the legislative sphere. Progressing such a goal will require a focus and commitment across all activity and relationships in the ACT community.

Broad reform needs to begin in certain parts of the community, so that we may learn and expand from our experiences. The Attorney has asked the Law Reform Advisory Council to give priority to 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 identified two areas, which disproportionately affect the lives of Canberra’s most marginalised people. These areas are:

- child protection; and
- public housing complaints and disputes.

These areas have been chosen for attention first, because, at a practical level, their legislation and administrations are within the legislative control of the ACT Government, rather than being shared with the Commonwealth Government, as is the case with areas like disability services. They are also areas which have been the subject of successful restorative efforts in other countries. In both areas, there are examples of measurable success in transformation in this area from overseas.
Focus Area 1

Child Protection

Child protection is a challenging area. Governments and community members often do not agree on when or how the Government should intervene in families to protect children and young people. The ACT Human Rights Act 2004, says that family is the 'natural and basic ground unit of society and is entitled to be protected by society'. Family is interpreted in a broad manner and includes foster and kinship families, birth families and other parent-child-like relationships. Section 12 of the Human Rights Act protects the family by stopping anyone from unlawfully or arbitrarily interfering with a person's privacy, family or home, or unlawfully attacking their reputation. The right to protection of family can compete with section 11(2) of the Act, which provides that all children have the right to be protected, without distinction or discrimination of any kind.

In the ACT, statutory care and protection services are provided by Child and Youth Protection Services (CYPS) within the Community Services Directorate. This work is informed by the Children and Young People Act 2008. Some of CYPS's responsibilities are contracted out to community partners, but overall statutory responsibility rests with the Director General of the Community Services Directorate.

CYPS has responsibilities for interventions involving children, young people, families and the community, which may involve a care or justice response. These are broadly classified as diversion, protection, restoration, transition and permanency, all within a trauma-informed framework. The principles set out on its website are that:

Children and Youth Protection Services works in partnership with:

> The community to protect children and young people from being harmed and from harming others; and
> Families and carers to ensure children and young people are safe and achieve the best possible life outcomes.

The Council seeks views on the lived experience of people in and with the child protection system. We are interested to hear whether child protection structures and processes are experienced as respectful, fair and trustworthy, whether people consider that they are listened to, and whether what they have to say is given due regard.

We are particularly interested in hearing about the experiences of birth families and Aboriginal and Torres Strait Islander families, kinship and foster carer families.

The Council wishes to hear from providers of child protection services, as well as support workers, community agencies, lawyers, police and others who have had involvement in the Care and Protection System. The ACT Government has an obligation under the Children and Young People Act to listen to the community about how effective its child and youth protection services are.
Question 9

The Council seeks the views of people with lived experience of the child protection system. In relation to your experience with the child protection system:
(a) Have you felt respected and fairly treated in your interaction with the child protection system?
(b) Have you felt listened to and heard in your interactions with the child protection system?
(c) Have you felt fairly treated in the process, in your participation and in your access to information?
(d) Do you think a more restorative approach could improve the system? If so, how?

Question 10

The Council seeks the views of providers of CYPS services and of support workers, community agencies, lawyers and police working in the child protection area.
(a) What has been your experience of the child protection system and its approach to participants in the system?
(b) What could be done differently to reduce any trauma associated with the provision of these services?
(c) If the government is minded to change the way these services are provided, what legislative, procedural or other changes could be made to deliver services in a more restorative manner?
Focus Area 2

Public Housing

Having a safe place to call home is important to everyone in our community. For a considerable number of people in the ACT, access to a safe, affordable home is only possible through Government support. Housing and Community (Housing ACT) within the Community Services Directorate, allocates, manages and maintains more than 11,000 public and community housing properties. More broadly, Housing ACT provides support for people who are disadvantaged or experiencing a crisis. It does this through a variety of programs, including services targeted at preventing homelessness and assisting people to transit through homelessness into stable housing. Housing is a basic human need and is essential in determining whether or not people live in poverty and in a society’s ability to realise broader social outcomes.

Demand for public housing in the ACT is high. Housing ACT triages eligible applicants into standard, high needs and priority lists. To be assigned to the ‘priority housing’ needs category, applicants must demonstrate ‘exceptional, urgent and critical needs that cannot be resolved by any reasonable means other than the early provision of social housing.’ Applicants must be able to demonstrate a range of complex needs and significant risk factors including evidence of:

- formally diagnosed mental health issues, including the effects of past trauma and torture;
- other serious and chronic health issues;
- disability, including age-related frailty;
- the need to escape domestic violence; and/or
- the provision of support for children who are at risk of abuse or neglect or have special needs

The Council has identified that due to experience of the above factors, Housing ACT tenants are potentially at high risk of suffering further disadvantage if disputes relating to their housing are poorly managed.

Disputes between individuals and Housing ACT may arise in relation to issues including eligibility for housing; triaging of applicants across the ‘needs’ categories; allocation of properties; rental rebates; repairs and maintenance; housing transfers; rent arrears and eviction applications. Disputes may also arise between Public Housing tenants.

At present, some disputes are dealt with informally, relying on Housing ACT policies processes. Other disputes are dealt with more formally, generally by way of application to the ACT Civil and Administrative Tribunal.

To what extent do existing Housing ACT frameworks and approaches reflect a restorative approach?

Housing ACT considers itself a Social Landlord, with ‘obligations that go beyond tenancy management and contribute to social welfare by, for example, setting rents at affordable levels, promoting tenant wellbeing and participation, neighbourhood upkeep and community vitality.’

The Practice Framework for Housing ACT’s Tenancy Operations adopts the ACT Government’s 2014 Human Services Blueprint principles. These principles state that services should be person-centred, community-focussed, strengths-based and outcomes-focused, as well as simple, collaborative, sustainable and high quality.
Any effort towards the ACT becoming a ‘Restorative City’ will require restorative approaches to be at the forefront of how public housing disputes are addressed. The Council is interested in hearing from everyone in the community including:

- individuals and families who have lived experience of Public Housing;
- Housing and Community Services ACT;
- community housing providers;
- legal advocates;
- community-based support workers; and
- the ACT Civil and Administrative Tribunal

about the extent to which existing law, policy and processes that impact the provision of public housing embody a restorative approach.

For example, does the current service model involve sufficient early-identification of at-risk tenancies, with emphasis on repairing a vulnerable tenant’s relationship with their public landlord? What stabilisation actions are, or could be taken in such circumstances? How does, or might, a strengths-based approach, including the provision of intensive support, build a tenant’s capacity to sustain a tenancy?

**Question 11**

*The Council seeks the views of people with lived experience of the ACT public housing system:*

(a) In relation to your experience with the ACT public housing system, have you felt respected and fairly treated in your interaction with that system?

(b) Have you felt listened to and heard in your interactions with Housing ACT and/or the ACT Civil and Administrative Tribunal?

(c) Have you felt fairly treated in the processes, in your participation and in your access to information about Housing ACT’s decisions?

(d) Do you think a more restorative approach could improve the system? If so, how?

**Question 12**

*The Council seeks the views of public and community housing providers, support workers, community agencies and lawyers working in the public housing system.***

(a) What has been your experience of the public housing system, including your observation of the way housing applicants or tenants are treated by the system?

(b) What, if anything, could be done to reduce hardship or trauma to applicants or tenants associated with the provision of public housing services?

(c) If the government is minded to change the way public housing services are provided, what legislative, procedural or other changes could be made to deliver services in a more restorative manner?
Other priority areas

The Council seeks advice as to whether there are additional priority areas that should be considered for legislative or other reform to promote a restorative approach to dispute resolution or to administration or management of specific areas or issues, which are likely to result in Canberra becoming a more restorative place to live.

Question 13

*Are there other areas which should be considered as priorities for attention in moving towards a more restorative city?*
Appendix 1: Information Sheet for Participants

The ANU Human Research Ethics Committee requires that all people who either make a submission or who participate in consultations are provided with the following information.

Participant Information Sheet

Researchers

This research is being conducted by the ACT Law Reform Advisory Council (the Council). The Council is a collaboration between the ACT Government and the ANU College of Law at the Australian National University (ANU). Because of this, it is considered ANU Research. The Council is based at the ANU College of Law.

The Council’s role is to provide expert advice and recommendations to the Attorney-General on matters of legal policy. It carries out inquiries into issues referred to by the ACT Attorney-General, which involve public consultations and receipt of submissions.

The Council is currently chaired by Professor Tony Foley of the ANU College of Law. The Principal Investigator for this Inquiry is Fiona Tito Wheatland, the Executive Officer of the Council.

Project Title: ACT Law Reform Advisory Council’s Restorative Practices Inquiry (2016/619)

General Outline of the Project

Description, Terms of Reference and Methodology: The ACT Legislative Assembly has supported the concept of Canberra moving to become a restorative city. The Attorney-General provided terms of reference to the Council to explore:

- what it would mean for Canberra to be a restorative city, with a focus on the legal and justice dimensions of this;
- how the ACT should prioritise its efforts towards 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.

Varying legal and regulatory mechanisms are likely to be needed in different areas, to support and permit restorative practices, which could benefit the ACT community and the participants in these areas. The Council will: research and prepare information for the public, including a Discussion/Issues Paper; conduct consultations on and receive submissions about the inquiry and then prepare a final report for the Attorney-General.
Participants: Any person or organisation interested in the Inquiry can participate in consultations and make submissions to the inquiry. Generally, the Council hears from people who are adults (18 years or over). This could include, but is not limited to:

- Government bodies that make decisions or manage people, and that could use restorative practices in their work;
- Statutory decision-making bodies, like courts, tribunals, commissions and panels;
- Organisations which are involved in the management of complaints or disputes at all different levels and locations, including schools, civil society organisations, businesses, professional organisations and mediation or conflict resolution services;
- People who have experienced conflict and adversarial or non-restorative processes in the community, some of whom may have been traumatised in the process;
- Lawyers, doctors, disability workers and others who provide support to people who may be involved in or affected by adversarial and non-restorative practices;
- People who have participated in restorative processes that have not gone well;
- People who may have worked in or experienced restorative practices, including restorative justice here or elsewhere; and
- Overseas experts and participants in restorative practices and restorative justice.

If a child or young person under 18 either made a submission to the inquiry or requested an interview, the Council would require the consent of their parent, carer or guardian (as indicated on the consent form). It is not intended that the Council directly solicit responses from those under 18.

Use of Data and Feedback: Information provided by participants will help the Council write a report to the ACT Attorney General that is informed by participants’ experiences and ideas, about where restorative practices may be used in the Canberra community. The Attorney General decides if the Report will be made public, and if so, it will be published on the Council’s website. At that point, only material included in the Report may be used for other publications eg explanatory articles, journal articles.

Participant Guidance about Involvement in the Restorative Practices Inquiry

Voluntary Participation & Withdrawal: Participation in the Inquiry is entirely voluntary. Participation can be by written or phone submission, by group discussion or interview.

If you make a written submission, you will need to sign the submission consent form. If you make a phone submission, the recording of the submission will commence with a “consent to participate” message. If you decide not to participate after hearing the message, simply hang up. In all cases, you can request either than you are identified by name, by a pseudonym or not identified at all.

Group consultations will generally be recorded, so we can accurately reflect the views put at the discussion. Individuals will not be identified in any information used from group consultations. If you do not want to be recorded, you will not be able to participate in the group discussion but you can choose to have a separate interview or provide a submission. In the case of an interview, your consent will be sought to recording the interview. If you do not consent hand-written notes will be kept instead. You may also choose to leave a discussion or interview at any time and terminate your involvement.

If you participate in a group discussion, and you decide to leave, you can decide if you are happy to let the Council continue to use the information provided before your departure. If you want us to withdraw the information provided in the group, we will attempt to do so, but it may not be possible to identify the different speakers to do this.

You can decline to take part, or decide to withdraw your comments or submission. If you choose to withdraw within a month of the close of submission, your submission or interview record will be destroyed and not
be used in the research. After that, the report of the Inquiry will be in final stages of preparation and, while reasonable efforts will be made to remove such material from the Report, this may not be possible.

**What does participation in the research request of you?** If you want to participate in the Inquiry, you are welcome to contribute in a number of ways, including having an interview, participating in a group discussion or making a submission, either as an organisation or individual. Information about the Inquiry and submission processes will be posted on the Council’s website at: law.anu.edu.au/lrsj/act-law-reform-advisory-council-lrac. You can contact the Council in a number of ways:

by email to lrac@anu.edu.au; or
by phone on (02) 6125 0812; or
by mail to:

Submissions – Restorative Practices
ACT Law Reform Advisory Council
c/o ANU College of Law
The Australian National University
5 Fellows Road
Acton ACT 2601 Australia

Please don’t be daunted about the idea of making a submission – you can simply tell us about the good and bad experiences you have had with current decision-making or dispute resolution processes and/or restorative practices. You can also provide your ideas about what and how you think restorative practices might work in your area of interest.

**Location and Duration:** Most consultations will occur after the release of the Council’s Discussion/Issues Paper. If you decide to participate in an interview or small group discussion, it will take place in an accessible location agreed by the participants and the Council and should last no longer than 1.5 hours. Submissions can be any length you want.

**Risks:** Even where you request the Council not identify you, there remains a small risk that others may be able to guess who has provided certain information due to the personal nature of the information or other identifying characteristics. Therefore, if you agree to participate in this reference you should be mindful of this risk.

If you decide to participate in a small group discussion, it is possible that others will disagree with your views or raise issues that you are not comfortable discussing. The researchers are experienced facilitators and will promote a culture of respect so that everybody has the opportunity to present their own views.

Another possible risk relates to confidentiality. While the Council requires participants in group discussions to maintain confidentiality of these, it cannot guarantee that this request will be respected. You can avoid these risks by instead participating in a one-on-one interview or making your own written or telephone submission, or by choosing not to participate at all.

It is also possible, while unintended, that discussion of some issues may cause personal distress or discomfort. If so, you can withdraw and contact details are provided below, if you wish to talk to someone about your distress.

**Implications of Participation:** If you choose to participate, you will get to have your say about a topic that may be important to you. Should you decide not to participate in the inquiry, there will no negative impact on you.

**Confidentiality – submissions and interviews:** When you make your submission or comments to the Council, you will be asked to complete a Consent Form. On that form, you can agree to your submission or comments being published on the Council’s website and in the Council’s report with or without your
full name. Note that if you are under 18 years of age, consent for your participation is required from your parent, carer or guardian. Submissions and comments published on the website will be available for any members of the public to view.

Alternatively, you can elect for your submission or comments and any personal details you have provided to remain confidential to the Council, so far as the law allows. In this case, your information will only be known to members of the Council and its Executive Officer. You also have the option of remaining anonymous by making a submission without any identifying information. This means that Council will not be able to identify you. If you make an anonymous submission your submission will not be published online or in the Council report. You will not be able to withdraw your submission at a later stage.

Confidentiality – Group discussions: If you participate in a group discussion, other group members will witness your contributions and it is possible that you will know other group members. As part of the consent process, the Council will request that focus group members maintain the confidentiality of group, are respectful of other participants and avoid making defamatory remarks.

Data Storage

Any information we collect during the consultations, which you have asked to be kept confidential, will be stored in a locked filing cabinet and/or stored securely on a computer. All submission, interviews, and records of group discussions will be kept for a minimum of five years at the ANU after publication of the Report or any article produced by the Council after that date. At the conclusion of the storage period, all data collected will be destroyed and will not be available for future research projects.

Queries and Concerns

Contact Details for More Information about the Inquiry: If you have any questions about the inquiry, please contact the Principal Investigator:

Fiona Tito Wheatland
Executive Officer
Tel: 02 6125 0812
E: fiona.tito-wheatland@anu.edu.au

Post:
Room 237, ACT Law Reform Advisory Council
The Australian National University
5 Fellows Road
Acton ACT 2601 Australia

Contact details for Chair of Council: If you have any questions of the Chair of the Inquiry, please use the following:

Professor Tony Foley
ACT Law Reform Advisory Council
E: lrac@anu.edu.au

Post:
c/o ANU College of Law
The Australian National University
5 Fellows Road
Acton ACT 2601 Australia

Contact Details if in Distress: In the unlikely event that your participation in this research causes you to feel distressed in any way, or raises concerns that you would like to talk to someone about, you can contact Lifeline’s 24-hour crisis line on 13 11 14.
Alternatively, if you are currently assisted by a support service, counsellor or case manager, you might like to talk with them.

If you are a parent or carer of a participant, and would like to talk to someone about any issues raised by this consultation relating to your role as a carer, you can contact the Carers ACT Advisory Service on 1800 242 636.

**Ethics Committee Clearance**

The ethical aspects of this research have been approved by the ANU Human Research Ethics Committee. If you have any concerns or complaints about how this research has been conducted, please contact:

Ethics Manager  
The ANU Human Research Ethics Committee  
The Australian National University  
Acton ACT 2601 Australia  
Tel: +61 2 6125 3427  
E: Human.Ethics.Officer@anu.edu.au
Endnotes


3. These are included in Appendix 1 to Zehr H. The Little Book of Restorative Justice. 2002, Good Books Intercourse, Pennsylvania (USA), but were originally published in Zehr & Mika 1998 - see note 2.


10. Liebmann M. 2015 – see note 9, at page 310.

11. Liebmann M. 2015 – see note 9, at page 309.


13. The aim in Hull (UK) is to become the world’s first restorative city: http://www.hullcentreforrestorativepractice.co.uk/?page_id=13

14. 2017 Key Principles http://www.hullcentreforrestorativepractice.co.uk/?page_id=13

15. For example, the Whanganui Restorative Practices Trust uses the motto “Whanganui: Towards a Restorative City- Honoa Ki A Rongo Ki Whanganui” to show it is a transition process - http://restorativepracticeswhanganui.co.nz/the-restorative-city/


21. This Māori word means “kit” or “basket” of knowledge.

22. For copies of these resources see http://pb4l.tki.org.nz/PB4L-Restorative-Practice


34. Housing ACT 2015 – see note 32: pages 43-44.
Canberra – becoming a restorative city

Issues Paper

JUNE 2017