

Front cover picture: Thank you to Relationships Australia, for agreeing to our use of the ‘word cloud’ in their second submission (Submission 17, page 5), to the ACT Law Reform Advisory Council. This captured “the thoughts of participants at the end of the 2-day Workshop” organised by the Canberra Restorative Community Network on 22-23 February 2018, with extraordinary financial and organisational support and restorative leadership from Relationships Australia. The workshop addressed the question “What is Canberra’s potential as a restorative city?”

ACKNOWLEDGEMENT OF COUNTRY

The author acknowledges that *Bright Ideas* was written on the land of the Ngunnawal people, and has been influenced by their continuing culture, the living connection with this land and their love for their children. I pay my respects to their Elders past and present, and thank them for their support of this work. I hope that this work will make sure that, in the future there are more Aboriginal footprints on this place, that I too call home, and that we have future Aboriginal Elders until time immemorial.

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Foreword

Bright Ideas records the evidence from the consultations and research undertaken by the ACT Law Reform Advisory Council (LRAC) over the past 2 years of the reference. As Executive Officer and Principal Researcher of the Council, I was responsible for the carrying out of most of the consultations and research, which form the substance of this document.

The purpose of *Bright Ideas* is to inform the Attorney-General, the LRAC Council members and the public about the views: of people, and sometimes, organisations that represent people; of places and developments overseas and nationally that are pursuing related aims; and from the research across the wide range of areas which have been discussed in the work of the reference.

Bright Ideas also puts forward actions which could enact the ideas discussed here. This is the Council's fifth and final reference, in its current configuration. The Minister, both bravely and rightly, asked us to engage in a consultation process quite different from the normal role the Council has had, where we had relied mostly on written submissions and expert voices.

The scope of this work, and the deeply personal impact of many of the issues covered meant we needed to engage much more directly with citizens. This engagement was diverse. It included formal interviews and meetings, case studies, informal deep conversations and working next to people, as well as receiving formal submissions. While people were often happy to talk, they were often uncomfortable with the idea of being recognised by people who were exercising continuing power over their lives. This was particularly so, when they were expressing concerns. This means that I have aggregated the experiences of many into descriptions of the general lived experience. By its very nature it is incomplete, but it shows at least, a window into the experiences of many people who would otherwise have had no voice. It tells of the experiences of those affected by current systems and how they imagine it could be different.

The public role of *Bright Ideas* is therefore an important one. People spent a lot of time developing submissions and meeting with me, as a Council representative, to talk about issues and questions. Some people spent considerable time – often several hours – talking about their experiences in the public housing and child protection, in the coronial system, in planning and in deliberative democracy. They also told me of their hopes and dreams of what a restorative Canberra could look like.

Bright Ideas is a step along the way to that future – another step in the active conversation about what kind of City we want to live in. The restorative journey for our city started in the early 1990s with restorative justice. *Bright ideas* is a stepping stone on the conversation pathway. It is also a resource document for the Council in finalising its formal role in the reference.

What do we need next? The Convenor of the Canberra Restorative Community Network, Mary Ivec describes it as a “restorative Imagination”. As a community, we have many assets to draw upon as we continue this restorative journey. We have resources, we have examples, we have local, national and international restorative leaders to draw upon. We have our imaginations. The next steps towards Canberra becoming a restorative city will be shaped by our courage, our commitment and our collective will to translate philosophy into action.

Dr Fiona Tito Wheatland
Executive Officer and Principal Researcher
ACT Law Reform Advisory Council

Chapter 1. Introduction

1.1 The Reference in context

As is discussed in more detail in Chapter 2 and Appendix A, Canberra was a pioneer city in legislating specifically for restorative justice, and has had an even longer history in experimenting with restorative justice. The Attorney-General's reference, as set out below, asked for a wider look at the idea of restorative approaches.

On 21 November 2016, as 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 in this wider way:

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.¹

This and subsequent discussions between the ACT Law Reform Advisory Council (the Council) 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 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 safer, 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 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 Terms of Reference were first 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.” Background research for the reference commenced during the caretaker period, though with the departure of the Attorney and the election, there was no certainty that the reference could continue past that date.

On 31 October 2016, Gordon Ramsay MLA was appointed as the new Attorney-General. The Attorney-General expressed strong support for the reference and affirmed it as a reference from him. He also provided additional clarification about the focus of the advice he sought from the Council. The Attorney-General asked the Council to give priority in its work to the discernment of areas which it considered 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 chose 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. The focus areas were child protection and public housing matters.

1.3 Conduct of the Reference

The Council released its first publication in the reference in June 2017: entitled *Canberra – becoming a restorative city Issues Paper* with a period for receipt of submissions by 25 August 2017. At the request of interested parties, that date was formally extended until the end of September 2017, but consultations also continued beyond that date. Because of the limited resources of the Council, initially the Council intended to simply rely on written submissions. However, it became clear that this would not work in obtaining the views of the more marginalised members of the community. The Council was advised that Aboriginal and Torres Strait Islander people and other people affected by various disadvantages such as age, poverty, mental illness, physical illness, imprisonment, drug and alcohol addiction and social isolation would have no voice. The Chair and the Executive Officer then went out to various community organisations, who worked with these people already and sought their advice. Some organisations encouraged people to contact us directly and, in some cases, we met with individuals and groups of people organised by them.

We are 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, supplementing the organisational voices of advocates and others. These initial processes included 14 submissions, 10 meetings and 5 case studies.

The Council was asked by the Minister for a progress report on the outcomes of the first round of consultations. This report, which was released on 8 December 2017, was entitled *Canberra – Becoming a Restorative City - Progress Report on community ideas from preliminary consultations*. The content from this report was the subject to further consultations over the first 6 months of 2018. These later consultations included meetings with 17 community and government organisations, work groups and individuals, and attendance at 13 conferences, workshops and meetings organised by others but attended by LRAC. While some of these focussed on the focus areas chosen by the Council, there was also a strong interest in a restorative approach across a wide number of other areas of life in Canberra, as is reflected in Chapters 5 of this document. These 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 Executive Officer attended the vast majority of these events on behalf of the Council.

The Executive Officer also worked with the University of Canberra in their Yarning Circles with the Ngunnawal Elders Council and attended a United Ngunnawal Elders Council Meeting to speak about the reference. The Chair and the Executive Officer also met with the dedicated staff of Winnunga Nimmityjah Aboriginal Health Services and visited with some of their groups about the reference. The Executive Officer also met with the Chair of the Aboriginal and Torres Strait Islander Elected Body, Ms Katrina Fanning about the reference. Discussions were also held between the Executive Officer of the Council and the chair of the Steering Committee for the Review of Aboriginal and Torres Strait Islander Children involved with Child Protection, Ms Barbara Causon and its Senior Clinical Leader. The Review was commissioned by Minister Rachel Stephen-Smith, who has responsibilities for both child protection and Aboriginal and Torres Strait Islander Affairs in June 2017 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 or Torres Strait Islander people.²

Supporting the work of the Council in this area, the Canberra Restorative Community Network and its supporters like Relationships Australia, RegNet at ANU and the University of Canberra held other functions on their own initiative including:

- A two day conference in February 2018, which looked at *What Canberra as a Restorative City might look like*, where expert visitors came from Hull, Leeds and New Zealand to tell stories of their reforms, particularly in the contexts of education, children and young people and child protection;
- A three day visit from a Maori contingent from the Whanganui Health Service in mid-May 2018, which formally met and yarned with the 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. While this visit was sponsored by the University of Canberra,

the two groups also conducted a cultural blessing of the new University of Canberra Public Hospital, with the co-operation of ACT Health;

- 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, who has conducted a number of foundational restorative inquiries in Canada and elsewhere, and Emeritus Professor Gale Burford, who is a Distinguished Visiting Scholar of Restorative Justice at Vermont Law School Justice Consortium, with a long history in child protection research, practice and reform.

The Council is deeply indebted to the efforts of the individuals and organisations who organised these events and that 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 document. The continued work of the Network at 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 intellectual learnings and motivational support from the members of the International Restorative Learning Community has also richly informed this document and is 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, like Newcastle, has provided lessons, support and conversations, that have informed this document.

1.4 The scope of *Bright Ideas*

As can be seen from the Contents pages, the scope of this document is as broad as our discussions have been, and some areas are more developed than others. The Council has sought to do as much as it could, within the constraints of a single part-time staff member, and an essentially volunteer Council in the time available. Where details have yet to be developed it is either up to Government or the community to supplement these ideas, if they consider them worth exploring further.

Among other things, while the legal and justice work which might enable or oblige working in a more relational way is discussed in some places, many of the actions necessary as the community moves towards becoming a more restorative city do not require legislation or legislative change. It requires a willingness to listen and learn from each other, and to work together to create strong and healthy relational bonds. It requires looking at how we might develop a shared concept of the common good for our future, and 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:

- it has a strong backbone of civil society organisations which create an existing web of social relationships that can support such a move;

- Government, community members, practitioners and academics have already been coming together to discuss how to strengthen our democracy through deliberative processes, which are based in a relational approach to governance;
- 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 document will provide ideas and suggestions for how this journey may be progressed, within Government and the public sector, within the Courts, within the private sector and within the community. There are many models to draw on and our connection to the International Restorative Learning Community provides an especially rich resource to draw upon.

To a great extent, the journey towards becoming a restorative city starts inside each of us, and it can commence whenever we want. It requires practice and a desire to act differently and with a conscious awareness of the impact of what we do, on others. It requires a sense of respect and regard for those around us, and the skill of listening and talking, over time. These developments can occur in any organisation or community or family at any time, but governments have an important role in leading such a change. These different paths towards the same future will be explored more in the next chapter.

Endnotes for Chapter 1

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

Chapter 2. Restorative Canberra

2.1 Introduction

One question that has arisen many times in the Council's consultations has been "What is a restorative city?" What would it look like to someone living here? How would it be different than what exists now?

Submissions received by the Council looked at this question, as did some of the forums, conversations and case-studies that helped inform this report. Sometimes, we heard what it could look like, and other times, we were told things that people felt were not likely to support the vision. This chapter explores the idea, its history and some pathways forward. A detailed history of restorative justice in the ACT is in Appendix A. What is apparent from the diverse examples emerging both here and internationally is that communities shape the idea to fit their own needs, cultures and contexts, within a broadly consistent values framework.

"Restorative justice" and "community" are said to be old concepts and practices, exemplified by some kinds of First Nations' dispute resolution processes¹. In the ACT, some of the work being done to create better health outcomes for Indigenous Australians at the newly opened University of Canberra Hospital uses Yarning Circles. These are modelled on Indigenous practices, with Indigenous elders and with Maori elders, who are establishing restorative health practices in Whanganui in New Zealand². Another part of the University of Canberra's restorative health work includes Yarning Circles, which are facilitated by teamed Indigenous and non-Indigenous facilitators, as teaching spaces. These Circles are teaching student health professionals and others the necessary skills to have meaningful and respectful conversations with each other and their current and future patients (including Aboriginal and Torres Strait Islander patients), as a key part of a unit on current Indigenous health issues. The Restorative Health Project is detailed in Chapter 6.

Circle processes are commonly used in restorative approaches throughout the world³. There are, however, many examples across most cultures and times, where what was described as justice was swift, brutal and lacked compassion, and where communities acted as a tool of conformity and of oppression, particularly to those seen as outsiders or as different. In the context of Canberra as a Restorative City, we are talking about specific meanings for justice and communities, that express what we want our Territory to be like to live in. This chapter will argue that 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 says that:

Restored relationships are focussed on conditions in relationship that people need to be well and succeed – relationships that are based on equal respect, concern/care and dignity.

Desire for a more restorative community may be seen partly as a response to people's sense of alienation and loneliness in the modern city. There is increasing evidence that the

disconnection between people is measurable and that there are significant health impacts. It is hard to flourish in a disconnected environment and people quite often express a yearning for more sense of community⁴. The first efforts towards restorative justice in modern times originally occurred because people were dissatisfied with the perceived failure of adversarial, punitive approaches in criminal justice. They wanted to create a system which would heal both people harmed and people who caused the harm and thus improve their community⁵. At one level then, this desire for a restorative city arises from a related desire to have a more caring and relational place in which to live and flourish.

Wanting a “Restorative City” requires us to consciously craft a future where we choose a better way of acting and living, based on lessons learned over our long and diverse cultural history and our own experiences of what works and what doesn’t. 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, in 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 purpose of the aspiration to become a restorative city is for us to consciously work towards building and supporting strong, healthy respectful, caring relationships to create a place where all people can flourish. It is unlikely to come about by accident. Living so that relationships really matter is an intentional and continuing process for each of us.

Restorative Justice to Restorative Cities

The concept of a restorative city emerged from the philosophy and ideals which underpin restorative justice in the criminal sphere. Within this values framework, a crime is seen as a breach not only of the law (that is, a breach of an obligation imposed by the State or the Crown), but more fundamentally, as a breach of relationships between people. These breaches give rise to obligations between the person(s) who carried out the harm and the person(s) who was harmed. Restorative criminal justice therefore moves from a model where the State punishes someone who has offended the law of the State, to one where the focus is on healing the relationships, which have been harmed by the deed. “Restorative Justice seeks to heal and put right the wrongs”.⁶

This broader idea of healing and putting things right can be appropriately applied well beyond the criminal context. Harm or hurt can be done in many ways, which do not offend the criminal law. For example, if someone is treated rudely, impatiently or is not listened to by someone when they are accessing a service or making a complaint, there can be significant consequences. At a practical and simplest level, the person does not get the service they need or they go elsewhere to get it. At a personal level, the person may feel belittled, frustrated or angry. Being treated unfairly is also now understood to be a dignity violation⁷, which can produce a neurological effect on the person treated unfairly⁸. This can produce a “neural alarm” so that when someone is placed in a similar situation, their level of arousal will already be primed⁹. This can make future interactions more difficult and, unless handled in a trauma-informed way, cause further problems¹⁰. They may also be left with an evidence-based distrust of that system and a threat expectation of any other service. This is discussed with specific examples in Chapters 3 and 4.

If the person and the service have had an existing relationship and the person wants to complain about an action or failure, being treated disrespectfully or dismissively may aggravate the initial problem. It is also likely to lower the possibility of effective and mutually satisfactory resolution. Research shows that poorly handled complaints can be very costly to an organisation¹¹, both in direct costs and in loss of confidence in their service. Low trust situations for organisations are widely acknowledged as more expensive to run. However, the long-term effects on citizens affected or the users of services can be very significant.

The relationship between a person and the State is one level where harm or hurt could occur. Equally, there can be situations where someone fails to comply with a requirement of a government body, or where harm or distress occurs within a community or family, where there is no question of criminal conduct.

Trauma and Healing – a brief introduction

To ensure that people flourish in our city, we want processes that specifically do not do harm, but we also want to create, build and maintain healthy, positive relationships. To achieve this, we need to understand the nature of harm that often comes through experiences that create traumatic stress.

A traumatic event can occur, which affects people differently, because of, for example, their prior experiences, their current health and the supports and connections available to help them. For example, if someone is stopped by police, it may cause an immediate shock, but no lasting impact. However, if the person stopped is an Aboriginal person, data shows they are more likely not only to be stopped but arrested¹². They may have a family experience of a death in custody¹³. In these circumstances, the same event may cause traumatic stress. Where people experience physical or emotional harm from a stressful event, over which they believe they have no control, then they may well experience traumatic stress. Levine states that “we become traumatized when our ability to respond to a perceived threat is in some way overwhelmed”¹⁴.

There are a wide range of traumas which produce long term effects on people’s health and well-being, on families and communities and even on the stability of the state. Trauma can arise from a single act, or from a series of actions which are recurring, cumulative or continuous. For example, recurring acts of bullying, especially when the person being bullied can’t avoid the bully or the bullying occurs at random times, can give rise to traumatic stress. Another example may occur when a government agency keeps continuously making demands of someone which they cannot meet. Where no effort is made to talk empathically with the person in a safe place and with someone to support them about a mutually agreeable way forward, this could also produce traumatic stress. When someone has financial stress through unemployment, then they become ill, and then they are visited by government officials about something else, these may cumulatively produce traumatic stress.

Trauma can affect individuals or a group, sometimes called collective trauma, which can affect specific groups or an entire society. These could include: natural, environmental or

technological disasters; war or high levels of social disharmony; fear, uncertainty and arbitrary enforcement of the law or other rules; dignity violations including racial discrimination, other forms of stigma and breaches of human rights; and symbolic losses, such as death of a leader. Traumatic stress can arise from one or more causes.

The Eastern Mennonite University *Strategies for Trauma and Resilience (STAR)* training¹⁵ lists the following categories, and states further, that collective traumas can be combinations of these:

- Historical trauma, which is “the cumulative emotional and psychological wounding over the lifespan and across generations, emanating from massive group trauma”;
- Cultural trauma: where attempts are made to eradicate part or all of a culture or people, or where cultural practices create dignity violations or harm to others in the culture;
- Dignity violations where there is an attack on someone’s intrinsic human worth or on the worth of someone they care about;
- Secondary or vicarious trauma, when someone is caring for someone else and experiencing their pain and suffering, when experiencing trauma through observing traumatic events or from the media or “compassion fatigue”;
- Participatory trauma, when someone participates in causing trauma to someone else, even where this is in their “line of duty”; and
- Structurally-induced trauma: traumas created by policies that result in systems, which are unjust, unsafe, abusive, racist, or otherwise discriminatory or breach human rights obligations, that cause hardship often on a long term, continuous basis. These include situations of conflict and or poverty that result in difficulty in meeting basic needs, such as adequate, food, housing, safety or health care.

An understanding of trauma is important in working towards a restorative city because its occurrence affects our ability to relate. Again, Levine says “Trauma is about loss of connection – to ourselves, our bodies, to our families, to others and to the world.”¹⁶ It is also important because establishing healthy, positive relationships are part of addressing the effects of trauma. In Judith Herman’s landmark book *Trauma and Recovery*, she describes the core experiences of psychological trauma as essentially “disempowerment and disconnection” and that “recovery can only occur within the context of relationships”.¹⁷ Because trauma robs someone of power and control, healing must restore power and control to the person¹⁸ in a safe environment, where they do not fear that the same thing will happen again.¹⁹

The creation of traumatic harm should be avoided when moving towards a more restorative and relational community because the experience of trauma keeps adversely affecting relationships long after the original event has passed. Remedying the impact of trauma is difficult, expensive and time consuming. It is much cheaper, more effective and more humane to avoid it by design at the beginning.

Can our current Crimes (Restorative Justice) Act extend to create a restorative city?

The first question is “can the existing legislative system for restorative justice in the ACT provide a base for expanding the use of non-adversarial, relationship-based processes beyond the criminal law?” Appendix A to this Report includes a detailed history of the development of restorative justice in the criminal area in Canberra, including a description of the current legislation in the *Crimes (Restorative Justice) Act 2004*. What is interesting about that Act in answering the first question here is that the legislation 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 wrong-doing conflict context. The legislation includes an objects section (section 6), which includes the idea of repairing harm, and of empowering victims in a safe environment. There are other hints at the values underpinning the legislation e.g. under section 41 (2) the convenor of a restorative justice conference must carry out their functions “in a way that ensures that no-one’s safety, rights or dignity is compromised”. Where there is a restorative justice agreement, it cannot include provisions which are degrading or humiliating to the offender or anyone else or that will cause distress to the offender or anyone else (section 51(4)(c) and (d)).

However, the legislation does not directly enunciate values that can be described as “restorative” or provide a description of what a restorative approach in other areas may look like. Framed clearly in a criminal justice context, it is arguably not suitable for simply expanding that legislation into other areas.

2.2 Beyond criminal justice – towards a State that supports relationships

Restorative justice is now part of criminal justice systems across many parts of the world. Its impact is expanding, for example, through the United Nation’s 2006 *Handbook on Restorative Justice Programs*²⁰, promoted as a “practical tool ...to support countries in the implementation of the rule of law and the development of criminal justice reform”.²¹

Jurisdictions across the world have also extended the healing concepts underpinning the criminal justice developments to non-criminal adversarial disputes. Further, the “restorative approach” has expanded further to non-adversarial and non-conflictual contexts, where the focus of effort is to build peace and strong communities through better relationships. In these broader areas, there is a recognition that every interaction provides an opportunity to enhance and value positive relationships with other people in a community. This, in turn, is likely to reduce conflict and allow greater human flourishing.

One of the submissions received by the Council from the Central Victorian Restorative Justice Alliance²², where restorative practices have been operating since 2007, describes this as the emergence of a virtuous cycle, where processes, programs and principles (social

norms) mutually reinforce each other. They describe this process, where multiple restorative programs are operating in the following manner. “In our common work of dealing with social harm, we are promoting fairer and more effective decision-making, in search of outcomes that heal individuals and restore right relations”. They consider this a broader conceptualisation of restorative justice. They also note that, as time has passed, the impact of the mutual reinforcement of the virtuous cycle is that “the relative emphasis of some of our programs is able to shift gradually from *reacting to* social harm, through *preventing* social harm, to *promoting* social flourishing.”²³ What the following examples show is that this shift in social norms can begin anywhere, and spread out from that place, to begin to influence the wider community and society towards a more restorative and relational future. Some examples of these broader initiatives include:

- Restorative processes in human rights disputes e.g. Nova Scotia²⁴;
- Open imprisonment models used in Scandinavian countries, to prevent the promotion of anger, bitterness and disconnection through the imprisonment process;²⁵
- Family Group Conferencing models in public mental health care to reduce coercive treatment e.g. the Netherlands²⁶;
- Restorative Inquiries where harms have been done across a group of people, who are seeking to heal from their experiences and change the conditions which led to the harm e.g. the Dalhousie Dental School Inquiry²⁷ and the Nova Scotia Home for Colored Children Inquiry²⁸;
- Re-integration of people who have been in prison into communities e.g. the Circles of Support and Accountability models used for sexual offenders e.g. Canada²⁹, United Kingdom³⁰ and in the USA³¹; and for any prisoners being released in others;³² and the Connectors program at the HMP Kirkham in North-West England³³;
- Social Network development to assist in recovery from addiction³⁴;
- Community dispute resolution through trained Restorative Justice volunteers e.g. in Canada³⁵ and New Zealand³⁶
- Child-safe community initiatives in Leeds, designed to reduce the number of removals of children from their families, while keeping them safe, to increase school attendance and to maximise children and young people remaining in education, employment or training³⁷;
- Family group conferencing and family-led decision-making in situations of domestic violence, child protection and youth offending in New Zealand; with the cities of Christchurch and Blenheim having reported a nil rate of Maori child removal in the past 12 months³⁸;
- Restorative models of practice and approaches across child protection interventions including foster care were identified by an Anglicare international review of what works in child protection³⁹;
- Restorative Health initiative in Whanganui⁴⁰, New Zealand, designed to improve the health of Maori and other people whose health is impacted by disadvantage;

- Hull’s work with families who have complex disadvantages to manage, through school and community based restorative practices⁴¹.

Many of these initiatives arose from a similar human impulse to improve outcomes for people through improving the relational bonds between people living and working together. Over the past three decades, there has been a growing recognition that strong communities arise from building social capital – the “networks of relationships that weave individuals into groups and communities”⁴². Many of these reforms listed above have participated in building social capital through “making connections among people establishing bonds of trust and understanding”⁴³. In these examples, the impetus for change came when people became aware that an existing system or practice wasn’t serving participants well, and that harm was being done by the processes and systems currently in use. People became aware usually in their own geographic area, activity and or occupation, and started to look at how to strengthen their relationships, as part of their efforts to improve things. They talked together and listened to each other. They recognised that better arrangements needed to be developed to help people and communities to flourish.

This exemplifies, in a broader way, Professor John Braithwaite’s “values conception of restorative justice”⁴⁴, where there are vicious cycles of harm caused from adversarial, retributive approaches, and virtuous cycles as a consequence of restorative, healing actions. For example, people have sometimes recognised that an institutional process or system has treated people disrespectfully and continued or aggravated a vicious cycle. They observe that this has helped no-one, but rather created distrust and often poorer and more expensively delivered outcomes. Some of these reformers put in place processes that were intended to create and perpetuate virtuous cycles of change, which minimised the human and financial costs through establishing healthy, positive, respectful relationships.

2.3 Why a “restorative city”?

In a 2018 presentation at the Newcastle Restorative City symposium⁴⁵, Professor Jennifer Llewellyn said that if we wanted to become a restorative city, we first needed to understand why, and then we could answer “how” that could happen and “what” it would mean. The “why” question is a values question. She said that any answer to the “why” question goes to the core of who we are and how we are with one another – what really matters to us collectively.

A city is a collection of individuals living in close proximity and interacting with each other. For it to be a positive, constructive environment for these individuals, these interactions should be as effective and efficient as possible. Listening to someone and properly understanding them is likely to reduce errors and harm and increase their sense of wellbeing, as well as increase productivity. The idea of a restorative city is a relational one where relationships and social capital are policy priorities. The economic and social benefits of good relationships, trust and cooperation in a community have been discussed over many years. In a 2000 paper for the International Monetary Fund, Francis Fukuyama argued that “social capital is important to the efficient functioning of modern economies and is the *sine*

qua non (indispensable and essential condition) of a stable liberal democracy”. He argued that social capital, while based in norms that promote cooperation, must be brought into existence through actual human relationships, and it is because of these relationships that trust, networks and civil society (elements of social capital) come into being⁴⁶.

Despite the recognition that there are lots of benefits for people and the State in the existence of many strong, positive relationships, there have been growing concerns both in Australia and overseas⁴⁷ that the relational health of our communities has been declining. There have been discussions about how this might be addressed and why it is important⁴⁸. There are tensions in our society between those who want to maintain their power and exercise power over others, and those who believe that the core of an effective democracy is an empowered and informed citizenry. Furthermore, an informed and cohesive community, who care for each other, have less need for imposed government, and this can threaten those who benefit from the exercise of power over others. Relationships exist wherever people live together or interact with each other. The policy and practical concerns are about whether we have positive, healthy relationships or ones that are destructive and unhealthy.

The quality and connectedness of even our positive relationships can be affected by many factors in our society. People are often heard expressing concerns that they do not know those who live near them or next to them, but are not sure how to start to get to know them⁴⁹. Many people move to Canberra for work, and away from their families and other networks, which can compound their sense of disconnection⁵⁰. In a speech in 2016, the then Executive Director of the ACT Disability, Aged and Carer Advocacy Service, Fiona May, said of the ubiquity of relationships and the current quality of relationships that often exist in Canberra:

If Canberra is indeed to become a restorative city we need to talk about relationship. Because at its heart, to live in society, to function as a society, is fundamentally about relationship. What relationship do you have with your children your neighbour, your shop keeper, your doctor? What relationship does a school have with its staff, its students, its parents, its neighbours? What relationship does Care and Protection Services have with the children it seeks to protect, the families it investigates, the foster carers, the organisations it contracts, and the young adults it transitions? What relationship does a government department have with its service users, the organisations it procures from, the stakeholders that seek to influence it, the government it serves? The answer is that in many cases those relationships are not the right relationships to achieve the vision that we have for our city.⁵¹

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 of our lives together as people in this place. This includes us as individuals, as families and friends, as communities, as organisations, as institution, as the body politic and society. This is part of the answer to the “why” question.

There are many reasons why this is a desirable goal for a society. Over the past few decades, evidence has grown, that loneliness and lack of social connection has negative health impacts on people, affecting their cardiovascular, immune and nervous systems⁵². In

fact, the evidence says that loneliness is as great a risk factor to mortality as smoking or alcoholism and significantly exceeds that of obesity or physical inactivity⁵³. There is significant evidence that the incidence of loneliness in Canberra and Australia has been increasing⁵⁴, and that it affects people across all age groups and genders, but often in different ways⁵⁵. In September 2018, Relationships Australia launched a research report *Is Australia experiencing an epidemic of loneliness?*, which looked at data collected annually between 2001-2016⁵⁶. It provides much more fine-grained detail about who experiences loneliness, and forms part of a longer-term study on the impact of loneliness on ageing Australians. The mental health and other impacts of our disconnection are also seen as major contributors to other pressing social and health issues, such as depression and drug and alcohol addiction⁵⁷.

There are complex reasons that have been put forward by many commentators about the causes of this disconnection in a world that, at one level, seems potentially more connected than ever before, through technology and the media⁵⁸. Explanations have included increasing economic disparities⁵⁹, the promotion of fear and exaggeration of risk from other people as tools of social control⁶⁰, longer working hours⁶¹, required work mobility and increased work insecurity⁶², an emphasis on individualism⁶³ and consumerism⁶⁴, as well as the breakdown of social capital within communities⁶⁵.

This document is unable to go in to a full analysis of these issues, because of the Council's own resource constraints. However, a submission from the Canberra Alliance for Participatory Democracy to the Council raised questions about "the fitness for purpose of our current economic system which is currently driven by neo-liberal ideology" in the context of a restorative future. This economic theory has driven policies and action by many western governments over the past 30 – 40 years, and the Submission describes this as our "operating system" which goes on behind the scenes often out of our conscious awareness. Under this model, "society" was subsumed into the concept of the economy, and people were encouraged to see themselves as atomised individuals "competing" with each other for scarce resources⁶⁶ and as consumers of products.

The impact of this "operating system" has been pervasive, and it is argued in the Submission and in other literature that it has subtly undermined our sense of community. We have been told to trust markets, not our relationships. At its deeper levels, it appears to have undermined our faith in collective institutions, our communities and other citizens, as argued by the Australian economist Richard Denniss⁶⁷ in 2017:

For decades, billions of people have been told ... that greed and selfishness are the dominant human motivators, that rational people think only about themselves, that collective solutions to collective problems are inefficient, and that risking inequality gives people an incentive to work harder. ... Over the same period, faith in democratic institutions around the world has been falling, and cynicism towards politicians has been rising. While there is no one cause of this decline across different countries with different constitutions, it is hard to believe that the endless repetition of the argument that governments are inefficient, that politicians are incompetent and that faith in the goodwill of others is naïve has had no effect on our expectations of elected officials. ... If citizens believe that their community will do nothing to help those at the bottom,

they have a stronger incentive to claw their way to the top – and even to stand on a few other people to get there. To build a strong sense of community, people need to settle down, engage regularly with their neighbours and develop a sense of shared goals. But many of the preferred policy tools from the neoliberal toolbox do not help bring people and communities closer together; rather they work to drive them apart. For example, the combination of insecure work that is hard to get and harder to keep and punitive approaches to welfare does more to keep people on their toes than to help them put down deep roots in their communities and workplaces.

Increased economic inequality has been one of the results for societies which followed this path⁶⁸. For example, Australian data shows that its level of income inequality has increased since the mid 1990s, relative to other OECD countries. Those Australians in the top 10% of income earners are becoming increasingly rich, at the cost of middle and lower income earners. Australian Tax Office statistics show that in 2015-16 the top 10% of income earners held 31% of all income, having increased their share from 26% in 1995-96. All other decile's share of income has remained the same or decreased over that decade.⁶⁹ Because of the importance of income as a means of meeting needs, as well as purchasing what is desired, high levels of income inequality have a corrosive effect on individual people, families and communities. "Greater levels of income inequality have been shown to increase status barriers between people, reducing empathy and community, within societies, and giving rise to feelings of social exclusion, insecurity and stress. The result is a more fragmented society".^{70 71}

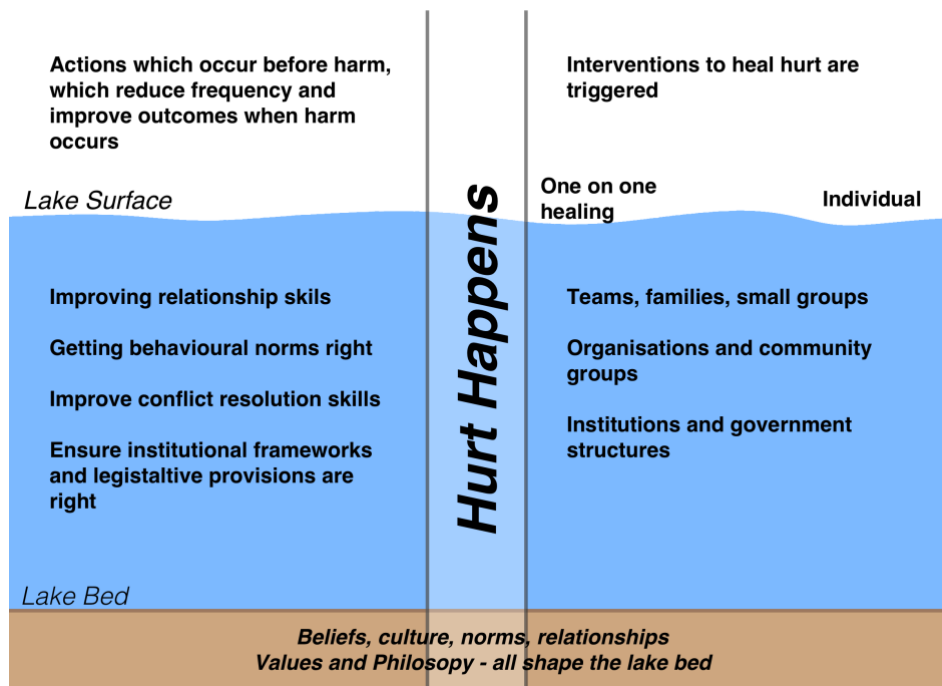
Some commentators argue that these kind of impediments to good relationships and connection are barriers to achieving a restorative community. To achieve the necessary shift in values and practices towards a restorative community means we need to question the impact of everything we do and believe on its likely effect on our relationships.⁷² This means we must look at the economic and social water in which our lives swim – the underpinnings of how our society has become, often without our conscious awareness. We must consciously hold the relational goal in our minds, 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 have even suggested using relational impact as part of formally determining government policies, in much the same way as we have environmental impact statements and regulatory impact statements⁷³.

A diagram of what is needed for a compassionate, restorative city was set out in the submission of Canberra Alliance for Participatory Democracy to the Council⁷⁴. It was modelled on the idea of Lake Burley Griffin at the centre of Canberra City, where values and philosophy (including beliefs, culture, norms and relationships) underpinned everything else. Comments on the diagram have also noted that where the diagram says "Hurt happens", it narrows down the beneficial effects which can mean hurt seldom happens. Sometimes flourishing or collaboration can happen, because of the earlier actions.

As represented in the diagram, the importance of the skill and relationship-building aspect of a restorative approach and our values, beliefs, culture and norms are therefore fundamental considerations as we move towards a more restorative city. Looking at our

community, our society, our institutions and our own lives through this goal of building healthy relationships across our society requires us to understand what healthy relationships look like and need to flourish, and why they are “so essential for safe, supportive and productive communities”⁷⁵. As Professor Jennifer Llewellyn says, a restorative approach must “guide policies, practices and processes to respond to things when things go wrong and support healthy relationships so that things go right more often”.

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A Democratic City***



Building healthy relationships, where people act kindly with compassion and empathy, and with honesty, builds trust and safety. This is the business of political leaders, public institutions and services, civil society, families, friends – in fact, it’s everybody’s business. Similarly, we need to see how we can change the things which work against healthy relationships and a more restorative city. We need to see where other places have succeeded and see what they have done.⁷⁶ In the ACT, we have our own examples which provide strong foundations for the future as set out in Chapter 6.

2.4 What are the characteristics of a “restorative” city?

Encouraging healthy positive relationships

Healthy, positive relationships are those which maximise the chance of human flourishing. These are based on a sense of mutual regard and respect, of care and kindness for each other, of recognising and valuing the other’s intrinsic worth. A healthy relationship involves wanting the best for the other person and being willing to help them to be the best they can be. It also involves learning how to talk and listen to each other and how to seek to

understand differences of view in a way which is respectful. It involves making time for each other and important conversations. It is not about always agreeing with each other. In fact, always agreeing on everything can be a sign of an unhealthy relationship. For example, where there is a power imbalance, a person may feel they can't express their own views without endangering the relationship or themselves.

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 the idea of a restorative approach through the word "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* and this will be discussed further in the next section. 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"⁷⁷. The complementary nature of both these approaches is discussed below. Within this broad human rights and obligations framework, a relational focus at a city level would also try to ensure that priority is given to the development of practices, policies and procedures, of processes and strategies which embody and enact restorative approaches.

Attention to threats to positive relationships

A restorative city should also work to reduce behaviours, processes, policies and strategies which work against human flourishing and breakdown or undermine the potential for good relations. For example, when government is proposing changes, communities often feel that government does not properly listen to their concerns, that they consult in a hurry, that there is no time to really listen to the legitimate concerns of people and modify proposals, and they do not act in a manner which builds trust or faith in government. The ACT Government's "Your Say"⁷⁸ website is a recent response to concerns that citizens have raised in this area.

Another example occurs where government and administrative decisions are made secretly or in a non-transparent manner, particularly where people are denied access to

information about themselves, despite the existence of legislation like Freedom of Information and Human Rights law which is supposed to ensure access. Similarly, where government acts as a litigant against its citizens, and uses its significantly stronger power and resources to prevent citizens effectively using external review or court processes or to delay them or escalate them to make the price of justice beyond the reach of citizens, despite requirements like Model Litigant rules.

These kinds of practices can be seen as offences against the human dignity of citizens and can leave a long-term legacy of trauma, anger and distrust about all parts of government. Where people see these actions occurring in an apparently systematic way, over a long period, this can lead to a loss of faith in the integrity of government and institutions, a loss of hope for the future and further civic disengagement. These kinds of experiences formed part of the observations from the broader public consultations, in both the focus areas and others like planning, coronial processes and mental health. These kinds of examples were also raised in submissions and case studies, and alternatives were presented in some of the functions organised by the Canberra Restorative Community Network. The task then of moving forward towards a more restorative city is to also reform these negative systems, which appear to ignore or undermine the goal of good relationships and often can be seen by citizens as abuses of power by government and their agencies.

Some guiding principles

The Restorative International Learning Community has provided support directly and indirectly to the work of the Council and has contributed significantly to a set of Principles for a Restorative Approach, which could provide a transformational starting point. They are consistent with the views expressed in those submissions, which looked at what a restorative approach might look like in the ACT. They could be used as a way of examining an activity, or an organisation, or indeed, as an audit of a community more broadly, to see whether it is taking a restorative approach. They provide a tool for answering the “how” question set out above.

As we saw in the examples of restorative approaches described above, the ways that people have enacted restorative approaches have varied with the place, the community and the priorities. The intention is not to limit innovations. Rather, the idea is to provide a framework of principles drawing common threads from the theory and practice of restorative approaches:

A restorative approach puts the creation, maintaining and strengthening of good relationships at the core of everything we do. A restorative approach should:

- (a) intentionally recognise all the relationships involved, actively work to build, support and maintain these relationships, and, where appropriate, help positively shape new relationships and inter-connections for the future;
- (b) seek to address power differentials constructively, to maximise the possibility of equal and fair engagement for all people in the relationship, and to encourage people to design their own processes to feel comfortable;

- (c) be holistic and integrative, take account of context and causes, rather than being only “incident”-focussed;
- (d) be inclusive and participatory, consciously addressing historical legacies of relational harm and the need to protect from further trauma;
- (e) ensure respectful listening and dialogue in a place where people feel safe, and allowing sufficient time for all people to feel heard;
- (f) provide an opportunity for honest, respectful conversation and reflection by everyone and, where appropriate, provide an outcome which is considered fair by everyone involved;
- (g) be appropriate to the context, responsive to the needs of people involved and informed by data and knowledge;
- (h) be non-adversarial and collaborative, with transparent processes and known outcomes;
- (i) be forward-focussed, educative, problem-solving, preventive and proactive; and
- (j) focus on individual and collective taking of responsibility.

Principles of this aspirational kind are being used in some ACT legislation, where Government has sought to influence how people behave and relate to each other, such as Schedules 1 and 2 under the *Disability Services Act 1991*. Such a set of principles could be framed in enabling legislation. This allows everyone to be able to look at these principles in their own context and consider what they may need to change.

As is already the case, in the examples set out in Chapter 5, people in Canberra are already moving towards a more restorative approach in many areas. A set of legislated principles would provide a common understanding of what is meant by a “relational focus” or “a restorative approach” for government, its agencies and service providers, the community and other organisations, e.g. the business and non-profit sectors. It also allows government to determine its timetable of expectations for its own functions to achieve such principles, initially through reviewing specific activities against these expectations and then changing their processes, and where necessary, their legislation. It also provides a consistent way for people, businesses, civil society organisations and government organisations to voluntarily move towards a more restorative future. A set of principles would encourage citizens to work together with government and others to shape the city and its future in a restorative and relational way.

Possible action 1. The Government could create an enabling legislative framework of principles, in consultation with the community, to move Canberra towards a more restorative and relationally focused future. As a guide, a set of principles could state that a restorative approach puts the creation, maintaining and strengthening of good relationships at the core of everything we do. A restorative approach should:

- (a) intentionally recognise all the relationships involved, actively work to build, support and maintain these relationships, and, where appropriate, help**

positively shape new relationships and inter-connections for the future;

(b) seek to address power differentials constructively, to maximise the possibility of equal and fair engagement for all people in the relationship, and to encourage people to design their own processes to feel comfortable;

(c) be holistic and integrative, take account of context and causes, rather than being only “incident”-focussed;

(d) be inclusive and participatory, consciously addressing historical legacies of relational harm and the need to protect from further trauma;

(e) ensure respectful listening and dialogue in a place where people feel safe, and allowing sufficient time for all people to feel heard;

(f) provide an opportunity for honest, respectful conversation and reflection by everyone and, where appropriate, provide an outcome which is considered fair by everyone involved;

(g) be appropriate to the context, responsive to the needs of people involved and informed by data and knowledge;

(h) be non-adversarial and collaborative, with transparent processes and known outcomes;

(i) be forward-focussed, educative, problem-solving, preventive and proactive; and

(j) focus on individual and collective taking of responsibility.

2.5 Law and justice – foundations and a values framework

Canberra includes some of these values 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.”⁷⁹ The submission goes onto list those provisions of the Human Rights Act 2004 that give effect to restorative practices and values, 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

The Submission also brings up an important legal framework issue, for 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 in both cases, it is hoped that the creation of an enabling framework would mean that government agencies and government-funded service providers would embrace and enact these ideas, there is evidence that this is not always the case.

As noted in later chapters, there are some areas of government function which act outside the normal administrative obligations of natural justice and other human rights obligations. A restorative framework is designed to create positive, healthy relationships, based on trust, respect and relational reciprocity. 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 first place for review where a government decision is seen as breaching their human rights obligations is the ACT Supreme Court, which 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 e.g. in relation to breaches of Human Rights obligations, victims of crime complaints and child protection matters (discussed further in Chapter 3)⁸⁰;
- The need for greater support for, and removal of barriers to the success of existing restorative practices e.g. in relation to the limitations on the provision of support to families, engaging in the Indigenous Family Group Conferencing pilot;⁸¹ - this is addressed further in Chapter 3;
- 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 obligations⁸².

Possible action 2. The problems identified by the Human Rights Commission relating to (a) lack of rights to external review of government decisions, especially where there are questions about failure to comply with natural justice and other human rights obligations, and (b) the need for access to restorative processes in relation to human rights violations should be addressed urgently.

Possible action 3. Once there is a commitment to move forward towards Canberra becoming a Restorative city, Government should ask their Directorates, Agencies and services to explore the cultural issues which have impeded implementation of human right compliant systems within them.

Another part of the justice underpinnings of a restorative approach is through the creation of restorative regulatory mechanisms⁸³, which work from the basis that most people want to do the right thing, so most effort should go into helping people to do this, rather than punishing those who don't. Punishment only needs to be there as a last option, where other processes have failed. Moves by the Chief Magistrate to create a Therapeutic Court, which seeks to take a health-based approach to drug and alcohol related offences and a more restorative approach, potentially, to child protection matters involving these same concerns. This is discussed further in Chapter 5. The submission of the ACT Civil and Administrative Tribunal to the Council⁸⁴ noted that while it had many powers to work restoratively, these were triggered late in the process, and that early availability of such measures would reduce trauma for those involved and be likely to produce better outcomes. The need for adequate resources to take on an extended role was also noted.

The Council considers that there are many opportunities inside the current justice and administrative review systems to make greater use of restorative approaches. Some of this may require legislative amendment. For example, in Nova Scotia, early resolution of matters through restorative processes is assisted by a practice requirement that anything of relevance must be introduced in the preliminary conference stage by all parties. Rather than conferencing and mediation being a confidential process where anything said cannot be used in later proceedings, Nova Scotia's approach to create greater transparency and understanding is that if the information is not produced up front, it can't be used or introduced at a later point.

Possible action 4. Government should work with the Courts and tribunals to develop a pilot of more restorative processes in areas that they identify as likely to create better systems for the community and to minimise unnecessary trauma, arising from the actual legal processes. The courts and tribunal could create a relational process to develop these pilots with participants and other stake-holders.

In some countries, community members are actively involved through being trained as volunteers in restorative dispute resolution at a community level. These trained volunteers are used in Circles of Support and Accountability for released offenders and also as a community mechanism to address child protection concerns. In some places, these trained volunteers operate like our Justices of the Peace system, where people are trained and

assisted and agree to respond to assist people as facilitators of an appropriate restorative process. There are positives and negatives to both funded services and trained volunteer-based services. Initiatives have been developed by members of our Restorative International Learning Community⁸⁵ which could be adapted to the Canberra context. The teaching of restorative skills as part of the school curriculum occurs across the school system in New Zealand. Schools could also provide options for others to learn the skills of effective restorative dispute resolution and peace-building at home and in the community as well. In Canberra, we also have great human capital in our older people, who may have retired, but who have extensive experience to draw upon and who may be interested in this kind of contribution.

Possible action 5. The Government should look at measures which might promote better restorative resolution of disputes within the community, so that the cost and trauma of having to use formal legal processes can be reduced, and that citizens have alternative pathways to resolve their disputes in more restorative ways.

Possible action 6. The development of the training for community-based restorative conferencing facilitators in the ACT is necessary whether the preferred way of making these services available for people in the community is through a paid or volunteer model (or a combination). This should be a high priority,

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 properly as a restorative city, it must make right its relationship with the Traditional Owners of this land, who have never ceded their sovereignty⁸⁶. The Uluru Statement of the Heart described this 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”⁸⁷.

The historical record of treatment of Aboriginal people, who live and visited the area now called Canberra prior to and from the laying of a foundation stone for the Australian Capital Territory in 1913 was one of dispossession, segregation, discrimination and exclusion at so many levels.⁸⁸ Many people were moved from their land to church and government missions near Yass. Children were removed from their families and spread throughout the country. The separation of families still occurs today in alarming numbers, as is discussed in Chapter 5. The dispossession, exclusion from education and community support has left the Traditional Owners with a legacy of long-term health issues, of fractured relationships and lost cultural heritage, and of poverty and disadvantage. As noted in the Uluru Statement from the Heart in May 2017, the results of these practice over many years is a crisis the dimensions of which “tell plainly the structural nature of our problem. This is *the torment of our powerlessness*”⁸⁹.

These are wrongs which must be addressed in the move to Canberra becoming a more restorative city, in partnership with the United Ngunnawal Elders Council and with the engagement of the Aboriginal and Torres Strait Islander Elected Body. The United 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. This strategy is also occurring in other states and territories, including Victoria, Western Australia and the Northern Territory.

Possible action 7. The Government should commence negotiations with the United Ngunnawal Elders Council about the nature and scope of a Treaty to recognise their sovereignty of their country, as soon as practicable, and seek to exert influence on the national government for all other Aboriginal and Torres Strait Islander Australians, many of whom live in the ACT.

On 31 May 2018, a seminar was organised by the Institute for Governance and Policy Analysis entitled *Reconciliation in the ACT – are we there yet?* The panel consisted of three Aboriginal leaders – Julie Tongs OAM, Chief Executive of Winnunga Nimmityjah Aboriginal Health and Community Services; Louise Taylor, at that time Deputy Chief Executive Officer of Legal Aid ACT, who has recently been appointed as an ACT Magistrate; and Kim Davies, the Chief Executive of Gugan Gulwan Aboriginal Youth Corporation. These leaders described continuing problems for Aboriginal people in the ACT including:

- The need for self-determination by Aboriginal and Torres Strait Islander people, in relation to all matters of concern – and the need for deep conversations and listening by government agencies which are having a negative impact on the health and well-being of Aboriginal people and their families;
- The need for government to show high levels of integrity and respect in all its dealings with Aboriginal and Torres Strait Islander people, to overcome the deep distrust of the community from the legacy of years of undelivered promises;
- Because of the long term impact of incarceration and unconscious bias demonstrated by data on disproportionate rises in Indigenous arrests over the past 4 years, there is an urgent need for the police to work collegiately with Aboriginal and Torres Strait Islander people to improve the current poor relationships between police and Aboriginal people, which the ACT's then Chief Police Officer Justine Saunders noted in May 2018, had worsened over the past 18 years;
- 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.

Possible action 8. As a community seeking to become more restorative, we must 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. We must commit to work with them to preserve their traditional knowledge and culture, and to be guided by them so we work to keep it a living culture for the benefit of us all. We must also respect and honour their families and ensure that they are provided with all the support necessary for their families and kinship networks to flourish. We must stand with them in their struggle for self-determination.

Endnotes for Chapter 2

- ¹ 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, e.g. 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.
- ² At recent visits between the two First Nations people from Whanganui and Ngūnawal country, they have exchanged cultural gifts which have been placed in both hospitals as a symbol of their relationships with each other, and as cultural symbols of the restorative journeys they are undertaking together and apart. <https://www.canberra.edu.au/about-uc/media/monitor/2018/may/oar-finds-new-home-on-dry-land>
- ³ A useful resource on this is: Pranis K. *The Little Book of Circle Processes: A new/old approach to peacemaking*. The Little Books of Justice and Peacemaking Series. 2005 Good Books, Intercourse (Pennsylvania).
- ⁴ This sometimes occurs when people look back at significant often tragic events, where there was strong community actions to help others eg in relation to the Canberra Bush Fires in 2003. See, e.g. Camilleri P. Healy C. MacDonald E. Nicolls S. Sykes J. Winkworth G. Woodward M. *Recovering from the 2003 Canberra bushfire: A work in progress*. 2007 Australian Catholic University, Canberra. Available at: https://www.preventionweb.net/files/2948_RecoveryCanberra2003July2007.pdf : see especially
- ⁵ The first modern conceptions of restorative justice, based on victim/offender restorative practices developed in Kitchener in Ontario, Canada, in 1974. Peachey DE. The Kitchener Experience. Chapter 1 in Wright M. Galaway B. (editors) *Mediation and Criminal justice – victims, offenders and community*. 1989, Sage publications, London (UK).: pages 14-26.
- ⁶ Zehr H. Mika H. Fundamental concepts of restorative justice. 1998 *Contemporary Justice Review*, volume 1, pages 47-55, at pages 51-53.
- ⁷ Hicks D. *Dignity: The essential role it plays in resolving conflict*. 2011 Yale University Press, New Haven: see chapter 6.
- ⁸ Tabibnia G. Lieberman MD. Fairness and co-operation are rewarding – evidence from social cognitive neuroscience. 2007 *Annals of the New York Academy of Science*, volume 1118, pages 90-101; Brosnan SF. De Waal FB. Monkeys reject unequal pay. 2003 *Nature*, volume 425. Pages 297-299. A short extract from a BBC program on this work can be seen at *Capuchin monkey fights for equal rights - Inside the Animal Mind*: Episode 3 - BBC Two at <https://youtu.be/xot4z1CKFMo>. This experiment is seen as evidence for the biological trigger caused by perceived unfairness.

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- ⁹ Goleman D. *Emotional intelligence – why it can matter more than IQ*. 1996 – electronic edition 2009 Bloomsbury, London: at Chapter 2 – the Anatomy of an Emotional Hijacking.
- ¹⁰ Herman J. *Trauma and recovery – the aftermath of violence – from domestic abuse to political terror*. 1997 Basic Books, New York.
- ¹¹ Society of Consumer Affairs Professional Australia and the University of Newcastle. *Return on Investment of Effective Complaints Management*, March 2018, which concluded that: this study clearly indicate[s] the substantial financial returns to the organisation when effective C[onsumer] C[omplaints] M[anagement] is delivered, particularly when extended benefit (of improvements to people, processes and products) is generated. 9page 54). Copies available at <http://socap.org.au/resources/return-on-investment-of-effective-complaints-management/>
- ¹² For example, 2017 data released by the ACT Justice Directorate showed that the rate of police apprehensions of Indigenous people had increased by 35% in just 4 years . Apprehensions include police cautioning, arrests or stopping people. Over that same period (2012-2016), the number of arrests of Aboriginal Canberrans increased by 64% over that period. O’Mallon F. ACT police apprehending many more Aboriginals than 4 years ago. 2017 *Canberra Times*, 30 September . Available at : <https://www.canberratimes.com.au/national/act/act-police-apprehending-aboriginals-more-often-than-five-years-ago-20170920-gylh4k.html>
- ¹³ While the actual numbers of deaths in custody (prison or police) are greater for non-Indigenous people, the significantly higher rate of incarceration of Aboriginal and Torres Strait Islander people, compared to their proportion of the population means that proportionally, deaths in custody occur more often for Aboriginal and Torres Strait Islander people. For example, Indigenous people were 2.8% of the national population at the 2016 Census and 1.6% in the ACT at that time. In the ACT Indigenous imprisonment rates are 16 times higher than for the non-Indigenous population, and Aboriginal and Torres Strait Islander people comprise 21% of the ACT adult prison population. (Australian Bureau of Statistics. *Prisoners in Australia*. 2017 Catalogue no. 4517.0). Nationally in 2014-15 (the latest year available at September 2018) 36% of deaths in police custody occurred to Indigenous people, and 22% of deaths in prison were Indigenous people. In the ACT, there were no deaths in police custody, and one death in prison custody in 2014-15 and that was an Indigenous prisoner. Ticehurst A. Napier S. Bricknell S. *National Deaths in Custody Program: Deaths in custody in Australia 2013-14 and 2014-15*. Australian Institute of Criminology (AIC) Statistical Report 05. 2018 AIC, Canberra.
- ¹⁴ Levine P. *Healing trauma – a pioneering program for restoring the wisdom of your body*. 2012 Sounds true, Boulder (Colorado), chapter 1, page 12.
- ¹⁵ Eastern Mennonite University and the Center for Justice and Peacebuilding. *STAR (Strategies for Trauma Awareness and Resilience) Level 1 Participants Manual*. 2016 October Course in Wellington , New Zealand, taught by Elaine Zook Barge and Vernon Jantzi: The Trauma Experience – pages 11-15.
- ¹⁶ Levine 2012 – see note 14, at page 12-13.
- ¹⁷ Herman J. 1997 – at note 10, at page 133.
- ¹⁸ Herman J. 1997 – at note 10, at page 159
- ¹⁹ Herman J. 1997 – at note 10, at pages 162 and following.
- ²⁰ United Nations Office on Drugs and Crime. *Handbook on Restorative justice programmes*. Criminal Justice Handbook Series 2006, New York, United Nations. Prepared by Yvon Dandurand and Curt T. Griffiths.
- ²¹ See note 20, page 1.
- ²² Submission 10, David Moore, on behalf of the Committee of the Victorian Association for Restorative Justice.
- ²³ These quotes come from a paper attached to Submission 10: Robinson K. Hamilton S. Binns B. Kent M. Moore D. Renou B. Restorative practice evolving through community networks: Lessons from the Central Victorian Restorative Justice Alliance. 2015 *New Community Journal 13 – Restorative* . Issue 50, volume 2: pages 23-29.

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- 24 <https://humanrights.novascotia.ca/resolving-disputes/about-process/restorative-approaches>
- 25 Pratt J. Scandinavian exceptionalism in an era of penal excess. Part 1: the nature and roots of Scandinavian exceptionalism. 2008, *British Journal of Criminology*, volume 48, pages 119-137. See also: Laron D. Why Scandinavian prisons are superior. 2013 *The Atlantic*. 24 September: <https://www.theatlantic.com/international/archive/2013/09/why-scandinavian-prisons-are-superior/279949/>
- 26 For example: Schout G. Meijer E. de Jong G. Family Group Conferencing – its added value in Mental Health Care. 2017 *Issues in Mental Health Nursing*, volume 38, issue 6, pages 480-485; Meijer E. Schout G, de Jong G, Abma T. Regaining ownership and restoring belongingness: impact of family group conferences in coercive psychiatry. 2017 *Journal of Advanced Nursing*,
- 27 All reports from the Inquiry and details can be found on <https://www.dal.ca/cultureofrespect/background/report-from-the-restorative-justice-process.html> .
- 28 History and conduct of the Inquiry can be found at <https://restorativeinquiry.ca/>. Copies of reports are under the media tab.
- 29 <http://cosacanada.com/documents/cosa-canada-research/>
- 30 See, eg <http://www.circles-uk.org.uk/circles4eu/about-cosa-recent-research-in-cosa> and <http://www.respond.org.uk/what-we-do/cosa/>
- 31 Eg the Minnesota COSA Program, described in Duwe G. Can Circles of Support and Accountability (COSA) work in the United States? Preliminary Results from a Randomized Experiment in Minnesota. 2012 *Sexual Abuse: A journal of research and treatment*, volume 25, issue 2, pages 143-165 – available at <http://journals.sagepub.com/doi/pdf/10.1177/1079063212453942>
- 32 Some of the Vermont COSA programs cover non-sexual and well as sexual offences, focussing not on the nature of the offence but the likelihood of reoffending. eg <http://brattleborocjc.org/our-programs/prisoner-re-entrycosa/> . There is a Community Restorative Centre model in NSW <https://www.crcnsw.org.au/> to assist prisoners and parolees, and their families to successfully break the recidivism cycle.
- 33 Best D. Musgrove A. Hall L. The bridge between social identity and community capital on the path to recovery and desistance. 2018 *Probation Journal – the Journal of Community and Criminal Justice*. Volume XX, issue X, pages 1-13. Available at: DOI: 10.1177/0264550518790677.
- 34 See, e.g. Best DW. Haslam C. Staiger P. Dingle G. Savic M. Bathish R. MacKenzie J. Beckwith M. Luman DI. Social Networks and Recovery (SONAR): characteristics of a longitudinal outcome study in 5 therapeutic communities in Australia. 2016 *Therapeutic Communities – International Journal of Therapeutic Communities*. Volume 37, issue 3, pages 131-139. See also Buckingham SA. Best D. *Addiction, behavioural change and social identity*. 2017 Routledge, New York.
- 35 See, e.g. the Community Justice Initiative in Ontario, <https://cjiwr.com/>; in Nova Scotia, <http://www.tricountyrestorativejustice.com/partners.html> ; in British Columbia , eg <http://krjustice.com/> and Dhami MK. Joy P. Challenges to Establishing Volunteer-Run, Community-Based Restorative Justice Programs. 2007 *contemporary Justice Review*, volume 10, issue 1 (March), pages 9-22; and Souza KA. Dhami MK. A study of volunteers in community-based restorative justice programs. 2008 *Canadian Journal of Criminology and Criminal Justice*, volume 50, issue 1 (January), pages 31-57.
- 36 See, e.g. Whanganui Restorative Practices Trust trains volunteers and even family members in restorative practices <http://restorativepracticeswhanganui.co.nz/community/> to ensure that the concept is spread widely through their community.
- 37 Submission 17 from Relationships Australia included the *Leeds Children and Young People’s Plan 2015-2019* as Attachment C to its submission. A brief report on progress can be found at <https://www.leeds.gov.uk/docs/Child%20Friendly%20Leeds.pdf>
- 38 Paul Nixon, Chief Social Worker, Oranga Tamariki, Ministry for Vulnerable Children, New Zealand, personal communication 3 July 2018.

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- 39 Ivec, M. (2013) A Necessary Engagement: An International Review of what works in child protection see <https://www.anglicare-tas.org.au/sites/default/files/A%20necessary%20engagement%20-%20An%20international%20review%20of%20parent%20and%20family%20engagement%20in%20child%20protection.pdf>
- 40 <https://www.canberra.edu.au/research/collaborations/ciri/uc-ciri-projects/restorative-health/events-and-items-of-interest/whanganui-health-board2> which notes that The Whanganui District Health Board has accelerated a narrowing of the gap in Maori health inequality by using Restorative Practices, which they define as "a philosophy, in action, that places respectful relationships at the heart of every interaction. This relational approach is grounded in beliefs about the equality, dignity and potential of all people and about the just structures and systems that enable people to thrive and succeed together" (2014). Eleven outputs from this project will provide the justification for, implementation of and evaluation plan for 'Restorative Healing Practice'.
- 41 <http://www.hullcentreforrestorativepractice.co.uk/>
- 42 Putnam RD. Feldstein LM. Cohen D. *Better Together: Restoring the American Community*. 2003 Simon and Shuster, New York: Introduction: page 1.
- 43 Putnam RD. et al. 2003. See note 42: page 1.
- 44 Braithwaite, J. *Restorative Justice and Responsive Regulation*, 2002 Oxford University Press. Oxford.
- 45 University of Newcastle Law School. *Newcastle as a Restorative City Symposium – justice, Community, Education and Health*, 14-15 June 2018, NeW Space Precinct, University of Newcastle, Hunter Street, Newcastle.
- 46 Fukuyama F. *Social Capital and civil society*. IMF Working Paper WP/00/74. April 2000, International Monetary Fund, Washington: page 3.
- 47 See, e.g. Schluter M. Lee DJ. *The R Option – Building Relationships as a better way of life*. 2003 The Relationships Foundation, Cambridge. Baker N. (editor) *Building a Relational Society – new Priorities for Public Policy*. 1996 Ashgate, Aldershot (England). Muir R. The relational state – beyond marketisation and managerialism. 2014 *Juncture*, volume 20, issue 4, pages 280-286. Cooke G. Muir R. (editors) *The relational state – how recognising the importance of human relationships could revolutionise the role of the state*. November 2012 Institute for Public Policy Research, London.
- 48 See, e.g. Born P. *Deepening Community: Finding joy together in chaotic times*. 2014 Berrett-Koehler Publications, San Francisco.
- 49 In recognition of this widespread longing for connection, Relationships Australia has initiated an Australia-wide Neighbour Day, the next one being on Sunday 31 March 2019. <http://neighbourday.org/home-page/how-it-all-began/>. The website includes an e-kit to help people organise an activity to meet each other.
- 50 For an analysis of Canberra's population in 2016, see Mannheim M. Who is Canberra? 2018 *Canberra Times*, 2 May 2018. See : <https://www.canberratimes.com.au/canberra-news/who-is-canberra-20180411-p4z8zu.html> Among other things, the article notes that, even when people are born here, few people stay in Canberra over their life time, which gives us an unusual population distribution, with relatively few children or older citizens. 20% of our population was born overseas as well.
- 51 May F. Towards a Restorative City. 2016 *ACTCOSS Update Journal: What we want the Canberra Community to be by 2020*. Issue 75, Autumn, page 4.
- 52 See, e.g. Miller G. Why loneliness is hazardous to your health. 2011 *Science*, volume 331, issue 6014, pages 138-140; and Holt-Lunstad J. Smith TB. Loneliness and social isolation as risk factors for CVD: implications for evidence-based patient care and scientific inquiry. 2016 *Heart*. Volume 102, issue 13 (July): pages 987-989.
- 53 Holt-Lunstad J. Smith TB. Layton JB. Social Relationships and mortality Risk: A meta-analytic Review. 2010 *PLoS Medicine*, volume 7 (July), issue 7, e1000316.

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- 54 An Australian Red Cross Survey 5-10 October 2017 showed that one in four people are lonely almost all the time or on a regular basis. <https://the-riotact.com/look-at-all-the-lonely-people-more-canberra-volunteers-needed-to-provide-social-support/226558>. A Relationships Australia on-line survey in December 2017 using two measures of social isolation (from family and friends) showed between 32-40% of respondents with low levels of connection that identified they were at risk of social isolation. <http://www.relationships.org.au/what-we-do/research/online-survey/december-2017-loneliness>. See also: Franklin A. Tranter B. *AHURI Essay Housing, loneliness and health*. Australian Housing and Urban Research Institute (AHURI) Final Report No. 164. February 2011, AHURI, Melbourne. Baker D. *All the lonely people – Loneliness in Australia, 2001-2009*. The Australia Institute (TAI) Paper No. 9. June 2012, TAI, Canberra.
- 55 See, e.g. Baker D. 2012 – at note 54: Summary, pages v-vi; Flood M. *Mapping Loneliness in Australia*, 2005, The Australia Institute (TAI) Discussion Paper Number 76, February 2005 TAI, Canberra; Aged and Community Services Australia (ACSA). *Social isolation and loneliness among older Australians*. Issues Paper No. 1. October 2015, ACSA, Canberra; Groch S. Canberra teens are among the loneliest in Australia: Pisa Report, 2018 *Canberra Times*, 6 June 2018; Australian Council of Education Research (ACER). *PISA in Focus Number 1: Belonging at school*. Programme for International Student Assessment. 2018 ACER, Camberwell (Victoria).
- 56 Mance P. *Is Australia experiencing an epidemic of loneliness? – Findings from 16 waves of the Household Income and Labour Dynamics of Australia Survey*. Working Paper, September 2018. Relationships Australia, Canberra.
- 57 See, e.g. Hari J. *Lost Connections – uncovering the real causes of depression - and the unexpected solutions*. 2018 Bloomsbury, London.
- 58 While there are also many books discussing these issues in other countries, two Australian books are: Leigh A. *Disconnected*. 2010 New South, Sydney; and Tanner L. *Crowded Lives*. 2003, Pluto Press, North Melbourne.
- 59 Piketty T. *Capital in the Twenty-First Century*. 2017 Belknap Press of Harvard University Press, London. Wilkinson R. Pickett K. *The Spirit Level – why greater equality makes societies stronger* 2010 Bloomsbury Press, New York.
- 60 Block P. *Community – the structure of belonging*. 2009 Berrett-Koehler Publishers, Oakland: see Chapter 3, pages 37-46.
- 61 A detailed analysis of the consequences of long working hours and relationships in Australia can be found here: Shepanski P. Diamond M. *An unexpected tragedy – evidence for connection between working patterns and family breakdown in Australia*. 2007 Relationships Forum Australia http://www.relationshipsforum.org.au/assets/downloads/rfa_an_unexpected_tragedy_appendix.pdf
- 62 See, eg Drago R. Black D. Wooden M. *The persistence of long working hours*. Melbourne Institute Working paper Series, Working Paper NO. 12/05. August 2005, Melbourne Institute of Applied Economic and Social Research, Melbourne; Richardson D. Casual labour – a stepping stone to something better or part of an underclass? Submission. January 2012, The Australia Institute, Canberra; Standing G. *The Precariat – the new dangerous class*. Bloomsbury Revelations Edition, 2016 Bloomsbury, London.
- 63 See, e.g. Bellah RN. Madsen R. Sullivan WM. Swidler A. Tipton SM. *Habits of the Heart – Individualism and commitment in American life*. 2008 University of California Press, Berkley. It is arguable, that the competing ideas of giving people a fair go and looking after your mates, which also exist in Australian culture beside individualism, can create different social outcomes.
- 64 See, e.g. *Growth Fetish*. 2003 Allen & Unwin, Sydney.
- 65 Putnam R. Bowling Alone: America’s Declining Social Capital, 1995 *Journal of Democracy*, January, pages 65-78; Leigh A. *Disconnected*. 2010 New South, Sydney. In Leigh’s book, he uses a simplified definition of social capital as “the networks of trust and reciprocity that link multiple individuals together” whether for good or ill (page 3).
- 66 Perhaps one of the most famous statement of this worldview was by the then British Prime Minister, Margaret Thatcher who said “They are casting their problems at society. And, you know, there’s no

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- such thing as society. There are individual men and women and there are families. And no government can do anything except through people, and people must look after themselves first.” 23 September 1987, Interview with Douglas Keay *Women’s Own* : available at <https://www.margaretthatcher.org/document/106689>.
- 67 Denniss R. *Curing Affluenza – How to buy less stuff and save the world*. 2017 Black Inc., Carlton (Victoria): Neoliberalism is bad for democracy, pages 258-281.
- 68 Douglas B. Friel S. Deniss R. Morawetz. Advance Australia fair? What to do about growing inequality in Australia. May 2014 Australia21 and The Australia Institute, Canberra. Available at: <http://australia21.org.au/wp-content/uploads/2014/06/Final-InequalityinAustraliaRepor-2.pdf> .
- 69 Grundnoff M. *Gini out of the bottle*. Discussion Paper. June 2018, The Australia Institute, Canberra. The International comparisons are in Figures 11 & 12, page 14. The income and Inequality data is on pages 5-10.
- 70 Douglas B. Friel S. Deniss R. Morawetz. Advance Australia fair? What to do about growing inequality in Australia. May 2014 Australia21 and The Australia Institute, Canberra. Available at: <http://australia21.org.au/wp-content/uploads/2014/06/Final-InequalityinAustraliaRepor-2.pdf> : at page 22.
- 71 See, Green T. What a society designed for well-being looks like. 2018 *Yes Magazine*, volume 87 Fall; pages 46-48. Pickett K. Wilkinson RG. *The Spirit Level – why equality is better for everyone*. 2010 Penguin Books, London.
- 72 Block P. *Community – the structure of belonging*. 2009 Berrett-Koehler, Oakland (California): page 47.
- 73 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/>
- 74 Submission 14 – see LRAC website <http://www.justice.act.gov.au/page/view/565/title/current-inquiries>.
- 75 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: slide 8.
- 76 For example, there are some highly successful societies which have not chosen a neo-liberal model 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 which appear to be encouraging a more relationship friendly State, where people are able to have healthy relationships at work, in their homes and in their communities. One illustration is set out in a recent book: Lakey G. *Viking Economics – how the Scandinavians got it right and how we can too*. 2017 Melville House, New York.
- 77 Submission 3.
- 78 <https://www.yoursay.act.gov.au/>
- 79 Submission 8, page 3.
- 80 Submission 8, pages 4-7.
- 81 Submission 8, page 7.
- 82 Submission 8, pages 8-9.
- 83 Braithwaite J. *Restorative Justice and Responsive Regulation*. 2002 Oxford University Pres, Oxford.
- 84 Submission 4.

⁸⁵ See, e.g. David Best in the context of addictions recovery; and Paul Nixon in the context of training community-based family group conferencing facilitators.

⁸⁶ In Chapter 3, the Aboriginal population in the Jarvis Bay Territory is noted. This area is sometimes known as Wreck Bay, but the Territory also includes people in the Jervis Bay area who live within that Territory. They are mentioned in Chapter 3 because when that Territory was excised from NSW under the *Jervis Bay Territory Acceptance Act 1915*, section 4(2) said that the laws from time to time in force in the ACT would apply to the Jervis Bay Territory, and so ACT child protection laws cover their community. However, because the land is regarded by the law as a Commonwealth Territory, the responsibility for negotiation of any treaty over the land rests with the Commonwealth Government. For the current administrative arrangements in relation to the Jervis Bay Territory, see http://regional.gov.au/territories/jervis_bay/governanceadministration.aspx.

, ⁸⁷ The one page text of the Uluru Statement from the Heart, which was prepared by delegates to a Aboriginal and Torres Strait Islander Referendum Convention held near Uluru in Central Australia on 26 May 2017 is available at: https://www.referendumcouncil.org.au/sites/default/files/2017-05/Uluru_Statement_From_The_Heart_0.PDF (Uluru Statement)

⁸⁸ One example of these discriminatory and exclusionary approaches was the approaches of various governments to access to education of Aboriginal children for more than 100 years, summarised here: <http://museum.hall.act.au/school/2591/yass-aboriginal-school.html>.

⁸⁹ Uluru Statement 2017 – see note 87.

Chapter 3. Child Protection – focus area 1

3.1 Introduction

In the last chapter, we discussed the negative impact of income inequality on people's sense of self-worth and on the cohesiveness of a community. Research shows further consequences, which have particular relevance for those who are the most marginalised in our increasingly unequal society.

Greater income inequality also leads to more unequal access to quality housing, education, nutritious food, and healthcare. Low income groups are less likely to be able to afford to live in neighbourhoods that are conducive to better physical and mental health (green space, facilities in walking range, reliable public transport and a safe environment). They are more likely to hold jobs that are precarious and low paid, thereby creating a greater risk of cardiovascular disease and mental ill-health¹.

Chapters 3 and 4 outline what was found through the research and consultations, in the focus areas of the reference. As noted in the Council's Issues Paper²

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 some of the experiences and problems caused to people subject to or using these government services by processes, which do not focus on creating strong relationships to prevent problems arising. Indeed, there is evidence that current practices generate fear and uncertainty for families and exacerbate their sense of powerlessness^{3 4 5}. Further, the processes can often undermine trust and reliance on those relationships which exist. Trustworthiness is very important, for those who have been traumatised in earlier experiences with government and other authority systems.

Both focus areas are fertile grounds for the use of more restorative approaches. These could better meet the needs of the people affected by their services and the Canberra community, as well as make the lives and jobs of people working in housing and child protection more satisfying and less traumatic.

3.2 Human Rights in relation to children and families

Under the ACT *Human Rights Act 2004* there are a range of human rights which apply to children and families and which arise because of the nature of the child protection system. These include, but are not limited to:

- The right to equality under section 8;
- The right to protection of the family under section 11(1);

- The right to protection of children and young people under section 11(2)
- The right to privacy and reputation under section 12;
- The right to a fair trial under section 21.

It is arguable that some practices in child protection could even give rise to a right to protection from being treated or punished in a cruel, inhuman or degrading treatment under section 10(1). These practices will be discussed, where relevant, under the summary of the consultations below.

As noted in Chapter 2, the absence of effective means of questioning these matters in the child protection arena, and of enforcing them against a government agency which infringes such rights is an issue which does need to be addressed. Section 40B 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 Law Reform Advisory Council⁶ 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 applications to understand each other better and avoid litigation.

Such restorative practices and processes can be used to minimise the need to resort to litigation. However, the existence of an enforceable right to require compliance by government agencies with human rights obligations is also important. For example, there can be an absence of good will or reluctance to voluntarily comply with a human right. Creating an accessible and simple means of enforcement, without the risk of costs of the government agency being awarded against a person seeking to enforce such rights is an important framework goal for more responsive regulation.

There is another relevant human rights instrument, which is not protected under the ACT *Human Rights Act 2004*, which nonetheless, under section 7, recognises that the Act is not exhaustive of rights which exist outside the terms of the Act, for example, in international laws, such as other declarations of the United Nations. The United Nations Declaration on the Rights of Indigenous Peoples⁷ has a range of important provisions which relate to the continuity of their culture, their capacity to self-determine and the obligation on States to consult and cooperate in good faith ... to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them. This international instrument was only endorsed by the Australian Government in 2009, after Australia had been one of four countries who voted against it in 2007⁸.

3.2 ACT Child Protection data

The ACT Child Protection system operates under the *Children and Young Persons Act 2008*, which is administered by the Community Services Directorate through the Office of Children, Youth and Family Support. The following section looks at the publicly available data on the children who are subject to child protection services and how the child

protection system is performing. These data are from the Australian institute of Health (AIHW)⁹ and Welfare and the Productivity Commission's Report on Government Services (ROGS)¹⁰. While released in 2018, the data in these reports relate to 2016-2017.

Children, their families and child protection services

The AIHW data shows that there were 939 children in out of home care in the ACT at some point in 2016-2017¹¹. The number of children and young people in out-of-home care at 30 June 2017 was 803¹². This latter figure is used in most of the analysis in both the AIHW and ROGS. 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 year¹³. This means that any positive or negative impacts of the system are likely to affect an even larger number of children or young people and their families over any 12-month period.

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 2,008¹⁴. 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.¹⁵ This means that the actions of child protection services touch many lives.

There has been a significant increase in the number of ACT children in out-of-home care between 2012-13 and 2016-17, with a 44% increase over that period¹⁶. This increase comes from a number of sources:

- 32% increase in the number of children and young people living under care and protection orders;¹⁷
- 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 2016-17¹⁸;
- The numbers of children and young people being admitted on care and protection orders has consistently increased over that period, with a 47% increase over the period¹⁹;
- 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.²⁰

The patterns of expenditure in different kinds of child protection services in the ACT are somewhat different from the whole of Australia. The ACT child protection system spends

- proportionally more on out-of-home care (67% compared to 60%);
- less on protective intervention services (20% compared to 23%);
- about the same on intensive family support (8%); and
- half the Australian rate on family support services (4% compared to 8%).²¹

Real expenditure on all these child protection services per child in the population 0-17 years in the ACT was \$143.35 per child in 2016-17, which is a decrease to the lowest level since 2010-11. The ACT amount has remained significantly below the figure for Australia as a whole over the period 2010-11 to 2016-17. This was \$221.91 in 2016-17.

While real expenditure on out-of-home care services has increased from \$32.6 million in 2012-13 to \$42.5 million in 2016-17, this increase of 30% has not kept pace with the rate of increase in children in out-of-home care. The ROGS data shows that the real expenditure per placement night has fallen over that period from \$159.13 per night to \$149.72 per night.²²

Indigenous children and families covered by ACT child protection legislation

Of the 803 children in out-of-home care at 30 June 2016-17, 227 were Indigenous and 576 were non-Indigenous.²³ The 2016 census showed that 1.6% of the ACT population is Aboriginal or Torres Strait Islander. Under 3% of children in the ACT are Aboriginal and Torres Strait Islander children or young people²⁴. This compares to the Jervis Bay Territory²⁵, to which ACT laws apply, where there is a much higher representation of Aboriginal people. The two statistical local areas level 1 in the Jervis Bay Territory are Wreck Bay²⁶ and Jervis Bay²⁷. Wreck Bay has a population of 193 people at the 2016 Census, 80.7% of whom are Indigenous Australians. Jervis Bay has a population of 189, 26.9% of which are 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, which was 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”²⁸. Data in that report also shows 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%)²⁹. Each of these new figures confirms an on-going 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 shows that the number of Aboriginal and Torres Strait Islander children and young people in out-of-home care is 90.1 per 1,000 children. This compares to 6.5 per 1,000 for non-Indigenous children. Expressed another way, 9% of Aboriginal and Torres Strait Islander children are in out-of-home care, compared to less than 1% of the non-Indigenous population³⁰. 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 a non-Indigenous child or young person³¹.

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 Aboriginal and Torres Strait Islander children and young people between 0-17 years. If the proportion of Indigenous children in care children as a proportion of indigenous children in the population is the same, the disproportionality ratio would equal 1³². If it is greater than one, then there are proportionally more children or young people represented in the data, compared to their proportion of the child/young person population – they are over-represented. The degree of that over-representation is shown by how much the “disproportionality rate” is above 1.

In the ACT in 2016-17, the disproportionality rate for Aboriginal and Torres Strait Islander children and young people across all child protection activity points³³ 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.³⁴ The ACT’s disproportionality rate for both care and protection orders and for placement in out-of-home care is the second highest in Australia, behind Victoria.³⁵

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 that these matters proceed to care and protection orders is 13.9 times greater³⁶. Once there is a notification, the path towards removal for many Aboriginal and Torres Strait Islander children appears inexorable from the data.

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, 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.

ACT socio-economic data and child protection

The Australian Institute of Health and Welfare examines the socio-economic area where children and young people subject to substantiations come from. The Index of Relative Socio-economic Advantage and Disadvantage (IRSAD) is used to measure this. The IRSAD “broadly assesses people’s access to material and social resources, and their ability to participate in society”. Areas are classified from Level 1, the most disadvantaged to Level 5, the most advantaged. A full interactive map of Australia can be found at <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2033.0.55.001~2016~Main%20Features~IRSAD%20Interactive%20Map~16>

Nationally, lower socio-economic status is a strong predictor of child protection intervention. For example, 46.1% of substantiations relating to Aboriginal and Torres Strait Islander people, related to people in the bottom Level 1 quintile and 30.6 % of non-Indigenous substantiations related to families in that same quintile. In total, almost 68% of substantiations on to allegations relating to Aboriginal and Torres Strait Islander children occur in relation to children in Level 1 or 2, and 59% of non-Indigenous substantiations are in these groups. The rate of substantiations decline progressively over the scale, with the most disadvantaged group in Level 5 having a 5.2% rate for substantiations relating to Aboriginal and Torres Strait Islander in this quintile, and 7.6% for non-Indigenous substantiations.

Given this otherwise consistent pattern across Australia, the high rate of removals of children and young people in the ACT is incongruous. In the ACT, our general level of advantage means almost all of the ACT population lives in suburbs at the 4-5 Level. There are only very small pockets of Level 1, 2 and 3 groups in the ACT.³⁷ Yet our rate of care and protection interventions and our rate of children and young people in out-of-home care is the second highest in Australia. Some possible explanations identified in the consultations are explored below. Research led by Valerie Braithwaite at the School of Regulation and Global Governance³⁸, has examined from a regulatory perspective the issues which have plagued child protection services in the ACT as well as child protection services more broadly.

System efficiency

The ROGS data provides some information of how the child protection system is operating. The data on costs per child in an overnight placement, and cost per child in the population of all services discussed above, gives some overall ideas. The ROGS data also examines the time taken to commence an investigation for those matters where an investigation is undertaken, and the time taken to complete an investigation. These are important matters. First, if the child or young person is at significant risk, a long delay in starting the investigations exposes them to a longer period of risk of harm. At the other end, often the process of investigation is very stressful for families and children. The threat and uncertainty create unnecessary stress in their lives, particularly if the investigation takes a long time.

The performance measures for the ACT child protection system over the three years between 2014-15 and 2016-17 show significant changes over these three years:

- The proportion of investigation that commence within 7 days has declined from 72.3% in 2014-15, to 64.7% in 2015-16 and 39.1% in 2016-17.³⁹
- The proportion of investigations commenced after 29 days has increased from 1.5% in 2014-15, to 4.4% in 2015-16; and 27.9% in 2016-17.⁴⁰
- The proportion of investigations completed with 28 days or less declined from 22.2% in 2014-15; to 15.9% in 2015-16, to 6.8 % in 2016-17.⁴¹
- The proportion of investigations completed in over 90 days increased from 5.0% in 2014-15; to 8.7% in 2015-16; and 47.1% in 2016-17.⁴²

ACT now has the second highest rate of completion of investigations over 90 days and the third lowest commencement rate on investigations within 7 days of the decision to investigate. The delay may be more extensive than that as there is no indication of how long after notification the decision to investigate is made. The ACT also has the third highest proportion of investigations that are not completed within 90 days.⁴³ It is not clear why the performance has declined so dramatically over the most recent three-year period.

3.3 Information from consultations and research

Consultations in child protection and where we are now

The consultation in this part of the Council's work drew on many information sources including case studies (as discussed in the Progress Report), submissions, meetings, face-to-face consultations with various organisations and individuals, public forums organised by the Canberra Restorative Community Network, by Universities and civil society organisations, ACT hospital staff and with Aboriginal and Torres Strait Islander peoples and organisations. Many individuals and organisations were reluctant to have their views or formal submissions attributed directly to them, because they were afraid of there being repercussions for "speaking out". This section combines the information provided in a way which protects everyone who contributed. Where information is from published sources, it has been cited in the conventional way. Where people or organisations identified as members of a particular group, (but not as named individuals), we have sought to honour their experiences as well.

While every effort has been made to accurately reflect what we were told, we have not been able to triangulate information from multiple sources to validate individual claims. Much of what we were told has been echoed in published research elsewhere.⁴⁴ What we have done in this report, is to bring together the perceptions and experiences of people who have little voice in the system and who feel very vulnerable talking about their experiences publicly. This is something which needs to be addressed urgently. It is wrong in a modern democracy claiming to be committed to both the wellbeing of its citizens and to improving the economic and social circumstances of those who are most vulnerable, that people feel they have no safe place to speak about some of the most traumatic experiences of their lives. In the August 2018 *Our Booris, Our Way Interim Report*, the Steering Community set out some words⁴⁵ that expressed similar kinds of views that we had heard either directly

from people or from their advocates. The depth of the tragedy for families who have had children removed from their care is ongoing and continues in both the indigenous and non-indigenous context. The *Our Booris, Our Way* Steering Committee noted that:

We have lost count of the number of reports and recommendations that have been made on child protection, the justice system and related issues. From the *Bringing Them Home* report in 1997 to the latest Royal Commission in the Northern Territory, there is national awareness of the importance of protecting our children and the impact of intergenerational trauma. And yet, in spite of the reviews and reports, the lack of progress that has been made to stop the removal of children from our families in the ACT is deeply distressing.

The data is stark. When the 2008 Apology was made by the then Prime Minister Kevin Rudd for the removal of Aboriginal Children from their families, at 30 June 2008, there were 81 Aboriginal and Torres Strait Islander children and young people in out-of-home care in the ACT, and 9,070 across Australia. By 30 June 2017, there were 227 Aboriginal and Torres Strait Islander children and young people in out-of-home care in the ACT and 17,664 across Australia. This makes an almost 3-fold increase in the ACT and almost 2-fold increase nationally in the numbers of Aboriginal and Torres Strait Islander children and young people who are in out-of-home care. The story for non-Indigenous children over that period also shows significant increases in the removal of children and young people, though not as dramatic as the experience of Aboriginal and Torres Strait Islander children. The corresponding figures were an ACT increase from 344 to 576 in the decade, and 22,070 to 30,069 nationally (1.7% and 1.4% increase respectively).

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 2004⁴⁶. Alongside these reviews, a major research initiative commenced in 2006 called *Community Capacity Building in Child Protection*. Initially funded through an Australian Research Council Linkage Grant, the Principal Researchers were Dr Valerie Braithwaite and Dr Nathan Harris from the ANU’s Regulatory Institutions Network. The predecessor to the Community Services Directorate were collaborative partners in this research⁴⁷, the purpose of which was set out as follows:

Capacity building is a key goal for child protection services. Child protection workers need to build the capacity of parents to care for their children, the capacity of communities to support families, and the capacity of young people to look after themselves. However, these aims are often undermined by a range of factors including increasing caseloads and emphasis on risk assessment and child protection laws in child protection agencies; difficulties building trust relationships in the context of interventions; limited understanding of the extent of problems; and contested ideas over what is considered acceptable parenting. The overall objective of this project is to demonstrate how safety for children can be improved and care capacity in the child’s local community can be more effectively harnessed through a responsive regulatory approach.

There were a significant number of reports from this work⁴⁸ which examined ways to assist child protection services to operate in a more responsive and restorative way to enable parents to build their capacities for safe care.

As noted in the *Our Booris* Interim Report, there have been many proposals for change over the years to address perennial issues in child protection in the ACT and nationally. Ongoing research is funded by the Directorate to address these⁴⁹. There have been reform agendas and strategies, the most recent of which is *A Step up for Kids* from 2015-2020. The Directorate has the following aims:

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. Officially launched on 22 January 2015, the five-year Strategy is:

- An additional \$16 million investment in the future of our most vulnerable children and young people. It is about breaking the intergenerational cycle of disadvantage and keeping children safe at home.
- About reunifying children and young people with parents as quickly as possible or for those who cannot safely go home to their parents growing up secure and loved within another family because they only get one chance at childhood.
- About creating a therapeutic, trauma-informed care system which responds more effectively to the needs of children and young people in care.
- About placing foster and kinship carers at the centre of the care system and providing them with the support needed to provide quality care. They are the child's primary support and healer.⁵⁰

The data set out above, seems to indicate that the vision is failing to translate into reality for a growing number of Canberra's children and their families. At its launch, the then Ministers⁵¹ expressed the view that these reform efforts would lead to a reduction in numbers of children and young people coming into care. Unfortunately, more than half way through the strategy, the evidence does not live up to its vision and expectation. An opportune time now exists for the Minister to evaluate what is and what is not working. Minister Stephen-Smith's important work in forming the *Our Booris Our Way* Steering Committee as a self-determining body and co-creating that Review with those affected is an important model of restorative practice. However, despite this work in progress, data shows continuing practice of removals. The laudable aims of the strategy do not appear to be influencing practice within child protection services.

In many ways, the problems identified by those who talked with us appear to reflect the long-standing cultural issues, which have plagued the child protection system for a long time. Looking at these issues through the lens of a restorative city has assisted other jurisdictions and may help us address these underlying problems, which continue to undermine a vision for something better.

Places to Learn From

There is hope for cultural change which would enable the vision of keeping children and young people safely within their families. As discussed in more detail in Chapter 6, the *What is Canberra's potential as a restorative city?* workshop was held in February 2018, organised by the Canberra Restorative Community Network and Relationships Australia. International visitors from Hull⁵², Leeds⁵³ and New Zealand⁵⁴ detailed their experiences in creating a more restorative city through working with families and children in a range of different ways. Other lessons on more responsive systems have come through the Restorative International Learning Community, of which our Canberra Restorative Community is also a member.

The Hull journey started through building positive supportive relationships in and around Collingwood school⁵⁵, located in a very socio-economically disadvantaged area of Hull. Following an Ofsted⁵⁶ inspection in 2002-03, the school was placed on “special measures” (signalling potential closure due to poor performance). Estelle MacDonald was appointed as head teacher at that time and within 24 months had transformed the school to “outstanding”. Focussing on an inclusive and restorative approach across the school for staff, pupils and their families, the school became, over a number of years, a place where families could come for help, where the community could meet and help each other, and where they could gain access to services when needed. The Hull Centre for Restorative Practices arose from this work and Estelle MacDonald remains the head teacher at Collingwood and is the Chief Executive Officer of the Centre. The work of the Centre has widened the use of restorative approaches across the City and around the world.⁵⁷ Other restorative leaders in Leeds (Nigel Richardson) and New Zealand (Paul Nixon) contributed to and drew on the work in Hull, and on the scholarship of Burford and Braithwaite during the 1990's. These learnings have now been taken to new cities and countries and adapted for local contexts.

The Leeds journey started with a desire to transform outcomes for children, through child protection reform and improving educational and training outcomes for young people through restorative actions. This too, was initially driven by an Ofsted finding that the city was failing to adequately safeguard its children and young people. In 2010, Nigel Richardson was appointed Director of Children's Services. From the beginning, the need for public accountability and reporting was built in through an Outcome-based Accountability system⁵⁸ to record progress on their three agreed “obsessions”. Between March 2011 and March 2016, Leeds has been able to safely reduce the number of children by 250, who are being “cared for” by the state. Children's Services have engaged the whole community in a positive way to help each other and create a great place for children, young people and their families to live. The numbers of children in out-of-home care has decreased consistently and attendance at school and in education, training or work for young people have significantly improved under the Child-Friendly Leeds strategy⁵⁹. These processes are open⁶⁰ as is access to data. The collection of performance data is done in real time and successes are celebrated on a weekly basis,⁶¹ so that any problems can be identified quickly and adjustments are made in real time.⁶² The following picture⁶³ is how the data on the three obsessions are provided each week to staff, to the Leeds Council and other partners.

Weekly obsessions tracker



Week commencing: 25 February 2013

Obsession	Latest position this week	Change since last week	% change over last 12 months	Change over last 12 months	12 month trend
Safely reduce the number of children looked after	1381	-8	-5.9	-86	
Reduce the number of young people who are NEET	1470	-1	-22.4	-429	
Reduce school absence: primary	4.8%	+0.4	n/a	-1.0	
Reduce school absence: secondary	7.6%	-0.2	n/a	-1.3	

CAUTION! This report is based on in-year data that is still being validated. It is designed to be used by partners to help track progress towards our three shared priorities. It must not be used for any external purpose without prior approval of the Children's Trust Board. Children looked after as at: 19/02/13 - NEET as at: 22/02/13 - Absence as at: week commencing 11/02/13

In New Zealand, the focus of the Chief Social Worker, Paul Nixon has been on improving the relationship of Child Protection services with the community, and to work closely with Maori Iwi to develop culturally appropriate child protection practice. In New Zealand, children and young people are primarily seen as part of their whanau, a Maori term meaning extended family and community who someone is connected to, and who often live near each other. The restorative work led by Paul Nixon over the past eight years has included a strong focus on family-led decision-making and action, through improving the quality of mandated Family Group Conferencing (using a different model than has developed in the ACT). New Zealand has also aimed to reduce the removal of Maori children through better engagement with Maori families and communities. This has led to no Maori children being removed for more than 12 months in several cities in New Zealand.

Possible action 9. The Government should continue its engagement with the experiences and opportunities that arise from other jurisdictions on a similar journey towards becoming a more restorative City. The Attorney and Minister for Justice have shown interest in learning from these examples. Visits undertaken by our leaders in government, in the judiciary, in universities and in the community have benefited from these learning exchanges. The Restorative International Learning Community remains operating as a community of practice on a non-existent budget, but on goodwill. A commitment to some modest amount of resourcing (possibly through the Canberra Restorative Community Network funding) would indicate more tangible support from Government.

Possible action 10. This Report has sought to highlight various examples from this broad web of our existing relationships. Implementation of approaches and models adapted to Canberra is now seen as something we must do, to counter the inequalities that have impacted so negatively on our most vulnerable community members. For example, enthusiastic restorative leadership has emerged to lead initiatives such as family-led decision making and to develop the idea of Canberra as a Child Friendly sister city with Leeds.

Removal of children

Incidence and consequences

It can be difficult to initially understand why there is such a high rate of removals of children from their parents and families in a community where there should be enough resources to support people in their times of need, especially if we are a compassionate and caring community. People experiencing difficulties as parents or chaos in their lives need to be able to be offered support and kindness to be the best parents they can be. Much in the current system operates in stigmatising and judgemental ways and this behaviour embeds a culture of disrespect towards families and those that are trying to help them⁶⁴. This can add to the feelings of hopelessness and isolation families can feel at difficult times in their lives. A broader restorative vision would embrace the idea that our wider community has a more active role to play in walking alongside families where safety concerns for children exist^{65 66}.

The number of children in out-of-home care in the ACT represent those children and young people where ACT Child Protection Services have decided that the risk of harm is sufficient for a child to be removed from the care of their parents or other carers. For both children, young people and their parents/carers, these decisions can and do have profound long term and short term effects, not only on their family but on their own life course⁶⁷. Longitudinal data shows that the effect of this form of intervention is mostly negative, (for example, a 2005 British cohort study that had followed people born in 1970 for 30 years). Of the just under 15,000 children followed, 343 had been in statutory or voluntary public care at one or more of ages 5, 10 or 16. Negative outcomes include higher levels of homelessness, convictions, psychological morbidity, poorer general health, higher levels of unemployment and these were compounded by non-white ethnicity. The study concluded that “public care in childhood is associated with adverse adult socio-economic, educational, legal and health outcomes in excess of that associated with childhood or adult disadvantage”⁶⁸. According to Professor Gale Burford from the University of Vermont, who is part of the Restorative International Learning Community, the removal of a child or young person from their family is one of the most far-reaching, intrusive, least transparent, and under-researched of the state’s powers⁶⁹.

During the consultations, we heard of children and young people who were extremely disturbed by being removed (often without warning and in traumatic circumstances e.g. with police involvement or where removal occurred from school). The families who spoke

to us described that the children, after they had returned to the family, had their lost their sense of security within the family and within their school. This resulted in severe anxiety e.g. about strangers coming to visit, and often impacted negatively on their behaviour at school, due to hypervigilance. Whenever a caseworker would visit, the children would hide and run away from the house 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.

Standard of Proof in child removals

Under the law, the amount of evidence required to prove a fact is called “the standard of proof”. The highest standard occurs in the criminal justice system, where the person's liberty can be at stake - this is called proof “beyond reasonable doubt”. This is a high level test, like being certain. When a fact needs to be proved in a civil matter, the general standard is called proof “on the balance of probability”. This means the fact needs to be proved more likely to be true than not. The personal stake for parties in civil matters is financial rather than a threat to liberty. Both these standards are considered to be just, given the likely consequences in each case.

In child protection, the stake for children and affected parents is high in relation to allegations of abuse or neglect – the State can remove a child from their family. For most people, the removal of a child from their family is recognised as an act of the greatest significance. When a child is removed from a family, it will normally be seen as a greater punishment than the deprivation of liberty. In addition, the child or young person has their liberty and right to live in their family put at risk, and family members or parents can have their rights and freedoms limited through contact restrictions and requirements to comply with orders of the Director-General which can be quite burdensome and intrusive.

However, the standard of proof required to remove a child from a family is lower than the standard of care in a civil matter. In many sections of the Act, to make a decision to remove a child or intervene in a family, a caseworker only has to prove that they formed a belief or suspicion of a risk of abuse or neglect on reasonable grounds. Caseworkers are generally the least experienced and least qualified workers within the system and so their beliefs may not always be well founded. The *Children and Young People Act 2008* does not define abuse or neglect. In combination, this means that any decisions of caseworkers to remove a child or young person from their family can be very difficult to challenge.

The standard of proof of simply “holding a belief or suspicion of a risk on reasonable grounds” is very low indeed. It is particularly low when contrasted to the possible consequences of the State exercising its coercive power to remove children and young people from their families. Combined with the lack of a statutory definition of what constitutes abuse or neglect, the situation for children, young people or families who want to question a decision of the Director-General is very difficult. Evidence of a belief can be vague and impenetrable. In addition, disproving a belief and testing “reasonable grounds” requires transparency and openness of the information upon which decisions are made. The combination of a very low standard of proof with poor definition of what needs to be proved creates a high risk of miscarriage of justice. This is sometimes justified on the basis

of the need to protect children from harm, but it is likely that the risk of harm to a child, young person or family from a miscarriage of justice is equally high.

These issues also negatively impact on the obligation of the Director-General to promote the wellbeing, care and protection of children and young people. As noted elsewhere in this chapter, there is limited capacity for the decisions of the Director-General to be externally reviewed. The powers of the Director-General are delegated to many people at different levels in the Directorate. In combination, the lack of external review, the low standard of proof and the uncertain nature of what conduct constitutes abuse or neglect, can easily result in poor administrative practice and a lack of accountability.

Possible evidence of poor administrative practices includes low-quality decision-making, poor documentation of decisions, the absence of evidence that a decision-maker uses appropriate critical thinking skills in forming a decision, evidence of bias or selective use of all available evidence to justify an earlier decision. Where decisions are made inappropriately, and there is insufficient accountability for the standard of decision-making, the Director-General is compromised in her or his professional obligations to act effectively, efficiently and justly in achieving her or his statutory and ethical obligations to children, young people, families and the community.

The practical impact for children and their families of these uncertainties and the opacity of the processes is that the system appears arbitrary, random and even discriminatory. Parents talked about circumstances where police were called and determined that there was insufficient evidence of any harm for them to even interview the person of concern to child protection, but where the child was removed anyway. People reported feeling intimidated and scared to complain, even when these practices breached human rights and were unjust. We heard from workers in agencies who advocate for people with specific needs (e.g. 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. Similar assumptions with other parents and families are discussed in the assumption of care section below. There appears to be a rush to remove, and then to gather small pieces of evidence to retrospectively justify the removal decision⁷⁰. A compulsory Family led Decision-making Conference, as occurs in both Leeds and New Zealand could put a critical thinking “stop” in before any removal process could start.

Possible action 11. While not a complete answer, the use of Family-led Decision-making Conferences based on restorative principles and action could increase the likelihood of sound decision-making and promote accountability. This needs to be the first step when a concern about a child or young person is raised, rather than removal of the child. These family-led conferences should be focussed on supporting the family and children to stay safely together and include resourcing to enable this. In addition, amendments to the legislation should clarify the terms abuse and neglect, as well as look to a higher standard of proof, before the removal of a child can occur.

Processes when someone is concerned about a child

Another mechanism used in New Zealand by child protection workers is a “Worry Statement”. Where a safety concern has been raised, a “worry statement” is provided to parents in plenty of time for the family conference along the lines of: “We are worried about the safety (or wellbeing) of (your child) because”. Where a child is removed in the ACT at the moment, there is often neither discussion of the reasons nor options provided for keeping children safely at home. This compounds the trauma of removal for the child and family. The lack of clear reasons for removal means that it is difficult for parents or carers accused of failing to care adequately for their child to address the issues which the State has deemed serious enough to warrant the removal of the child. Not only does this dramatically increase the level of distress in the family but it can be argued to be a breach of human rights of the child and the family.

Anecdotally, it seems that such removals routinely occur on a Friday afternoon, when parents cannot access legal help or other support in relation to the removal. Also reported was the practice that parents and carers were asked to sign legal documents by care and protection staff, at the time of a removal, when they did not understand the consequences or purposes of the documents. This is not appropriate practice. Also reported was the practice of court paperwork being provided to parents and carers “at the door of the court” there being no opportunity to address the matters raised prior to court proceedings. Because Legal Aid does not, as a rule, offer assistance for child protection matters, people did not know they could ask the Court for time to prepare their case, or even to advise the judge that they have only just been served with papers. People in the case study interviews reported significant factual issues within the documents presented to the court, but felt unable to have their voices heard in the court setting. These issues continued to be deeply distressing for them, long after the court decision had been made.

Where people feel disempowered and threatened by processes they perceive as unfair, as well as feeling fearful for their children, they sometimes express anger towards authorities. These reactions are often seen as further “evidence” of their (lack of) parenting capacity, as disrespectful and are held against them. Processes in court are not very “consumer-friendly” which further adds to the feeling of threat and having violence done to them. For those who have prior court dealings (e.g. for a criminal matter), the formality of the court plays an important symbolic role and reappearance at the same forum is traumatising. Combined with the feeling of ambush when material is provided late, this extreme fear can trigger a biological response of anger, absence or silence – depending upon whether the person’s normal biological response to severe threat is flight, fight or fear (freeze). If the person has low levels of literacy or difficulty understanding English (as can occur with, e.g. refugees), the provision of late information can mean they do not have access to an interpreter or any support or friend to help, triggering feelings of helplessness, shame and humiliation.

When any one, or all of these above events occur, on top of the removal of a child or children, the resulting trauma exacerbates stress, anxiety, depression and can lead to maladaptive coping behaviour like drug and alcohol consumption. Longer term, mental health and physical health concerns often arise. Distrust of the system and of authority in

general becomes a default position. Any repeat approaches by the state, even if well intentioned will be met with either hostility or non-co-operation. Child protection services often then see the person as unwilling to engage, and draw adverse inferences, attributing the person with a higher risk profile than is most likely the case. This becomes a vicious cycle of distrust and non-engagement. Practice in Leeds, Hull and New Zealand, when someone is not engaging with services, has child protection workers professionally responsible for working out how to approach the person and overcome their relational reluctance in respectful ways.

Possible action 12. When there are concerns about a child or young person, the use of early restorative and relationally-focussed assistance as well as practical support in times of crisis should be the first action. More restorative child protection services would involve respectful processes of curiosity rather than judgement about what has happened. They would also show respect and concern for the parent, as a key person in the life of the child. Workers would, for example, address the underlying issues related to physical and mental health (including drug and alcohol addiction), poverty, unemployment, insecure housing, and a lack of connections to enhance wellbeing. A restorative child protection service would have fair processes and be designed to comply with the restorative principles set out in Chapter 2.

The best interest concept

While there are principles to guide the determination of the meaning of the “best interests of the child” (sections 7, 8, and 9, 349 and 350) of the *Child and Young People Act 2008*, the approach generally in the Act seems to be that a child is an 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 free-standing individuals. By comparison, the New Zealand *Oranga Tamariki Act 1989* or *Children’s and Young People’s Well-being Act 1989*, strongly embeds constructs of the child’s best interests in their nested relationships, one inside the other. A non-Indigenous Australian translation might be that a child’s best interests would be best served by strengthening the relationships of love and protection in their family, their extended family, friends and community to enable them to flourish. The New Zealand Act applies the Maori relational concepts to all New Zealand children. Clearly, all children are embedded in a web of relationships and these need to be recognised and reflected in our local legislation.

The surprise nature of some child removals and the uncertainty of the reasons for removal (including a lack of paperwork provided to the family at the time), indicates little evidence is gathered, apart from a caseworkers’ belief, before emergency action is initiated in the ACT. For example, the lack of consultation with other support services often involved with

families before a child is removed, has been well documented.^{71 72} A risk averse culture in child protection services, result in child removal practices being seen as the safest option for the worker. A process of self-justification then leads the worker to “decide” that it is the safest option for the child, when this may not be the case..

In the conscious or unconscious mind of a case worker, there may sit the fear that a child might be seriously harmed or die if not removed from a home which is different from their internalised image of “a good home”. What might be a “good home” to one person will not be so for another, as this ideal can vary with social class, economic resources, ethical priorities or cultural norms. It also says very little about the nature and quality of the relationships, which are the core of a “good home” for a child. 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, and the more likely the child is to be removed.

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, using the Court as a first-stop decision-making safeguard for reviewing the removal of children and young people from their families after the facts has high risks of harm and high costs. It often creates a cascade of intervention in the life of a child and family, plummeting them into a new level of the unknown, chaos and distress which is disempowering and dehumanising.

Equally, the science of cognitive dissonance and self-justification means the case worker and the service system becomes strongly invested in justifying their decision, whatever it is. This can sometimes involve dichotomous thinking (e.g. the parent is all bad, the child is all good; people who disagree with my decision are bad, people who agree with me are good etc). The psychological mechanism of cognitive dissonance refers to the discomfort we feel when faced with two conflicting pieces of information. One of these may be a belief or decision we make. The other may be a piece of evidence. Once we make a decision, particularly one which we make in a hurry and which goes to our sense of worth or a deeply held belief, then our capacity to think sceptically or scientifically about it is impeded. Our brain has a powerful need to find and accept confirmatory pieces of evidence and to disregard inconsistent pieces of evidence. The brain is just as uncomfortable with uncertainty, so making a decision brings about more rigid views, with less capacity to critically consider uncertainty and ambiguity.⁷³

As a community, we too, are uncomfortable that in very rare cases a child may die or be intentionally seriously harmed. We rightly seek to protect children from harm. However, sometimes protective measures we take cause harm, and the risks sought to be addressed, quite small. There are questions being asked about whether this mismatch between real harm and the risk we hear about, (say for example of stranger abduction), are blind-siding us from other more likely ways that our children can be removed⁷⁴. We desire even greater safety in an environment where the media and Internet create a climate of fear to get our attention, when the evidence shows we are actually much safer than over most of human history. This means that sometimes the actions taken are disproportional to the risk.

The research described above indicates that there are many long term and lifelong negative impacts of the removal of children from their families. And yet for a caseworker, these effects are out of mind, because they are an uncertainty that is a long time into the future. For the case worker, their concern is more likely to be the potential for unspecified harm that may occur or not, but for which they may be held accountable for failing to prevent, if the risk crystallises. In the ACT where families are using support services or are being assisted by friends or family, the statutory decision-maker in the Community Services Directorate will often have no pre-existing knowledge of, or relationship with, the family or the child. The model currently in place separates out these two functions in a way that embeds communication failure and a lack of relationship in the structures of child protection. This contrasts with other jurisdictions such as New Zealand, where child protection services identify relationships of care around the child and family and work with these relationships to best support the family care for the child safely at home.

Possible action 13. The consideration of the concept of “best interest of the child or young person” in the decisions of both child protection services and the courts should include consideration of evidence about the long-term effects of removal from families.

Clarity about the concepts of abuse and neglect

One of the determinations which needs to be made is about whether there has been abuse or neglect or whether there is risk of abuse or neglect. There is no categorisation available at the moment to determine the severity of various types of neglect or alleged abuse. The ACT Government’s *Keeping Children and Young People Safe – A shared responsibility*⁷⁵ document gives examples of physical abuse which are quite serious, and yet there were examples raised in consultations, where there was no injury to the child, including restraining a child by holding them to protect them without any resultant injury being “substantiated” as “physical abuse”. Even in relation to sexual matters, this document includes a wide range of events, which people may not recognise as abuse in the ordinary meaning of the word. Neglect and emotional abuse are similarly given a wide cover in that document.

Where a decision is to be made or has been made to remove a child, data is not available on whether physical abuse involved injury or not, and if so, to what extent e.g. temporary mark on the skin from a smack, bruising, medical care required, hospitalisation or death. This is also the case with all other bases for intervention. The lack of any statutory measure of seriousness means that people carry their own idea of what is and what is not included in these very morally loaded words, findings about which can have devastating consequences for all concerned.

Possible action 14. Data on what is being called “abuse” and “neglect” in its different forms should be systematically recorded, to ensure that community and child protection standards are able to be compared.

It is unclear from the consultation process whether the harm of removing a child from their family or long-term carer, for example, is considered in the decision-making of child protection, or whether this evidence is provided to the court. However, with the strength of the evidence available, long-term harm should be part of the equation. If removals were only made in an emergency situation, (i.e. significant risk of imminent harm), this could be supervised e.g. by a warrant before a magistrate. In this way, the harm and trauma of removal could be somewhat minimised.

Using the Leeds model, removals of children generally do not occur until there has been a failure of the plan from the Family Group Conference. This plan is developed by the family and whoever the family considers can help them address child safety concerns, which are openly discussed with the care group. If the actions in the plan do not occur (without good reason), another more formal meeting is held to establish what barriers exist to achieving the plan, and whether there are better ways to address the concerns. Only after the plan has failed after that second stage, does the conversation with the family turn to other out-of-home care options. The evidence of increased delays in starting and completing investigations, indicate clear opportunities to use these delays to help families where concerns are raised and before formal action takes place.

There are many examples of programs designed to assist family and child protection services engagement. A summary report *A Necessary Engagement: An International Review of Parent and Family Engagement in Child Protection*⁷⁶ highlights restorative, relational ways in which child protection services can work to help parents and families to develop their capacity to care for their child or children, irrespective of what intervention may or may not have already occurred. In some cases, it may simply be that the service system needs to recognize that people have a range of ways of living and children have always grown up in these and flourished. Some stories provided in the consultations included case workers making comments about untidy houses and yards, as if these related in some causal way to the ability to be a good and loving parent. The State has to provide far more reason than aesthetics, to intervene in these cases.

The impact of findings

When child protection services investigate a child concern report or a child protection report they almost always use a process called “appraisal⁷⁷” The Act provides a broad number of intervention options for the Director-General if satisfied that a Child Concern Report should be turned into a Child Protection Report. (see section 361), but in almost all cases child protection services proceed to appraisal. This has an advantage for the Director-General in that anything in an appraisal is specified in the Act to be “sensitive information” and so cannot be seen publicly and tested⁷⁸. Parents and carers described being unable to find out the basis of so because of this. A “finding” is a finding of fact by child protection

services, used to substantiate an allegation of abuse. There are no processes of natural justice in this appraisal phase and no ability to question the basis of any findings. Even where reports provided in an allegation are made by a child protection officer, there is no capacity to access the information.

The impact of a substantiation can be very significant, because it acts as a barrier to obtaining a Working with Vulnerable People's Check. This means that you cannot work in a wide range of professions, including health care, teaching, any caring positions or voluntary positions with children or vulnerable adults e.g. as a youth leader or sports coach. Under new laws where information can be shared between many government agencies and jurisdiction, the importance of findings and any substantiation based upon them is enormous and can seriously damage someone's reputation, without them having any capacity to question the evidence upon which any findings are based. Even the facts can be hidden, if it is believed by child protection services that the reporter could be identified if the information was known. Some have called this a modern form of star chamber.

Possible action 15. There should be an investigation by the Human Rights Commission as to whether the process of investigation of abuse in child protection matters complies with human rights and other obligations, such as natural justice and administrative fairness. The Commission should consider whether people subjected to a substantiation of any form should have access to the facts said to be established, the nature of the evidence supporting these findings and whether there should be a right of independent judicial or tribunal review of the findings and conclusions.

Indigenous concerns

The initiative of Minister Rachel Stephen-Smith in deciding to undertake the *Our Booris Our Way* Review is to be commended. This Review is being conducted in accordance with the principles of self-determination, with a "wholly Aboriginal and Torres Strait Islander people with professional experience relevant to the review and personal or community experience of the impact of the child protection system on families". The review scope and its manner of working has been developed through a co-design process, which allows Aboriginal and Torres Strait Islander people to shape the inquiry. The LRAC Executive Officer met with the Review Chair and Principal Professional of the Review, 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 members of the Social Health team and groups which meet there. The views of these groups covered diverse areas and are represented in different parts of this document.

In general, the LRAC reference should be seen as supporting the work of the *Our Booris Our Ways* review, by providing supplementary information for their consideration. One strong message we received in the consultations was the interconnections for Aboriginal and

Torres Strait Islanders between the racism they experienced daily, mental illness, the lack of support for their continuing culture, the lack of recognition of their connection to the land, the ignorance of many people to the history of their dispossession, drug and alcohol addiction, other major community health issues, poverty, incarceration, policing and child protection. These interconnections require much more holistic ways of thinking and acting than have occurred in the past. The other main message is that they are strong peoples, despite all this, and wish to be actively engaged and self-determining in finding solutions to their needs. They also want to work towards a society where everyone is able to be healthy, strong, engaged and respectful with each other.

Stopping child protection removals of their children from their communities was seen as a high priority. Where children are removed from homes in the Aboriginal Community, there are few efforts made to understand cultural needs. Some people described these continued removal practices as a form of cultural genocide, because their culture is generally transmitted through being together, watching and listening. It is in this way that their culture continues, but the removal of almost 10% of Aboriginal and Torres Strait Islander children from their parents stops this mechanism of cultural transmission. Already, many feel they have lost so much that the tragedy of these continued removals makes their culture more fragile.

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 on Ngunnawal land, to help them maintain knowledge and understanding of their country, their heritage and their identity. Where children have been placed out of the ACT's jurisdiction, then the ACT Government should negotiate for this with the relevant jurisdiction to allow the child or young person to attend cultural activities and kinship contact on Ngunnawal land. The separation of Aboriginal children from their culture and kin acts as a form of continuing cultural genocide, because stories and knowledge cannot be passed down or have meaning to the next generation.

Possible action 16. The Government should address the removal of Ngunnawal (and other Indigenous) children and young people from their families, as a priority. The Ngunnawal community must be engaged with Government in this process, as the Ngunnawal community sees self-determination as a core requirement for their flourishing and the flourishing of Ngunnawal children on Ngunnawal land. Where this may not be possible, all Indigenous children must be provided with opportunities to be on country, to be educated about their country and establish connections with country and kin.

Possible action 17. There is a need in child protection legislation for words that express the concepts of belonging, often found in First nation's languages. The New Zealand Act applies the Maori relational concepts to all New Zealand children. Clearly, all children are embedded in a web of relationships and these need to be recognised and reflected in our local legislation. A non-Indigenous Australian translation might be that a child's best interests are best served by strengthening the relationships of love and protection in their family, their extended family, friends and community to enable them to flourish, but it is important to ensure any such description is inclusive of Indigenous concepts of relationships.

Assumptions of care at birth

The Progress Report noted that we had heard a number of stories about the practice of removal of babies from their mothers at birth. Discussions were held with various professionals (both Indigenous and non-Indigenous) about the issue, including a range of different health professionals, advocates and administrators. All confirmed that this practice occurred, as did family support organisations and lawyers who had represented mothers trying to have their children returned. Aboriginal mothers, young mothers, mothers who have disabilities, and mothers who have health issues like drug and alcohol dependence or experiencing mental illness are said to be more affected by removal practices. Christine Marsh, a New South Wales based PhD scholar researching these practices⁷⁹ confirmed these experiences as prevalent throughout many jurisdictions across Australia.

In the ACT we were informed that when a health professional, including a social worker, believed a woman who attended pre-natal care had issues in her life, of the kind mentioned above, or was subject to domestic violence, the professional might put in a prenatal report to the Director-General of Community Services, under section 362 in Division 11.1.3 of the Children and Young People Act 2008. This Division relates to "Prenatal reporting of anticipated abuse and neglect". Section 362 also allows the Director-General to intervene in a number of ways, including providing assistance or support to the pregnant woman with her consent.

The Director-General can ask for consent to obtain information from support services about any information that relates to the safety, wellbeing and development of the child after its birth. The Director-General may also seek this information without her consent, "only if the Director-General suspects on reasonable grounds that the child may be in need of care and protection after the child is born" (section 362(7)). At this point, the Director-General is bound to ensure that the exercise of any of these powers occur, as far as practicable, in a manner that is "appropriate and consistent with the pregnant woman's human rights" (section 362(9)). The material collected by the Director-General under these provisions are defined as "sensitive information" so the mother cannot access the information collected by the Director-General nor find out who provided it. There is also a practice which involves

the medical record of a mother to be marked in the hospital, if the mother has ever had a child removed or discloses this to her health care provider e.g. midwife. It is not clear how this fits into the schema under Division 11.1.3. Upon whatever legal basis if any this occurs, once the patient is identified thus, as a “pregnancy at risk” hospital staff believe there is an obligation to notify child protection services that the birth of the child is either imminent or has occurred.

People who participated in this practice in the hospital were unsure what the legal basis for their responsibility was. They thought it was to help the mother prenatally but believed that many programs to assist women in difficult circumstances were either no longer available or had few places. They hoped that child protection services were ensuring access to support in pregnancy but were unsure that this occurred. Several noted that Aboriginal and Torres Strait Islander women composed more of the identified “at risk” pregnancies. While it has not been possible to verify this, one health professional said that the list included up to 80% Indigenous women. When asked in the consultation whether they saw any ethical conflict with their duty to the pregnant woman, they were unsure. However, they believed that notifying child protection services of concerns in pregnancy was mandatory, even though it does not fit into the requirements of mandatory reporting until after the birth of the baby.

In relation to people with disabilities, we were informed that sometimes parents were contacted by child protection services while pregnant. These contacts indicated the intention of child protection services to remove the baby at birth 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, despite the extent of research that shows that most women with disabilities (including those with intellectual disabilities) can parent their children with support⁸⁰. Sometimes it was possible for an advocate to work with a family to scaffold help around the woman and her child to satisfy the concerns of care and protection services, but whether this worked seemed hit and miss, with the majority of such babies being removed at birth. This would seem to be a practice that was discriminatory and in breach of the woman’s (and once born, the baby’s) human rights.

The legal basis is unclear, for the marking of a confidential and personal medical record of a woman to indicate that at some time in the past, she had had a child removed by the State. In one matter where this occurred, the mother had her baby successfully returned to her, because she was able to demonstrate that her family circumstances and age were very different than the circumstance 10 years before.

In addition to the questions about whether there is a legal basis for some of these actions, there are important ethical issues and practical consequences of these procedures. Firstly, in the case of Aboriginal and Torres Strait Islander women, and in fact, any other vulnerable women, it reduces the likelihood that they will present regularly for prenatal care. This can have poor consequences for mother and baby if things go wrong. It can particularly effect later presentations for subsequent pregnancies, because any trust that may have developed between midwives and the woman will be destroyed by the midwives’ betrayal of the woman who they were caring for.

There were stories of hospital staff (midwives and social workers) who opposed removals in specific cases, where mum and baby were doing well, but their views were disregarded, and child protection services complained to hospital management about the behaviour of the nurses and social workers. On two occasions, staff mentioned that they were asked by child protection workers to do things, which they felt were unethical. These were to ensure that other family members went home and the woman was alone when the child protection worker (sometimes with police) came to remove the baby in the evening. The other ethical issue was to mislead the mother about the likelihood of the baby being removed from her, for example, by telling her to pack her bag so she could change rooms on the evening the removal was to occur. All of these practices seem to be completely unjustified from a child protection perspective, and to be likely to be a breach of ethical if not legal obligations.

It seems callous and cruel in the extreme to withhold or fail to provide support to assist the mother or the parents to be able to try to parent their child. One case described at the hospital was a mother “couch surfing” because she could not afford housing. Rather than seeking to assist her to obtain secure housing (if this was the only concern), her baby was removed from her care. The research of Christine Marsh describes these processes as traumatising for the midwives and other professionals involved, because they felt that they had betrayed the mothers, who had trusted them. For the mothers, they were left with no faith in the health care system and medical needs went unchecked immediately after birth. Mothers need advice on how to deal with their milk supply and what to be aware of after baby’s birth. Most importantly they need assistance with the emotional impact of having their baby removed and legal advice to have an opportunity to parent their child. When the hospital staff were asked about the services offered to mothers in these circumstances, they appeared unaware of there being specific assistance provided to these mothers but thought “perhaps they went to their general practitioner”. Given the shame mothers are likely to feel, and the betrayal they experienced at the hospital, it is hard to believe that they would attend a general practitioner or that this was a likely source of advice. There appeared to be no systematic follow-up of these women. This must raise questions about the hospital’s duty of care towards the mother.

Possible action 18. As a start in the reform of this system, a moratorium should be placed on all removals of babies at birth. The practices of recording information to notify child protection services at the birth of a baby must cease. If there is a prenatal notification, its only purpose should be to link the mother into an intensive support system, so she and her baby have the best start possible. Given the impact on Aboriginal women giving birth, this may be an issue that the *Our Booris Our Way* Review may wish to further explore. It is critical to hear the voices of the mothers and families who are affected and to ask them what they need in order to care for their children safely at home.

Fear and intrusion and legal impingements

The impact of structural violence

Violence in a society can be exercised in many ways, including exclusion from society, racism, discrimination, disrespect and rudeness. Violence can also be exemplified in structural forms, by processes in government which are used to silence and oppress people who try to raise concerns. In the conversations with Aboriginal and Torres Strait Islander peoples and other non-Indigenous people whose child or children had been removed by child protection services, many described situations where they got angry when their children were taken away. Expressing outrage by swearing at a worker or trying to protect their children were all seen as acts of violence and used as evidence of the rightness of the decision of child protection workers to remove their children. However, their anger was about a system where their child could be removed without them having a real chance to explore alternatives. It was, for them, a brutal exercise of state sanctioned force or structural violence.

Like any form of violence, the threat to remove a child from its family unless the parent complies with some instruction, is a form of coercion. Parents whose children had been returned to them, or had never been taken, but had been visited by child protection services, spoke about their forced compliance to conditions which made no sense or were oppressive. One story was of a parent with small children who had disabilities being told she needed to travel across Canberra three times a week on public transport for urinalysis. She said she did not think that was going to be practically possible, because of medical appointments with the children, and she was given a “take it or leave it” response. When she indeed could not meet these conditions, her children were removed.

There was much evidence of lawyers advising people to “agree to whatever child protection services wanted because if you got on their wrong side, they could remove the children very easily”. This left people feeling terrified and living in fear. This fear and terror was further aggravated by practices like child protection services taking a long time to respond – sometimes months – and then receiving a letter demanding something be done or making a finding which created another threat. People described being frightened to open their mail or to open the door. They felt unable to seek help because of mandatory reporting. They felt isolated by the shame of being in contact with child protection services. One person described case workers who were threatening or bullying in their manner. When one woman sought permission for her father to be present, the worker initially agreed. When the worker started to behave in a bullying manner and the father spoke up, the worker refused for him to be present again. When the father and daughter formally complained to the supervisor, they were told that there was no substance to their concerns, and the case worker could place any limits on who was or was not present as he saw fit.

People are shamed and silenced

The problem with addressing the manner of these concerns is that it is hard to talk publicly. One interviewee described when she spoke to the press about her circumstances, case workers visited, warning her that this would not be a positive thing in relation to keeping her children. Not only is there direct discouragement, there is also shame that exists when

child protection services have become involved in your life. People expressed a sense of aloneness in their strife, because they did not want others to know. One parent described it thus: “People sometimes believe that child protection services only get involved when you have done something really bad to your child. It wasn’t like that at all, but I felt too ashamed to share it with anyone. And besides, I didn’t know who had reported the situation and so I didn’t know who to trust. I just shut down.” Underpinning these feelings of shame is the importance attached to doing the right thing by your children, in whatever circumstance.

Secrecy, fear and a lack of accountability

There is also an argument that when we are told something is “in a child’s best interest”, the effect can be similar to when we are told that we need some new piece of legislation to protect us from a “security threat”. In these kinds of situations, laws or practices are introduced which often impinge on our lives in other ways. They can reduce our freedoms or negatively impact on our human rights. Some of the laws in child protection in the ACT and other places fall into this category. For example in the ACT, there is no right to external review of child protection decisions relating to contact with children once removed, or placement decisions or decisions about findings in relation to abuse (so called ‘substantiations’). As noted above under the section on Findings, the impact of a substantiation can be very significant, because it acts as a barrier to obtaining a Working with Vulnerable People’s Check. Under new sharing of information provisions between States and across different agencies, it is also possible that the impact of a poorly grounded, non-appealable substantiation on a parent or carer can be profound.

There are no effective requirements to provide natural justice in these processes, because there is no right to know what you are alleged to have done. These allegations can be made by an unnamed person, protected from having to demonstrate their bona fides or their evidence tested. Child protection workers can also claim this protection and refuse to provide copies of reports they have made. Records can be created which assert facts with no evidence to support them, while the person concerned can neither address the record nor see the ‘evidence’ against them. The child protection system ensures records are created so as to not be accessible, (e.g. classified as sensitive documents and included in appraisal processing). The only route for appeal in most cases is to the Supreme Court, which is slow, prohibitively costly and risks that the State will seek to recover costs. At a practical level it is hard to obtain legal representation in a child protection matter as most barristers and solicitors with skills or knowledge in the area already undertake work for the Directorate.

Possible action 19. The Government may need to amend the Children and Young People Act 2008, to address identified shortcoming to a restorative approach being achieved. This includes:

- ensuring that the best interests of the child recognises the importance of relationships which support the child and family, such as are reflected in the New Zealand Oranga Tamariki Act 1989, (Children’s and Young People’s Well-being Act 1989), sections 5,6 and 13;
- that removals of children only occur as a last resort, after there has been a Family-led decision-making process to ensure the family understands the safety concerns and have the opportunity to address these;
- that emergency orders can only be executed with a warrant issued by a judicial officer, in the case of serious risk of imminent harm;
- that court and administrative processes be re-defined towards open information provision, and to introduce restorative, trauma-informed practices that focus on building healthy relationships, and
- that the child protection system becomes much more open to the broader community and accountable for priorities of the kind used in Leeds.

The secrecy and reluctance of people to formally complain because of fear, legal and practical barriers, leaves people feeling powerless, angry and grieving. It also leaves bad practices within the system uncorrected and poor practices simply expand. The lack of prompt external review and public performance reporting should be compared to the open and transparent processes in Leeds, which not only had open and accountable processes, but also substantially reduced the number of children and young people in care.

Possible action 20. The Government may wish to evaluate the effectiveness of its reforms thus far. A first step could be to choose specific relevant ‘obsessions’ as in Leeds, and start producing public data on a weekly basis.

Possible action 21. Similarly, a restorative approach being adopted by child protection services would see the development of safe spaces for the voices of those affected by child protection to be heard and influencing practice through dialogue and listening.

Mandatory reporting

Mandatory reporting was introduced in Australia to try and ensure that all forms of child abuse were identified and acted upon. Unfortunately, the consequences have included system swamping, and little evidence that this is producing a safer life for children and families. In fact, there is evidence that it has created fear and an overly intrusive culture within care and protection services around the world.

Mandatory reporting has been specifically problematic for pregnant woman who are vulnerable or may have specific health needs but may not present if they have drug and alcohol issues; or if they are Aboriginal or Torres Strait Islander; or refugees for fear of intervention and removal of their children as discussed above. Another group may be parents with anger issues or who are seeking more acceptable ways of disciplining their children, but are limited in who they can seek advice from in a mandatory reporting context. Overseas research is starting to question mandatory reporting efficacy in the United States. Mandatory reporting was never introduced statutorily in the United Kingdom or in New Zealand.

Possible action 22. There is a need to review the effectiveness of mandatory reporting, to examine its aims, benefits and harms; to develop trust based on confidential relationships when a family is seeking help, without fear of reporting.

3.5 Options for achieving a more relationally focussed child protection system for all

International and national models of engagement, support and advocacy for families and carers who have contact with child protection systems do exist. 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.

One option for positive engagement with parents in contact with child protection services was developed by Sharynne Hamilton and Valerie Braithwaite. Sharynne Hamilton is a Ngunnawal woman and PhD scholar now employed in Perth. Her important work on a Charter of Rights and Responsibilities for parents and family members, was developed in 2014, and is at Appendix C to this document. It is currently being examined by the Western Australian government and provides a set of guiding principles broadly consistent with the restorative principles set out in Chapter 2. The Charter covers the broad areas of respecting

diversity, consultation and dialogue, transparency and accountability, strengths and weaknesses, and privacy – all issues we have identified in this report.

A number of restorative initiatives and ideas could be trialled here in the ACT. These could be drawn from the international review of what works in child protection, undertaken by Canberra Restorative Community Network Convenor, Mary Ivec for Anglicare Tasmania in 2013. This review provides an enormous range of proven options which could be used to pilot restorative approaches to child protection that promotes a more restorative city and improves relationships within families and communities, thus reducing the need for costly and tertiary end child protection services.

Figure 1 was provided by Mary Ivec to the Council as a summary of the restorative approaches identified as part of the international review. The diagram enables us to identify targets of change, and what interventions are used nationally and internationally to address these. Using a pyramid of engagement as a model reflects the opportunities for parent/carer involvement at each and every level of the child protection system. The model is based on responsive regulation theory and the regulatory pyramid of Ayres and Braithwaite (1992). It depicts six layers of activities where escalation up the pyramid increases statutory and court involvement, cost and coercion.

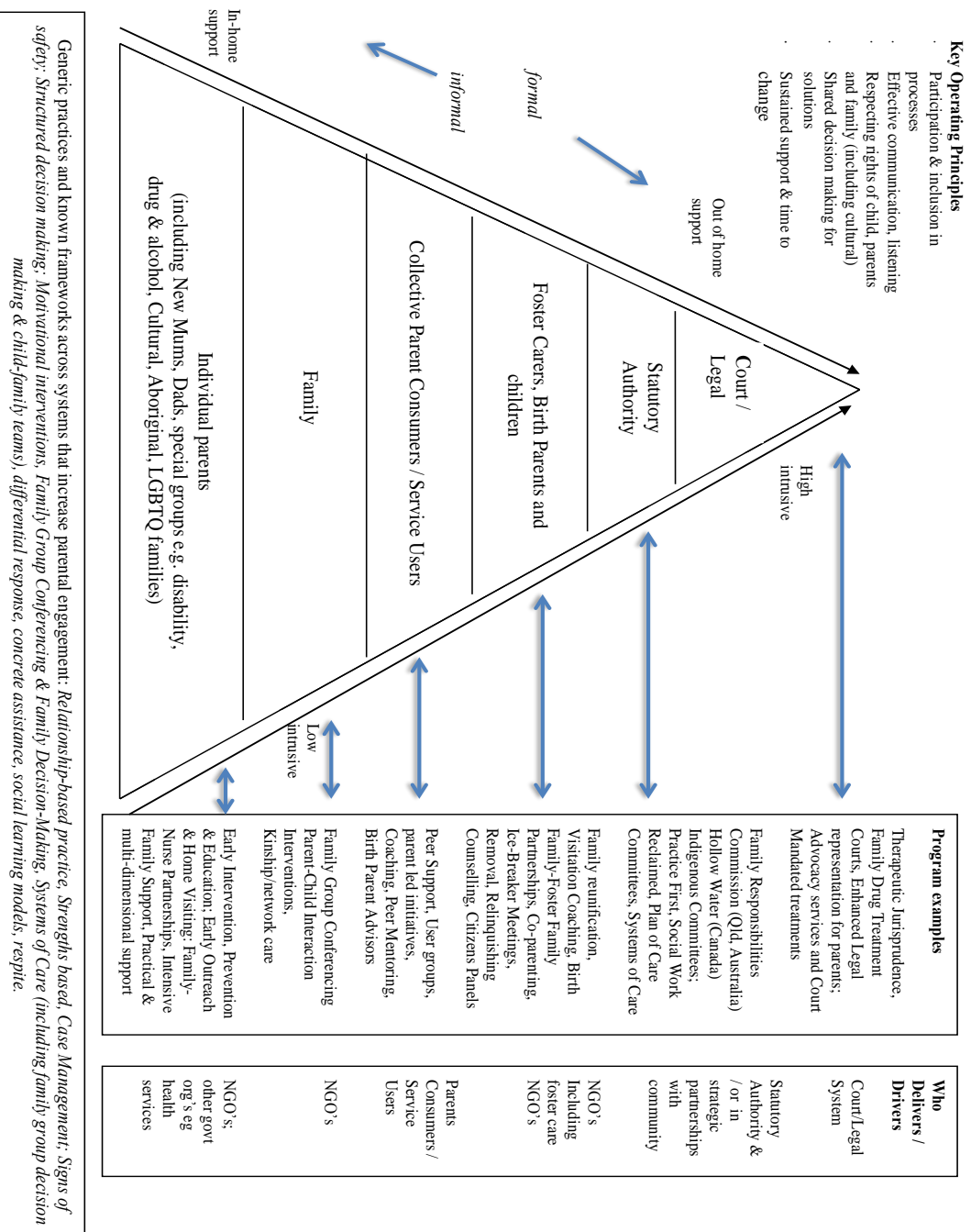
The categories in the pyramid of engagement initiatives have been defined by the goals of the strategy, program, or legislation, that is, who, or what, is the target of change. The various layers are not exclusive; in practice, the borders are blurred and a mix of possibilities exists. The programs and approaches identified as part of this review are summarised and grouped according to these layers and are each extensively described in the Anglicare report.⁸¹

Possible action 23. The adoption in the ACT of the Charter of Rights and Responsibilities for Parents and Families, as being considered in Western Australia -

Possible action 24. Trialling of restorative approaches across all parts of the child protection system, as illustrated by Figure 1.

Possible action 25. Restorative program attempts should be incentivised in funding arrangements for government and non-government organisations. A restorative impact statement can be included in budget bids for any child protection funding.

Figure 1: Pyramid of interventions. Generic practices and frameworks used in combination across service systems across bottom of pyramid and program examples.



Endnotes for Chapter 3

- 1 Douglas B. Friel S. Deniss R. Morawetz. Advance Australia fair? What to do about growing inequality in Australia. May 2014 Australia21 and The Australia Institute, Canberra. Available at: <http://australia21.org.au/wp-content/uploads/2014/06/Final-InequalityinAustraliaRepor-2.pdf> : at page 22.
- 2 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.
- 3 Ivec M. Braithwaite V. Harris N. Resetting the Relationship in Indigenous Child Protection: Public Hope and Private Reality. 2012 *Law & Policy*, volume 34, issue (1), pages 80-103. (For a comprehensive list of publications see <http://www.protectingchildren.org.au/child-protection-systems/>)
- 4 Harris N. Gosnell L. (2012) *From the Perspective of Parents: Interviews Following a Child Protection Investigation*. Regulatory Institutions Network (RegNet) Occasional Paper No. 18. 2012 Australian National University
- 5 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*. Regulatory institutions Network (RegNet) Occasional Paper 21. 2014 Australian National University Canberra: Submission 3.
- 6 https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf
- 8 The *United Nations Declaration on the Rights of Indigenous Peoples* was originally passed by the United Nations General Assembly by a majority of 144 states in favour, with 4 countries voting against it (Australia, New Zealand, Canada and the United States) with 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and the Ukraine. <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>
- 9 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);
- 10 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)
- 11 AIHW 2018 – see note 9: see Table 2.1, page 10.
- 12 AIHW Data collection 2018 – see note 9: Table A1.
- 13 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%)
- 14 AIHW 2018 – see note 9: see 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.

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- 15 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.
- 16 AIHW Data collection 2018 – see note 9: Table S55.
- 17 AIHW Data collection 2018 – see note 9: Table S33.
- 18 The compares the figures noted above in note 13 for children in care at 30 June each year (Table A1), and those on child protection orders at 30 each year (Table S33).
- 19 There were 128 children admitted to care and protection orders in 2012-2013 and 188 in 2016-17. AIHW Data collection 2018 – see note 9: Table S31.
- 20 AIHW Data collection 2018 – see note 9: 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.
- 21 ROGS Data attachment 2018 – see note 10: table 16A.6.
- 22 ROGS Data attachment 2018 – see note 10: table 16A.32 – in 2016-17, the ACT had the second lowest real expenditure per placement night in Australia and is more than \$30 per night lower than the figure for the whole of Australia. In addition, the real expenditure per placement night has fallen even more from its high point in that period in 2013-14 of \$165.88, where the expenditure was the 4th highest and \$14 above the Australian figure.
- 23 AIHW Data collection 2018 – see note 9: Table S43.
- 24 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.
- 25 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
- 26 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>
- 27 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>
- 28 Our Booris Interim Report – see note 24: page 2.
- 29 Our Booris Interim Report – see note 24: page 2, bottom boxes.
- 30 AIHW Data collection 2018 – see note 9: Table S43.
- 31 AIHW Data collection 2018 – see note 9: Table S43.
- 32 ROGS 2018 – see note 10: Box 16.2 pages 16.7-16.8.
- 33 The activity points are Notification, Receiving Intensive Family Support Services, Investigation; Substantiation, Care and protection Orders and Out-of-home care.
- 34 ROGS Data attachment 2018 – see note 10: table 16A.8. page 3 of Table 16A.8.
- 35 ROGS Data attachment 2018 – see note 10: table 16A.8. pages 1 and 3 of Table 16A.8.

36 ROGS Data attachment 2018 – see note 10: table 16A.1.

37 Information on the population of specific places can be found through the interactive IRSAD map: <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2033.0.55.001~2016~Main%20Features~IRSAD%20Interactive%20Map~16> Using the IRSAD map to the suburb level, the only suburb in the ACT which are in the Level 1 category is Symonston, with a tiny population of 559, 3.8% of which are Aboriginal and Torres Strait Islander people. There are only 2 suburbs which are in Level 2 - Charnwood (with a population of 2,979, 3.2% of whom are Aboriginal and Torres Strait Islanders) and Oaks Estate (with 251 people and 1.2% Aboriginal and Torres Strait Islander people in the population). Level 3 has only one suburb (Richardson (with a population of 3006, 3.9% of whom are Aboriginal and Torres Strait Islander people).

38 For a full list of studies undertaken see <http://www.protectingchildren.org.au/>

39 ROGS table 16A.9. Data attachment 2018 – see note 10. Table 16A.9.

40 ROGS table 16A.9. Data attachment 2018 – see note 10. Table 16A.9.

41 ROGS table 16A.9. Data attachment 2018 – see note 10. Table 16A.10.

42 ROGS table 16A.9. Data attachment 2018 – see note 10. Table 16A.10.

43 ROGS table 16A.9. Data attachment 2018 – see note 10. Table 16A.10.

44 http://regnet.anu.edu.au/research/research-projects/details/521/community-capacity-building-child-protection#acton-tabs-link--qt-research_project_details_qtab-ui-tabs5

45 Our Booris Interim Report – see note 24: page 6.

46 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.

47 Collaborators are listed here: http://regnet.anu.edu.au/research/research-projects/details/521/community-capacity-building-child-protection#acton-tabs-link--qt-research_project_details_qtab-ui-tabs5

48 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/> There are also other resources there.

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 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*. RegNet Occasional Paper 22. September 2014 Australian National University, Canberra. http://regnet.anu.edu.au/sites/default/files/publications/attachments/2015-05/Occasional%2520Paper_22_Hamilton_Braithwaite_0.pdf

49 The ACU Institute of Child Protection Studies is based in Canberra:
http://www.acu.edu.au/about_acu/faculties_institutes_and_centres/centres/institute_of_child_protection_studies

50 https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/2084/~/a-step-up-for-our-kids---one-step-can-make-a-lifetime-of-difference

51 See e.g. 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/ocyfs/children/child-and-youth-protection-services/out-of-home-care-strategy-2015-2020/new-services-for-families>

52 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.

53 Nigel Richardson, former Director of Children’s Services at Leeds City Council, and Saleem Tariq, Deputy Director Children’s Services, Leeds City Council.

54 Paul Nixon, Deputy Chief Executive, Chief Social Worker and Director of Professional Practice at Oranga Tamariki , Ministry for Children, New Zealand.

55 <http://www.collingwood.hull.sch.uk/> The Value Statement of the school shows that restorative approaches are at its core:

Children at Collingwood Primary School are restorative.
Through our actions and strong leadership, we show that we are caring,
that we have courage and that we act responsibly.
We are aspirational and we work hard.

56 Ofsted is the Office for Standards in Education, Children’s Services and Skills. They inspect and regulate services that care for children and young people, and services providing education and skills for learners of all ages.

57 <http://www.hullcentreforrestorativepractice.co.uk/>

58 An excellent summary of Leeds’ Use of Outcomes-Based Accountability can be found at [http://davidburnby.co.uk/wp-content/uploads/LeedsStory\(WebsiteVersion\)_Jan16.pdf](http://davidburnby.co.uk/wp-content/uploads/LeedsStory(WebsiteVersion)_Jan16.pdf)

59 The 2015-2020 Child Friendly Leeds plan is at <https://www.leeds.gov.uk/docs/Leeds%20Children%20and%20Young%20People%20Plan%202015-2019%20WEB.pdf> . A report of the first five years is at: <https://www.leeds.gov.uk/docs/Child%20Friendly%20Leeds.pdf>, see also the Leeds City Council website: <https://www.leeds.gov.uk/childfriendlyleeds>. The reports of the External regulator OFSTED on Leeds show the results of the work to all of the community <https://reports.ofsted.gov.uk/local-authorities/leeds>. Submission 17 to LRAC from Relationships Australia also included some of these documents as models for progress.

60 Their full policies and procedures manuals are available in line : <http://leedschildcare.proceduresonline.com/chapters/values.html>. While this has been a recommendation for reform for more than 15 years, this has still not occurred.

61 A copy of the weekly obsession tracker can be seen at [http://www.davidburnby.co.uk/wp-content/uploads/Leeds_WeeklyObsessionsTracker_Mar13\(App5\).pdf](http://www.davidburnby.co.uk/wp-content/uploads/Leeds_WeeklyObsessionsTracker_Mar13(App5).pdf).

62 The measures used are listed in the plan under How we’ll know if we’ve made a difference” and our three obsessions”:
<https://www.leeds.gov.uk/docs/Leeds%20Children%20and%20Young%20People%20Plan%202015-2019%20WEB.pdf> .

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- 63 Extracted from: A copy of the weekly obsession tracker can be seen at
[http://www.davidburnby.co.uk/wp-content/uploads/Leeds_WeeklyObsessionsTracker_Mar13\(App5\).pdf](http://www.davidburnby.co.uk/wp-content/uploads/Leeds_WeeklyObsessionsTracker_Mar13(App5).pdf)
- 64 Hamilton S. Braithwaite V. Stigma by Association and Its Impact on Community Organisations in Australian Child Protection Systems (February 10, 2016). RegNet Research Paper No. 2016/100. Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2730925
- 65 Nixon P. Burford G. Quinn A. A Survey of International Practices, Policy and Research on Family Group Conferencing and Related Practices. May 2005 . Available at:
https://s3.amazonaws.com/academia.edu.documents/5385958/family_group_practices_report.pdf?AWSAccessKeyId=AKIAIWOWYYGZ2Y53UL3A&Expires=1538388102&Signature=Xf0o6GMIOBZ2415cK3jBsTB7a14%3D&response-content-disposition=inline%3B%20filename%3DA_survey_of_international_practices_poli.pdf
- 66 Melton GB. ‘Programs’ aren’t enough - child protection must become part of everyday life. 2013 *Child Abuse and Neglect*. Volume 37S, pages 1-7. McLeigh JD. How to form alliances with families and communities. 2013 *Child Abuse and Neglect*. Volume 37S, pages 17-28.
- 67 <https://www.aracy.org.au/events/event/14th-australasian-conference-on-child-abuse-and-neglect>
- 68 Viner RM. Taylor B. Adult health and social outcomes of children who have been in public care: population-based study. 2005 *Paediatrics*. Volume 115, April issue 4, pages: 894-899 . See also Jones R. Everson-Hock ES. Papaioannou D. Guillaume L. Goyder E. Chilcott J. Cooke J. Payne N. Duenas A. Sheppard LM. Swann C. Factors associated with outcomes for looked-after children and young people: correlates review of the literature. 2011 *Child: care, health and development*. Volume 37, issue 5, pages 613-622. Available at: doi: 10.1111/j.1365-2214.2011.01226.x
- 69 Burford G. Family engagement and social work in statutory settings. Chapter 27 in Maschi T. Leibowitz GS. (editors). *Forensic Social work: Psychosocial and legal issues across diverse populations*. 2nd edition. 2018 Springer Publishing Company, New York: pages 389-416; at 391.
- 70 A foster carer advocate called it the “hill of beans” approach to gathering evidence against either a carer or parent. ‘Every single bean is very small and probably not significant, but if they gather enough of these things, it might make a hill of beans that people will take notice of as if it were a real mountain. But it’s not, it’s still just a hill of beans’.
- 71 Ivec M. Braithwaite V. Reinhart M. *A National Survey on Perceptions of How Child Protection Authorities Work 2010: The Perspective of Third Parties - Preliminary Findings*. Regulatory Institutions Network (RegNet) Occasional Paper 16. 2011 Australian National University, Canberra.
- 72 Hamilton et al – see note 48 – Charter reference.
- 73 Travis C. Aronson E. *Mistakes were made (but not by me): Why we justify foolish beliefs, bad decisions and hurtful acts*. 2013 Pinter & Martin Ltd, London.
- 74 Pimentel D. Fearing the Bogeyman: how the legal system’s overreaction to perceived danger threatens children and families. 2015 *Pepperdine Law Review.*, volume 42. Pages 235-292.
- 75 ACT Government Community Services. *Keeping children and young people safe – a shared responsibility – a guide to reporting child abuse and neglect in the ACT*. November 2017: pages 7-10.
- 76 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>
- 77 *Children and Young People Act 2008*, part 11.2
- 78 *Children and Young People Act 2008*, section 845.
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coming to take your baby: Real life drama for the women and professionals involved. 045 Australian College of Midwives Oral presentation. 2105 *Women and Birth* volume 28S, page S22.

⁸⁰ The following literature search by Women with Disabilities Australia provides a starting point for exploring the evidence <http://wwda.org.au/issues/motherhd/motherhd2006/motherhdlitrev1/>

⁸¹ Ivec 2013 - note 76.

Chapter 4. Public Housing – focus area 2

4.1 Background data

Introduction

Housing is recognised as a crucial requirement for personal and family security and forms a pre-requisite for people to be able to live a good life.

Housing and International Human Rights

Article 25 of the United Nations Declaration of Human Rights¹, established in 1948 and to which Australia was an original signatory, sets out the following aim in relation to a country's obligations towards its citizens in relation to housing:

25. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

The Australian Human Rights Commission states that:

The Universal Declaration is not a treaty, so it does not directly create legal obligations for countries.

However, it is an expression of the fundamental values, which are shared by all members of the international community. And it has had a profound influence on the development of international human rights law. Some argue that because countries have consistently invoked the Declaration for more than sixty years, it has become binding as a part of customary international law.

Further, the Universal Declaration has given rise to a range of other international agreements which are legally binding on the countries that ratify them. These include the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)².

Article 11 of the United Nations International Covenant on Economic, Social and Cultural Rights,³ established in 1966, ratified by Australia on 10 December 1975, and which is a Treaty, states similarly:

11. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

In a 1991 exposition of this right, the UN Committee on Economic, Social and Cultural Rights stated that:

In the Committee's view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. ...

As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: "Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost".⁴

The ACT *Human Rights Act 2004* does not at the moment include the right to housing in its current range of rights⁵. Adequate, secure housing is also one of the social determinants of health⁶. For example in 2016, the Australian Institute for Health and Welfare said:

Safe, affordable and secure housing is associated with better health, which in turn impacts on people's participation in work, education and the community. It also affects parenting and social and familial relationships. There is a gradient in the relationship between health and quality of housing: as the likelihood of living in 'precarious' (unaffordable, unsuitable or insecure) housing increases health worsens. The relationship is also two-way, in that poor health can lead to precarious housing. Single parents and single people generally, young women and their children and older private renters are particularly vulnerable to precarious housing.⁷

Detailed Victorian research into precarious Housing showed that "People in precarious housing had, on average, worse health than people who were not precariously housed. This relationship existed regardless of income, employment, education, occupation and other demographic factors". The research also showed that it was a two way street – poor mental or physical health could lead to precarious housing and vice versa⁸.

Overview of relevant Housing Issues in the ACT

In the 2016 Census, the ACT had had the largest population increase of all states (11.2% since 2011) and a 10.2% increase in the number of privately occupied dwellings. We 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 those who have mortgages.⁹ 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.¹⁰ This had been a decrease since the 2011 Census.

in May 2018, the Australian Homelessness Monitor released its 2018 report¹¹, which had done further analysis of the census data¹², this showed that while the overall number of homeless people had decreased in Canberra by 8% over the period 2011-2016, the number of people sleeping rough had increased from 28 to 54 people. These increases were reported to have been accompanied by nearly \$5 million decrease in ACT government spending on homelessness services between 20i2-13 and 2016-17, and an 80% decrease in investment in social housing over that same period¹³.

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 capital¹⁴. Over the past 4 decades, with changes in policy at both the Commonwealth and the Territory/State level¹⁵, public housing has moved to being a housing option for those who not only have low incomes, but other significant barriers to housing. The current income tests eligibility criteria are on the ACT Housing website¹⁶.

Once otherwise eligible, people who apply for public housing are categorised according to the intensity of their needs, into 3 categories for the waiting list. Numbers of people on 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: 207 days for Priority Housing; 607 days for High Needs Housing; and 1035 days for standard housing. Sometimes people in public housing may seek a transfer e.g. to accommodate changed family circumstances, 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.¹⁷

A new ACT Housing Strategy in development

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, released in February 2018. A Housing Summit was also 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) Rebasement of 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.¹⁸

Alongside this work, the Government has had another process called *Housing Choices – what it means for you*.¹⁹ This work was initiated by the Minister for Planning and Land Management and the Environment, Planning and Sustainable Development Directorate. A Discussion Paper in this project was released in November 2017 and the Minister noted the close relationship between the housing affordability work being undertaken by the ACT Housing Strategy initiative and his work on *Housing Choices*. The consultation period for

that discussion paper closed in March 2018. The *Housing Choices* work has been progressed through one of the deliberative democracy trials. The Collaboration Hub was launched on 5 May 2018²⁰. The report to the Government from that Hub²¹ was received by the Government in July 2018, to which Government responded in September 2018.²² The Minister has given in-principle support to all the recommendations of the Collaboration Hub.²³

These are interesting times in the housing policy and practice space. The Council's work looked only at the area of public housing and how restorative processes might be of assistance to identified issues, particularly for those people in our community who are the most marginalised. However, the use of the collaboration hub, a deliberative process which shares many characteristics with restorative processes, shows that the Canberra community and government are already adopting more restorative practices. These can be seen as signs of Canberra becoming more restorative through the actions of citizens and governments working together. How this process translates into a reduction in homelessness will be the test to how our restorative ideals are realised in a tangible way.

4.2 Information from consultations

Views of tenants, ACT Housing and stage 1 submissions²⁴

Housing ACT is trying but ...

Submissions²⁵ and consultations with Housing ACT emphasised the potential benefits they saw of using restorative practices to better engage with tenants and work for better outcomes for all involved. However, many submissions highlighted that often good policies are not applied or are applied inconsistently, and staff do not use restorative processes to the full extent available. Many interactions are dependent on which staff member the client is interacting with. Some submissions (e.g. Human Rights Commission²⁶) highlighted that Housing ACT already had many good restorative policies and practices in place, while noting that there was some indication from clients that these policies are not always applied.

Some of the uncertainty about whether there were legal limits to treating clients in a more restorative manner arose from confusion about what might be restorative, and how these related to legislative obligations in ACT Housing. For example, concerns were raised about how to best engage with tenants, given that formal notices are often only given after repeated refusal to engage. Some concern was also raised over protections in the Act that specify Housing ACT should not harass tenants or interfere with quiet enjoyment and exclusive possession of property. There were concerns from staff in consultations that Housing ACT taking intervening steps to try and communicate with tenants, even in a restorative manner, may be seen as potentially violating these provisions.

Challenges remain for ACT Housing even when using a restorative approach to engage with tenants. Many tenants will not engage with Housing ACT unless there is the threat of ACAT behind the notice. Housing ACT agreed that the best approach is preventing issues before they arise, but they noted that a lot of action occurs after an issue has been going on for

some time. Housing ACT said that it is difficult to commit staff and resources to building an ongoing relationship.

Some other areas where issues with restorative practices had arisen for ACT Housing were:

- The work in alternative dispute resolution by the Conflict Resolution Service, where disputes arise between tenants, was considered to be restorative and effective, though it was said to be significantly under-funded for the demand.
- Interaction with Housing ACT was highly dependent on the senior staff member involved. Although some staff regularly use restorative practices when interacting with tenants, the response was described as inconsistent. Often good work by particular staff members was lost in staff turnover.
- Many of the most effective existing policies, including Domestic Violence Policies and mechanisms to better engage with people with disabilities, or who have experienced trauma, used restorative approaches.

Working with vulnerable clients and associated challenges

Submissions highlighted that many public housing clients are among the most vulnerable in the community and include people with disabilities, those escaping family violence, people from the Indigenous community and from culturally and linguistically diverse backgrounds. These vulnerable people often struggle engaging with Housing ACT or meeting the necessary 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 only triggered through strong advocacy work on the part of community organisations.

Some submissions highlighted that Housing ACT does not effectively engage with Indigenous tenants and often acted insensitively when dealing with cultural issues, around debt and sorry business. Some submissions highlighted that Housing ACT currently does not meet all the needs of ATSI tenants. This was also evidenced in the direct consultations, conducted by the Executive Officer, with Aboriginal and Torres Strait Islander people, described below.

Some submissions pointed to effective public housing processes in other states including;

- Western Australian Department of Housing employs Aboriginal Customer Support Officers,
- Aboriginal Housing Office in New South Wales intended to use Indigenous views to inform policy changes,
- Indigenous Housing Authority of Northern Territory have integrated public housing systems that offers a model of deep community involved in construction, maintenance and management of public housing, and
- In Victoria rejected applications can be reviewed by Aboriginal Housing Board

People experiencing chronic homelessness were also considered to face considerable problems in the current ACT Housing environment. They are unable to prove their capacity to sustain tenancy by virtue of their situation, nor are they able to engage with front-line services while they prioritise finding a place to sleep. Some submissions advocated for a *Housing First* solution (discussed later below), where accommodation is provided first and then other necessary services are engaged.

Submissions suggested that staff training that focuses on awareness-building of the existing policies and legislation as well as on how to interact with tenants in a respectful and empathetic manner, could promote a restorative approach to public housing in the ACT. Particularly, staff need training in how to engage with vulnerable people and learn from previous mistakes and reflect on new learning opportunities.

Staff training should also focus on the needs of the staff, especially those working on the front line. Staff are often exposed to traumatic experiences and need to be able to debrief in a safe and supportive environment.

Seeking information and early stages of disputes

Some submissions and our consultation with Housing ACT, touched on the therapeutic benefits of allowing tenants to tell their stories and feel listened to. Many submissions highlighted that tenants feel that they are not listened to, respected and that no one cares about their stories. Housing ACT also recognised the value in taking the chance to listen to a tenant's experience respectfully in order to build trust and a respectful relationship. RegNet advocated for a Hearing Day to give tenants the chance to tell their stories.

Submissions noted that many of the policies and procedures used by Housing ACT, particularly the assessment and review processes, remain opaque and confusing. Many tenants, particularly tenants who are vulnerable, find it difficult to engage with these processes. The decision-making processes of the Multi-Disciplinary Panel, in particular were identified as being particularly unclear. The review and assessment processes used by Housing ACT are also considered to be opaque and confusing. All policies and procedures should be made available to the public in a clear and understandable format. Further, all tenants should be able to easily access information about their own case.

Housing ACT emphasised that many issues arise when communication breakdown occurs especially when tenants are unable to meet their eligibility requirements to sustain their tenancy. A restorative approach that builds a respectful, empathetic relationship from the first interaction can help prevent these communication breakdowns occurring, and allow Housing ACT to work with tenants, to help them understand the presenting issue. Housing ACT will generally send many letters, make phone calls, and sometimes visit tenants when there is an issue involving their tenancy. However, Housing ACT, themselves recognised that many tenants find these interactions confusing and intimidating. One needs to be approachable and respectful in order to effectively engage tenants.

As a first step, ACT Housing should consider a restorative conversation as a first response. To achieve this, there needs to be a common language of restorative practice used across all government interactions with clients and between various community organisations

operating in this space. Restorative practice should form part of the first response, ensuring that all interactions happen in a respectful and empathetic manner.

When disputes become formal

Although there are multiple options for internal review, the reviewing party will not accept information from the tenant but relies solely on the information provided by ACT Housing. This excludes the tenant applicant from the decision-making process, which can lead to feelings of disempowerment and arguably undermine the efficacy of the review process. As Housing ACT emphasised, there is not necessarily a need for another complaints or dispute resolution process, rather the existing complaints process should be conducted, in a restorative manner.

The Human Rights Commission identified these key areas that could benefit from a restorative approach;

- Rental rebate system,
- Where tenants are incarcerated, and
- Where tenants die and their loved ones have been living in the house.

ACAT as the final arbiter

Decisions by Housing ACT can be referred to ACAT for review. Although ACAT allows for a transparent and fair review of the decisions, some submissions highlighted that some of ACAT's processes remained inaccessible to public housing tenants. Submissions highlighted that proceedings were not conducted in a restorative manner as Housing ACT will treat ACAT as an adversarial forum.

Specifically, some submissions highlighted that in recent times the evidentiary burden adopted by ACAT has increased significantly, undermining the informal, problem-solving objects of ACAT. Many tenants struggle to reach this high burden.

ACAT's submission²⁷ stated that its legislative scheme already promoted restorative objectives, through the informal, flexible approach utilised by the tribunal, but the submission also reflected its limitations. For example, ACAT assists parties in reaching an agreement about the dispute, but there is no guarantee that this will lead to a restoration of relationships. Further, given ACAT only becomes involved during the final stages of the dispute, the relationship between parties had often already disintegrated. ACAT is also limited by their human and financial resources, undermining the tribunal's ability to ensure a restorative approach in every case.

ACAT argued that the disputes best suited for a restorative approach included:

- actions brought by Housing for injunctions or specific performance orders, and
- actions brought by a tenant alleging that Housing has not maintained the property.

These types of disputes were often the culmination of a lengthy dispute and there was a need for a formal order and for the chance for each party to express themselves and listen.

Aboriginal and Torres Strait Islander experiences with ACT Housing

Consultations with some Aboriginal and Torres Strait Islander people who were residents of public housing raised significant concerns about the quality of maintenance services, at that stage, provided by Spotless. These included 4-day response rates, where there was a roof leaking into a live light socket in a tenant's kitchen, and a contractor damaging furniture, clothing and precious objects when painting a tenant's house. It also included circumstances, such as unplugging a freezer, during maintenance, after which the tenant complained and it took 2 weeks to respond, during which time the tenant was forced to rely on food parcels from emergency relief to feed her children.

These discussions occurred after the Auditor-General's 2016 report²⁸ into problems with the quality of Spotless²⁹, who at that time was responsible for maintenance of public housing³⁰, but before a new tenderer was appointed. A long tender process to obtain an alternative provider was completed in July 2018. A new contract has now 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 2018³¹. It is hoped that these kinds of problems will be more effectively dealt with and that tenants are treated with respect when lodging concerns.

Other complaints included being subject to more frequent inspections, when someone had complained about an ACT Housing service. People saw these as "payback" for them raising legitimate concerns. Another 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, once tenants had lodged the paperwork in time, resulted in people's eligibility for rent assistance not being completed on time. This resulted in people not being eligible for subsidised rent, and their rent being significantly increased to market rates with no notice. Because of auto-payment processes that tenants used to avoid late payment, tenants bank accounts were "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 being able to do things either on line or on the phone. One person described when ACT Housing staff arrived to do 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 that this meant he could not do the inspection until her rent was up to date. This necessitated her having to transport her small children by bus to ACT Housing from where she lived, to pay the 20 cents, because she was told she could not do it over the internet.

Another tenant described the situation where she 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 staff of ACT Housing. They identified situations when they became angry, due to long wait times and disrespectful behaviour, and then being threatened with police, or told they would not be served. In other high public contact areas, where restorative approaches have included de-escalation strategies, these incidents of aggression have almost ceased entirely³².

There was praise for some ACT Housing staff, who worked to understand what the tenant was seeking and then worked with them on a solution. However, there were other staff, who seemed to view all tenants as “the problem”. Many of these kinds of complaints could be avoided if ACT Housing staff were to approach clients with curiosity rather than irritation. Training in restorative approaches to conflict could assist them to have happier tenants and to have better outcomes in their work. This is particularly important in addressing the needs of people who may have had a history of trauma and poor relationships with either ACT Housing or other government agencies, as discussed in Chapter 2. Both staff and tenants who have experienced trauma or have been threatened in some way, need to have processes which build trust and which do not replicate previous harm.

The relationship tenants have with ACT Housing is likely to be long-term. Always aiming to build positive, respectful relationships, to work at maintaining those relationships and knowing how to repair these relationships when things go wrong, is foundational to a restorative approach being adopted in public housing.

Possible action 26. ACT Housing should engage with tenants about refreshing their policies and practices, to be more compassionate and respectful to clients, to ensure the training of staff to understand their role in the prevention of anger and aggression in clients, and to develop relational and restorative skills to ensure that the needs of public housing tenants are being met in a manner that strengthens their relationships and reduces trauma for both tenants and staff.

Possible action 27. There is a need for effective cultural safety training, so that ACT Housing staff better understand the cultural concerns of their Aboriginal and Torres Strait Islander tenants.

Post-prison housing

In the ACT there is a very high recidivism rate³³. In talking to people, the Council learned that for many people who come out of gaol, there are no secure housing options. While

there is some immediate post release housing, the shortage of public housing appears to have a big impact on this population.

The difficulty for people coming out of gaol is that if they were in public housing, they may have lost that entitlement through their imprisonment. Once out, they then need to reapply, but the waiting list is very long. Often, the only place they can stay is with friends. In some cases, these friends may have been part of their criminal past and this may increase the likelihood of reoffending. The difficulty many ex-prisoners have in getting employment after prison aggravates their situation, because without significant earnings, they will not be able to enter the rental market.

Similarly, if their imprisonment was related to drug or alcohol addiction, then their lack of housing can lead to both homelessness and to using alcohol or drugs to cope with their insecure living arrangements. Research shows that people in these circumstances are unlikely to be able to break away from their previous identity and activities, and so are more likely to re-offend³⁴.

Possible action 28. More relational and restorative approaches for people being released from prison would provide support for accessing secure accommodation, employment and community re-integration and likely to have better outcomes, including reducing recidivism. Programs used overseas and in other states of Australia should be evaluated for use in the ACT.

Possible action 29. Given the high level of incarceration of Aboriginal and Torres Strait Islanders in the ACT, appropriate programmes for this group should be a priority. In both cases, the need for secure housing, employment and community supports need to be developed with the detainee and their family, prior to release.

Relocation of public tenants as part of renewal process

With the renewal of public housing, many tenants are being moved into different suburbs and therefore, new communities. Another matter raised in consultations was the need for ACT Housing to take a more actively relational and restorative approach to the movement of tenants into new communities. Often existing residents raise concerns about the tenants moving into their areas. Many of these complaints are based on stereotyped views about who public housing tenants are. Rather than simply dismissing these concerns as “Not in my backyard” prejudices, ACT Housing could try using active relationship building processes. These could either avoid this kind of issue or, if they have already arisen, address these so that people do not feel unwanted in their new homes and communities. In some places, communities can be engaged in welcoming new residents, e.g. through a welcome barbeque, through inviting everyone to events where they can get to know each other, e.g. the establishment of a community garden.

The facilitation of such activities could be encouraged by ACT Housing, with some welcoming ideas, like the Relationships Australia Neighbour Day material. The Suburban Land Agency uses these techniques to create vibrant new communities. However, the Mingle Programs³⁵ do not actually link with ACT Housing to see if they can work together to ensure all new residents are part of the community. This would seem to be easily remedied by the two Government agencies working together. ACT Housing could also look at how to use these community creation processes in older suburbs, to where public housing tenants are also being relocated.

Possible action 30. To enable good relationships to develop, ACT Housing should actively work with communities and public housing tenants moving into new communities to ensure that public housing tenants who will live there will be welcomed. In new suburbs public housing tenants should be part of any Mingle Group planning, like all other new residents.

4.3 Information from later submissions

The most detailed submission on public housing and restorative practices came from Canberra Community Law (CCL), in two submissions³⁶. The first submission content was included in section 4.2 above. The second submission focusses on the introduction of restorative principles and processes to ACAT in dealing with Public Housing Evictions. After detailing current arrangements, the submission presents a number of case studies, which strongly show the non-restorative nature of much of the interactions between tenants-in-trouble and ACT Housing until they are at the Tribunal door. The case studies illustrate the chaos that can result in the lives of vulnerable people, who become overwhelmed by the events around them. They show the tension between the ordered requirements of a bureaucratic process, which expects everyone to behave in an ordered way, and the reality of the lives of people who, through an endless variety of circumstances, are unable to function in such a way. They are not trying to thwart the system, they are simply drowned by it. Each step within the ordered processes set up to ensure rent is paid, such as notices and threats of legal action become just another contributing factor to their trauma.

The submission goes on to describe “restorative justice principles and studies which relate to the issues of lack of engagement and re-traumatisation seen in the public housing eviction process”. It sees the relational aspect of restorative practices as a major protection from re-traumatisation. For example, informal face-to-face interactions, undertaken with compassion and understanding where the person feels comfortable are less likely to add to their existing burden of trauma. Its first principle then is early intervention and resolution by conferencing/mediation. CCL notes that:

Conferencing and mediation have the effect of "humanising" the eviction process by giving tenants an opportunity to explain their situation in a more comfortable and controlled environment. Mediation aims to remove the inequalities and power imbalances of the formal court process which can be overbearing and daunting to

tenants. By providing a forum for open, personalised dialogue, tenants may be more inclined to cooperate where they feel safe to respond in a personalised setting³⁷.

The next principle is that such processes increase the person's perceptions of safety and so reduce traumatic stress. Over time, when someone meets face-to-face in a respectful and safe space to discuss a problem, the evidence is that they are less likely to feel overwhelmed and may engage earlier, if another issue arises. Restorative processes are also demonstrated to bring greater tenant satisfaction and reduce the risk of repeat breaches of a tenancy agreement.

The submission then goes on to give examples from the ACT and other jurisdictions where restorative justice is practiced in Australian Courts or Tribunals and by public authorities. These included Children's Court conferencing, adult criminal justice conferencing and a 2 stage appeal and review process in Western Australian Department of Communities – Housing, which uses a Regional Appeals Committee in a manner described in the submission as having restorative elements.

The last part of the submission details a proposal for a mediation in all ACT Housing eviction matters, prior to ACAT hearings, using restorative principles and practices. The submission concludes:

CCL recognises that adding mediation into the eviction process, including that ACAT Members and Housing ACT officers be trained in restorative justice principles, requires the investment of additional resources by the ACT Government. However, CCL considers that a modest investment in training of these already well-qualified and trained professionals to ensure adequate housing and compassionate treatment of disadvantaged people is an overwhelmingly worthwhile investment. Further, the addition of alternative dispute resolution processes to court and tribunal proceedings has proven to be more cost effective in the long term.³⁸

Possible action 31. Government and the ACAT should consider a pilot or trial of restorative mediation in the area of ACT Housing eviction applications as a matter of priority, given the harm which appears to flow from current eviction processes.

4.4 Options for achieving a more restorative system for all

Housing First

As noted, submissions (including that from Canberra Community Law discussed above) referred to *Housing First* as a way to ensure that all homeless people were housed in the ACT. The current circular requirement for people to be tenancy-ready before they access housing and the requirement that they have housing to access services (which they usually need to become tenancy ready) needs to be broken. *Housing First* is a movement around the world, which seeks to first house people and then work on their other needs. Without

secure permanent housing, it is very difficult for people to get employment, and to become participating and contributing members of a community. This requires a commitment by Government and the whole community to make permanent housing a priority for all – housing choices for all. There are many programs throughout the world, which should be examined to give this the greatest chance for success³⁹. There are also people in Canberra and Australia who are working with this same end in mind⁴⁰. For example, Northside Community Services is the lead agency in the ACT championing this aim⁴¹. In many ways, like ensuring the establishment of just relationships with Aboriginal and Torres Strait Islanders through a Treaty, the assurance of housing for all should be an expectation within a society like Canberra, and a foundational aim for a restorative community.

The issue of housing is also fundamental for child safety and protection. Statutory child protection intervention on the basis of insecure housing is an area of deep concern for the Council.

Possible action 32. The Government should look to the use of the most appropriate deliberative democracy tool to consider and develop a Housing First option for addressing homelessness, rough sleeping and statutory child protection intervention in our community, given the successes in other places, as a foundational element of Canberra as a restorative city.

Tenancy rights in public housing

Given that the message from consultations and submissions is that Public Housing is keen to develop more restorative processes and relationships, but that it is having some difficulty understanding what it means and how to do it, ACT Housing could engage with its tenants in a co-design process to develop a set of expectations or rights for public housing tenants. This could be based upon the restorative principles set out in Chapter 2. The development of this could be done as a restorative circle process with public housing tenants and staff working together on this and “learning by doing.”

Possible action 33. ACT Housing should consider establishing a restorative process to develop a Tenant’s Charter of Restorative Expectations. This could will also provide ACT Housing staff and tenants with opportunities to establish creative relationships with each other, to learn ways of listening, to understand each other’s views and learn about the use of restorative circle talk in a practical way.

Endnotes for Chapter 4

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- 1 The Declaration can be found at: <http://www.un.org/en/universal-declaration-human-rights/index.html>
- 2 <https://www.humanrights.gov.au/publications/what-universal-declaration-human-rights>
- 3 <https://www.humanrights.gov.au/international-covenant-economic-social-and-cultural-rights-human-rights-your-fingertips-human-rights>
- 4 Office of the High Commissioner for Human Rights. CESCR General Comment No 4. The Right to Adequate Housing. Adopted at the sixth session of the Committee on Economic, Social and Cultural Rights on 13 December 1991. See especially paragraph 7, page 4. Available at: <http://www.refworld.org/pdfid/47a7079a1.pdf%20%20%20%20%20See%20especially%20page%204>
- 5 The ACT legislation allows coverage of rights under the International Covenant on Economic, Social and Cultural Rights, so far as they are listed in Schedule 2 to the Act. The right to education is the only one currently listed.
- 6 Australian Institute of Health and Welfare (AIHW). *Australia's Health 2016*. Australia's health series No 15. Cat No. AUS199. 2016 AIHW, Canberra.
- 7 AIHW 2016 – see 6 note: at page 133.
- 8 See detailed reports and research into the health of those who have precarious housing in Australia: <https://www.vichealth.vic.gov.au/media-and-resources/publications/precarious-housing-and-health-inequalities>. In particular, the Key Findings of the Study can be found on page 2 of the Summary Report. Mallett, S, Bentley, R, Baker, E, Mason, K, Keys, D, Kolar, V & Krnjacki, L. *Precarious housing and health inequalities: what are the links? Summary report*. 2011 Hanover Welfare Services, University of Melbourne, University of Adelaide, Melbourne Citymission, Australia.
- 9 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.
- 10 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>
- 11 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/>
- 12 The data had also been supplemented Australian Institute of Health and Welfare Data and Productivity Commission data.
- 13 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>
- 14 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>
- 15 Troy P. The rise and fall of public housing in Australia 2001. Available on line at: http://soac.fbe.unsw.edu.au/2011/papers/SOAC2011_0073_final.pdf. See also: Industry Commission. *Public Housing Volume 1: Report*. Report 34, 11 November 1993, AGPS, Canberra. Available at : https://www.pc.gov.au/data/assets/pdf_file/0020/156710/34public.pdf

16 Income tests from 24 August 2018 are set out at:
http://www.communityservices.act.gov.au/hcs/services/social_housing/eligibility_for_public_housing ,
For further criteria of eligibility for higher priority lists, see
http://www.communityservices.act.gov.au/hcs/services/social_housing/eligibility_for_early_allocation_of_housing

17 http://www.communityservices.act.gov.au/hcs/services/social_housing/waiting_lists

18 All of these documents and further information on the development of the Strategy can be found at:
<https://yoursay.act.gov.au/affordablehousing>

19 <https://www.yoursay.act.gov.au/housing-choices>

20 Further details about the Hub and the information provided to it can be found at: [https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.act-yoursay.files/8915/2539/9786/FINAL - Housing-Choices-and-Collaboration-Hub-Information-Kit-Accessible.pdf](https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.act-yoursay.files/8915/2539/9786/FINAL_-_Housing-Choices-and-Collaboration-Hub-Information-Kit-Accessible.pdf)

21 https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.act-yoursay.files/1915/3290/7795/Housing_Choices_Collaboration_Hub_Report_1_002.pdf

22 https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.act-yoursay.files/5215/3740/2339/Housing-Choices-and-Collaboration-Hub- Government_Response.pdf

23 ACT Government. *ACT Housing Choices Hub – Government Response*. September 2018: page 10. For full report see: https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.act-yoursay.files/5215/3740/2339/Housing-Choices-and-Collaboration-Hub- Government_Response.pdf

24 This section was prepared from a summary of Hannah Cameron, who worked as an intern for the Council in 2017. She attended the consultations with ACT Housing and the Tenants Group with the Chair of the Council Tony Foley. And provided the analysis of submissions received prior to the release of the Progress Report in December 2017.

25 Submissions which included reference to housing included Submission 2 (Advocacy for Inclusion), Submission 3 (Human Rights Commission), Submission 4 (ACAT), Submission 5 (Canberra Community Law) and Submission 6 (RegNet). In most places in this summary, the views expressed were similar, and so they have only been specifically identified in other circumstances.

26 Submission 3.

27 Submission 4.

28 ACT Auditor-General. *Maintenance of Public Housing*. Report no. 2/2016. Tabled 4 April 2016. Available at: https://www.audit.act.gov.au/_data/assets/pdf_file/0005/1179941/Report-No.-2-of-2016-Maintenance-of-Public-Housing.pdf

29 These kinds of problems have also been identified by non-indigenous Housing ACT tenants: Burgee K. As their public housing units fall apart, these women hold each other together. 2018 *Canberra Times* 26 June 2018. <https://www.canberratimes.com.au/politics/act/as-their-public-housing-units-fall-apart-these-women-hold-each-other-together-20180619-p4zmb2.html>

30 Lawson K. Auditor-general finds failings in management of Spotless public housing maintenance contract. 2016 *Canberra Times*, 14 April 2016.

31 Berry Y. Contract awarded for the maintenance of public housing properties across Canberra. Media Release 27 July 2018. Available at https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/yvette-berry-mla-media-releases/2018/contract-awarded-for-the-maintenance-of-public-housing-properties-across-canberra

32 Research undertaken by University of Canberra in Whanganui New Zealand on Restorative healthcare in Whanganui Hospital.

33 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.

34 Buckingham SA, Best D. (editors). *Addiction, behavioral change and social identity – the path to resilience and recovery*. 2017, Routledge, London.

35 <https://suburbanland.act.gov.au/en/mingle>

36 Submissions 5 and 16.

37 Submission 16, page 6.

38 Submission 16, page 11.

39 See, e.g. <http://homelesshub.ca/housingfirstcanada> : there is an excellent resource available for download there. Gaetz S, Scott F, Gulliver T. *Housing First in Canada: Supporting communities to end homelessness* 2013 Canadian Homelessness Research Network Press, Toronto.

40 See, e.g. <https://www.launchhousing.org.au/> . See also the Australian Housing and Urban Research Institute. <https://www.ahuri.edu.au/policy/ahuri-briefs/what-is-the-housing-first-model>

41 <http://northside.asn.au/northside-housing-first/>

Chapter 5. Other possible priority areas for restorative action

5.1 Introduction

This chapter looks at areas 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. Some of these are within the direct influence of the Attorney-General; others are questions for the broader government. People have also raised potential benefits of using relational and restorative approaches in the national sphere, like the National Disability Insurance Scheme and the Commonwealth Family Law Act. These are beyond the scope of the Council's work. However, so far as these areas are concerned, when the ACT Government is involved with discussions with Federal partners, it could provide leadership examples which exemplify restorative approaches to address problems in these areas. This would also raise the profile of Canberra's move towards being a more restorative city.

5.2 Restorative Inquiries

When tragedy or disaster happens, or a revelation of systemic harm over a significant period of time is made, there are often calls for a public inquiry or a Royal Commission to find out what happened and why. Governments often call for such action to reassure the community that they too, are seriously concerned about the matter. Sometimes, such inquiries can come under the jurisdiction of the Coroner, which is discussed separately below.

The ACT has two Acts which can be used to initiate inquiries, the *Inquiries Act 1991* and the *Royal Commission Act 1991*. In relation to the two specific inquiry Acts, both have similar structures and have similar powers to determine their own processes (within the requirements of natural justice and other requirements set out in each Act). The main difference in the Royal Commission Act is that only judges or lawyers of 5 years standing can be appointed as Commissioners (section 6). This restriction does not exist in other Australian jurisdictions, like Victoria and the Commonwealth, with people being able to be appointed with relevant expertise from other fields.

There are also other provisions in specific Acts, which allow people (usually those who hold a statutory office) to initiate their "own motion" inquiries. These are usually inquiries into specific areas of concern that have come to their attention within the scope of their statutory responsibilities. There are also a number of internal and external inquiries conducted within Government Directorates, such as the Review set up to look at the high level of Aboriginal and Torres Strait Islander children in the ACT child protections system, discussed in Chapter 4.

Restorative inquiries and restorative responses following inquiries have been used in Australia, Nova Scotia and other jurisdictions around the world. There have also been proposals for using a restorative approach in relation to emergency management inquiries. Some of these are summarised later in this section. 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 and confidence in systems, organisations and leadership because of what occurred, and to seek better ways to drive broader cultural change to prevent harm occurring again in the future.

Professor Jennifer Llewellyn visited the ANU in May 2018, at the invitation of the Canberra Restorative Community Network, and the ANU's School of Regulation and Global Governance (RegNet) where she delivered a public workshop on Restorative Inquiries¹. Later in June in Vermont in the USA, she and a team from Nova Scotia presented a Workshop at the International Conference on Restorative Justice². She described in both instances the growing awareness of the need for a restorative approach to inquiries.

Professor Llewellyn noted in these presentations that most adversarial processes do not actually help to uncover the truth or identify what is actually important about the event. The primary aim of a restorative approach to inquiries is to understand fully what happened. She argued that compared to the other options - criminal law, administrative processes, civil law or public inquiries and reviews, restorative inquiries offered the greatest likelihood of uncovering the truth, obtaining justice for those affected and wider learning.

She noted that it was 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, i.e. being sensitive and responsive;
- Future focussed; and
- Action orientated.

These mirror the proposed Principles of a Restorative Approach set out in Action 1 in Chapter 2 above. It would be appropriate to include references in any legislated Principles to 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. The Council has not undertaken a systemic search for other examples around the world, due to its own resource constraints, but the examples below are illustrative of the broad range of areas where restorative approaches can and have been used.

The following case studies show two different ways that restorative approaches have been used in inquiries in Australia and Nova Scotia, sometimes in conjunction with other forms of inquiry. There are other examples, like the Dalhousie Dentistry Restorative Inquiry³, which involved on campus sexual harassment; Human Rights inquiries⁴ and an inquiry into deaths

in custody⁵. There is likely to be scope for their use in many other contexts. Following these two case studies, the work which has been done to bring restorative practices to disaster management contexts is also briefly discussed.

Australian Defence Abuse Response Taskforce (DART)

A significant number of complaints of sexual and other abuse and harassment in the Australian Defence Force were received after publicity surrounding an incident at the Australian Defence Force Academy in 2011⁶. A Review of Allegations of Sexual and Other Forms of Abuse in Defence was established in April 2011 and this was undertaken by an independent law firm DLA Piper. The report of the Review was provided to the Minister for Defence in several parts between October 2011 and July 2012.⁷

The Department of Defence also concurrently initiated a series of Defence Culture Reviews⁸, and in response to the results of all these on 7 March 2012, the Minister for Defence, Secretary of Defence and the Chief of the Defence Force “jointly announced a strategy for cultural change and reinforcement in Defence and the Australian Defence Force”. The strategy for cultural change that was produced responded to the recommendations in all these Review and Reports⁹. It has also resulted in a continuing program of cultural change within the Australian Defence Forces, which is in its second 5-year phase.¹⁰

Following the release of the DLA Piper Review, the Commander in Chief of the Defence Forces, General David Hurley¹¹ issued an apology on video to all members of the Commonwealth Defence Forces who have suffered abuse and the Minister announced the formation of the Defence Abuse Response Taskforce (DART) on 26 November 2012.

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”¹².

DART established a Restorative Engagement Program¹³ in response to the conclusion in the RPA Piper report that “a significant number of the persons who contacted the Review indicated that their primary wish is for Defence to acknowledge that abuse has occurred and to express regret for that action¹⁴.” Over 650 conferences were delivered in its three years of operation, until it concluded its work on 31 August 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.¹⁵

The powerful positive impact of these processes - for those who suffered abuse telling their stories and of the impact on Defence senior leaders to listening to them - is documented in the Final Report of the Taskforce¹⁶. Combined with the counselling that was available, many complainants said they were able to heal after the acknowledgement of their story and the

harm done to them, and the apologies received, often face-to-face from a Senior Defence Officer.

The impact of the restorative processes on the concurrent work on culture change was seen as particularly influential because of the effect on the officers who sat in the conferences as representative and the Defence Force. These people would be Defence leaders in 10 or 15 years' time. In a Budget Estimates hearing on 2 June 2015, Vice Admiral Ray Griggs said:

I can assure you that sitting there for two or three hours with these victims of abuse is a life-changing event for most people. We think an exceptionally powerful way to get this message through to the future leadership of the ADF is by exposing them to this process now, exposing them to the issues and really deeply changing their views about this.¹⁷

The Final Report also recommended that the Restorative Engagement Program continue past 31 August 2016,¹⁸ as had its earlier report¹⁹, which suggested that the abuse-related Restorative Engagement Program should continue under a independent oversight body (such as the Defence Ombudsman). That report went further to suggest that Defence should consider using restorative practices in a number of other areas:

Indeed, the concept of facilitated conferencing (not mediation or conciliation) based on the Restorative Engagement model, could well be adopted by Defence as part of a Human Resource management, unacceptable conduct, or cultural development program.²⁰

The Commonwealth Ombudsman is jointly appointed as the Defence Ombudsman, and continues to provide a free and independent service in any case of serious abuse in Defence. The Ombudsman offers a Restorative Engagement conference option for those affected by serious abuse from another person or people in Defence, that occurred while they were in the Defence Force.²¹

Nova Scotia Home for Colored Children Inquiry

This inquiry in Nova Scotia is still on-going, but its importance to the Council's work is that from its beginning, it was established as a restorative inquiry. This is quite different from the Defence Abuse Restorative Taskforce, which was set up after the inquiry, to address needs in individual cases.

The Nova Scotia Inquiry arose as part of a comprehensive response to the history and legacy of the Nova Scotia Home for Colored Children (NSHCC), which was established in 1921 as an orphanage for children of African descent, and where the child residents suffered physical, psychological and sexual abuse and other harm over a 50 year period. The establishment of this Inquiry was part of the agreement in a settlement of a class action by former residents, who believed that the results of having only a financial settlement would not deliver the changes that were needed to prevent further harm²². It is focussed on not just the lived experiences of the child residents and the harms and intergenerational impacts of the harms done to them, but on the broader context of systemic and institutional racism in Nova Scotia and the institutionalised abuse of children.

From its very beginning, the Inquiry involved a different way for government to collaborate and participate, as well as creating a different way forward in conducting the inquiry.²³ One of the goals was to “disrupt old patterns of relationship” between government and citizens. This began with engaging former NSHCC residents and their group VOICES (Victims of Child Institutional Exploitation Society), the NSHCC, the community of Nova Scotians of Africa descent and others in developing the mandate for the Inquiry. The 15 member UJIMA Design Team²⁴ first met in September 2014 and “worked through a collaborative, consensus-based process to establish the design and terms of reference for the restorative inquiry, including consulting broadly with government and community stakeholders” to develop the terms of reference, the structures and the operational strategy for the Inquiry. The terms of reference (Mandate, goals and principles) developed by the Design Team and the Team’s membership are set out in Appendix B to this Report²⁵ The Mandate, Goals and Principles may serve as a useful model for other restorative inquiries to work with and adapt, as necessary.

The UJIMA Review Team also saw that the cultural importance of their African heritage was a foundational principle of the Inquiry’s work:

The Africentric worldview focuses on “oneness with others” (community). Just relationship with the community is valued. There is a strong belief in the goodness of people and individuals working together. The process is to be reflective of the Africentric values/commitments of:

- UMOJA (Unity): To strive for and to maintain unity in the family, community, nation, and race.
- UJIMA (Collective Work and Responsibility): To build and maintain our community together and make our brothers’ and sisters’ problems our problems, and to solve them together.
- IMANI (Faith): To believe with all our heart in our people, our parents, our teachers, our leaders, and the righteousness and victory of our struggle.²⁶

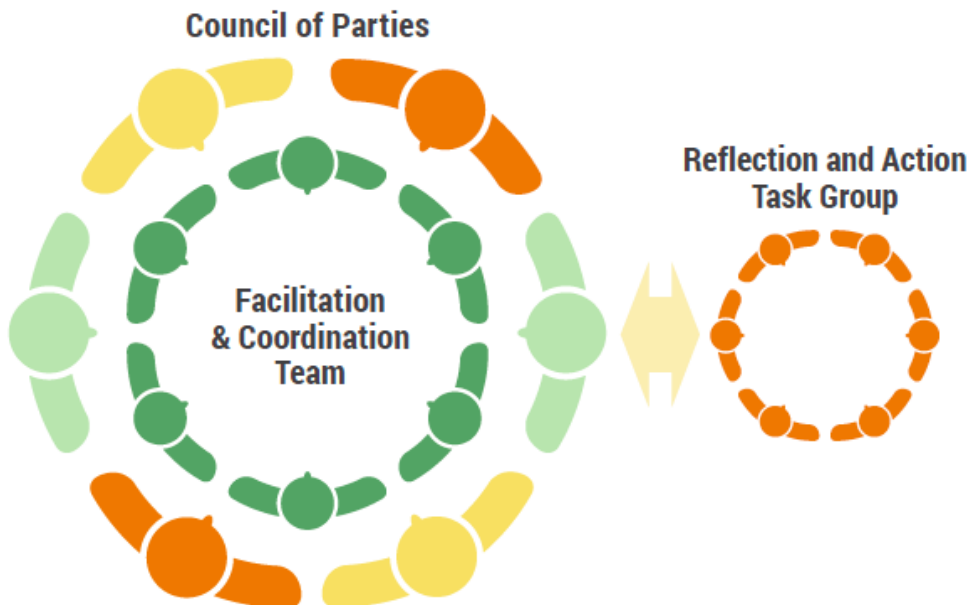
The engagement of people with an African heritage in the design of the inquiry fundamentally shaped it so it was culturally appropriate. The intention was to focus not only the experiences of the previous residents in the Home but also on the broader issues of racism in Nova Scotian society. Shifting the focus to the lens of their experience of the world is a prerequisite for the Inquiry to achieve its aims.

The Team identified 3 stages of the Restorative Inquiry: gathering knowledge; analyzing or making sense of it; and outcomes – acting on the knowledge. These three stages were not necessarily linear, and not necessarily discrete. In addition, the Team identified three elements of work relating to their objectives. There are: relationship building; learning and understanding; and planning and action. Each of the stages and elements of work are interrelated, as represented by the Team in this diagram²⁷.



Structurally, the Team proposed that there be 3 components in the governance and facilitation of the inquiry arranged in the following way, and that the entities to occupy the positions would be selected and appointed on the recommendation of the UJIMA Team. While the selection and appointment process was proceeding, the Design Team acted as an Interim Council of Parties, until the Inquiry became operational.

Process Structure - Facilitation/Governance



A Council of Parties leads the work, rather than the traditional single or small group of commissioners. There are two co-chairs of the Council – one from the VOICES group and one chosen by the Council. There are ten voting members on the Council and two non-voting members. The voting members are 2 VOICES representatives, 2 government appointees – one of whom is to report to the Premier; 1 Board member from the NSHCC; 2 members of the Nova Scotia African community; 1 young person or young adult from the Nova Scotia African community, the Co-ordinator or Director of the inquiry, 1 Provincially or

Federally appointed judge. The two non-voting members of Council are a pro-bono external legal counsel and a Restorative process expert.

The Facilitation and Co-ordination Team are the staff of the Inquiry, including the Coordinator/Director of the Inquiry, providing management, expertise, facilitation, health support for participants etc. The Mandate lists the equivalent of 11 full-time Lead positions in this team, and indicates more people behind the Leads to provide support and work with the Council collaboratively, to help participants in the inquiry, and to ensure no further harm comes to former residents, among other things.

The last structure links into Government and the community, and is called the Reflection and Action Task Group. This Group consists of up to 12 members: the Premier's Liaison person on the Council and an external/community representative (independent of government) as co-chairs; the Deputy Ministers of Community Services, Justice, Health and Wellness, Education and Early Childhood Development, African Nova Scotian Affairs/Communities, Culture and Heritage; a VOICES representative; the Chair of the Council of Parties (or other representative); Knowledge Lead of the Restorative Inquiry; Coordinator/Director of the Restorative Inquiry and an Academic or Expert Advisor. The functions of the group are to encourage the participation of "active and full involvement of public and government institutions"; to consider findings and recommendations throughout the Restorative inquiry and to make plans for appropriate action and implementation; and to submit an annual report to the Nova Scotia legislature on government participation and action to progress the objectives, goals and impact of the Restorative Inquiry.

The Terms of Reference were released in June 2015²⁸ and the Inquiry started the Preparation stage in June 2015 and this was to go until September 2015, with the Inquiry expected to go for 30 months from commencement (October 2015-March 2018)²⁹. The Council of Parties issued its first Report³⁰, in early 2017³¹ which summarised the extensive efforts made in the relationship building phase. This process gave the Council some initial information, on concerns across the various parties, which were then able to be fed into the next phase of learning and understanding.

The Council conducted extensive community consultations throughout the province about the issues of concern to the African Nova Scotian community³², as well as providing talking and listening circles for former residents and more private options for telling their stories. They also engaged in Partner Circles with Government and community partners. A second report³³ on the progress of this stage of the Review was released on 12 January 2018³⁴. The Report identifies 3 central issues for attention and action from its learning and understanding phase. These are:

- The context of responses to institutionalized abuse to understand and reflect on historic and contemporary responses to systemic abuse to help restore damaged relationships and prevent such conditions from occurring again;
- Experiences of children and youth in care in Nova Scotia – how children come into care, their experiences in care and transitioning out of care;
- Historic and ongoing impacts of systemic racism on African Nova Scotians.

The Council sees these 3 issues as closely related, sharing common threads. The Report states that “Each issue requires examining how systems respond to the needs of vulnerable and marginalized citizens, while also understanding how race and racism influence those responses. The work is also focused on learning from the past and the present to create a better future”³⁵.

In the Terms of Reference Report in 2015, the UJIMA Design Team also put forward the expected outcomes from the work of the Inquiry:

It is expected that the Restorative Inquiry will make significant and substantial contributions toward:

- Truth and understanding of what happened with the NSHCC, including the context, causes, impact, and legacy of harms.
- Addressing the needs of and supporting healing for former residents.
- Public recognition and acknowledgment of historic and current systemic and institutionalized anti-Black racism in Nova Scotia through the lens of the NSHCC experience.
- Modelling ways of confronting and addressing instances and issues of racism in Nova Scotia in the future.
- Eliminating racism existing at individual, institutional and systemic levels in Nova Scotia.
- Supporting reconciliation and fostering just relationships within the African Nova Scotian community and between African Nova Scotians and other Nova Scotians.
- Better relationships and ways of working between African Nova Scotian communities and Government founded on mutual respect and understanding.
- Recognition and affirmation of the significance and strength of African Nova Scotian culture, communities and leadership as a founding people of Nova Scotia.³⁶

The two later reports of the Council of Parties and the formal report from the Reflection and Action Task Group³⁷ released in October 2017³⁸ all show there is significant progress towards delivering on these outcomes. Following a request to extend the time of the Inquiry (but not the cost)³⁹, the third phase of the Inquiry of planning and action will take place up to March 2019. The NSHCC Report 2 names this as the period where, continuing in partnership relationships already established, the Council will build an agenda for action “a foundation for real and lasting change”.⁴⁰

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, Dr Michael Eburn and Professor Stephen Dovers released a Discussion Paper entitled *Learning for Emergency Services - Looking for a new approach*⁴¹. 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.⁴²

A 1-day Workshop was also held in Newcastle in early June 2018, many of Australia’s experienced emergency service inquiry directors looked at the good and bad of current adversarial inquiries. They then 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. This was based on the work of Ivan Pupilidy of the US Forest Service. Pupilidy describes it as a Learning Review⁴³. This 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. Professor Jennifer Llewellyn also outlined the nature of a more extensive restorative inquiry, along the lines discussed earlier. There was considerable enthusiasm among emergency managers to explore these options for the future.

Reforming through restorative inquiries

Restorative inquiries provide an innovative way of both getting to an understanding of what has happened and how it has affected people, while looking to the future to see how to prevent further harm. It seems particularly useful for complex areas, where there has been relational breakdown and long-term harm. Some areas that have been looked at by the Council, such as Child Protection and the systemic failures and institutional and social racism that negatively affects the position of Aboriginal and Torres Strait Islander Canberra seem particularly well suited to such a way of moving forward, from a base of understanding and respect. The collaborative nature of a restorative inquiry, that allows real time change during its processes is another advantage compared to most other Inquiry processes. The method may also be a better one for post disaster inquiries, as the protracted, adversarial inquiries processes following the Canberra Bush Fires in 2003, was reported to have been seen by many participants as at least as traumatic as the fires themselves and to have done little to restore confidence and feelings of safety to many Canberra residents⁴⁴.

Some legislative changes in the ACT may facilitate the availability of more restorative and relational options in the future. For example, there is an argument for moving to a single

Inquiries Act, as exists in Victoria, where Royal Commissions, Inquiries and Formal Reviews are all included in the one piece of legislation (the *Inquiries Act 2014*). The removal of the current requirement for a Royal Commission to be a judge or lawyer in the ACT legislation could open up the opportunity to be more inclusive and adopt a “Council of Parties” model as was used in the Nova Scotia Home for Colored Children Inquiry, where Commissioners include all major Stakeholders and form a collective decision-making body that listen and learn together. The Nova Scotia experience also shows that inquiries can produce “real time action”, if empowered to do so, because of the diverse membership of the Council of Parties. This means that, instead of having to engage officials in making change after the inquiry is completed, decisions to act can be made along the way because all stakeholders are around the table and can act.

In Nova Scotia, to reflect the importance attached to dialogue and truth-telling, there are other legislative provisions which have been put in place that are different to those which exist in Australia. For example, in the Nova Scotia Human Rights Commission, evidence not provided for the initial restorative conference cannot be introduced later. The purpose of this provision is to have all information on the table, so that everyone present can be fully informed and there is no capacity to ambush others. This is designed to build a trustworthy process for all. Similarly, the *Public Inquiries Act* in Nova Scotia had a provision inserted specifically to assist in the truth-telling function. Section 5A does not allow criminal prosecution for things disclosed to a public Inquiry except in relation to prosecution for perjury for false statements to the Inquiry.

One of the issues with using a restorative process in an Inquiry of either kind is that many advocates are used to working in an adversarial environment. It can be hard to change behaviours, which can be counter-productive in a restorative approach. In the Nova Scotia Home for Colored Children Restorative Inquiry, one of the techniques developed by the Design Team and used by the Council was the use of the voluntary Statement of Commitment that parties to the Inquiry were asked to sign. This Statement of Commitment is also included in Appendix B. It sets out the different nature of the Inquiry and the relational partnership that is required for the inquiry to be restorative, and it seeks people to sign voluntarily, so they are made aware of the different expectations and intentions⁴⁵.

Possible action 34. When Government proposes to undertake an inquiry or review, the purpose of the Inquiry should first be considered. If the purpose is to discover the truth about what happened and to ensure a shared understanding of what occurred amongst all parties, as well as repairing and building relationships to heal harms, to develop and implement future-focussed solutions, then adopting a restorative methodology and tools should be considered.

5.3 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. Their stories were individually and collectively harrowing and their need for a different kind of process to Coroner's inquiries, very clear. The Council was also informed by the 5-part Canberra Times Podcast series called *Losing Paul*, which told of the whole experience from the death to the end of the coronial process faced by one of the women from the Coronial Reform Group.⁴⁶

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 immediately trial a restorative inquiry model for reform, using a family engagement process with those who have experienced the existing system. They also saw 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.⁴⁷

Current concerns

The Coronial Review Group and others interviewed by the Council all believed that significant parts of existing coronial processes did not meet the needs of families faced with the death of their loved one. Their voices have not been alone in these criticisms, and their submission quotes from a 2016 article by Melbourne lawyer, Ian Freckleton QC, who said:

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.⁴⁸

There exists a body of Australian and other academic work spanning the past decade confirming the lived experiences described by people interviewed by the Council, and the possibility that a restorative approach may offer a good way to address these negative experiences⁴⁹. The above Freckleton article starts with a quote from the US Chief Justice in

1984, which draws attention to the need for change in the nature of the process, and why a restorative approach may assist in this area of law (and potentially others):

The entire legal profession – lawyers, judges, law teachers – has become so mesmerised with the stimulation of the courtroom contest that we tend to forget that we ought to be healers – healers of conflicts.⁵⁰

The Coronial Reform Group submission lists a series of reasons for why coronial reform “should be investigated as a possible field for restorative practices” given their lived experience of its failure to achieve the aims set out in the *ACT Coroners Act 1997*. In particular, their submission expressed the view that current arrangements did not satisfactorily recognise the interests of the immediate family, having all reasonable questions about the circumstances of the person’s death answered, the right to be kept informed and its broader public obligation to identify changes which could prevent other deaths in a timely manner. A summary of their key concerns about current coronial arrangements are that:

- They are expensive, extremely time consuming and often delayed till some years after a death, leaving families with unanswered questions about the circumstances of their loved one’s death, necessary for their grieving process;
- The process is seen as one-sided – where the Coroner can determine not to make adverse comment about the actions of a living person, but there is no capacity for family to protect the reputation of their loved one –“ [the families] have no recourse to correct untrue, distressing and judgmental information presented in court, which remains on the public record”;
- The process is unnecessarily adversarial, and not focussed on open communication about what happened - the family and friends of the deceased person are often retraumatised by the process;
- Current processes are not effective or cost effective in identifying matters of public safety and ways of preventing similar deaths in the future;

Another issue which came up in a number of the individual interviews was the disparity in resources available, where a Government agency had been involved in the death. Where staff of a Directorate are involved, or another Government agency (such as the police), very significant legal resources are made available to protect themselves, to put in place legal barriers to information flows which considerably delay coronial processes. Families of the deceased do not have access to the “deep pockets” of Government and do not necessarily get information from the coronial system to help them navigate it. Where they seek to have their own legal counsel, the costs can be extraordinary, with one family describing legal costs in the vicinity of \$50,000 and the average estimated by the Coronial Reform Group, being around \$30,000. This significantly disadvantages families in their legal access, when they cannot raise that kind of money, and for those who can, it can be a significant risk to their financial stability into the future.

Examples were also given where people in the coronial process were unable to access information held by Government through channels set up to provide more open access to

information by citizens (such as freedom of information). Where Government has imposed Model Litigant obligations on Directorates, it is not clear if this makes any difference in ensuring that families are well treated through the process. It is not surprising that families and friends often feel that the State and its processes are neither seeking justice nor the truth about what happened to their loved one, but rather to protect the agencies and staff from accountability. Combined with evidence of the approach taken by some agencies to coronial inquests, where they act only on specific recommendations rather than on the detailed findings in the final reports following inquests, families often felt that the State, in all its arms, was not serving the interests of its citizens, but rather, itself.

The submission talks about how a restorative approach may be able to address many of these problems. The submission draws on a 2013 Paper by the Federation of Community Legal Centres in Victoria, which notes that despite the therapeutic ideals of coronial frameworks, for many families and communities, the experience of the process is “neither fair nor healing”. The submission also includes a detailed table which draws on the work of the Centre for Innovative Law at the Royal Melbourne Institute of Technology, about how restorative processes might address the negative experiences of families and produce greater justice from the system. The full submission is on the Council’s website and is an important contribution, of itself, to documenting the need for reform and setting out options which may work better for families. The submission includes a list of key issues for coronial reform in the ACT, which provide a useful starting point for reform. These are:

- Families need to be supported and guided through the coronial process and its aftermath.
- There is an unacceptable time gap at the moment between the death and the inquest being completed.
- The costs of coronial inquest are prohibitive for families.
- The coroner needs to have power to fully investigate cases. At present he/she can only look at events proximate to the death.
- There needs to be more pressure on government to act on coronial recommendations.
- Factually incorrect information about the deceased person is sometimes included in coronial finding in the ACT, and there is no opportunity for family to correct this. This is damaging or distressing to families and results in errors being published in the local media and through other channels.
- Opportunities for real systemic change are lost when a coroner is reluctant or unable to make adverse comments against individual professionals and government systems when there is clearly evidence that there are issues of public safety. It seems that the same concerns do not apply when making adverse comments about the deceased person.

A Restorative Reform Process

The Coronial Reform Group was also impressed by some of the restorative inquiry processes in Nova Scotia. These are described in more detail in the Restorative Inquiries section. There has already been some discussion about, and enthusiasm for, using restorative

approaches in larger coronial processes, such as those which surround natural disasters like bushfires⁵¹. The Group expressed a strong preference for the Attorney-General to shape the enquiry as one where the Group worked collaboratively with the Justice and Community Safety Directorate and others involved in both designing and implementing change.

The first stage would be to design the process and terms of reference collaboratively, as was done in the Nova Scotia Home for Colored Children Inquiry described earlier. This group would work together to establish scope, best process to use and goals for achieving change. In the Nova Scotia inquiry the team set its own “goals” for why and how they would work, (see Appendix B). The goals and methods used in Nova Scotia show how a reform process can itself emulate the kinds of reforms it seeks to undertake from its inception. The Coronial Reform Group has encapsulated its desire for such a process in its closing summary:

If a conversation about how restorative practices and coronial reform might work for coronial reform to be initiated by the ACT Government, CRG would like 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 for families of those involved and other community stakeholders; and
- The principles of participation, voice, vindication, accountability and prevention guide the process.

As discussed earlier, such engagement from the beginning helps build trust and relationships in an area where harm has already been done, probably inadvertently in most cases, by a government system, designed with the public good in mind. It is a respectful way of acknowledging and giving all stakeholders a role in designing and acting to change together.

Possible action 35. The Attorney-General should trial a restorative process, involving the Coronial Reform Group and other representative stakeholders, through a co-design process to develop terms of reference and scope of the Coronial Reform proposal. 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.

5.4 Therapeutic and restorative court and tribunal processes and Community Justice Centres

The idea that courts and tribunals can act in a different way that reduces harm to parties from the process itself, reduces recurrence of offending and potentially builds better relationships, is not new. So-called ‘therapeutic jurisprudence’ has been discussed for about the same period as restorative justice, and often these efforts co-exist, because to some extent they are looking at the same problem – the potential to reduce harm from the process of getting to a just outcome. The Australian Institute for Judicial Administration describes therapeutic jurisprudence in the following manner.

Therapeutic jurisprudence says that the processes used by courts, judicial officers, lawyers and other justice system personnel can impede, promote or be neutral in relation to outcomes connected with participant wellbeing such as respect for the justice system and the law, offender rehabilitation and addressing issues underlying legal disputes. Developed by Professors David Wexler and Bruce Winick in the United States in the 1980s in the context of mental health law, it is now seen to apply to all areas of the law and across cultures and is the subject of international study and development⁵².

The Australasian Therapeutic Jurisprudence Clearinghouse lists and describes many different therapeutic legal practices and court processes⁵³. These include court diversion programs, death-related issues (including coronial processes), legal and court processes relating to family breakdown and child welfare, family violence courts, legal and court processes relating to homelessness, legal and court processes relating to indigenous people, indigenous sentencing courts, legal practices around people with mental illness and mental health courts, as well as problem solving courts. The Clearinghouse also includes materials on therapeutic jurisprudence in civil and administrative matters, court administration, corrections, legal practice and victims of harm.

There are therapeutic initiatives that already exist in the ACT, such as the Galambany Circle Sentencing Court⁵⁴, which is a specialised Aboriginal and Torres Strait Islander court, under the Magistrates jurisdiction, which has been operating successfully since 2004⁵⁵. Presided over by a Magistrate with Elders and Aboriginal and Torres Strait Islander Panel members, the purpose is to provide a culturally sensitive sentencing option for indigenous offenders. The work of the Restorative Justice Unit and the *Crimes (Restorative Justice) Act 2004* also fits into this broad class of practices.

The Council considers that there are many opportunities for more restorative processes to be included in appropriate court and tribunal processes in the ACT. Victoria has had a Centre for Innovative Justice at RMIT, under the leadership of a previous Victorian Attorney General and Deputy Premier, Rob Hulls, since October 2012. This provides another source for research for those who believe more restorative approaches in the justice arena should be trialled. The goals of the Centre are set out below:

The Centre for Innovative Justice researches, translates, advocates and applies innovative/alternative ways to improve the justice system, locally, nationally and

internationally, with a particular focus on appropriate/non-adversarial dispute resolution, therapeutic jurisprudence and restorative justice.⁵⁶

Victoria has also pioneered two examples of these practices in the Family Drug Treatment Court and the Neighbourhood Justice Centre. Both of these initiatives operate at a Magistrates Court level. This is a brief outline of their operations.

Victorian Family Drug Treatment Court

The Family Drug Treatment Court was established as a 3 year trial in May 2014 as part of the Children's Court of Victoria, to stop parents using drugs or alcohol to facilitate family reunification, where child protection services have become involved. The pilot was commenced by Magistrate Greg Levine, following completion of his Churchill Fellowship looking at these models in 2011. The Court is chaired by the Magistrate, who is supported by a multi-disciplinary team, including drug and alcohol clinicians and a dedicated social worker. The Court also works with other agencies providing services for parents on the program, such as residential treatment providers, mental health and drug and alcohol counselling, parenting programs and housing programs. Professionals also work with the children.

A Family Recovery Plan is developed and then implemented, with regular visits back to the court to determine whether the plan is being complied with by the parents (including regular drug testing), and what services may be needed as time progresses. The duration of the program is 12 months and where the goals of the plan have been met, the magistrate can make an order to return the children to their parents' care. The pilot has specific geographic entry requirements. The pilot was evaluated in 2016 and found to be successful and cost-effective⁵⁷. Court staff advised that the pilot is continuing, because it was too early in the last evaluation to determine the impact over time. Another evaluation on the longer term effectiveness of the court is underway at the moment.

Neighbourhood Justice Centre

The Neighbourhood Justice Centre is a community justice centre, located in Collingwood, in Melbourne, serving the inner City of Yarra. The Neighbourhood Justice Centre says that:

As a community justice centre, everything the NJC does is based on the core principle that justice can help to improve community life, especially in places with high-levels of crime and disadvantage. While honouring and maintaining traditional procedural rights and equality before the law, our centre brings important notions of social justice to the criminal justice agenda. And so, while dealing with criminal events, we can strengthen communities to prevent criminal and harmful behaviour from occurring in the first place⁵⁸.

Community justice centres of different kinds exist in other Australian⁵⁹ and overseas jurisdictions. The Victorian centre provides a wide range of services e.g. including mediation, which commonly occurs in other community justice centres. However, it also operates as a court and tribunal site, including the Magistrates Court, Children's Court (Criminal division), the Victorian Civil and Administrative Tribunal and the Victims of Crime Tribunal. These all co-exist, under the one roof, with therapeutic and practical support

agencies, legal representation, police prosecutions, community correctional services, as well as teams for crime prevention and community justice, community justice education and communications and court innovations. The Centre’s wide range of services are designed “to assist people to address the underlying conditions that contribute to their offending behaviour, or for clients who are not attending the court, to assist with living more fulfilling lives”⁶⁰. The kinds of services include things like mental health services, addiction services, housing, employment and training service, Aboriginal and Torres Strait Islander support services and services for migrants and refugees.

Other therapeutic and restorative court or tribunal models

What became clear in our consultations with people who were currently marginalised in the Canberra community was that they often had complex and overlapping issues which contributed to their marginalization. What was also clear was that much of the assistance available came at a time of crisis, and was often not well matched with their needs. When they then intersect with the justice system, problems often multiplied. This has been recognised by judicial officers, like the Chief Magistrate, who has expressed an interest in more therapeutic and restorative models like the ones described above. There are many overseas models⁶¹, like the multi-disciplinary Youth Drug Court in Christchurch New Zealand⁶², and the two specialist courts in Nova Scotia for Opioid addiction⁶³, which began in 2014 under Chief Justice Pam Williams, and domestic violence⁶⁴, which began in March 2018 under Judge Amy Sakalauskas. Using restorative circles with marginalised populations and drawing on data on the nature of people’s complex lives, more therapeutic and integrated processes could be developed and better assist and meet the needs of those in contact with courts and tribunals.

Possible action 36. The Government should support the Chief Magistrate and the head of the Children’s Court in their efforts to examine therapeutic and restorative court and tribunal models. These offer better ways of dealing with the complexity in people’s lives, and reduce the effects of court proceedings, which often add to the harm in the lives of marginalised citizens. Piloting these kinds of processes would be consistent with the Justice Reinvestment policy approach supported by ACT Government.

5.5 Education and training

Current efforts in the ACT

The Council sought advice from 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. The ACT Education Directorate provided the following information about the current use of restorative approaches in Canberra public schools. The Council thanks the Directorate for its

advice that opportunities for restorative approaches are being further explored, given the importance of relationships in school communities.

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

Many schools in the ACT would consider themselves employing restorative methods to foster cultures of inclusion and respect and using 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 with 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 these 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 a necessary part of this process.

Current Education Context

In the ACT, restorative principles are evident in the *National Safe School Framework* and local policies and programs.

National

The National Safe Schools Framework

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 individual national, state and territory initiatives, policies and legislative frameworks currently in place to support students' safety and wellbeing.⁶⁵

Education Directorate Policies and Programs

Future of Education

In February 2017, the Minister for Education and Early Childhood Development announced the commencement of the *Future of Education* conversation, which will result in a long-term strategy for education in the ACT. The *Future of Education* team has been actively working with schools, parents and citizens associations, school boards and community organisations to facilitate this conversation in the ACT community. The themes of equity and inclusion have drawn comments relating to the need to articulate what is meant by these terms and setting a related policy goal

for ACT public schools. The theme of equity has been particularly evident in feedback from students⁶⁶.

The Safe and Supportive Schools Policy 2016

The Safe and Supportive Schools Policy provides guidance for ACT public schools on promoting a safe, respectful and supportive school community. The policy articulates ACT public schools' commitment to providing positive and engaging environments where young people feel connected and respected, achieve success and are fully engaged in education. It reinforces that student wellbeing impacts on student learning and is fundamental to a student's successful engagement with education. ACT public schools establish safe, respectful and supportive environments for the whole school community, by fostering a positive school culture based on positive relationships and a focus on prevention and early intervention for behaviour that may impact safety and wellbeing. Restorative measures are identified as part of this policy statement⁶⁷.

Social and Emotional Learning Programs

Social Emotional Learning (SEL) is the process through which students develop and apply the knowledge, attitudes, and skills necessary to understand and manage their emotions, set and achieve positive goals, understand and show empathy for others, establish and maintain positive, respectful relationships, and make responsible decisions. The Safe and Supportive Schools policy requires every ACT public school to implement SEL. The Directorate's SEL approach is informed by the Collaborative for Academic, Social and Emotional Learning's approach, which identifies the following five areas that effective SEL strategies should cover. These five areas assist students to develop skills that are important in a restorative context⁶⁸. They are:

- self-awareness
- self-management
- social awareness
- relationship skills
- responsible decision making.

Positive Behaviour for Learning

Positive Behaviour for Learning (PBL) is a whole school approach to creating a safe and supportive environment through strong evidence-based systems and practices. The PBL approach incorporates the theoretical understanding of brain functioning from a neuroscience and trauma informed lens. Currently 37 schools are engaging with PBL. Schools are supported in implementing the framework by an external PBL Coach and Senior Psychologist from the Education Directorate who provides training and coaching support to the school's internal implementation team. This approach has a strong research and evidence base in:

- increasing student engagement in learning;
- improving student learning outcomes;
- improving school climate and culture;
- decreasing levels of problem behaviours (low level, repetitive) and challenging behaviours.

The Directorate is aware that the New Zealand Ministry for Education has integrated Restorative Practice into their PBL model. *Positive Behaviour for Learning Restorative*

Practice is based on a set of best practice tools and techniques to support a consistent and sustainable approach to managing positive, respectful relationships within the school⁶⁹.

Future potential developments

The Conference⁷⁰ 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. They spoke about the experience of introducing restorative approaches in the schools in Hull⁷¹, which has spread through a large area of the UK. Hull is now an Academy School, which teaches other schools how to make the same transition. 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 to 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. This is discussed more in Chapter 3 above.

Schools working restoratively can also serve as modelling and training places for the extension of restorative skills into the wider community. For example, at Truro High School in Nova Scotia, parents from two different ethnic groups and having relational difficulties asked the school to help them work together to resolve their problems⁷².

Possible action 37. The current efforts of the Education Directorate are a key beginning in moves towards a more restorative city. The Directorate is continuing to explore options where marginalisation and disconnection from school were successfully addressed through restorative processes. To supplement these efforts, particularly in relation to Aboriginal and Torres Strait Islander children and others with educational disadvantage, strengthening engagement and collaboration with Hull, Leeds and the Restorative International Learning Community would further assist in developing and operationalizing the no suspension and other restorative policies.

Possible action 38. The Education Directorate and Government should explore options for expanding restorative efforts across all schools and their school community (e.g. in relationships with students, parents and in relationships between teachers). This skill development in schools could be promoted across the wider community, to encourage the use of relationship-based skills in other contexts, more broadly.

5.7 Other areas of government responsibility where restorative approaches might assist

Health and community care

Current work on restorative health care by the University of Canberra Public Hospital is discussed in Chapter 6. However, the inherently relational nature of health and community care services means that both skills to establish strong, respectful relationships that build trust and restorative ways of addressing issues when things go wrong, are integral in all health and community care relationships. Health providers and others working in healthcare settings need to be constantly present to the vulnerability of those they serve. We have a deep human need for kindness and care, especially when we are sick. Whether services are provided to consumers/patients or their carers by doctors, nurses, allied health staff, catering, cleaning or other support services, in whatever setting - a hospital, a community facility or private home, what people always remember is how they felt they were treated.

As fellow human beings, we need to be intentionally present to the needs of those around us, especially if someone is sick or in need of assistance. Offering help and checking on workmates, neighbours, friends and family if sick or need support 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 we have discussed earlier. “When we belong to a community characterised by mutual care and respect, that experience will develop our capacity for compassion towards others.”⁷³

Applying restorative principles across health or community services could be an important quality improvement mechanism. Principles listed in Recommendation 1 are key characteristics of quality and compassionate care. Seeing through the eyes of a patient, being trustworthy is what consumers and carers hope for when they or their loved ones need care.

Using restorative processes when things go wrong is consistent with best practice. Research shows when someone is harmed, they want to know what happened and what can be done to repair the damage, where possible; they want an apology; where there is a cost to fix it, they want these borne by the person who caused the harm; and they want to know action is being taken to prevent recurrence. These are all key elements of the national standards relating to open disclosure. Yet a common response to harm is for services and providers to retreat to an adversarial position, further undermining trust. People become reluctant to seek help, even when it is important to do so. Harm can compound as questions do not get asked about why someone is not attending or “complying with instructions”. Applying restorative principles in health and community care management, in inter-professional relationships, and in provision of care together with competent care, will enable the best care. Health care is another area, where restorative principles and practices could be supported and adopted with beneficial results.

Town and Service Planning

Concerns about adversarial approaches to planning decisions and failure to engage people in conversations and decisions were raised in submissions and consultations. People expressed the view that their legitimate questions or concerns were seen as “Not in my Backyard” prejudices. People expressed the need for good, clear information about how their concerns would be considered in decision-making processes. People felt ambushed or kept in the dark, which leads to poor relations and community divisions. These situations can be avoided by slower, more engaged, restorative approaches to decision-making in town and service planning.

Government’s effort in “*Have your say*” was seen as an important development. However, keeping across all consultations was reported as time-consuming. Being provided with information about all the various proposals still did not ensure adverse impacts on their lives. These concerns related not only to town planning decisions, but also to other service and program planning decisions.

Adopting restorative principles, recognising that trusting relationships and listening matters, are likely to be beneficial approaches for all these kinds of planning processes.

5.8 Other areas of potential relational tension and support

Conflict is normal in human relationships and can be a driver for positive change.⁷⁴ When conflict arises it can provide an opportunity for greater understanding in a relationship, if we have the tools to listen deeply, reflect and communicate with the other person in a respectful way. We also need to understand that we have choices about how we react, and how we respond to the emotions we feel⁷⁵. We can use our “moral imagination” to think up new ways of relating and recognising ourselves in our many and varied relationship.⁷⁶

While the concept of violence is most often thought of as physical harm, violence can occur in many other ways, such as people being subject to racism, discrimination, and other causes of traumatic stress. When parents and teachers say to children “use your words, not your fists”, this may not avoid harmful violence if the words create shame, humiliation and anger. Words which impinge on someone’s sense of worth and human dignity, particularly over time, can be as harmful as those more traditionally recognised forms of violence⁷⁷.

Recognising conflict when it arises can sometimes be subtle and sometimes immediately obvious. Discomfort that can come with conflict can result in physiological changes related to the threat implicit in conflict. To maintain and support our relationships we need ways of dealing with conflict so that we can use these experiences as an opportunity to strengthen our relationships, and where possible, minimise harmful consequences of the source and consequences of the conflict.

Domestic relationships

We have many relationships important to our well-being which require us to act restoratively or in a manner that reflects the importance to us of these relationships continuing. These can include family, friends and neighbours. Family can include, partners,

parents and children, elders and others. There is a need for us to learn relational skills to both build, maintain and repair our relationships throughout our lives. The work of existing programs that can be built on are mentioned in Chapter 6. There is a need to recognise the importance of these skills through school and adult education opportunities and to help people develop these in the context of specific disputes.

Using restorative, relationally focused ways of dealing with conflict in various domestic relationships, including with family, friends and neighbours, allow people who have had few tools except violence for dealing with conflict to develop new skills. Restorative approaches allows respectful communication of the feelings of each party to a conflict, with the aim of developing a common understanding between them in a safe environment. Where people are listened to in a context where they feel respected and heard, where they feel powerful enough to speak their truth, and where their behaviour and feelings can be looked at in the context they experienced, then people are more likely to be able to understand each other. Where they have a continuing relationship, this allows them to take responsibility and to look towards more positive, future focussed ways of relating, to avoid further conflict.⁷⁸

One area of innovative work using restorative practices is in domestic violence where the person subject to violence wants the violence to stop, but also wants a continuing relationship with the person displaying violent behaviour. This can occur in situations involving intimate partners, children and parents, siblings, elders and adult carer children to name a few. The dominant “separation” policy motif in these situations removes the person who acted violently, usually by police, and imposing legal limitations on the people being near each other through state issued tools, like domestic violence orders.

Some of these processes are put in place as “protective” of “victims”. Not only do they fail to protect those who have been harmed from further harm⁷⁹, but they are often unacceptable to the harmed person for other reasons. For example, if the harmed person is financially or socially dependent upon the person, loves them and wishes them no harm, then the dominant solutions are likely to be unacceptable. The lack of availability of non-separation options can have differentially adverse effects on people who have the care of dependent children, those being cared for such as older relatives or people with disabilities, and those who are economically disadvantaged.⁸⁰

Enabling a person to take charge of what happens when they are harmed (that is, be empowered) rather than handing the power to the state requires a suite of solutions. These must recognise different needs and priorities of those affected, who should be able to choose how to respond and whether or not the state should become involved⁸¹.

Restorative practices can play a significant role in the creation of options. For example, the work of Joan Pennell and Gail Burford has shown that family group conferencing can be used effectively to stop or reduce family violence against both adults and children⁸². A 3-province Canadian project undertaken in the 1990s showed that where family group conferences were used to create a Family Plan, the incidence of violence halved, for both children and adults.⁸³

An excellent resource to explore the complex issues about domestic violence and the need to look beyond a criminal response to better meet the needs of those harmed by domestic

violence, and who do not see separation as the best intervention is Leigh Goodmark's 2018 book *Decriminalizing Domestic Violence – A balanced policy approach to intimate partner violence*.⁸⁴

Exploring this issue is very important, as conversations held during the Council's inquiry, indicated systems like Child Protection saw separation from, and criminal prosecution of the person who was violent, as the only solution. Women who did not want to involve the police as state criminal regulators, and who did not want to leave a partner who was violent towards them, but wanted to look at other means of stopping the violence, were often criticised as being "non-protective" of their children. In some cases, people claim that they were threatened with removal of their children unless they left the relationship. In turn, this made people subject to violence less likely to seek help when an incident occurred. Where adolescents or children were violent to parents or siblings, most options available to stop the violence were unsatisfactory. People felt that services like child protection blamed them for the violence they or other family members experienced, and so they were reluctant to seek police or other protective support, if the violence occurred again. Mandatory reporting was identified as a barrier to help seeking behaviour, as discussed in Chapter 3.

Restorative justice has proved to be beneficial in situations where older people suffer violence or where financial exploitation occurs within their family relationships. These situations can be very complex with a lifetime of interactions shaping the situation people are now in. Where prior power relationships may have included violence or were emotionally negative, changed power dynamics from age-related frailty, disability or mental impairment can lead to complex relational issues and relationship problems and conflict. Similarly, elders may be reluctant to take legal action or involve police to protect themselves, because they may still be dependent upon those same people to remain living in their home. For many elders, the idea of involving the police where a child or partner might end up in gaol is sufficiently repugnant for them to do nothing.

Restorative processes, which recognise and acknowledge these broader contexts in both the occurrence and the solutions are important as protective processes for elders in these circumstances. Relationships Australia operates Elder Relationship Services, based on relational and restorative principles.

Work relationships

Similarly, positive work environments rely on good relationships and taking a restorative approach when problems arise. An early resort to adversarial processes is likely to lead to further breakdowns of relationships and an unhappy work environment. There is extensive evidence that such workplaces are less productive, and workers suffer from greater ill-health through stress and associated trauma. Where a workplace wants to establish a positive culture, or address a damaging one, restorative principles set out in Chapter 2 can operate as mechanisms for this to occur.

In Whanganui, teaching and encouraging workplace restorative practices are a key part of the Restorative Practices Whanganui Trust's work⁸⁵. Restorative practices are seen as a way

of preventing bullying and poor workplace culture which are costly imposts for business. In a 2014 Trust Report⁸⁶, the use of restorative tools in workplaces was an example of the Trust's "primary aim ... to help the workplace community think, act and live relationally. Restorative practice is a strengths-based and hope-filled approach to working and wider community life ... [which builds] a vision of a thriving and relational workplace community"⁸⁷.

One option for expanding the concept of a restorative Canberra would be to support the widespread adoption of restorative principles proposed, on a voluntary basis, by government and non-government workplaces. This was an area discussed in the early days of restorative justice work⁸⁸ and has been used in many places since then⁸⁹. Companies and bureaucracies are using these kinds of techniques to prevent or heal "toxic cultures"⁹⁰, and to prevent and deal with racism in the workplace.⁹¹

A good place to start would be to train human resource and senior managers in the principles and practices of restorative approaches. This is occurring in places around the world. For example, in the United Kingdom, the Restorative Justice Council outlines the process of restorative approaches to conflict or inappropriate behaviour in workplaces as:

- bringing together all those affected by conflict
- providing a safe environment for the expression of emotion
- allowing participants to come to a shared understanding
- identifying creative ways to deal with conflict
- providing opportunities to rebuild damaged relationships and strengthen teams⁹²

Possible action 39. Restorative approaches offer alternative ways of tackling diverse kinds of domestic and work conflicts. The Canberra Restorative Community Network might consider identifying and showcasing innovative practice for the Canberra community more widely. The Canberra network could also look at partnering with other interested groups to see how these approaches could be developed.

Chapter 5 Endnotes

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- 5 The restorative inquiry was sought by Ernie LeBanc, whose son Jason died in custody after being arrested for an alleged parole violation, after getting caught in a snow storm. Tutton M. Dad says N.S. restorative justice helped him heal after son's jail cell death. The Canada Press. 2 April 2018: available at <https://www.cbc.ca/news/canada/nova-scotia/cape-breton-correctional-centre-ernie-leblanc-jason-leblanc-death-1.4601567>
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- 10 This 2016-17 Defence Department Annual Report web-page noted that all of the recommendations in the 2012 strategy noted above at note 9 had been implemented and then set out a summary of the next 5 year plan: <http://www.defence.gov.au/annualreports/16-17/Features/PathwayToChange.asp>. See also <http://www.defence.gov.au/PathwayToChange/> and the refreshed “Cultural Intent for 2017-2022” statement available at <http://www.defence.gov.au/PathwayToChange/Docs/Defence%20Cultural%20Intent%20Statement.pdf>
- 11 For a video of the apology of the Chief of the Defence Force General David Hurley, see <http://video.defence.gov.au/play/2800#>.
- 12 <https://www.defenceabusetaaskforce.gov.au/Aboutus/Pages/default.aspx>
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- 15 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>
- 16 Defence Abuse Response Taskforce. *Final Report*. March 2016. Available at: <https://www.defenceabusetaaskforce.gov.au/Reports/Documents/Dart-final-report-2016.pdf> : see Section 1.6 at pages 19-20; and Section 8 at pages 50-52.
- 17 Defence Abuse Response Taskforce. *Report on the progress, operations and future structure*. 30 June 2015. Available at: <https://www.defenceabusetaaskforce.gov.au/Reports/Documents/Report-on-Progress-Operations-and-Future-structure.pdf> :at page 19.

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20 DART 2014 – see note 19: at page 68.

21 There is an Ombudsman’s Office pamphlet, explaining the services and availability. http://www.ombudsman.gov.au/__data/assets/pdf_file/0038/79994/DFO-Reporting-Abuse-Flyer_Web.pdf

22 This article outlines the history of the class action. <https://www.cbc.ca/news/canada/nova-scotia/home-for-colored-children-deal-presented-to-the-court-1.2667325>

23 Details of this process are set out in: Reflection and Action Task Group. Report to the Legislature. Nova Scotia Home for Colored Children Restorative Inquiry (NSHCC Inquiry): available at <https://ansa.novascotia.ca/sites/default/files/Reflection-and-Action-Task-Group-Report.pdf> : pages 4-5.

24 UJIMA is an African word meaning “collective work and responsibility” and it was chosen to emphasise the groups commitment to this Africentric principle. UJIMA Design Team. *Nova Scotia Home for Colored Children Inquiry - Mandate and Terms of Reference*. (NSHCC Terms of Reference Report) 2015. Available at : <https://restorativeinquiry.ca/sites/default/files/u4/nshcc-restorative-inquiry-report.pdf> : page 7.

25 The Terms of Reference an also be downloaded from <https://restorativeinquiry.ca/terms-of-reference> and the full NSHCC Terms of Reference Report can also be downloaded from that page, or above at note 24.

26 NSHCC Terms of Reference Report 2015 – see note 24: at page 7.

27 NSHCC Terms of Reference Report 2015 – see note 24: at page 10.

28 At the public ceremony releasing the Terms of Reference Report, the Nova Scotia Home for Colored Children Board chair apologised for the harms which had occurred there. <https://atlantic.ctvnews.ca/terms-of-reference-released-for-nova-scotia-orphanage-inquiry-1.2419482>

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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 by Government, either through relevant Ministers 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, like venues to hold public discussions or administrative supports such as photocopying. On other occasions, resources may be needed, for example, to help bring guest speakers or trainers to Canberra to speak or help train people here.

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/Restorative Engagement Officer in to help support the Network. This network has more than 500 members across the community, and this support will facilitate learning and research about 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 expand its work and to provide training restorative approaches to conflict solving to the community on a cost recovery basis.

6.2 Government services

Restorative Justice Unit, Justice and Community Safety Directorate

The ACT's Restorative Justice Unit has been a 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, looking at the application of restorative practices across different aspects of vulnerable people's lives in Canberra over 2016-2017. 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 website¹. The findings from these inclusive participatory events have led to a number of restorative projects and initiatives that have benefited the ACT community detailed below.

Most recently, the Unit formulated a successful proposal for a 2018-19 Budget bid for the Canberra Restorative Community. This was supported by the Attorney-General and will , provide administrative and other support to continue to expand the work of the Network in 2018-19.

6.3 Democratic collaborations and deliberations

In some of the literature on the relational state discussed in Chapter 2, a key element is described as governing *WITH* the people. Mulgan wrote in 2012 of three stages in the developing role of government over the long term. Initially government acted *OVER* people, standing over people to enforce its will through its monopoly on the legal exercise of force, or was, at best, a paternalistic protector. Secondly, government moved to a provider role, where it did things *TO* its citizens, who were seen as passive recipients and there was a “manufacturing process” mentality; and lastly, government is increasingly seeking to work *WITH* the public to achieve common goals, sharing knowledge, resources and power.”² He also notes that different functions of Government can involve each of these three modes, but that we need to as a society, consciously explore what the appropriate relationship is between citizens and state in each area of responsibility. This is necessary to ensure that power actually moves to the people away from government where that is most appropriate, and that efforts towards co-design and co-production between citizens and between citizens and Government are real.

Government-Civil Society-Academic Collaborations

The ACT Government has recognised that its processes for engagement with citizens in the democratic development of our city needed to be re-examined and re-invigorated. In a 2016 Election, the now Government promised more representative consultation for the Canberra community. The Government released a Whole of Government Communications and Engagement Strategy in mid 2018.³

A deliberative process can take many shapes, but it is essentially a process of public reasoning, that involves citizens in respectful informed dialogue about different issues. Professor John Drysdale at the September 2018 Deliberate ACT meeting described its key features as talking, listening and reflection, in a manner which is civil, respectful and involves reciprocity (that is, an intention to seek to find agreement). He said that it was an inclusive process, involving all interested parties and that it should be consequential, in that it should have an impact.⁴

Part of this commitment has resulted in a civil society/academic/government collaboration called Deliberate ACT, which acts as a community of interest. Deliberate ACT is a

collaboration between the Canberra Alliance for Participatory Democracy, University of Canberra's Centre for Deliberative Democracy and Global Governance and the ACT Government. It meets every six weeks at the Museum of Australian Democracy and includes members of the public, academics, passionate democracy advocates, engagement practitioners and public servants.

Public conversations

With its rich supply of university resources in Canberra, there are a wide range of “public conversations” which encourage understanding of complex issues and provides opportunities for citizens to learn and listen. These are some of the key elements in a relational and restorative city, because they provide ways for people to learn about issues that concern them and to engage in conversations that can bring understanding of the views of others and even, at times, facilitate agreed positions. Some events addressed generally to the public include:

- The Canberra Conversation series of free public lunchtime lectures, jointly convened by Professorial Fellow Jon Stanhope AO and Adjunct Professor Dr Khalid Ahmed PSM from the Institute of Governance and Policy Analysis.⁵
- The Australian Catholic University's Blackfriars lecture series⁶ which are designed to honour the Dominican Order which is “committed to the ongoing, systematic and critical search for Truth in all its forms” and serves to “engage the community in the ongoing quest for the true, the beautiful and the good”.
- The ANU Public lecture series.⁷
- The University of Canberra Public Lecture series⁸ that include the Ngunnawal Lectures.⁹

Many other institutions in Canberra also provide intellectual support for greater understanding between people through their public outreach work, including museums, art galleries, public libraries, civil society groups and private sector organisations. These all contribute to social capital in the community, particularly where they foster respectful, informed conversations between people.

Social connections are also built through the wide range of hobby groups, sporting clubs, church congregations, and other civil society organisations in Canberra. For example, on the Associations register, there are currently more than 2,800 registered associations incorporated in the ACT. Not only do these organisations form a network of relationships across Canberra, where there are likely to be rich conversations, but they also have the opportunity to work in restorative ways when there are disputes within these organisations. Such actions could be encouraged through changes to the Model Rules of incorporation to ensure that the processes which are in the legislative rubric of associations establish restorative processes, by which to resolve conflict.

There are also new organisations and activities in Canberra, which are focussed on different models of cooperation and skill-sharing, which are strongly relationally based, such as the Repair Café movement¹⁰, various “sharing economy” initiatives¹¹, sharing meals and ideas¹².

The deliberative process trials

The Government also committed to a series of trials of various kinds of deliberative processes to explore different ways of engaging with its citizens more deeply, in some of the complex issues which affect them. Over the past 12 months, the Government has arranged four different deliberative processes and is evaluating them at the moment: one was a Carer Voice panel to develop an ACT Carer Strategy; another was a Citizen's Jury to develop a new Compulsory Third Party scheme for the ACT; another was a Collaboration Hub on Housing Choices for the ACT; and the last was a Better Suburbs Citizen's Forum.

The continued exploration of ways to better engage citizens in their democracy and the evaluation and improvements learned from these trials provide another component of what a more relational and restorative Canberra might look like. The active promotion of these new forms of engagement by government is consistent with its commitment to the creation of a more relational and restorative society

6.4 Government Involving Citizens and Serving Citizens

The YourSay web page and Access Canberra Offices also provide social capital which can be used to create better connections between governments and the citizens. For example, the YourSay website says:

Our goal is to involve Canberrans in the decisions that impact their lives. YourSay provides you with a range of ways to participate and share your ideas online. Canberra is a city like no other, and together we can plan for our growing city. YourSay is the ACT Government's online consultation hub where you can stay informed and influence government decisions. You can participate by joining online discussions, voting in quick polls and taking surveys. Sign-up today to start contributing and to receive updates about other opportunities to join in the conversation.¹³

The interactive nature of the web-site allows people to see the views of others as well. Access Canberra is the One-stop Shopfront for many different services of the ACT Government. The current customer respectful training provided to staff creates the opportunity for people to have good interactions with government on a day to day basis. In Whanganui's efforts towards becoming a more restorative city, one of the first places which undertook training in restorative practice were the municipal frontline staff, who play a similar role to the officers in Access Canberra venues. These are all important elements in a more connected, relational and respectful society, even where they may not be first thought of as "restorative" or "relational". Done well, they are both.

6.5 Canberra Restorative Community Network and the Restorative International Learning Community

Canberra Restorative Community arose from the efforts of number of concerned citizens, who were aware of our city's foundational history in the international restorative justice movement. These people had seen what was happening overseas in the use of restorative

approaches in the creation of strong communities, through visits to places like Vermont, Nova Scotia and New Zealand. In addition, these people encouraged visits by members of the Restorative International Learning Community that had formed to learn from each other's experiences in the spreading out of restorative and relational principles in communities around the world. Importantly, they were led and advised by internationally renowned local academics at ANU's RegNet, especially Professors John and Valerie Braithwaite and an international community of scholars

A conference entitled Towards a Restorative Community was hosted by the then Attorney-General Simon Corbell on 20 July 2015 at the ACT Legislative Assembly. This included keynote expert speakers from overseas and locally, such as Professor Jennifer Llewellyn from Dalhousie University in Nova Scotia and Professor John Braithwaite from the Australian National University. Speaking publicly about the Conference, Mr Corbell said:

We are hoping to learn more about this restorative phenomenon, which is being embraced in Halifax, in Vermont, in Hull and Leeds in the UK, and closer to home, across the Tasman in Whanganui New Zealand.

A restorative community is a place where people and organisations are committed to practices that promote, build and enable respectful relationships. It is a community where individuals are aware of and understand the principles of restorative justice in their personal and organisational practice.

Restorative practice works to ensure everyone is heard, everyone who has a stake in a problem is included, solutions are worked out together and everyone has a part to play in making the solution work¹⁴.

Press coverage of the event was positive¹⁵ and many people attended, including in the words of the Canberra Times, "many well-known Canberra thought leaders: Chief Magistrate Lorraine Walker, Human Rights Commissioner Helen Watchirs, Relationships Australia chief executive Alison Brook, Victims of Crimes Commissioner John Hinchey and Canberra Raiders great Don Furner"¹⁶.

In November 2015, on the occasion of a visit from Canadian Senator Vern White who talked about restorative policing in Canada¹⁷, the inaugural meeting of the Canberra Restorative Community Network was held, with more than 70 people present¹⁸. The Network oversaw with the Restorative Justice Unit a series of presentations and discussions over the next 18 months (2016-2017) about the applicability of restorative practices.

The Network to date has operated with a volunteer convenor (Mary Ivec) and a small informal committee of individuals with an interest in the issues, and who often have initiated their own projects, as described below.¹⁹ The Regulatory Institutions Network provides voluntary support to the Network. Among other things, it has helped organise other public forums and presentations by overseas visitors and Aboriginal and Torres Strait Islander people. They have also provided significant organisational and personal support to the work of the Law Reform Advisory Council's research and consultation efforts.

Some of the projects described in section 6.6 have also created learning opportunities for Network members and others in the Canberra Community. For example, the Restorative

Health project (discussed in detail below) arranged for a world-renowned Restorative practitioner John McDonald of ProActive ReSolutions to give a 1.5 hours workshop on the basics of Restorative Practice at the University of Canberra on 28 November 2017. John did this pro-bono in support of the UC CIRI Restorative Health Project, but it provided benefits for members of the Canberra community as well. These activities are described below and in more detail in section 6.6.

The Canberra Restorative Community Network has a website²⁰ and an active Facebook page²¹. It holds two gatherings a month – one on a Tuesday evening and one on a Friday lunchtime - which are open to anyone who wants to attend. People involved in restoratively focussed projects or work provide updates and there is often discussion and planning for where to next.

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

- to raise awareness across government, education, social services, justice and mental health sectors as well as the broader community 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 experts²²

International speakers from Hull, Leeds and New Zealand gave detailed presentation on how their own cities had transformed communities, characterised by social deprivation and marginalisation into restorative communities, starting in schools (Hull)²³, in the children's service/child protection arena (Leeds)²⁴ and in New Zealand, working with Maori in the context of social services and child protection²⁵. There was also a presentation about the Practice First initiative in child protection in NSW²⁶.

On the evening of 22 February, 2018 the Attorney-General Gordon Ramsay, and the Minister for Justice, Shane Rattenbury, hosted a Legislative Assembly reception for the international visitors, for other Ministers (Minister Rachel Stephen-Smith, who has portfolio responsibility for child, youth and families and indigenous affairs) and senior Directorate staff and other guests engaged in the Restorative Canberra endeavour. This involved a talking circle where the visitors outlined what had occurred in their communities and the Ministers and others were able to ask questions.

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. There was a 30% response rate. These were from across the community – 36% were from the community sector, 34% were from ACT or other state governments, 15% were from academic institutions, 13% were private individuals and 4% worked for the Commonwealth Government. The main areas of interest of the attendees included child protection, social

services, disability and caring, education, family violence, elder abuse, health, housing, human resources, indigenous affairs, justice and regulation.²⁷

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 e.g. ACT Government trialling a restorative approach; ACT government acting on problems in child protection; ACT government to support work already started, such as through LRAC (child protection and housing), Galambany Circle Sentencing Court and Peace Education Program; training of ACT government staff; and buy-in from ACT government directorates.
- Combining what is already happening, increase opportunities for information exchange and continued transparency, 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.
- Further 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.
- Developing increased understanding how and why ACT public servants in all areas feel unable to or constrained from acting restoratively so as to identify barriers and develop strategies to remove them.
- 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 to us all.
- 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 have greater 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.
- Law makers would need to look at the aspects of the law that restorative practice would impinge on e.g. punishment, bail conditions, child removals, restorative practice in juvenile crime.

The survey also guided the Network about what was wanted of it in the immediate aftermath of the Workshop, and these were: regular meetings and events, opportunities for discussions and working together, training, more opportunities to share stories; and more opportunities to link and network. Having heard much of this from participants, regular twice-a-month conversations were organised and continue. Circle talking is practiced at many of these meetings, as a form of training as well, with people practising as circle leaders. The Network has established a Facebook page to facilitate rapid dissemination of information and news²⁸.

The Network and its members have continued to organise events about restorative practice issues for interested people and the public. In addition to those listed under specific projects in section 6.6 below, this has included:

- University of Canberra, Health Research Institute. *Can the use of restorative practices in healthcare provide pathways to hope and healing? In conversation with Emeritus Professor Gale Burford (USA), Professor John Braithwaite (ANU), Janine Mohamed (CEO CATSINaM) and other experts* on 1 February 2017.
- An evening seminar on Restorative approaches to quality and safety in health care, during the visit of the Whanganui Hospital team to the University of Canberra Hospital on 15 May 2018;
- Engagement in the Cultural Blessing of the University of Canberra Hospital on 16 May 2018;
- Workshop by Helen Shurven, member of the Australian government's Native Title Tribunal on "The Reflective Practitioner – considering the role of mediator" on 22 May 2018;
- Organisation of a public lecture by Professor Jennifer Llewellyn of Dalhousie University, Nova Scotia and convenor of the Restorative International Learning Community, on "Restorative Inquiries and hope – learning from the past to create a better future" on 7 June 2018;
- Organisation of a Workshop on Restorative Practices in Human Services, by Emeritus Professor Gale Burford of University of Vermont and Professor Llewellyn on 8 June 2018;
- A visit by the Attorney-General Gordon Ramsay to the August Tuesday Network conversation (7 August 2018), where he outlined his continuing commitment to the development of Canberra as a Restorative City and the engagement of the community

through the Network, which had resulted in a commitment of funds to support the work of the Network in a number of ways.

Some of this 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.

6.6 Initiatives with a restorative and relational lens

This Report has already covered some of the existing work where people in Canberra are exploring more restorative approaches in specific areas, such as courts and tribunals, coronial inquiries, the work in the education arena and others in Chapter 5. This section deals with those initiatives that have begun in the restorative arena, often through the efforts of Network members

University of Canberra Collaborative Indigenous Research Initiative and Restorative Hospital Project

The University of Canberra (UC) Collaborative Indigenous Research Initiative has funded a project, entitled "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 Canberra, Newcastle and Melbourne, local Nggunawal 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 the history of racism. There are also cultural barriers to healthcare access for patients, their families and staff, where health services do not work to engage Aboriginal and Torres Strait Islander people in the design and delivery of health services that meet their needs- or ensures their voices are heard throughout governance structures. The then forthcoming opening of the University of Canberra Hospital as a specialist rehabilitation, recovery and research facility and the education links between that hospital and the University located on the site and its health students and researchers such as the School of Nursing, Midwifery and Public Health provided an ideal opportunity to look at better ways of doing this.

During a visit to New Zealand in October 2016, some members of the Canberra Restorative Community Network became aware of an initiative at the Whanganui District Hospital to make their hospital into a restorative hospital. Part of this was working closely with the local Maori community, to determine how best to help them achieve better health outcomes²⁹. On returning to Canberra, this news was shared with other Network members and Dr Holly Northam from the University of Canberra School of Nursing and Midwifery. Under Holly's leadership as Principal Investigator, Indigenous and non-Indigenous collaborators from the University of Canberra and other institutions received funding to develop the project. The project has a number of elements and the team describe it in the following manner:

[The Restorative Hospital project] presents an important opportunity to bridge the Indigenous and non-Indigenous 'Gap' in life expectancy and wellbeing. The historical harms perpetrated within hospitals and other institutions associated with colonisation, as well as the distrust engendered by brutal separations of children from their families continue to tragically frame the healthcare relationships of many Indigenous Australians. This problem is compounded by negative cultures within the health system that may limit Indigenous voice in healthcare environments. These relational issues of identity, trust and equity contribute to existing and potential communication barriers. Communication failings are the primary cause of over 70% of sentinel events resulting in death or serious injury to patients; and given the prevalence of harmful cultures of bullying in Australian healthcare organisations - it becomes imperative to find new ways to work.

Whanganui, a restorative community in New Zealand, have significantly accelerated narrowing Maori health inequity by using Restorative Practices, which they define as "a philosophy, in action, that places respectful relationships at the heart of every interaction. This relational approach is grounded in beliefs about the equality, dignity and potential of all people and about the just structures and systems that enable people to thrive and succeed together" (Whanganui Board, 2014).

Nurses and Midwives at the University of Canberra are supporting the ACT in becoming a 'restorative' community and in joining the Restorative International Learning Community. In collaboration with Indigenous leaders, we are exploring ways to translate visions of equity in healthcare for our community- by exploring new ways of teaching, learning, practicing and researching. Our vision is to apply 'Restorative Healthcare Practice', a strength's based relational approach, centred on giving voice, respect, acknowledgement, accountability and healing value to the most vulnerable to healthcare delivery to benefit Indigenous people.

Our objective is to introduce restorative healthcare practice to the new University of Canberra Hospital. Our work in this area involves the wider ACT community. In this project we seek to reach out and address the needs of those who are most vulnerable to social and healthcare inequality and injustice- we believe that by meeting the needs of the most vulnerable we help everyone in our community.³⁰

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 visit to 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 more restorative hospital, which 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 week³¹. Other important steps in the project have been:

- a Restorative Practice Yarning Colloquium on Healthcare – Enabling equity on 28 November 2017, which included a 1.5 hour Basics of Restorative Practices workshop

conducted by John McDonald and ?, a Yarning Circle on Restorative Practice to “Close the gap” (including lessons learned from the visit to Whanganui) and an evening seminar on Restorative Practice in Health Care – the Value of Voice (including feedback from the visit to Whanganui), with key note speakers Professor Gary Foley and Dr Doseena Fergie at the University of Canberra

- a reciprocal visit of a Whanganui delegation to the University of Canberra, which included visits to cultural sites of significance in Canberra and at the University of Canberra, welcome to country ceremonies on Mount Ainslie, participation in yarning circles and in an evening seminar and yarning circle on quality and safety in health care, the opening of the learning and research part of the University of Canberra Hospital, visits to sites of significance around Canberra and a visit to the Bush Healing Farm.
- A forthcoming visit in December 2018 by Professor Jennifer Llewellyn to exchange information with the CIRI Restorative Hospital Project and others as part of the Restorative International Learning Community.

The Restorative Hospital project has also modelled the importance of building relationships in creating a more restorative Canberra. This has included the sharing of cultural ceremonies on both sides of the Tasman, and the exchange of cultural gifts, reflective of the growing networks of relationships.

- When the Ngunnawal delegation visited Whanganui, they brought a gift of artwork for the Whanganui Hospital and Health Board. The painting was called Gulwan (Ngunnawal word for Sisters) and was painted by local Ngunnawal artist Lynnice Church, to honour the relationship between her mother and Auntie Ros Brown (who was part of the delegation and is also part of the CIRI project team). The sister relationship was also seen as reflecting the “bond that has developed between the Whanganui Hospital and the Restorative Health team, and their shared hopes for the new ACT Government/UC Hospital and Indigenous health and wellbeing.”³²
- Whanganui Hospital Maori visitors presented the University of Canberra Hospital, with a hand-crafted canoe oar (called a “hoe” in Maori³³) made by Reneti Tapa from the Te Atihau-nui- a –Paparangi tribe, and a member of the Patient Navigator team which implements key parts of the restorative approach through their work symbolise that health care is like a canoe, with the patient and family at the front and everyone in the health care system paddling together in the direction indicated by the patient and family³⁴.

Other outcomes to be completed as part of the Restorative Hospital Project are likely to not only benefit Aboriginal and Torres Strait Islander people, but also 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 focussed health system and create a proto-type for new ways of engaging with Indigenous and non-Indigenous consumers and carers.³⁵ 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 6 new actions that are specific to Aboriginal and Torres Strait Islander people³⁶. 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.

The project is currently in the writing up stage and the intention is to produce a number of peer-reviewed journal publications to add to the evidence base. The project conclusions will, no doubt, provide further ideas of the application of restorative approaches to health care, as well as showing ways to create a more restorative environment for patients and staff at the University of Canberra Hospital.

A number of other important developments have already flowed from the participatory action research methodology of the Restorative Hospital Project³⁷. 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 a compulsory part of the course³⁸. 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.

Other restorative/relational developments in health

An Independent Review into the Workplace Culture within the ACT Public Health Services³⁹ was announced on 18 September 2018 by the ACT Health Minister, Meegan Fitzharris. There has been a period of years now, where many parts of the ACT health system had negative experiences involving bullying and relationship breakdown. There may well be opportunities to look at ways of using restorative principles and practices to help rebuild relationships and trust with the hospital and for the community outside the hospital.

Circle talking is a key methodology used in restorative approaches of many kinds⁴⁰. The use of yarning circles and other kinds of circle talking can be used as tools of consumer, carer and broader public engagement in the health context, as well as ways of producing health care that is co-designed with consumers. The use of restorative practices in the context of health complaints and open disclosure processes have been identified as other possible areas where patients, carers and staff and the community could benefit from the healing and truth-telling processes, which are core to restorative approaches.

As discussed in chapter 5, coronial matters often involve the health system. When someone dies unexpectedly in hospital or after health care, more restorative approaches would not only help grieving families. They could open up the possibility of more learning within health care to prevent further harm in the future. Adversarial approaches in health coronial matters have resulted in non-reflective postures and narrow legalistic approaches to problems in health care. An example of this is where only the narrowest changes occur to address the often small number of recommendations of the coroner, rather than looking to

action on extensive comments in the rest of the coroner's report. This was a concern raised in Submission 20, from the Coronial Reform Group, discussed in Chapter 5 of this Report.

Prisons and the Peace Education Program

One of the discussions at the early meetings of the Network included looking at the data on imprisonment in Canberra. The most recent Australian Bureau of Statistics Corrections data shows that over the last 3 years, the average daily number of people in full-time custody in the ACT has risen 37% to 504 in the June quarter 2018. This is double the rate of increase in the figure 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 Aboriginal and Torres Strait Islander rates of imprisonment, compared to the number of indigenous people in the community⁴¹;
- A lack of transitional support processes for all prisoners, when they are leaving prison;
- Violence and anger as a consequence of what happens in prison;
- Higher rates of recidivism than in any other Australian jurisdiction across all prisoners;⁴² and
- Linkages between prisoners, mental health, addiction health issues and the removal of children from families, particularly in the Aboriginal community, which are not being addressed in a wholistic way in Canberra.

Some members of the Canberra Restorative Community Network have taken a special interest in this area, as a state function which could benefit greatly from restorative practice. Providing a supportive pathway for those who have been imprisoned to become part of the community again after their sentence is important. It is also important to look at the underlying reasons for imprisonment and see what can be done to both reduce the incidence of offending, and to reduce the use of imprisonment.

Where imprisonment is seen as the only solution, there is also a priority to ensure that the experience itself does no further harm and hopefully can provide some benefit. Some of the existing efforts that were mentioned in Chapter 2 at section 2.2. These include Circles of Support and Accountability⁴³, the skills acquisition and socialisation focus in the Open prison model used in some Scandinavian countries⁴⁴; the Connectors Program through HMP Kirkham in the United Kingdom⁴⁵ are all ways of building positive relationships and creating a more restorative environment in Canberra.

There are also proposals specifically related to Aboriginal and Torres Strait Islander people, to break the cycle of imprisonment as early as possible. PhD candidate and Aboriginal man, Wayne Applebee at the University of Canberra 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 both addiction and reoffending, through among other things, cultural healing.

Already, one action has been for a group of volunteers to run a pilot of the Peace Education Program in the women's section of the prison, involving a small number of participants. The Peace Education Program is a 10 week media-based program, which helps people to look to their inner resources under 10 themes. These themes are: 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. A second trial, this time in the men's part of the prison is commencing in October 2018. In both cases these trials are being run by external volunteers. The program has been used successfully in prisons in many places, and the most recent evaluation of the program has strongly demonstrated its efficacy among prisoners and in many other contexts as well⁴⁶.

A trial of the program in Queensland, at the Wolston Correctional Facility, has engaged the Corrections Officers together with Prisoners in the running the course, and this has shown excellent benefits for both prisoners and staff. It has also resulted in a dramatic reduction in violent incidents within the Centre. Since March 2017, 121 prisoners have completed the Peace Education Program, 108 of which were in prison for violent offences. 58 of these were responsible for 1 assault in prison, while 50 were responsible for 185 assaults. Since March 2017, there have been 5 violent incidents in the corresponding period after the Peace Education Program finished. Based on this success, Queensland Corrections has decided to introduce the program across all prisons in the state. On 20-21 September, 2018, two members of the Canberra Restorative Community Network attended a session at Wolston Correctional Facility with the founder of the program, Prem Rawat, the Queensland lead, and prisoners who have been through the program⁴⁷. The Network hopes to bring the Queensland Correctional staff leaders to Canberra to present about the Wolston work in the ACT in the next 6 months. Police Inspector and educator Corey Allen, who also attended the Wolston event and has been an inspirational police leader in Brisbane with restorative community policing, which has made a significant impact on Brisbane.⁴⁸. An invitation has also been provided for him to be a guest speaker in Canberra in the next six months.

Sexual assault on Campus

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.⁴⁹ 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 Executive Summary of the Report says, on page 11:

Overwhelmingly, men were the perpetrators of both sexual assault and sexual harassment reported in the survey. A significant proportion of students who were sexually assaulted or sexually harassed knew the perpetrator, who was most likely to be a fellow student from their university. Postgraduate students were almost twice as likely as undergraduate students to have been sexually harassed by a lecturer or tutor from their university.

The National Survey results add to the body of evidence that highlights the disturbing levels of sexual violence and violence against women in Australia.

Although no directly comparable data is available, the prevalence and nature of sexual assault and sexual harassment in a university setting largely corresponds with what is already known about the prevalence and nature of sexual violence in the broader Australian community.

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, either because they didn't know how to or did not think it significant enough. 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 when it occurs, but also to increase the students' awareness of available responses"⁵⁰.

It is widely recognised that many of the normal ways of dealing with these matters – through formal complaint or the criminal justice system often fails to meet the needs of the person who has been sexually assaulted or harassed and does little if anything to change the behaviour or attitudes of those who caused the harm, nor to change the culture in which it occurs. This is particularly so given the very low rates of reporting. It is with this awareness that people have been looking at restorative justice processes to better serve the desired goals of justice, accountability and change, not only in the person who harmed, but also within the culture that allowed it to occur.

Restorative approaches were used to tackle both the individual and systemic causes of sexual harassment on campus in the Dalhousie Dentistry School inquiry in Nova Scotia. The circumstances of that gave rise to and initiated the Inquiry were set out in the Executive Summary to the report in the following terms:

In December 2014, female students in Dalhousie University's Faculty of Dentistry filed complaints under the University's Sexual Harassment Policy after they became aware some of their male colleagues had posted offensive material about them in a private Facebook group. The select materials revealed from the Facebook group reflected misogynistic, sexist and homophobic attitudes. At the complainants' request, the University began a restorative justice process to investigate the matter, address the harms it caused and examine the climate and culture within the Faculty that may have influenced the offensive nature of the Facebook group's content.

Twenty-nine students from the class of DDS2015 (out of 38 in the core four-year program) participated in the restorative justice process. This included 12 of the 13 men identified as members of the Facebook group when the offensive material was discovered. Fourteen women and three other men from the DDS2015 class also participated in the process over the last five months.

The Restorative Justice Report provides full details about the Restorative Justice process⁵¹. It also includes the Statements of participants, who were involved, made after the process to talk about its impact. The Report also deals in detail with the assertions made about the

process along the way and clarifies its nature and processes in a very transparent way. Compared to other punitive or adversarial inquiries, 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. The impact on the culture of the faculty and the institution and on the wider context of dental practice is already evident in the work, and was made more public through the conduct of an international conference to look at the process and its outcomes.

Universities in Australia are continuing to work on their responses to the Human Rights Commission's Report. Through the efforts of a number of students and now completed students who had experienced sexual assault on university campuses in the ACT, the response of restorative processes is being explored here. The intention of restorative practices in this area is to both change the culture to prevent such things occurring in future, and to better meet the needs of people who are assaulted or sexually harassed on campuses. The Annual Audit Reports by Universities are available from the Human Rights Commission's website⁵².

While the local universities have not mentioned restorative practices in their reports, some progress is being made. When Professor Llewellyn visited Canberra in June 2018, she met with a delegation of ANU students and staff involved in the exploration of restorative options for campus sexual assault and harassment issues. The initial work on this was started by the efforts of Cody Bell. The Pro-Vice Chancellor recently announced the availability of restorative justice training for staff involved in this work, which will be held before the end of 2018. The University of Canberra Restorative healthcare team are also linked to the Rx for RJ group in the United States of America. This initiative includes Deans of Medical Schools who are working to address issues of academic and sexual misconduct on campus. Work is underway to strengthen these partnerships to support students and academics in building cultures of safety in university and healthcare settings- including in the ACT.

6.5 Training and resources that can assist

Skills for resolving conflicts in a restorative manner

The ACT has rich community resources to help people who may want to deal with a specific conflict in a way which mends relationships. There are also a number of organisations who offer specific restorative skills training into the ACT from other jurisdictions. There are also more general conflict resolution skills that may not be called "restorative", but which are about strengthening relationships. There are also other resources on respectful relationships skills that may be useful in some circumstances e.g. the YWCA Respect Ed Respectful Relationship Resources⁵³. It is worth looking at these to see if they appear to meet the principles described earlier in Chapter 2.

One local example of this is the Conflict Resolution Service, which was inspired by the model of Community Justice Centres in NSW and commenced in 1988. Some of those in the Canberra Restorative Community Network were involved in its establishment.

Currently, the Conflict Resolution Service provides training on conflict resolution and mediation in the ACT. Restorative approaches in many ways are characteristic of its core business, as shown in its Vision and Mission. 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”⁵⁴. The Service receives recurrent funding from the ACT Government through the Community Services Directorate, Community Service Program. This funding is to provide free/low cost and accessible community dispute resolution service involving: Information and referral; conflict coaching; mediation, facilitation and assisted settlements; community education; and restorative justice conferencing. However, at the moment, its training and used of restorative approaches in its work is in a developmental stage.

In its submission to the Council, the Conflict Resolution Service expressed its support for Canberra as a Restorative City in the following manner:

CRS stands with others in the Territory, and across the globe, identifying a strong need for building stronger relationships between members of the community and between organisations, services, government departments and the public. When we have shared goals and a mutual purpose of building stronger relationships, the outcomes will be identifiable. People will feel safer, shared problem solving will become easier, and there will be outcomes for education and productivity. These outcomes and others have been measured and documented elsewhere.⁵⁵

The Conflict Resolution Service conducted a 4-day restorative workshop last year on with Terry O’Connell and Matt Casey, both very experienced restorative practitioners, and they believe that they have gained great knowledge from that. The Service is focussing this year on how to incorporate restorative approaches into its existing activities, policies and procedures and will look at possible expansion into training on restorative practices once these preliminary tasks are completed.

The submission notes 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, if harm occurs. Using the same metaphor, developing relational skills to build strong relationships is like relational preventive health. The submission also notes the importance of narratives that tell a different story. As we noted in Chapter 2, many of the conventional narratives in our present culture are adversarial, competitive and destructive of relationships. We need some other stories to inspire people as the reality, as put in the submission is that “it is difficult for people to operate simultaneously in an adversarial process and in cooperative problem solving”. With the dominant narrative often adversarial, there needs to be some other stories to show that a different way is possible.

Other kinds of training or models which can help with relationship building and restorative engagement

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 who might need help at a specific time. These are made up of friends, family and other people who the person might interact with such as a local café or shop owner. It is a voluntary arrangement, where a network of support is built, always with the person's approval and involvement. The group meets at times and frequency determined by them with the person about whatever it is the person believes they want at a specific time. A person can have several circles of support for different purposes. For example, someone might determine that they need a job, some people to hang out with and some skills to help them look after their house. Where it is necessary. A person can invite other people to join a circle for that purpose, and where it is necessary a friend or supporter can help them do this.

A Circle of Support should meet sufficiently often for relationships and connections to develop, and to achieve what the person wants to achieve, but not so often as to overburden the people involved. Often people will share food together as part of these circles. They can meet at someone's home, in a public place like a café or a park, or wherever people feel comfortable. It is not a "paid service", though from time to time a circle may invite someone who is a paid service provider to attend a meeting.

The model has been used with people who are at risk of social isolation through disability, age, mental health issues. It could be useful for many different people - young people, older people, vulnerable families, people transitioning from care or prison or other institutional situations.

Training about how to create circles of support for people with disabilities is available from time to time in Canberra e.g. through the Youth Coalition of the ACT⁵⁶. One was run in April 2018 and was conducted by people from Imagine More, based in Melbourne. There are also community-run programs with this name, e.g. through the YWCA⁵⁷. For those who want to know more about this model, there are some good YouTube videos on circles of support for people with specific needs⁵⁸. A useful book to look at the practical process of building community around yourself is *Personal Safety Nets – Getting ready for life's inevitable changes and challenges*⁵⁹.

Asset-Based Community Development

The techniques of Asset Based Community Development are an example of a different way of working in relationship. Instead of Government simply doing things to a community once government has determined their needs, the community first looks at its assets and strengths and builds from there. The principles underpinning this is that no matter how rich you are, you have needs; no matter how economically isolated you are, you have gifts. Like the relational state concept, the process starts from a position that people want a life, not just a service.⁶⁰

The role of government in the process is as an enabler for the community. For example, it may provide resources and information to facilitate community discussion about the community's assets, and to help the community determine what they need to live a good life, but all the decision-making power shifts to the community. Under this model, once the assets and strengths are identified, the community looks at its needs. The process starts from the idea that we all have needs: at its most basic, for example, we need someone to love, somewhere to live and something to do. In addition, we all have assets - skills, strengths and resources - some of which we may not even recognise as such. Living together in a community allows us to share in our collective gifts.

Once the community identifies its needs and its assets, the first question it asks is what can we do within our own community's existing assets to address our needs. Once this is completed, the second question is where do we need some outside assistance to be able to build on our resources and activate them to meet our needs.? When all this is also exhausted, then the residual question becomes, where do we need government assistance or other external resources to achieve our goal and how do we engage with them in a manner that our needs are met.⁶¹

In his *Sustainable community development* TEDx talk⁶², Cormac Russell describes this model as moving the focus of helping impulses from what is wrong, to what is strong in a community. He discusses what he calls the shadow side of helping, where it is not based on the kind of principles of restorative practices, discussed in chapter 2, and says that "When we do change to people, they experience it as violence; but where people do change for themselves, they experience it as liberation."⁶³ ABCD processes seeks to work as liberation.

Dialogue training

There are also opportunities to learn about dialogue, through deep listening and respectful conversations. There is a monthly meeting of the ANU Dialogue for people who are engaged in or interested in learning more about dialogue skills⁶⁴.

Community courses are also sometimes run. For example, The Art of Hosting⁶⁵ 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."

Another form of communication training which shares common principles with restorative practices is Non-violent Communication (NVC) training. This was originally developed by psychologist Dr. Marshall Rosenberg, who died in in 2015. At the core of this method is the skills of compassionate communication, including deep listening. The four components of NVC are: (1) the concrete actions we *observe* that affect our well-being, (2) how we *feel* in relation to what we observe; (3) the *needs, values desire* etc that create our feelings; and (4) the concrete actions we *request* in order to enrich our lives. The two parts of NVA are (1) expressing honestly through the four components; and (2) receiving empathically through the four components. There are training courses and institutes operating all around the world, including Australia⁶⁶. Many books have been written about the method⁶⁷, and there are many instructive videos available as well.⁶⁸

6.6 Restorative Organisations

Relationships Australia (RA)

RA is an active member of the Canberra Restorative community and has provided real assistance for the Network and its members in its early stages, including the management and hosting of the *What is Canberra's potential as a restorative city?* in February 2018. RA has been conducting National surveys about people's understanding of restorative practice every 2 years since 2015. Its first survey looked at restorative approaches to domestic violence⁶⁹. The September 2017 survey looked at community understanding of and attitudes to restorative justice⁷⁰

RA 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 families⁷¹, all of which can help build better relationships.

Endnotes to Chapter 6

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- 1 These are available at <http://www.canberrarestorativecommunity.space/blog/2017/6/27/transcripts-of-our-restorative-community-network-workshops-and-associated-reports> .
 - 2 Mulgan G. Government with the people: the outlines of a relational state. : pages 20-34, at pages 20 and 23 and following. Essay in Cooke et al 2012 – at note **Error! Bookmark not defined.**
 - 3 https://www.act.gov.au/_data/assets/pdf_file/0004/1163983/ACT-Whole-of-Government-Communications-and-Engagement-Strategy-2017-2019.pdf
 - 4 Presentation by Professor John Drysdale, to the Deliberate ACT meeting, 6 September 2018, Museum of Australian Democracy.
 - 5 The University of Canberra's Institute for Governance and Policy Analysis holds many events in this area – see <https://www.governanceinstitute.edu.au/events>; as does the Crawford School of Public Policy at ANU <https://crawford.anu.edu.au/events/current> .
 - 6 https://www.acu.edu.au/about_acu/campuses/canberra/blackfriars_lecture_series
 - 7 See <http://www.anu.edu.au/research/public-lectures>
 - 8 <http://www.canberra.edu.au/about-uc/events/home>
 - 9 <http://www.canberra.edu.au/about-uc/events/home/ngunnawal>
 - 10 <https://www.canberraenvironment.org/repair-cafe-1>
 - 11 <http://www.see-change.org.au/sharing-economy/>
 - 12 Kitchen table conversations, where conversations with or without food are used to get citizens working together. http://www.see-change.org.au/wp-content/uploads/2015/01/SEE-Change_Voices-of-the-People-in-Kitchen-Table-Conversations-A4_v3-.pdf Other options include Food for Thought dinners: <https://www.greeninstitute.org.au/chat-about-the-future/> and the Welcome Dinner Project, which was crowd funded
 - 13 <https://www.yoursay.act.gov.au/about>

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- 14 Corbell S. Improved outcomes in restorative communities. Press Release 20 July 2015. Available at http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/corbell/2015/improved-outcomes-in-restorative-communities
- 15 See, e.g. Peake R. ACT police chief learnt a valuable restorative justice lesson early on. *Canberra Times*, 20 July 2015 – available at <https://www.canberratimes.com.au/national/act/act-police-chief-learnt-a-valuable-restorative-justice-lesson-early-on-20150720-gig8pm.html> ;
- 16 Peake R. Children can help Canberra become a more caring city. *Canberra Times*, 24 July 2015 available at <https://www.canberratimes.com.au/national/act/children-can-help-canberra-become-a-more-caring-city-20150720-gigijp.html>
- 17 Peake R. New strategy needed to battle our ice epidemic. *Canberra Times*, 20 November 2015. Available at: <https://www.canberratimes.com.au/national/act/new-strategy-needed-to-battle-our-ice-epidemic-20151113-gkyode.html>; Peake R. Here's how you break the nations thirst for ice and reduce crime. *Canberra Times*. 13 November 2015. <https://www.canberratimes.com.au/national/act/heres-how-you-break-the-nations-thirst-for-ice-and-reduce-crime-20151111-gkwczo.html>
- 18 Corbell S. Canberra's Restorative Community Network *meets* for the first time. Media Release, 18 November 2016 available at: http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/corbell/2015/canberras-restorative-communities-network-meets-for-the-first-time
- 19 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>
- 20 <http://www.canberrarestorativecommunity.space/>
- 21 <https://www.facebook.com/canberrarestorativecommunity/>
- 22 Submission 17, page 3.
- 23 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.
- 24 Nigel Richardson, former Director of Children's Services at Leeds City Council, and Saleem Tariq, Deputy Director Children's Services, Leeds City Council.
- 25 Paul Nixon, Deputy Chief Executive, Chief Social Worker and Director of Professional Practice at Oranga Tamariki , Ministry for Children, New Zealand.
- 26 Kate Alexander, Executive Director, Office of the Senior Practitioner at Department of Family and Community Services (NSW)
- 27 Submission 17, page 4.
- 28 <https://www.facebook.com/canberrarestorativecommunity/>
- 29 The following article provides a little information on what is being done to provide Whanau-centred care in the Whanganui area. <https://www.health.govt.nz/our-work/populations/maori-health/maori-health-case-studies/whanau-centred-care-whanganui> "Whanau" is the Maori word for family, including extended family and even friends. For pronunciation, see <http://maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&keywords=whanau>
- 30 Information provided by Dr Holly Northam, Principal investigator, University of Canberra, CIRI Restorative Hospital Project
- 31 https://www.nzherald.co.nz/wanganui-chronicle/news/article.cfm?c_id=1503426&objectid=11489721
- 32 <https://www.canberra.edu.au/research/collaborations/ciri/uc-ciri-projects/restorative-health/events-and-items-of-interest/whanganui-health-board>
- 33 This Maori word "hoe" is pronounced like "hoy" – see <http://maoridictionary.co.nz/word/1311>

34 <https://www.canberra.edu.au/about-uc/media/newsroom/2018/may/oar-finds-new-home-on-dry-land>. For a video of the event, see <https://www.youtube.com/watch?v=I9NEI3V39qA&feature=youtu.be>

35 In addition to the normal publication goals and the intention to create a stronger evidence base for further research, other key outcomes sought by the Project team include:

- The integration and diffusion of Aboriginal voices throughout the governance of the new University of Canberra Hospital through establishing yarning circles as a routine practice for partnering with the local Aboriginal community.
- An Indigenous-driven Charter for Restorative Health Care defining the terms of reference for Aboriginal engagement in the corporate governance of the Hospital. For example, the Charter could recommend that each of the Hospital's key governance committees (Board, Executive, Medical, Ethics, and Finance) have an Aboriginal person as a member or an observer.
- Development and implementation of a Restorative Healthcare Framework, to guide the implementation of restorative practices in the new hospital. As part of the National Safety and Quality of Health Services Standards used for Accreditation, hospitals are required to establish mechanisms for routine data collection and reporting. The project will also develop evaluation tools to measure achievement of the Restorative Healthcare Framework, in collaboration with the hospital.
- Guidelines and methodology to enable non-Indigenous academics and health professionals to learn to create environments that feel culturally safe for Aboriginal and Torres Strait Islander people and which better serve the needs of all people using health care. These could also be accompanied by corporate governance training of hospital directors.
- A student and staff cultural self-assessment tool, contributing to the cultural awareness of non-Indigenous staff and students and processes for strengthening of cultural competence across health disciplines and the university.
- Working with health professional associations (and Australian Health Practitioner Regulation Agency) to encourage the integration of a Restorative Health Care Framework into existing training and education materials.
- Aboriginal aesthetic integrated into the Hospital's architecture, in the form of commissioned art, use of local native plants, restorative wall commemorating the history of Aboriginal people at the site and around Canberra; use of Ngunnawal language in communications; naming of meeting rooms in traditional language; flying the Aboriginal and Torres Strait Islander flags; and other such aesthetic aspects that create a welcoming space and promote Aboriginal identity.
- New knowledge about the potential for Restorative Health Care to enable improved health care access and satisfaction for Aboriginal and Torres Strait Islander people, disseminated through the UCH and University of Canberra Website. This promotes evidence-based practice development for hospital staff who undertake training for communication and engagement with Aboriginal and Torres Strait Islander People and for the Canberra community. These outputs will have national and international significance.

36 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>

37 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.

38 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)

39 Details of the Review Team and the Terms of Reference can be found at:

<http://www.health.act.gov.au/Culture-Review>

40 See, e.g., Pranis K. The Little Book of Circle Processes: A new/old approach to Peacebuilding. 2015 Good Books, Intercourse (Pennsylvania USA);

41 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 worse than the figure indicated.

42 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.

43 There are COSA Programs limited to sexual offenders: e.g. the Minnesota COSA Program, described in Duwe G. Can Circles of Support and Accountability (COSA) work in the United States? Preliminary Results from a Randomized Experiment in Minnesota. 2012 *Sexual Abuse: A journal of research and treatment*, volume 25, issue 2, pages 143-165 – available at

<http://journals.sagepub.com/doi/pdf/10.1177/1079063212453942>. There are also COSA programs in

some places for anyone who likely to reoffend. Some of the Vermont COSA programs cover non-sexual and well as sexual offences, focussing not on the nature of the offence but the likelihood of reoffending. e.g. <http://brattleborocjc.org/our-programs/prisoner-re-entrycosa/>. There is a Community Restorative Centre model in NSW <https://www.crcnsw.org.au/> to assist prisoners and parolees, and their families to successfully break the recidivism cycle.

44 Pratt J. Scandinavian exceptionalism in an era of penal excess. Part 1: the nature and roots of Scandinavian exceptionalism. 2008, *British Journal of Criminology*, volume 48, pages 119-137. See also: Laron D. Why Scandinavian prisons are superior. 2013 *The Atlantic*. 24 September:

<https://www.theatlantic.com/international/archive/2013/09/why-scandinavian-prisons-are-superior/279949/>

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- 45 Best D. Musgrove A. Hall L. The bridge between social identity and community capital on the path to recovery and desistance. 2018 *Probation Journal – the Journal of Community and Criminal Justice*. Volume XX, issue X, pages 1-13. Available at: DOI: 10.1177/0264550518790677.
- 46 See e.g., Damooel 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.
- 47 Invitations were extended to those working in the Corrections area of ACT government, but no one was available to attend unfortunately.
- 48 <http://www.abc.net.au/radio/programs/conversations/conversations-corey-allen/8253804>
- 49 A copy of the report can be found at:
https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_2017_ChangeTheCourse_UniversityReport.pdf
- 50 Human Rights Commission 2017 – see note 49: at page 12.
- 51 Llewellyn JJ. MacIssac 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>
- 52 <https://www.humanrights.gov.au/audit-2018> There is also one for 2017 available.
- 53 <https://ywca-canberra.org.au/community-services/respect-ed-respectful-relationships-resources/>
These include different programs for children and young people, including an on-line program.
- 54 <http://www.crs.org.au/about.htm>
- 55 Submission 15, page 2; see also their preliminary response at Submission 12.
- 56 See e.g., 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.
- 57 <https://ywca-canberra.org.au/community-services/circlesofsupport/>
- 58 <https://www.youtube.com/watch?v=IY5G9J7hgSE> : Circles of Support in Schools;
<https://www.youtube.com/watch?v=yVtCGFHPKWY> : Circles of Support for adult people with disabilities; <https://www.youtube.com/watch?v=C15Hp3h6U> : Intentional networks and circles of support for adolescents with disabilities:
- 59 Gibson JW. Pigott J. *Personal Safety Nets – Getting ready for life’s inevitable changes and challenges*. 2007 Classic Day Publishing, Seattle. The model could also be adapted to groups you are a part of such as a family or in relation to supporting a specific relationship.
- 60 For a great range of videos about the ABCD history and process, please see
<https://www.nurtureddevelopment.org/abcd-resources/abcd-videos/>
- 61 Asset Based Community Development training is regularly offered in Canberra – for example, Peter Kenyon and Cormac Russell facilitated an ABCD Masterclass in Woden on 3 May 2018, that was organised by Karen Jesson of Communities at work in Tuggeranong. Further information and resources about the method can be found at: <https://www.nurtureddevelopment.org/>; published material includes Kretzman JP. McKnight JL. *Building communities from the inside out: a path towards finding and mobilizing a community’s assets*. 1993 ACTA Publications, Chicago. Born P. *Community Conversations: Mobilizing the ideas, skills and passions of community organizations, governments, businesses and people*. 2012 BPS Books, Toronto.
- 62 TEDxExeter, 16 May 2016: <https://youtu.be/a5xR4QB1ADw> : This is a useful video introduction to the model.
- 63 Cormac attributes this quote to the Harvard business academic, Professor Rosabeth Moss Kanter, whereas, it appears to be a paraphrase of a part of a speech she did “Change is a threat when it is done—

to us, but it is an opportunity when it is done by us.” The Norman Lear Center, USC Annenberg
<https://www.youtube.com/watch?v=2rXS0i7n5dQ>

64 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

65 An on-line community on this method is at <http://artofhosting.ning.com/> . There are many other websites that provide information and videos as well.

66 See e.g., <http://nvcaustralia.com/>.

67 See Rosenberg M. *Nonviolent Communication: a Language of Life. Life Changing tools for Healthy Relationships*. Edition 3. 2015 Puddledancer Press, Encinitas (California). Puddledancer Press publishes a large range of books on Non Violent Communication – for a list of books see <https://www.nonviolentcommunication.com/publisher/catalog.htm>

68 See e.g., Rosenberg M . The Basics of Non-violent Communication 1.1 <https://youtu.be/M-129JLTjkQ> ; Rosenberg M. *Vision for the Future*. <https://youtu.be/CwHBD7lhy5U>

69 <https://www.relationships.org.au/what-we-do/research/online-survey/november-2015-restorative-practices>

70 <https://www.relationships.org.au/what-we-do/research/online-survey/september-2017-restorative-practice>

71 A number of skills development and counselling services are provided in our community, see: <https://www.racr.relationships.org.au/courses> .

Appendix A. Restorative justice in response to criminal conduct in the ACT – History and Legislation

History before legislation in 2004

Restorative approaches have been used in the ACT and in Australia over the past 3 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, particular 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’.¹ The Report noted the first Australian pilot of this kind started in 1991 in the NSW rural town of Wagga Wagga². 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 Experiments³ or RISE project. Data comparing standard court processes with a diversionary conference for four categories of offence were 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).⁴

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 Report⁵. The results in relation to the last hypothesis are more complex and less clear. They are covered in a second report⁶. 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 shop-lifting groups. There was small increase in the rate of repeat offence in drink drivers who went to conference rather than court.

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 courts⁷.

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 undertaken⁸.

The Sentencing Review Committee formed a Restorative Justice Sub-committee that released an Issues Paper in 2003⁹. 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 4 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.¹⁰ 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 both¹¹.

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 old¹², 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”¹³).

In 2015, the ACT Legislative Assembly’s Standing Committee on Justice and Community Safety¹⁴ 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 stepped¹⁵, 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 4 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 2018.¹⁶

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 2015¹⁷, and was passed on 11 February 2016¹⁸. The passage of the legislation occurred the day after the Restorative Justice motion¹⁹ 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.²⁰

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.²¹

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”²². 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.

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 referred to 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.
- (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.

Amendments passed on 18 September 2018

The scheme has generally been seen as a significant success²³. 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.²⁴

The Explanatory Statement for the passage of the Bill includes a long section on the Human Rights implications of the legislation. The amending Act and the Explanatory statement can be found at <https://www.legislation.act.gov.au/a/2018-34/>. A main focus on the provisions is to keep young people out of the criminal justice system²⁵.

Endnotes for Appendix A

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- ¹ Australian Law Reform Commission. *Seen and heard: priority for children in the legal process*. ALRC Report 84: see paragraphs 18.45 and following.
 - ² 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.
 - ³ 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.
 - ⁴ 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/raise/final.html
 - ⁵ Strang et al 2011, see note 4
 - ⁶ 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).
 - ⁷ 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>
 - ⁸ ACT Criminal Justice System Strategic Plan 2002-2005, Aim number 17.
 - ⁹ Restorative Justice Sub-committee of the Sentencing Review Committee. *Restorative Justice Options for the ACT – Issues Paper*. October 2003, ACT Government, Canberra.
 - ¹⁰ The model was set out in Figure 1, page 33 of the Issues Paper – see note 9.
 - ¹¹ Legislative Assembly for the ACT *Crimes (Restorative Justice) Bill 2004 Explanatory Statement*, circulated by the authority of Jon Stanhope MLA, Attorney General: page 3.
 - ¹² Defined in section 12 of the *Crimes (Restorative Justice) Act 2004* (2004 RJ Act).
 - ¹³ 2004 RJ Act – at note 12: see eg, sections 14(4), 15(4) and (5).
 - ¹⁴ Standing Committee on Justice and Community Safety. *Inquiry into Sentencing*. Report Number 4. March 2015 ACT Legislative Assembly, Canberra. At

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- http://www.parliament.act.gov.au/data/assets/pdf_file/0019/707212/JACS-Ctee-report-for-Inquiry-into-Sentencing-FINAL.pdf. (2015 Sentencing Report)
- 15 2015 Sentencing Report – see note 14: recommendation 47, paragraph 8.169, page 371.
- 16 *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.
- 17 Legislative Assembly for the ACT. *Debates – Weekly Hansard*. Eighth Assembly. 19 November 2015: Mr Corbell MLA, pages 4215 – 4219.
- 18 *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.
- 19 This motion is referred to, in part, in the Terms of Reference of this inquiry.
- 20 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.
- 21 Legislative Assembly for the ACT. *Debates – Weekly Hansard*. Eighth Assembly. 10 February 2015: Mr Corbell MLA, pages 126-128, at page 127.
- 22 Legislative Assembly for the ACT. *Debates – Weekly Hansard*. Eighth Assembly. 11 February 2015: Ms Porter MLA, page 283. See full debate: pages 276-285.
- 23 Peake R. Restorative justice program in the ACT a success, *Canberra Times*, 27 February 2015.
- 24 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.
- 25 Rattenbury S. Improving access to restorative justice. Media Release 23 August 2018 . http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/rattenbury/2018/improving-access-to-restorative-justice. This media release was released with introduction of the Bill, which was passed on 18 September, notified on 26 September and is due to commence on 1 October 2018..

Appendix B : additional material on the Nova Scotia Home for Colored Children Inquiry

Developing the methodology and terms of reference collectively

The Terms of Reference and the methodology for the Inquiry were developed collaboratively by the 15 member UJIMA Design Team, which consisted of: Tony Smith, Victims of Institutional Child Exploitation Society (VOICES); Gerry Morrison, VOICES; Tracey Dorrington-Skinner, VOICES; Sylvia Parris, Nova Scotia Home for Colored Children (NSHCC) Board of Directors; George Gray, NSHCC Board / African United Baptist Association; Carolann Wright-Parks, Ujamaa / Greater Halifax Partnership; Tracey Thomas, Office of African Nova Scotian Affairs; Gerald Hashey, Nova Scotia Human Rights Commission; Stephanie MacInnis-Langley, Nova Scotia Advisory Council on the Status of Women; Kenneth Fells, Black Educators Association; Mike Dull, Wagners Law Firm; Michelle Williams, Director, Indigenous Black & Mi'kmaq Initiative, Dalhousie University; David Darrow, Deputy Minister to the Premier (retired); Chad Lucas, Executive Council Office; and Jennifer Llewellyn, Viscount Bennett Professor of Law, Schulich School of Law, Dalhousie University (facilitator).

UJIMA is an African word which means “collective work and responsibility”, and includes concepts like teamwork and shared responsibility. The Design Team also developed a visual symbol, which has been used in many ways in the work to encapsulate the different nature of the inquiry:



SANKOFA:

“To reach back and get it”

Sankofa is a Ghanaian word that translates as “to reach back and get it.” The principle of Sankofa is that one should gather the best of what the past has to teach in order to succeed in the future. It is expressed visually as a bird that flies forward while looking backward with an egg in its mouth.

The full report of the work of the UJIMA Design Team can be found at:
<https://restorativeinquiry.ca/sites/default/files/u4/nshcc-restorative-inquiry-report.pdf> .

Mandate

The Nova Scotia Home for Colored Children Restorative Inquiry (RI) will:

- a. Examine the experience of the Nova Scotia Home for Colored Children (NSHCC) as part of the history and legacy of systemic and institutionalized racism, both historic and current, in Nova Scotia.
- b. Examine and seek to understand the experiences of former residents within the NSHCC and the legacy and impact of these experiences for former residents, their families and communities.
- c. Examine the experiences of former residents within the NSHCC for what they might reveal about issues of institutionalized child abuse and prevention and protection in future.
- d. Inquire into how the history and legacy of the NSHCC has impacted not only African Nova Scotian communities but all peoples in Nova Scotia and consider how to address this harmful legacy. It will reveal, reckon with and address this part of the harmful history and legacy of anti-Black racism in the Province of Nova Scotia.
- e. Empower those involved in, and affected by, the history and legacy of the NSHCC to learn about what happened and the contexts, causes, circumstances and ongoing legacy of the harms related to the NSHCC.
- f. Examine the role and contribution of various systems, sectors and institutions in the harmful history and legacy of the NSHCC, including, for example: education, justice, health and community services.
- g. Engage affected parties and all Nova Scotians in collaborative planning and action to address this history and its legacy and create change to secure a better future for African Nova Scotian children and their families and communities.
- h. Educate the public about the history and legacy of the NSHCC.
- i. Contribute to the goal of social change to end the harmful legacy of abuse and ensure the conditions, context and causes that contributed to it are not repeated.
- j. Publicly share the truth and understanding established through the RI and the actions taken, planned and recommended to address systemic and institutionalized racism and build more just relationships for the future.
- k. Affirm and strengthen the cultural knowledge, leadership and health of the African Nova Scotian people and communities as one of Nova Scotia's founding cultures.
- l. Model a restorative approach to conflict resolution.

- m. Create agenda and momentum for further learning and action on related issues of systemic racism that are revealed through the process.

Goals

- a. **Build Just & Respectful Relationships**
 - Foster relationships of mutual respect, care, acceptance and dignity within and among communities, systems, structures and institutions. Support collective ownership, shared responsibility and collaborative decision-making.
- b. **Develop Knowledge and Understanding**
 - Learn what happened, what matters about what happened for the future, who was affected and how, and the contexts, causes and effects of what happened.
 - Develop understanding of different experiences, perspectives, worldviews and how they have shaped relationships and lives within African Nova Scotian communities and between African Nova Scotians and non-African Nova Scotians in the context of the history and legacy of the NSHCC.
- c. **Develop Plans & Take Action**
 - Toward a better future for African Nova Scotian children, families and communities and all Nova Scotians.
- d. **Establish Shared Understanding & Seek Just Social Change**
 - To ensure that such harms never happen again by seeking an end to systemic and institutionalized racism.
 - Seek to understand and address the conditions and circumstances that enabled or fostered institutionalized child abuse.

Guiding Principles

- a. **Relationship & Community-focused:** Focuses on relationships and not only the individual level. Looks at the interconnectedness of people and issues.
- b. **Justice-seeking:** Takes as its aim fostering “just” relationships – those reflecting the core commitments of equal respect, care, acceptance and dignity
- c. **Strengths-based:** Recognizes African Nova Scotians as a strong and dignified people in their own right, not defined by marginalization or comparisons but as a founding culture in Nova Scotia. The process should profile and strengthen the leadership of African Nova Scotians indigenous to this province and build stronger community relationships with other peoples, systems and institutions in Nova Scotia.
- d. **Do No Harm and Support Healing:** Former NSHCC residents’ needs and experiences will be central in the process. The RI will take a trauma-informed approach that contributes to healing and well-being while avoiding further harm. The process should seek to “do no further harm” to those involved and their relationships.

- e. **Comprehensive/Holistic:** Attend not only to particular incidents and issues but also to their causes, contexts and implications. Examine the experience of the NSHCC as part of the legacy of systemic and institutionalized racism, both historic and current.
- f. **Contextually Grounded:** Responsive to the needs of parties within the process. Processes will be flexible and responsive, guided by principles and adaptive to the needs of the parties and the context.
- g. **Inclusive, Participatory and Accessible:** Processes should include the particular people, groups and communities relevant to the issue(s). They must be concerned to include those affected or who can affect the outcome of a situation. Inclusion must be meaningful and make a difference to the process and its outcome. It must involve engaged and active participation within collaborative processes. The RI must foster collective ownership and shared responsibility and decision-making. While not every process will be held in public or open to everyone who wishes to participate, every process will consider how to ensure the knowledge and learning gained therein is accessible to the broader public. The overall work of the RI must be done in the public interest and for public benefit.
- h. **Action and Change-Oriented:** Oriented to meaningful, sustainable social change to achieve justice in and through the relationships, systems and institutions that affect the well-being of African Nova Scotian families and communities, in order to improve relationships and understanding throughout Nova Scotia.

Statement of Commitment

This statement of commitment was voluntarily signed by all parties who participated in the Inquiry, so that they understood the process and agreed to participate in the spirit it was set up. The Terms of Reference Report said on page 12 that the Statement of Commitment by parties is “a public proclamation of their support and commitment. This commitment is not legally binding but is the primary informal mechanism the Restorative Inquiry will rely upon to secure and ensure full participation.”

The Nova Scotia Home for Colored Children Restorative Inquiry will reveal and address part of the harmful legacy of racism in Nova Scotia by examining the Home and the experiences of former residents, as well as the impact on their families and communities.

As we enter the Restorative Inquiry as supportive partners joining in the journey to light, we commit to building strong, healthy, respectful relationships that will help us plan and act together for a more just and equitable future.

We commit to participate in the Nova Scotia Home for Colored Children Restorative Inquiry as full partners. We acknowledge our collective responsibility for the process and its outcomes.

We recognize that the harms suffered by former residents of the Nova Scotia Home for Colored Children have affected them, their families and their communities for generations.

We commit to seek a common understanding of the abuses that happened at the Nova Scotia Home for Colored Children, including the context and conditions that allowed them to happen, and why this matters for all of us.

We welcome this opportunity to examine how broader systemic issues have affected and continue to affect Nova Scotian communities—especially African Nova Scotian communities.

We commit to be open and transparent as we examine our past in order to seek a better future together. We commit to supporting this work with our time, resources and energy to the best of our abilities.

We commit our best efforts to do no further harm and leave no one behind.

We acknowledge that we must find better ways of working together.

Appendix C: 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

The Charter on the following pages was prepared by Sharynne Hamilton and Valerie Braithwaite, as a part of their Regulatory Institutions Network Occasional Paper 22 entitled: *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*, dated September 2014. A complete copy of the Occasional Paper, from which the Charter has been extracted, can be found at: <http://regnet.anu.edu.au/research/publications/2702/no-22-parents-and-family-members-matter-charter-rights-and>.

Guiding principles of rights and responsibilities for parents and family members involved with Australian Child Protection Services
'IN THE BEST INTEREST OF THE FAMILY'

YOUR RIGHTS	YOUR RESPONSIBILITIES
<p>Respect</p> <p>You have the right to:</p> <ul style="list-style-type: none"> have the integrity of your family unit protected be treated with courtesy and respect by child protection workers and other statutory representatives have your individual human dignity valued have your expressions of anger or frustration understood with professional sensitivity by child protection workers be recognised and respected in your roles as parent/family member in your interactions with child protection workers <p>Diversity</p> <p>You have the right to:</p> <ul style="list-style-type: none"> be free from unlawful discrimination and have your individual needs respected regardless of race, colour, gender, sexual orientation, language, age, disability or other status <p>Consultation and Dialogue</p> <p>You have the right to:</p> <ul style="list-style-type: none"> be informed of your right to a support person request flexibility when arranging meetings to take into account work, medical, Centrelink or other significant commitments be heard and have questions answered in a clear and understandable way be consulted and kept informed of the placement, placement changes, health, education and all decisions made about your children when in out of home care represent your position in fair and open decision-making forums which respect your right as parent to have exclusive decision-making power over your child's upbringing receive all information in a form and language that you understand and be provided with decisions and meeting discussions in writing as a matter of course 	<p>Respect</p> <p>It is your responsibility to:</p> <ul style="list-style-type: none"> treat child protection workers with respect and in the same way you expect to be treated recognise that child protection workers have a job to do and respond to workers in a developing respectful working relationship with you tell child protection workers when you feel they, as professionals, are not taking the lead in treating you with respect <p>Diversity</p> <p>It is your responsibility to:</p> <ul style="list-style-type: none"> ensure that child protection workers are aware of you and your children's cultural, religious and medical needs <p>Consultation and Dialogue</p> <p>It is your responsibility to:</p> <ul style="list-style-type: none"> tell child protection workers that you need a support person and organise for them to attend meetings with you make yourself available, as far as possible given the constraints of other commitments i.e. Employment/Centrelink requirements be willing to engage ask anything you need to know regarding your children's placement, health and education ask questions when you do not understand ask for confirmation of decisions/outcomes of meetings in writing

<p>Transparency and Accountability</p> <p>You have the right to:</p> <ul style="list-style-type: none"> · honesty and to know the reasons and the evidence for actions taken by Child Protection Services · adequate legal advice and representation in court proceedings · to attend all meetings with a support person · access independent advocacy and legal advice regarding your family's social needs · have your case reviewed · comment on any aspects of the care of your child and to have your concerns addressed · receive information on mechanisms of complaint and redress <p>Strengths and Weaknesses</p> <p>You have the right to:</p> <ul style="list-style-type: none"> · the recognition of both your strengths and weaknesses · to have change and positive steps acknowledged and taken into consideration when decisions are made about the care of your children · have child protection workers be responsive to changing circumstances and be part of resolution · have child protection workers recognise the structural (socio/economic) constraints which affect your ability to change, and offer support/resources to enable you to overcome the constraints so far as is possible. <p>Privacy</p> <p>You have the right to:</p> <ul style="list-style-type: none"> · protection of your personal privacy · privacy and confidentiality of your personal information · access your records in accordance with the Freedom of Information Act (1989) 	<p>Transparency and Accountability</p> <p>It is your responsibility to:</p> <ul style="list-style-type: none"> · be honest · ask why and on what grounds actions are being taken by Child Protection Services · ensure your support person has accurate and complete information about your situation · ensure your legal representative has accurate and complete information about your situation <p>Strengths and Weaknesses</p> <p>It is your responsibility to:</p> <ul style="list-style-type: none"> · recognise and consider your strengths · recognise and acknowledge your weaknesses and address them · ensure Child Protection Services are aware of all the services you receive · ensure Child Protection Services are aware of positive changes you have made · embrace change and be part of solutions <p>Privacy</p> <p>It is your responsibility to:</p> <ul style="list-style-type: none"> · not breach the privacy of child protection workers approaching them or identifying them in public place
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