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# Regulating restorative justice: Victoria makes a move

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## Professionalisations steps in ADR

# Regulating restorative justice: Victoria makes a move

Peter Condliffe

The Law Reform Committee of the Victorian Parliament (LRC), as part of an inquiry into ADR and restorative justice, recently recommended as follows:

*Recommendation 64: Identification of core skills and attributes of restorative justice practitioners*

The Victorian Government, in consultation with practitioners and the Victorian Association of Restorative Justice, should develop a list of core skills and attributes required by restorative justice practitioners.<sup>1</sup>

The Victorian Association for Restorative Justice (VARJ) began developing draft standards and an accreditation protocol before the LRC began its inquiry. However it was encouraged by the recommendations of the LRC, and by the enthusiastic responses from VARJ members and agencies providing restorative justice processes during a consultation process begun in 2008. The result is the *Best Practice Standards for Restorative Justice Practitioners* (BPS) and related *Accreditation Scheme for Restorative Justice Practitioners (ASP)* launched on 14 October 2009. Both are available on VARJ's website at <[www.varj.asn.au](http://www.varj.asn.au)>.

VARJ was also mindful that the United Nations had already moved towards the establishment of a set of principles for restorative justice in criminal matters.<sup>2</sup> Clause 12(c) of its *Basic Principles on the Use of Restorative Justice Programs in Criminal Matters* provides that member states should, inter alia, consider establishing guidelines for the qualifications, training and assessment of facilitators of restorative justice processes.

Developing such complex documents is challenging and not without controversy.<sup>3</sup> There has been, up until

now, no systematic accreditation of restorative justice practitioners within Australia. However, VARJ firmly believes that the development of these standards echoes the benefits identified by NADRAC in relation to regulating mediation practice.<sup>4</sup> These include goals to:

- maintain and improve the quality and status of restorative justice practice;
- protect consumers;
- facilitate consumer education about restorative justice practice;
- build consumer confidence in restorative justice practice services;
- improve the credibility of restorative justice practice;
- build the capacity and coherence of the restorative justice practice field; and
- promote Victoria's, and Australia's, profile in the restorative practice field.

Drafting these standards and an accreditation scheme sometimes involves balancing competing considerations.

For example, people must not be stigmatised by the process and the needs of offenders, of victims and of affected communities must all be addressed.

Standards must be supported by appropriate accountability in what are often relatively closed processes. In a field that is becoming increasingly professionalised, standards should be relatively informal and non-bureaucratic but clear in their intent and reporting arrangements.<sup>5</sup>

Across the range of programs in Australia that identify as 'restorative', one is struck by the dissimilarities between the various systemic and organisational contexts but also by their general reliance on the conferencing process. The focus of these new standards reflects this reliance. Interestingly, the United Kingdom's Training and Accreditation Group's



advice to its government concluded that core skills across the various contexts of conferencing practice in that country were the same.<sup>6</sup> The report lists a set of key knowledge and skills. It outlines six separate areas of competencies that should be considered in the training and accreditation of restorative practitioners. These are: core restorative practice; sensitive and complex cases; family group conferencing and processes involving welfare planning; co-working; case supervisors; and line managers.<sup>7</sup>

The extent and practice of restorative justice practices in the UK is more extensive than in this country. Moreover, the UK has the advantage of a relatively unitary system of justice administration, unlike Australia with its kaleidoscope of State jurisdictions and their jigsaw of programs. However despite these differences, VARJ believed that the UK experience and its Scottish derivative provided a useful introduction to the development of standards. The first section of the BPS is broadly divided into two parts — the first a quality assurance framework and then a second section which presents the standards that apply to the facilitation of the four stages of a RJ process (Commitment, Preparation, Communication and Action.) The quality assurance

framework consists of two core elements: (A) Training and (B) a Support Structure that includes Case Supervision, Line Management and Co-facilitation. The ASP is loosely based upon similar schemes developed for mediators under the recently introduced national mediation accreditation system.<sup>8</sup>

Hopefully these standards and accreditation schemes will provide a useful precedent and resource to be considered by other Australian jurisdictions and organisations as they consider the establishment and ongoing evaluation of restorative justice programs. ●

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## Endnotes

1. Law Reform Committee, *Inquiry into Alternative Dispute Resolution and Restorative Justice*, Law Reform Committee, Parliamentary Paper No 184, May 2009 at 307.

2. Basic Principles were endorsed by the Economic and Social Council in 2002. More recently, the declaration of the Eleventh UN Congress on the

Prevention of Crime and the Treatment of Offenders 2005 urged the further development of restorative justice policies, procedures and programs, see United Nations Office on Drugs and Crime note 1 at 2.

3. See Condliffe, P, and Douglas, K, 'Reflections on conferencing practice: the need for accreditation and the dangerous debate' (2007) *ADRJ*, 140.

4. National Alternative Dispute Resolution Advisory Council, *Legislating for Alternative Dispute Resolution: A Guide for Government Policy-Makers and Legal Drafters* (Canberra, November 2006) p 57.

5. Nadeau J, *Critical Analysis of the United Nations Declaration of Basic Principles on the Use of Restorative Justice Programs in Criminal Matters* (2004) <[www.restorativejustice.org/resources/docs/nadeau](http://www.restorativejustice.org/resources/docs/nadeau)> viewed 24 April 2007.

6. UK Home Office, *Best Practice Guidance for Restorative Practitioners and their Case Supervisors and Line Managers*, (December 2004) p 5.

7. UK Home Office, note 42, p 15 and following.

8. See <[www.nadrac.gov.au/www/nadrac/nadrac.nsf/Page/WhatIsADR\\_NationalMediatorAccreditationSystem\\_NationalMediatorAccreditationSystem](http://www.nadrac.gov.au/www/nadrac/nadrac.nsf/Page/WhatIsADR_NationalMediatorAccreditationSystem_NationalMediatorAccreditationSystem)>.