

Government Partnership and Restorative Justice in New Zealand

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Good morning everybody, I'm Hayley MacKenzie and I'm from the Ministry of Justice in New Zealand. I'd like to start this morning with a traditional Māori greeting.

Tēnā tātou katoa,

Ko Ranginui kei runga, ko Papatūānuku kei raro

Ko ngā tāngata kei waenganui

Tātou katoa kua huihui mai nei i raro i te maru o tēnei whare, tēnei au, tēnei mātou o Aotearoa e mihi nei. Koutou te iwi taketake o tēnei whenua taurikura, whenua ataahua rirerire tēnā koutou Enoch Cree.

Koutou ngā tini mate, kua haere ki tua o te ārai, haere okioki.

Āpiti hono, tātai hono, rātou kua wehe atu ki te pō

Āpiti hono, tātai hono, tātou e tū tonu ana ki te ao tūroa

Tīhei Mauriora.

Kua ora tōku wairua i te taenga mai ki tēnei kaupapa, koutou o Alberta Restorative Justice Association, e rere ana a mihi.

Tātou katoa e noho mai nei, e mihi kē o Pūkenga, ki ō hua.

E tika ana te kōrero o ō tātou tupuna:

Nāu te rourou, Nāku te rourou, Ka ora ai te iwi

Nā reira, tēnā koutou tēnā koutou tēnā koutou katoa

I first acknowledge the sky father above, and earth mother below.

I again greet the earth mother. I greet the land, the standing place of the nation, and the building we are in.

I acknowledge the indigenous people of this area, the people of Enoch, and I thank you for having me.

I acknowledge those who have passed before us as without them we would not be here, and I farewell them into the night. I then return us to the living.

I thank the Alberta Restorative Justice Association for inviting me here, to support this important topic.

I finish with a proverb, that by combining your food basket, with my food basket, the people will thrive.

That is, by sharing our knowledge and experience – ours of restorative justice in New Zealand and yours of restorative justice in Canada - great things will be achieved.

And so finally, greetings to you all here today, and thank you for having me at this conference.

In New Zealand government partnership with grass-roots community restorative justice providers has substantially increased the reach of the restorative justice movement.

It has provided stable funding to deliver restorative justice services nationally in the criminal court.

However, public funding comes with obligations for community organisations, such as accountability to professional standards and competitive procurement processes.

Ultimately, the partnership between government and community restorative justice providers in New Zealand works when the government trusts that those providers are experts in the delivery of restorative justice services, and providers trust that the government makes decisions with the best interests of the community at heart. Today I am going to talk about:

- the New Zealand context in terms of justice and government
- what the relationship between government and restorative justice community providers looks like in New Zealand

- what the biggest challenges are that we face in the relationship between restorative justice providers and the Ministry of Justice
- how we make the relationship work
- and the key things we have learned along the way.

I realise that what works in New Zealand isn't necessarily what will work in Canada. Taking solutions from one place and putting them into another ignores the social and historic context of both places and will always be an over simplification.

What I am hoping to convey is some of the challenges we have faced in New Zealand, so you can consider what you think is helpful and relevant, and what you would like to do differently or better in your journey going forward. My colleague Francesca Kliffen, a Senior Advisor in my team, will be facilitating a workshop to explore this topic further later this morning – so this is a shameless plug for her session!

1. Government in New Zealand

We cannot talk about government partnership in New Zealand without acknowledging the importance and history of Te Tiriti o Waitangi, the Treaty of Waitangi.

The Treaty of Waitangi was signed between Māori tribes, or Iwi, and the British Government. It is considered New Zealand's founding document.

It takes its name from the place in the Bay of Islands at the top of the North Island where it was first signed, on 6 February 1840. The Treaty is an agreement, in Māori and English, that was made between the British Crown and about 540 Māori rangatira or chiefs. In 1840, when the Treaty of Waitangi was signed, New Zealand became a colony of Britain. This image is a somewhat romanticised reconstruction of the event, painted by Marcus King nearly 100 years later. Māori leader Tāmāti Wāka Nene is shown signing the treaty in front of British officials and witnesses. Other Māori signatories are assembled on the left.

The Treaty is a broad statement of principles on which the British and Māori agreed to found a nation state and build a government for New Zealand. The document has three articles. In the English version:

- Māori cede the sovereignty of New Zealand to Britain

- Māori give the Crown an exclusive right to buy lands they wish to sell, and, in return, are guaranteed full rights of ownership of their lands, forests, fisheries and other possessions; and
- Māori are given the rights and privileges of British subjects.

The Treaty in Māori was intended to convey the meaning of the English version, but there are important differences. Most significantly, the word ‘sovereignty’ was translated as ‘kāwanatanga’ which means governance. Some Māori believed they were giving up governance over their lands but retaining the right to manage their own affairs. The English version guaranteed ‘undisturbed possession’ of all their ‘properties’, but the Māori version guaranteed ‘tino rangatiratanga’ (full authority) over ‘taonga’ (treasures, which may be intangible). Māori understanding was at odds with the understanding of those negotiating the Treaty for the Crown, and as Māori society valued the spoken word, explanations given at the time were probably just as important as the wording of the document.

Different understandings of the Treaty have long been the subject of debate.

From the 1970s many Māori have called for the terms of the Treaty to be honoured. Some have protested – by marching on Parliament and by occupying land. There have been many studies of the Treaty, and a growing awareness of its meaning in modern New Zealand.

It is common now to refer to the intention, spirit or principles of the Treaty. The exclusive right to determine the meaning of the Treaty rests with a commission of inquiry created in 1975 called the “Waitangi Tribunal” which investigates alleged breaches of the Treaty by the Crown. More than 2000 claims have been lodged with the Tribunal, and major settlements have been reached.

Following a claim in August 2015, lodged by a retired senior probation officer called Tom Hemopo, the Waitangi Tribunal found the Crown in breach of its Treaty obligations by failing to prioritise the reduction of the high rate of Māori reoffending relative to non-Māori.

In its report, *Tū Mai te Rangī!*, the Tribunal says the undisputed disparity between Māori and non-Māori reoffending rates is longstanding and substantial. It says high Māori reoffending rates contribute to the disproportionate imprisonment of Māori, who currently make up half of New Zealand’s prisoners, despite being just 15 per cent of the population. The report looks at how the Crown, through the Department of Corrections, is failing to meet its Treaty responsibilities to reduce Māori reoffending rates.

The New Zealand Crime and Safety Survey tells us that in terms of victimisation, 33% of Māori had been a victim of one or more offence in 2013 alone. This compares to 24% for the New Zealand average. Overall, these disparities have been growing. Over the last few decades, there has been a downward trend in crime in New Zealand. Yet, the rate of positive change for Māori lags behind that for non-Māori.

A “rising tide floats all boats” approach to justice—which holds that the benefits of interventions are distributed equally among social groups—has not been true for Māori.

Māori outcomes for health, education, employment and other socioeconomic indicators are worse than for other population groups. The reasons for this are disputed, but the result is understood to be social disadvantage. For example, Māori make up almost two-thirds of the youth population defined as being at extreme risk of poor life outcomes, including justice outcomes.

All government partnerships with communities must honour the principles of the Treaty of Waitangi.

These are partnership, protection and participation. These principles have important meaning in all aspects of government, such as health, education, local government and the environment. In a justice context:

- **Partnership** involves working together with iwi (tribes), hapū (sub-tribes), whānau (extended family) and Māori communities to develop strategies that support Māori wellbeing if they are in contact with the justice system.
- **Participation** requires Māori to be involved at all levels of the justice sector, including in decision-making, planning, development and delivery of services. It is about empowering Māori communities to achieve their aspirations
- **Protection** involves the Government working to ensure Māori have at least the same level of justice outcomes as non-Māori, and safeguarding Māori cultural concepts, values and practices.

The principles of the Treaty are reflected in the Ministry of Justice values, principles and standards of restorative justice best practice in New Zealand. Collectively, the Ministry and restorative justice providers are committed to upholding the principles of the Treaty at all times.

2. Restorative justice Provider-Government relationship in NZ

Last night I talked about the grass roots development of restorative justice in New Zealand.

To briefly recap, restorative justice grew out of partnership between community groups and local judiciary, with later pilots being funded by the Ministry of Justice. Now we fund 9 million dollars to 26 community based restorative justice providers across New Zealand each year. This amount meets the current demand for services. The map of New Zealand behind me shows where referrals are concentrated around the country.

We only fund restorative justice services that happen before an offender is sentenced.

Every court in New Zealand can refer cases to a local restorative justice provider. The provider receives the referral, proceeds with restorative justice if it is safe and appropriate, and reports back to the judge on what the outcome was. These services are divided into three categories; Standard cases, and specialist Family Violence and Sexual Violence cases. Facilitators who undertake family violence or sexual violence cases are required to have a specialist qualification (called an endorsement), and need to meet additional practice standards to ensure the process is safe.

We pay a one-off referral fee to providers at the beginning of each financial year to pre-emptively cover any administrative costs of receiving and processing referrals from the court. This is undertaken recognising that many referrals do not proceed to preconference. Providers are then paid a Fee for Service, which is a set amount paid for each preconference and conference delivered. Each case type is funded at varying rates to reflect the difference in experience, time and accreditation required to deliver restorative justice safely and effectively.

Restorative justice is embedded into the court process for cases where the offender pleads guilty before the district court, and there is an identifiable victim. The legislative amendment back in 2014 that made it mandatory for judges to refer eligible cases tripled adult court referrals to restorative justice. Courts now

refer around 12,500 cases to restorative justice annually, with around 2500 cases proceeding to a restorative justice conference between the victim and the offender.

There are a broad range of social service providers who deliver restorative Justice services in New Zealand.

We have:

- eight Māori based providers
- twelve restorative justice trusts – these organisations only deliver restorative justice services
- two district councils
- two social service providers with a religious foundation
- one Community Law Centre and
- one specialist sexual violence restorative justice provider, who delivers services nationally.

The providers have different focuses and values. This is generated by the origin and history of their organisations, their size, who their clients and communities are, and the philosophies that inform their work. All providers, whether they have a Māori foundation (kaupapa) or not, need to be able to work in ways that are culturally responsive to the participants in the conferences.

Providers are selected to deliver services to the region of the country that they are based in.

For example, the Nelson Restorative Justice Trust delivers services in Nelson at the top of the South Island, Te Runanganui o Ngati Porou delivers services in Gisborne at the East Cape of the North Island, which is the land the iwi or tribe is connected to. Some providers in main cities share the larger courts, meaning that referrals are distributed based on the agreement in the contract.

Some providers handle a much greater number of referrals than other providers, depending on the demand in the region they service.

The government idea of partnership and the grass-roots, community, restorative justice providers idea of partnership may be very different.

The Ministry of Justice is the only funder for many of our smaller community based organisations, such as the various restorative justice trusts. These providers are dependent on their contract with the Ministry for their continued existence and to pay their staff.

This dependence creates an inherently unbalanced partnership, with providers often treating the Ministry with caution. This risk and dependency is reduced for some of the larger organisations the Ministry contracts with who have many other government agencies funding their services such as the Ministry of Health or the Ministry of Social Development.

Similarly, without restorative justice providers there would be no service for government to fund. At a recent annual general meeting, the chair of the Restorative Practices Aotearoa Board (that's the Restorative Justice Professional Association) said, that "if government tried to do the work that you [the providers] do, it would kill it in a second". Community providers can build relationships and trust with participants which would be difficult for a government to emulate. In New Zealand, restorative justice would look very different without the restorative justice providers.

3. Challenges we face in the relationship

I am going to talk about the big challenges we face with the government - restorative justice provider relationship. These are:

1. Understanding government and providers' priorities
2. Balancing accountability with flexibility
3. Measuring whether providers are doing a 'good job'
4. Deciding who to fund to deliver services
5. Working effectively with Māori provider organisations and;
6. Busting silos and work together.

A principle challenge lies in how does restorative justice retain its integrity as a movement without being limited to a service delivered on behalf of a government? You may want to ask yourselves, are you a movement or are you a service? Or how can you find the balance to be both?

I am also going to talk about how we make it work, recognizing these inherent challenges and tensions, and some of the lessons that we have learnt along the way.

These challenges are not unique to the relationship between government and the restorative justice sector. We know that many community organisations are grappling with how to maintain their identity in the face of standardisation.

Challenge 1: Understanding government and providers' priorities

Our first challenge is understanding the different priorities of the government and community groups. The justice sector in New Zealand is the Ministry of Justice, Department of Corrections, NZ Police, the Serious Fraud Office, Crown Law and Oranga Tamariki – Ministry for Children.

Government has signaled significant reform will be required if the criminal justice system is to deliver on its objectives – to improve public safety, better support victims of crime, meet our obligations to Māori, and build public confidence in the system. It has also signaled it wants a 30% reduction in the prison population by 2032.

We have commenced a public conversation to establish shared values, vision, policies and services to deliver a criminal justice system that New Zealanders identify with and feel proud of, and that motivates communities and government to work together.

The public conversation will include hearing from Māori, victims, and other stakeholders such as the disabled, Pasifika (who are people living in New Zealand who have migrated from the Pacific Islands, or identify with the Pacific Islands because of their ancestry), rainbow communities and business owners. These groups are all significantly impacted by the shortcomings of the current system.

Community organisations are highly diverse. New Zealand government agencies have several thousand contracts with thousands of not-for-profit and for-profit organisations to deliver social services which account for billions of dollars.

The primary drivers and concerns for social services organisations are diverse as well. What often unites them is the ambition to deliver the social services that their communities need, and pressures to remain sustainable into the future. They are in a different position from government. Government still needs to work within budgets and fiscal constraints, but pressures are different - concerns such as paying staff are less immediate and day-to-day like they can be for some providers.

These two sets of values mean that at times we can talk across each other, and misunderstand each other's point of view:

- For community providers, if they do not get government funding then their organization may have to close, or may be severely limited in the work they deliver because they would need to pay for it themselves. Social services often receive funding for a range of issues from a range of agencies with different responsibilities, but they see a person in front of them with a problem or problems that they can support them with, not “is the Ministry of Justice responsible for this”, or “the Ministry of Health is responsible for that”.
- On the other hand, Government looks at the system level. We want to improve public safety, better support victims of crime, meet our obligations to Māori, build public confidence in the system, and get the best value we can from the limited budget of public money. If we don't see positive outcomes linked to those priorities for the public money that is being spent, then it is difficult to put forward a strong case to continue funding.

Restorative Practices Aotearoa have told us that for a long time that there was a feeling of distrust between providers and the Ministry. Of course, this isn't uncommon in this type of relationship. Providers felt that the government did not value what they gave to the sector and that their concerns were not listened to.

These feelings have been reinforced in the past when consultation has taken place but the Ministry has not been able to deliver what providers asked for. For example, at the start of 2015 the Ministry asked providers for their views about pricing and funding. Providers participated, gave their thoughts and ideas and their time, and the Ministry listened. A new pricing model was set that followed the structure that was put forward by providers – so we paid per service that was delivered and an initial fee rather than a bulk funding model – although at a lower price than providers put forward during consultation.

After that meeting, there was a perception that the Ministry had done what it had planned to do all along. Providers became disillusioned feeling that their thoughts, ideas and time were not valuable to the government. Even though we took on their feedback on funding models, we needed to compromise on price to act within our own limited budget constraints when setting prices. We need to show value for money, and that funding is consistent with other services we pay for. In this case, it was clear that expectations were not managed as well as they could have been. We have learnt from this, and later work has been managed differently using co-design processes. Regardless, this kind of experience creates

mistrust, tension and anxiety between the Ministry and providers, and ultimately distracts from the customer receiving the best restorative justice service possible.

In preparation for this speech, we spoke to some of our providers about how the relationship between us had changed over the years and how it's impacted those using the service. Restorative Practices Aotearoa have told us that in the last several years they have felt a positive shift in the relationship between the Ministry and restorative justice providers. Much of this they attribute to the recent Ministry practice of having a dedicated "Contract Manager" assigned to each provider - one person in the Ministry who they know well, who knows them, and who they can easily access and talk to.

Contract Managers visit providers face-to-face around the country every six months, and they are always available over the phone when needed, and can make consistent, fair decisions. Other providers tell us as a result of the appointment of Contract Managers that they are no longer dealing with a faceless institution, but with real people at the Ministry of Justice who want them to succeed. This vastly improved interface is incredibly important for building stronger relationships and improves the service for people going through a restorative justice process. One provider told us that they felt that their contract manager would always sort any issues out quickly for them, and this meant that they could get on with doing restorative justice work. We know that this means a better service for victims, offenders and their support people.

Another example a provider told us about was that before 2015, providers were required to deliver a certain number of conferences as a target for each quarter in the contract. They told us that removing these targets was a key turning point in the relationship for them. This provider told us that targets put them under pressure to take on cases they considered 'borderline', just to meet the numbers, and there was a feeling that the Ministry focused on the numbers rather than quality. By removing the targets and simply paying for the work providers did instead, this supported the principle that restorative justice is voluntary for all participants, and providers were trusted to proceed with cases that were appropriate but also decline cases that wouldn't be safe or beneficial.

Challenge 2: Balancing accountability with flexibility

Our second challenge is balancing government requirements for accountability with flexibility for providers. Ministers are accountable to Parliament for the public funds that are spent, and public servants are subject to public law and administrative requirements which ensure that public funds are used in a lawful,

transparent and accountable manner. Receiving public funding is therefore accompanied by high levels of accountability for community providers.

Just as the Ministry is accountable to the public (including providers and those who participate in restorative justice services), providers are accountable to the Ministry. They are accountable in a number of ways, such as through their contract with the Ministry. There is also a requirement to gain accreditation as a whole organisation showing that they follow employment, health and safety legislation and have appropriate governance in place. There are monitoring requirements such as quarterly reports, and six-monthly site visits, and audits each contract term.

We have these requirements in place because government needs to be confident that provider organisations have the capacity and capability to deliver the services that we are paying them to deliver, and that the services that are being delivered are of a high quality and effective in improving outcomes for people using them. Some of the requirements are more pragmatic – we ask for a quarterly report so we know how much to pay them in each quarterly invoice.

The key requirement we have in place to make sure the restorative justice service is safe, is the requirement for facilitators to be trained and accredited by the Ministry funded accreditation body.

In 2014, we entered a contract with a national organisation to deliver restorative justice training, and to grant professional accreditation to facilitators working within Ministry-funded organisations. Previously the Ministry funded the training courses directly, and granted Ministry of Justice accreditation directly to facilitators. Contracting this to an organisation that specialises in delivering training and managing professional accreditations has made the system more robust and consistent across restorative justice providers.

The Ministry's contracts will soon require that all lead facilitators delivering services are accredited. Our current transitional contractual requirement is that facilitators are trained and "working towards" accreditation.

Being accredited as a restorative justice facilitator means that the person has the skills to facilitate restorative justice cases. Facilitators must have had the training, mentoring and guidance to perform the facilitator role. To ensure consistency, facilitators must follow the best practice standards, which were co-

designed by the Ministry and providers. In addition to standard accreditation, facilitators can be endorsed for specialist expertise. The specialist endorsements are for family violence cases and for sexual violence cases. Advanced accreditation is also available, which recognises facilitators who work on complex cases, and who supervise and mentor others. The advanced accreditation was introduced in 2015 to provide a professional pathway for restorative justice facilitators, and to recognise the skills and experience they gain through years of practice.

The accreditation is one of the ways we assure our stakeholders (Ministers, the judiciary, other community NGOs, lobby groups) that the service we are providing is safe. This is especially important when it comes to family violence and sexual violence cases.

There are a range of different views about the training and accreditation requirements among our provider groups.

- Some providers are very supportive of the need for a training and accreditation framework, and tell us that it has supported them to maintain good quality practice amongst their staff
- Other providers tell us that the accreditation requirements limit their organisation's ability to decide how their facilitators should practice restorative justice.

Accreditation of facilitators is an area that can highlight the tension between provider independence and government drive for consistent, accountable services. To achieve accreditation, a facilitator needs to be assessed and meet standards of practice that are applied consistently across the country. Examples of standards include conference planning, facilitation techniques, self-reflection, working with children, making sound judgements in relation to safety and report writing.

A facilitator may not meet the standards required for accreditation - it could be that a facilitator's report writing skills are not of high enough quality, or they may not complete risk assessments, or safety plans to the required standard. They may not have enough experience in the Family Violence sector if they are applying for a specialist endorsement, or their practice may be fundamentally incompatible with the best practice standards.

In these cases, facilitators can only continue practicing if they are accompanied by another facilitator who has been accredited, and therefore meet the required standard. Provider groups must put support and professional development around that facilitator to raise them to the standard, otherwise they will only be

able to co-facilitate. If there is a philosophical opposition to practicing in a way that meets the agreed practice standards, then they will not be accredited.

This is why accreditation is one of the most complex areas of work with our providers. There is the potential clash between government requirements for having in place robust systems and practice standards and the grass-roots drive for flexibility and autonomy.

Last night I spoke about the best practice documents in New Zealand, beginning with the principles and values first published in 2004, and the family violence and sexual violence standards published in 2013. One of the ways we have navigated this complex area of accreditation is by heavily involving providers in updating the best practice framework. After all, the standards that facilitators are required to meet for accreditation have their basis in the practice framework.

We began the review of the practice framework by forming a working group made up of provider representatives, the professional association and Ministry of Justice staff. This working group proposed the new structure of the document, and streamlined principles to be included. Then we invited representatives from all the provider groups together for a one day meeting to discuss the proposed new principles and what values providers would like to see underpin best practice. From there, we worked with the professional association to identify what the standards should be that facilitators needed to meet in every case.

In working with the professional association, we realised that we needed to bring the standards right down to the baseline of what we require of facilitators to be confident that the restorative justice process was safe and appropriate. As long as facilitators are meeting these minimum requirements, they can adapt to meet the needs of the participants involved.

What the document reflects is a large focus on the pre-conference stage – providing information to make sure participants can choose whether they want to go forward to a conference, and identifying risks and planning to make sure that a conference is safe. The standards for the conference itself are much more straight-forward if all of the preparatory work is done well.

The draft practice framework then went through expert advisors, including academics and subject matter experts for consultation, and then back out to all providers for final feedback before it was published as a

'living document' in August 2017 until March 2019. This means that we are still collecting feedback from providers and facilitators about how the standards are working. We will review this feedback all at once in March, make changes to the standards if necessary, and publish a final version. We have followed this process because sometimes things don't work as intended in practice. We want to document to be a useful tool for our providers, rather than just another set of rules they need to follow.

By taking the time to get agreement from providers and facilitators on what the standards should be in all cases, it is much easier to uphold these when it comes to accrediting facilitators. It means the standards aren't just something that the Ministry has imposed, but something that the wider provider network has developed and agreed on as the way we do our work safely. The best practice framework is available on our Ministry of Justice website if you are interested in finding out more about it.

Challenge 3: Measuring whether providers are doing a 'good job'

This brings us to our third challenge of measuring whether providers are doing a 'good job'.

Measuring outcomes of social services is difficult. Currently, we use a 'Results based accountability' framework. This framework asks:

- How much did a provider do?
- How well did they do it?
- Is anyone better off?

The first question is straight forward. We can tell how many referrals a provider received, how many pre-conferences were delivered and how many conferences were held. Restorative justice is a demand driven service which is voluntary for all participants, meaning that sometimes more isn't necessarily better.

The question of "**How well did they do it**" can be looked at a provider level as well. We can assess how experienced their facilitators are, whether they delivered the services within the timeframe required and if they received any complaints.

The question of “**is anyone better off**” is much more complex. How do you measure what restorative justice meant to the lives of people who participated? Currently, we have two ongoing research projects that look at this question:

Firstly, research on reoffending:

The Ministry of Justice has conducted three studies that look at reoffending rates for offenders who participated in restorative justice. The most recent study, which was released in 2016, included data from conferences held between 2008 and 2013.

The method used in the reoffending studies compared offenders that participated in the restorative justice process, to a matched comparison group of offenders who went through the police diversion or court process, and who would have otherwise been eligible for restorative justice.

Four key findings from this latest study include:

1. The reoffending rate for offenders who participated in restorative justice was 15% lower over the following 12-month period than comparable offenders, and 7.5% lower over the following three years
2. Offenders who participated in restorative justice committed 20% fewer offences over three years
3. Restorative justice appeared to reduce reoffending across many offence types including violence, property abuse or damage, and dishonesty. However, there was no significant difference for participants who committed a driving offence causing death or injury, we know that the reoffending rate for this type of offence is already low.
4. Restorative justice is effective for Māori. The reoffending rate for Māori who participated in restorative justice was 16% lower over the following 12-month period than comparable Māori offenders. Māori offenders who participated in restorative justice committed 23% fewer offences per offender within the next three-year period than comparable Māori offenders.

The research findings then clearly show that some people are better off for having participated in restorative justice – both the offenders that didn't go on to reoffend, and those people who didn't become victims because of that.

And now, research from a victim's perspective:

In 2011, 2016 and 2018, restorative justice victim satisfaction surveys were undertaken with victims who had attended a Ministry of Justice funded restorative justice conference.

Results were very positive. The three significant results from the 2018 survey were that:

1. A large majority (86%) were satisfied with the conference they attended
2. A large majority (84%) said they were satisfied with their overall experience of restorative justice
3. And again, a large majority (84%) also said they would be likely to recommend restorative justice to others.

Of interest, when we break the figures down, family violence victims were equally satisfied with the restorative justice process than victims in non-family violence cases.

To try and answer this question of "is anyone better off" we asked participants if they could identify any benefits of participating in restorative justice. 79% of victims identified one or more benefits, most commonly:

- I feel that I can move on or I got closure (29%)
- I got to have my say or the offender heard how the offence affected me (25%)
- I got to hear the offender's point of view and understand what happened (20%).

Other commonly mentioned benefits were:

- I was given financial compensation
- The offender apologised

- I can communicate better with the offender
- It built up my confidence or it was empowering
- I'm now aware of the help available
- I could see the offender face-to-face.

59% of participants said that their views of the criminal justice system as a whole had become more positive following their participation in the restorative justice process.

I'd like to share some of the comments from the survey: 'It made me feel a lot more confident leaving the meeting and knowing that I had confronted that person. Prior to the meeting I was anxious and now I feel like I let out what I needed to and I can move on.'

'It is as if weight has been lifted off my shoulders. I can be happy and I am able to move on with my life.'

'It reassured me that he (offender) was okay. I welcomed his apology. We had a better understanding of the event. I understood that it was totally accidental and I hope he understood that we didn't hold any ill feeling.'

'I am at peace with the situation and what has happened.'

This research gives us confidence that restorative justice services are meeting the needs of participants – both victims and offenders. However, from a contracting perspective, it doesn't give us all of the information we would like to know. The survey sample size is too small to be broken down to give individual statistics on different provider groups. This means that we don't know if some providers are doing an excellent job with almost all their victims satisfied, while others do not, or if it is spread evenly across all the providers. These results can only be attributed to the service across the country, rather than used to hold an individual provider to account or improve their service.

To get a fuller picture we undertake audits and monitoring of providers, we follow up if complaints are being received by the Ministry and we monitor any issues that providers are having with facilitators gaining accreditation.

At the moment, providers are rewarded based on whether they complete certain processes - pre-conferences and conferences - with less emphasis on how good their service is. Ideally, how we pay for

services would be connected in some way to achieving clearly specified and measurable outcomes. However, this ideal is often difficult to achieve and contracts instead specify inputs or outputs, rather than outcomes.

Challenge 4: Deciding who to fund to deliver services

Our fourth challenge is making sure that we are working with the right providers in the community to deliver these services. We do this by going through procurement processes. This inherently puts pressure on the relationship between the government and providers.

Procurement covers all aspects of the buying and delivery of goods and services. It spans the whole contract life cycle from the identification of needs, to the end of a service contract. It is not just about selecting the cheapest option available, but more about getting the best value for money by procuring a good or service that is fit for purpose, uses funding appropriately and is financially viable for our providers.

As a government agency, we undertake procurement processes to ensure that public money is used in an efficient and responsible way, and to get the best fit of service and provider to deliver the intended outcomes. Procurement means that we are exploring and implementing improvements or enhancements to services where possible, which improves the experience of delivery for providers. We can also change and refine the restorative justice service to make sure that New Zealanders continue to receive the best possible service.

There are several different styles of procurement processes that can be used by a government agency in New Zealand. To comply with the New Zealand Government Rules of Sourcing, which set the rules of fair practice for government, we often prefer to run an open competitive procurement. This means that the opportunity to deliver restorative justice services will be advertised openly, and any social service provider can apply to have a contract so long as they meet the minimum criteria we require of providers. The providers with the strongest tender applications will then be selected to deliver services.

The benefits for giving all providers the opportunity to bid for a restorative justice contract include allowing entry by new, possibly very effective providers and encouraging poor performers to upskill or exit. This promotes efficiency and innovation.

There are of course challenges that come with procuring social services. Because restorative justice in New Zealand initially came from communities and not government, the market was created by the providers themselves and is naturally very small. This makes it difficult to predict whether the required open competitive approach will attract new eligible providers.

In addition, we need to be careful about creating competition among social service providers who have to work cooperatively with one another after the tender is over, as this could create division and mistrust, and ultimately damage the restorative justice service. We will need to minimise this risk by making sure the assessment method and criteria does not favour any particular type of provider and analyses candidates holistically and objectively.

Challenge 5: Working effectively with Māori provider organisations

Our fifth challenge is working effectively with Māori provider organisations. One of the Ministry's four key goals is to deliver improved justice outcomes for Māori.

This year the Ministry released a new Māori strategy; Te Haerenga, which means "the Journey". This signals our desire for positive change for Māori in the justice system, and serves as our roadmap for achieving this goal over the next five years and beyond. It includes key high-level actions we will undertake as an organisation to improve the services we deliver, and how we deliver them. The Ministry has been establishing and communicating the expectation that all our employees will understand basic te reo Māori (the Māori language), tikanga Māori (Māori world view/traditions) and the Treaty. This is to ensure our people can interact confidently and appropriately with Māori customers by building our understanding of Māori needs and aspirations, in order to target or tailor services as appropriate. We also hope these incentives will help us achieve our goal of partnering with iwi and Māori organisations, who can provide invaluable skills, experience and insights the Ministry needs to improve restorative justice services.

We will know how well our services meet Māori needs and aspirations by working with tribes or Iwi/Māori organisations to measure service outcomes for Māori. We will work with them to develop a framework and methodology to evaluate the effectiveness of new and existing services and how they can be improved.

Our current relationship with Iwi/Māori organisations as contracted service providers does not yet align as well as we would like with our vision of equal partnership. Ensuring Māori world views and values are

understood, accepted and supported by the Ministry is one of the largest challenges we face, and something we plan to address in Te Haerenga. Approaching this issue with sincerity and avoiding tokenism will be the key to real change and progress toward our goal of equal partnership with Māori.

As I mentioned earlier, we have eight Māori providers who deliver restorative justice services across 18 District Courts. This means that about one third of our District Courts have a Māori restorative justice provider organisation delivering services. These are strong providers who contribute to the restorative justice provider network, through delivering training, presenting at conferences and holding leadership in the Māori caucus of Restorative Practices Aotearoa.

Challenge 6: Busting silos and working together

Our sixth challenge is about busting silos and working together. A big challenge we have as a government is to not operate in silos and to increase our connectedness and collaboration with other government agencies – particularly our justice sector partners – Police, Courts, Corrections, and those who also have a stake in the restorative justice service.

I'm sure you will be familiar with the concept of the criminal justice system as a "pipeline". The pipeline starts with Police preventing and dealing with crime, moves through to the Courts where offenders are prosecuted and sentenced, and ends with Corrections who manage prison and community sentences, and provide rehabilitation programmes. It means policies and approaches in one part of the system can impact on others. We work hard to join up our approach to allow us to identify these effects, and implement changes that have the best outcomes for everyone. This needs to happen at the chief executive level right through to the contract managers in my team.

We know it becomes very apparent to our restorative justice providers when the government is working in silos. They don't want to see work being duplicated, be told two different things by staff working for the same organisation, or processes put in place that don't work because somewhere in that justice pipeline information is missing.

To avoid inefficient situations like this we need to work together with other key players in the system, particularly those who are involved directly or indirectly in restorative justice work, such as the courts, Police, Corrections, the judiciary.

An example of this is our Ministry of Justice funded restorative justice training programme, and the similarities it has with another out of court programme funded by police called Te Pae Oranga. Te Pae Oranga is a process based on Māori meeting grounds, called a marae, run by iwi or tribal providers and Police to address low-level offending, while keeping participants out of the mainstream justice pipeline. It is designed to make participants – Māori and otherwise – accountable while addressing the causes of their offending and the harm caused. The image behind me is of our unit when we spent a day at Hongoeka Marae – you can see the meeting house behind us and what a beautiful location it is.

There are many connections and similarities between the Te Pae Oranga panels and restorative justice, including the training that is required to facilitate them. Our restorative justice training and accreditation provider developed the training programme for Te Pae Oranga based on the restorative justice training programme, and four of our restorative justice providers also facilitate the Te Pae Oranga panels in their area.

Back when the Te Pae Oranga panels were first established, our providers who wanted their staff to work on both Restorative Justice and Te Pae Oranga panels needed to send their facilitators on both one-week training courses, even though they were almost the same. When providers told us how costly and inefficient this was, we updated our requirements so that if a provider had a facilitator who had done the Te Pae Oranga training they only needed to complete some additional online modules rather than attend a second full week course. In this way, we have tried to reduce the compliance for our restorative justice provider who already delivers this work, and give other providers access to a pool of well-trained talented people who are delivering similar services without needing to give them unnecessary training.

With several thousand social service providers working in New Zealand, our restorative justice providers also need to ensure that they are not working in silos. Because restorative justice is often a “one off” intervention, providers need to make sure that they have strong relationships with other providers in the sector, that they can refer to if there is an ongoing need for support. This is particularly the case when family violence is involved, and providers are making referrals to other family violence agencies if needed.

An overarching challenge for restorative justice providers is how restorative justice holds on to its integrity as a movement without being limited to a service that is funded by the government.

One facilitator described it as “sitting in the belly of the whale”. For us in New Zealand, restorative justice now sits firmly within the criminal justice system. There are clearly many benefits in being a service -

restorative justice is enshrined in legislation, thousands of referrals are made to restorative justice every year resulting in thousands of conferences, and providers have sufficient funding to do the great work that they do. However, by sitting in the belly of the whale, within the criminal justice system rather than on the outside, does it become more difficult for restorative justice to offer its critique of mainstream criminal justice processes – that victims and offenders should be central to justice rather than professionals acting on behalf of the state?

I suggest that if there is a relationship of respect and trust between government and providers there is room for providers to do both - be part of a robust service and retain their identity as a movement. After all, as this is where innovation, growth, and perhaps the essence of restorative justice comes from.

4. How we make our relationship work

So far, I have discussed many of the things that both the Ministry and providers are grappling with in New Zealand. Now I want to talk about how we make it work.

Broadly speaking, restorative justice providers and the government have the same shared vision. We all want to heal harm, reduce crime, and the impact of crime on victims, reduce prison numbers, strengthen families and communities, and encourage more restorative approaches to achieve a safe and just society.

When we are working through challenging issues with providers, we still respect that they are coming from a place of wanting to do the best for their communities.

We hope that providers also know that the Ministry of Justice also wants restorative justice to thrive and deliver great things.

The Ministry of Justice also supports restorative justice in New Zealand beyond just service delivery from the 26 restorative justice providers.

There are two arms to this support – the professional association of restorative justice facilitators, Restorative Practices Aotearoa, and a university chair providing academic leadership. By financially

supporting these bodies, we strengthen the sector, and provide support to the 'movement' aspect of restorative justice, as well as service delivery.

I have already spoken a bit about the work that the Restorative Justice professional association does.

Restorative Practices Aotearoa has been funded by the Ministry since 2005 to help build practice among restorative justice providers, raise the profile of restorative justice, and contribute to the current and future direction of restorative practice. Restorative Practices Aotearoa have undertaken significant training on when and how to safely involve children in restorative justice processes in a child centred way. Restorative Practices Aotearoa also represent the views of their members to government agencies, including the Ministry of Justice, and look for opportunities for restorative practices to be involved.

We appreciate their candid advice on how projects such as the victim satisfaction survey, the best practice framework and procurement will impact on providers, and know that it enables the Ministry to have stronger relationships with the sector.

Moving now to the academic side of things, the Diana Unwin Chair in Restorative Justice was established in 2014 and sits within the Victoria University of Wellington School of Government.

The position is currently held by Professor Chris Marshall. The role of the Chair is to provide academic and professional leadership to a team of researchers and practitioners, and facilitate collaborative engagement between public sector agencies and civil society organisations on restorative justice issues.

This year the Chair in Restorative Justice offered a free online Massive Open Online Course (MOOC) called Restorative Justice and Practice: Emergence of a Social Movement, via the edX international learning platform. The course was the first MOOC of its kind worldwide, teaching restorative practices and how they can bring about positive change for schools, families, workplaces and community agencies. Several thousand people around the world have completed the free six -week course. If you are interested in learning more about the emergence of restorative practices in New Zealand, you can find more about this on the Victoria University of Wellington website searching Restorative Justice.

One of the main things we have learnt along the way is that people come before process.

As I said earlier, the whakataukī that guides our restorative justice practice is:

He aha te mea nui o te ao? He tangata, he tangata, he tangata

What is the most important thing in the world? It is people, it is people, it is people.

Trust is something human beings build with each other, not something that organisations do. It isn't Restorative Practices Aotearoa that trusts the Ministry of Justice, it is Mike, Manager at Restorative Practices Aotearoa who trusts Francesca, his Contract Manager at the Ministry. Trust is difficult to build up and easily lost.

Our contracts, accreditation systems, funding models, practice standards, and decision-making processes all need to support that relationship of trust between contract managers and provider managers, but just like with restorative practices, it is the person to person stuff that really counts.

Challenging issues can be resolved and strong relationships maintained when provider managers trust that their contract manager is fair, and dedicated to doing the best for restorative justice, all within their other accountabilities and priorities. Likewise, if a Ministry contract manager trusts that a provider manager is being upfront and transparent with them, they can follow their provider's advice with confidence in difficult situations or case decisions.

The public service has a much higher turn-over rate of staff than our restorative justice providers. Both my colleague Francesca and I have been working in this space at the Ministry for just over three years, and we are some of the longest serving staff in our unit. Our restorative justice providers have sometimes been working in this field for 20 years, and they have seen many Ministry staff come and go in their time.

This turnover means providers must frequently build new relationships with people at the Ministry. In turn as Ministry staff, we need to make that as easy for them as possible. We do this by being prepared, always being responsive to emails and phone calls, and getting out in the field to meet them face-to-face as soon as we can. We standardise the processes we follow at the Ministry, so even when key staff leave things remain consistent for providers.

5. Conclusion

A provider manager once said to me; “I don’t know how you can be so passionate about restorative justice when you do not get the chance to sit in conferences day in, day out”.

He said that people – both victims and offenders - come into the conference with the weight of the world on their shoulders, and by the time they leave they can be transformed – heads held high, walking tall and with hope for the future.

Being part of this moment, where you can see change before your eyes and people can move forward from the hurt that they have experienced, is what kept him working in restorative justice for many years.

For me, working away from the front line, the satisfaction comes from contributing to a system where people are having these extraordinary experiences every day.

My team, and our restorative justice providers, handle some complex challenges. We need to understand each other’s priorities and drivers, even if they are different to our own. We need to ensure that providers still have the flexibility to adapt to meet the needs of participants, while retaining accountability to keep everyone safe. We need to understand how to measure whether providers are doing a good job, beyond simply counting numbers. We need to make robust fair decisions about who to fund, and ensure that we support strong relationships in the sector when we do. We need to make sure that our ways of working build up Māori organisations and participants, rather than holding them back, and we need to work collaboratively rather than in our own silos.

When we navigate these challenges with careful planning, and the understanding that people need to be at the centre of our decisions, I know that we make our contribution to a restorative justice service that meets the needs of victims, offenders, their families and their communities.

Providers tell us stories of conferences they have been part of where relationships have been healed between estranged parents and their children, people who have had family members killed in road accidents, and have had the opportunity to look the person who caused their harm in the eye, and neighbours that have been able to live in peace after their dispute was resolved.

Earlier in my speech today I shared the proverb:

Nau te rourou, Nāku te rourou, Ka ora ai te iwi

With your food basket, and with my food basket, the people will thrive. While the dynamic between the government and community organisations is a complex one, great things can be achieved when we work together.

Nō reira tēnā koutou, tēnā koutou, tēnā tātou katoa.

Thank you to everyone here for allowing me to participate today.

ENDS