

# Evolution of Restorative Justice in New Zealand

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Hello everybody, my name is Hayley MacKenzie and I'm from the Ministry of Justice in New Zealand.

Thank you to the Alberta Restorative Justice Association for bringing me here, and I would also like to acknowledge the people of this land, the Enoch Cree Nation.

In New Zealand, at the beginning of any hui (gathering), following the pōwhiri or the mihi whakatau (a welcome), a round of introductions and speeches – or mihi mihi – usually occurs.

During this time, people will stand and share their pepeha. Your pepeha tells people who you are by sharing your connections with the people and places that are important to you. In te ao Māori – the Māori world – whakapapa, or genealogy, is about relationships, both with the land and with people. There is a proverb “Whatungarongaro te tangata, toitū te whenua” - As man disappears from sight, the land remains. Māori have a deep spiritual connection with the whenua (the land) through their whakapapa (or ancestry) from Papatūānuku, the Earth Mother. This is why we talk about connections with the mountains and bodies of water as well as tribes and family.

Recently, Dr Hinemoa Elder, a prominent Maori psychiatrist and professor of indigenous health, described this as “Pepeha work like a kind of Māori De Vinci code. Following clues, unlocking the pieces, helping put into words the connections that bind us together”.

Often when meeting others, we are listening out for signs of where they are from; this could be a common land feature or a well-known name. In this way, we build whanaungatanga, which are connections and relationships with each other.

Relationships, connections and common ground between people are also at the heart of restorative justice, so it feels particularly fitting to begin by sharing my pepeha with you:

Tēnā koutou te whānau

Ko Manaia te maungā

Ko Whāngārei -Terenga-Parāoa te moana

Ko Ngāti Pākeha te iwi

Nō Whāngarei ahau

Ko Hayley tōku ingoa

Nō reira, tēnā koutou, tēnā koutou, tēnā koutou katoa

The translation is:

Greetings to you all,

The mountain I affiliate to is Manaia

The sea I affiliate to is Whangarei harbour

My tribe is pākeha

I am from Whāngarei

My name is Hayley

And so, greetings, greetings, greetings to you all.

- Tonight I would like to share the journey New Zealand has undertaken to get to where Restorative Justice is today.

- This will provide a framework for tomorrow when I will speak about our partnership with communities to deliver restorative justice services.

### **I'd like to start by talking about the evolution of restorative justice in New Zealand.**

#### *Restorative practices were inherent in the Māori culture:*

Before any enabling legislation, even before European settlement, New Zealand's Māori population used restorative practices based on their customs and traditions.

The emphasis was on involving the whole community; reaching a settlement acceptable to all parties; examining the wider reasons for the wrong that was committed; and restoring balance and harmony.

When New Zealand looked to incorporate restorative practices into legislation governing the criminal justice process, traditional Māori practice, including the involvement of the wider community in addressing harm to the community, was an important influence.

### **New Zealand interest in restorative justice has been driven primarily by practitioners, not policy makers or academics.**

A restorative-type practice was first included in legislation for youth. In 1989 the Principal Youth Court Judge, Judge Mick Brown, was responsible for the overhaul of the youth justice system from its punitive focus to a restorative one that continues today.

The 1989 Children, Young Persons and Their Families Act introduced family group conferencing. This act has since been renamed the Oranga Tamariki Act, or "the wellbeing of our children Act". A family group conference is a structured meeting where children or young people and their family/whānau ("whānau" is the Māori concept of family and extended family) and professionals come together to talk about concerns that are held for a child or young person and develop a plan to address the issues. There are two types of family group conferences:

- Care and protection – held when there are concerns for the safety or well-being of a child or young person
- Youth justice – held when a child or young person has offended.

The intention of the Act was to increase the involvement of families and their wider circles when dealing with children and young people who offend. This was to strengthen the ability of families to hold their young people accountable, and encourage them to develop in law abiding and socially productive ways.

There were three revolutionary elements of the youth court model:

- It transferred power from the state, principally the court, to the community
- The family group conference became a mechanism for producing a negotiated, community response
- The involvement of victims as key participants, making healing possible for both offender and victim.

While these elements are very familiar to restorative justice it was three or four years before the term “Restorative justice” became known in New Zealand.

*Restorative-type practices were then widened to include adults:*

The early 1990s saw the family group conference model extended to a number of adult cases. Trained community groups facilitated conferences and provided reports on individual cases to sentencing courts. Judges, using their discretion, had granted adjournments for a restorative conference to be held. No commitment was made that the process would affect the outcome, and judges were not obliged to consider the conference report in sentencing decisions.

*This ad hoc extension of restorative justice to adult cases led to the first government-funded pilot of restorative justice in criminal cases, which occurred in the late 1990s.*

The three-year pilot was carried out in four courts across three cities. These were Project Turnaround in Timaru in the South Island, and in the North Island Te Whānau Awhina in Waitakere and the Community Accountability Programme in Rotorua. The first two restorative justice programmes are still in operation today.

The pilot built on the family group conference from the **Oranga Tamariki** Act, as well as the community-based programmes carried out by volunteers. Evaluation of the pilots was positive, leading to the extension of government funding beyond the pilot courts.

*Eventually, restorative principles and procedures were incorporated into New Zealand's legislation:*

This statutory recognition of restorative justice within the criminal justice system was through the Sentencing, Parole and Victims' Rights Acts, enacted in 2002. This suite of legislation achieved three things:

- Firstly, it gave greater recognition and legitimacy to restorative justice
- Secondly, it encouraged the use of restorative justice processes wherever appropriate
- Thirdly, it allowed restorative justice to be taken into account in the sentencing and parole of offenders when a conference had taken place.

*An umbrella organisation for restorative justice was established:*

In 2005, government funding was made available to establish a professional body to represent providers of restorative justice services. The society is called Restorative Practices Aotearoa, and its role is to build practice among restorative justice providers, raise the profile of restorative justice, and contribute to the current and future direction of restorative practice. This society works very closely with the Ministry of Justice.

*A legislative amendment substantially increased restorative justice cases:*

In 2014 there was a significant amendment to the Sentencing Act. It stipulated that in specified cases, courts must adjourn criminal proceedings prior to sentencing to consider whether restorative justice would be suitable in the circumstances of the case. If the case was assessed as suitable, it would be adjourned to allow for the restorative justice process to take place. A restorative justice conference still only proceeds if the case is appropriate and both the victim and offender want to participate, even if the case has been adjourned for it to occur.

Almost overnight, this legislative amendment 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.

**Before I go any further, it may be useful to explain what restorative justice actually looks like in New Zealand**

*Firstly, I'd like to share how we describe restorative justice:*

Restorative justice is a community-based approach to responding to crime, that aims to hold offenders to account for their offending and, to the extent possible, repair the harm caused to the victims and the community.

Ministry of Justice-funded restorative justice aims to give victims a voice in the adult criminal justice system and may enable them to receive answers, apologies and reparation. Participation in restorative justice is voluntary, and usually involves a facilitated face-to-face meeting between the victim and offender.

*And this is how restorative justice looks in practice:*

Prior to sentencing, the facilitator (who is employed by a restorative justice provider) meets separately with the victim and offender to work out if they are both willing to participate, and that everyone will be, and will feel, safe. We call these meetings pre-conferences. Where the case involves family, or sexual violence, only specially trained and accredited facilitators are used.

Once these meetings have been conducted, the facilitator decides if a conference should go ahead. If the case is not suitable to proceed, the facilitator will inform the court and the offender will be sentenced as usual. If the case is suitable, the facilitator will bring everybody together for a conference.

At the conference, the facilitator brings together the offender, the victim, or victims, their support people and, if agreed, professionals such as Police, lawyers etc. Everybody has an opportunity to speak openly and honestly about how the offending has affected them.

Parties may also discuss ways for the offender to help put things right. Putting things right might include the offender agreeing to attend a programme (alcohol or family violence etc), pay reparation, or volunteer in the community.

The facilitator then reports back to the judge on the conference and any agreements made. The judge sentences the offender, taking into account the offender's participation in restorative justice and the facilitator's report, alongside other information such as a pre-sentence report.

**The New Zealand government has been very supportive of restorative justice**

*As I have already mentioned, several pieces of legislation supported the evolution of restorative justice.*

Firstly, the Sentencing Act 2002. This explicitly gave the adult courts the power to adjourn a case to enable a restorative justice process to occur, or to enable a restorative justice agreement to be fulfilled. This was a big step that gave recognition to the importance of restorative justice in the criminal justice system.

Next, the Victims' Rights Act 2002 gave victims the right to request a restorative justice process in relation to the offence committed against them. If satisfied that the necessary resources were available, court staff, Police or probation staff were required to refer the request to a suitable service provider.

The third piece of legislation that supported restorative justice was the Parole Act 2002. One of the guiding principles in this Act, which relates to the release of an offender from prison, ensures that any restorative justice outcomes are given due weight.

The Act also allows for offenders on home detention to leave their residence to attend a restorative justice conference, and also to leave their home to carry out any undertaking arising from a restorative justice process. This is more closely related to restorative justice undertaken after an offender has been sentenced.

*There was additional support over and above these pieces of legislation:*

Additional public and political support came from a review of victims' rights in 2011. The victims' rights review was informed by a public consultation process which started in 2009. It involved consultation with key stakeholders and government agencies, local and international research, and surveys related to victims and victims' issues.

The review of victims' rights resulted in a range of operational and legislative recommendations, one of which was to provide better access to restorative justice processes. This recommendation reflected feedback received during the consultation process. For example, the following comments about restorative justice were made in submissions received:

“Restorative justice is very important to families and **whānau** as a means of healing rifts between the community and families, and rifts within the family or **whānau**.”

and

“[the submitter] is committed to the principles of restorative justice and is very aware of the benefits many victims have gained from participating in well facilitated restorative justice settings. Restorative justice – while being limited by the relatively small minority of victims of crime who will be able to take part – does offer a powerful tool that can offer victims the opportunity for finding safety, answers to questions, opportunities for truth telling and for restitution.”

At the same time, submissions raised concerns around some factors, including:

- whether enough government funding was made available so restorative justice could be implemented and delivered adequately; and
- ensuring it was victim focused, as opposed to offender focused.

As a result of the review, the government approved a package of reforms – one of which was a change to the Sentencing Act which strengthened the use of restorative justice as part of the sentencing process. The Bill was passed in 2014 – and came into effect in December of that year.

The feedback from the public, and in particular the confirmation that the environment was ready for a shift towards a more restorative approach, gave policy makers the confidence to be more innovative with the suggested reforms. It also gave solid foundation to the successful implementation of the new legislation.

*There was also monetary support from government:*

From the relatively minor funding of the restorative justice pilots in the 1990s, the government is now allocating \$9 million NZD annually (about \$8 million Canadian dollars) to restorative justice services. This is a substantial investment for such a small country with a population of only 4.8 million people, similar to that of Alberta. This funding has a big reach in our justice system, with around 18% of all people convicted in a district court in 2015 in New Zealand referred to restorative justice.



## **The 2014 legislative amendment changed the landscape of restorative justice in New Zealand**

Almost over night the legislative change increased access to restorative justice in the adult jurisdiction in New Zealand. The amendment to the Sentencing Act outlined when the court is required to adjourn criminal proceedings for consideration of restorative justice. Previously, the court's power to adjourn proceedings for a restorative justice process was discretionary.

The legislative amendment requires a court adjournment for an investigation into restorative justice where the following five conditions are met:

1. An offender appears before a District Court before sentencing (this legislation does not relate to the higher courts)
2. The offender has pleaded guilty
3. There are one or more victims of the offence (for example, a drug use charge could not be referred to restorative justice under this legislation because there is no identifiable victim)
4. No restorative justice process has previously occurred in relation to the offending
5. The Court Registrar, the administrator of the court, has informed the court that an appropriate restorative justice process can be accessed.

The fifth condition means that there needs to be a local restorative justice provider with capacity to take the case for the referral to be made. This means if there is no provider in the area, if the provider was at full capacity, or there were no facilitators available to take the case, there wouldn't be a breach of the legislation by not accepting the referral and the court process wouldn't be held up.

*This is the New Zealand process for a referral to be made:*

- A guilty plea is entered. A finding of guilt, rather than a guilty plea, does not legally preclude restorative justice from happening if it is considered appropriate. However, it is not covered under this section of the legislation. It would be rare for a case to proceed to a conference if the offender has not pleaded guilty.
- The court will then assess the case against the criteria from the Sentencing Act (that I just mentioned).

- If the criteria is met, the court must adjourn the case to assess whether restorative justice is suitable.
- If restorative justice is considered appropriate the legislation further requires the court to adjourn the case for the process to occur.
- At the completion of the process, the facilitator submits a report to the court, detailing the facts of the conference, any outcomes agreed, and any progress towards those outcomes. This report is also shared with the participants.
- The court must then take the report into consideration when determining an appropriate sentence.

**The purpose of the Sentencing Act amendment in 2014 was to ensure more people would have access to restorative justice services, and this was achieved very quickly.**

In the three months before the amendment, the courts made over 1,300 referrals to restorative justice in the adult jurisdiction. In the three months after the amendment, courts made over 3,500 referrals: an increase of around 170%.

As well as the significant increase in referrals to restorative justice, we also saw an increase in the number of conferences held as a result of these referrals, from 465 in the three months before the amendment, to 620 in the three months after.

The number of conferences has increased at a lower rate than referrals, but we had expected this as there are many reasons conferences do not go ahead. The most likely reasons are that either the offender or the victim doesn't want to participate, or that the facilitator considers it not suitable or safe for an individual case to proceed.

**Four years on from the Sentencing Act amendment our focus is on delivering an efficient, high quality, national restorative justice service.**

One of our challenges is to reduce the number of referrals to restorative justice in cases that are unlikely to proceed to a conference. Finding a solution to this gap will reduce unnecessary administration for courts and providers, and minimise delays in sentencing offenders.

One of the ways we are doing this is by improving the quality of information given to providers at the time of the referral, so that better assessment can be made earlier, and better contact information is provided.

**We are also focussing on the quality of restorative justice services delivered by service providers.**

In 2004 the Ministry published a document entitled *Restorative Justice: Best Practice in New Zealand*. This document provided guidance on the use of restorative justice processes by outlining the fundamental principles that should be upheld within restorative practice. The development of these principles followed consultation with restorative justice practitioners, and it is a contractual requirement for Ministry of Justice funded restorative justice providers to adhere to these principles.

In 2013, specific standards were developed by the Ministry for restorative justice practitioners to follow in cases of Family Violence and Sexual Offending. These standards recognised that, while the principles outlined in 2004 provided a sound basis for the practice of restorative justice, additional safeguards are necessary when dealing with harm which has had complex or chronic impacts, such as family or sexual violence.

**The Ministry of Justice recently updated these best practice documents to ensure that the guidance is still relevant.**

The first (and foundation) of the suite of documents 'Restorative Justice: Best Practice Framework' was published in 2017. The framework was developed with significant input from restorative justice providers and facilitators, including a 1-day meeting with representatives from all Ministry funded restorative justice providers.

The new framework sees the structure of the best practice documentation substantially overhauled. The framework now comprises of a guiding **whakataukī**, a Māori proverb, that conveys the core purpose of the framework.

This **whakataukī** says:

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.

It represents that people come above all else in our restorative justice practice.

The restorative justice values have been refreshed to reflect Māori restorative justice values proposed by our provider group, and standards have been developed to be used in all cases.

The principles have also been streamlined. The principles that guide Ministry of Justice funded restorative justice practice in New Zealand are:

- participation is voluntary throughout the restorative justice process
- the victim and the offender are the central participants in the restorative justice process
- understanding is key to effective participation
- offender accountability is key to the restorative justice process
- restorative justice processes are flexible and responsive to the needs of participants
- restorative justice processes are safe for participants

More recently we have also updated the standards for family violence cases, which has strengthened requirements for risk assessment, safety planning and linking participants with other family violence specialist services. We have created a suite of practice resources to accompany the family violence practice standards, including participant intake forms, risk assessment forms and basic safety plans for both victims and offenders. These resources support facilitators to meet the additional risk and safety requirements.

**Looking across the justice sector, restorative justice is also funded at the post-sentence stage.**

A small amount of post-sentence restorative justice is funded through a limited budget held by the New Zealand Department of Corrections who administer New Zealand's prison and probation services. Post sentence restorative justice can occur if the Parole Board has made a recommendation for restorative justice to be assessed as part of a prisoner's release plan. Some community restorative justice providers also deliver post-sentence restorative justice services outside of those funded by the government, using their alternative funding streams.

New Zealand is looking to reform the criminal justice system through a programme called Hāpaitia te Oranga Tangata: Safe and Effective Justice. New Zealand has one of the highest imprisonment rates in the OECD, Māori are over-represented at every stage in the criminal justice system and our reoffending rates are high. This is long term work, and we are beginning by listening to people who are involved in the justice system such as victims, offenders, professionals and communities for their ideas and a fresh conversation about what people want from the criminal justice system. While it is early days yet, one of the calls has been for the justice system to become more restorative as a whole. This is a reflection of how far reaching the message of the restorative justice movement has been in New Zealand, and how well accepted it has become.

Only a few weeks ago, on the 25<sup>th</sup> of October, we had a news headline in New Zealand that read “Truck driver supported by victim and family”. I’m going to read you some extracts from the story itself. The article starts:

“A truck driver who ploughed through a pedestrian crossing into a schoolboy got some support from an unlikely source at sentencing.

When Brett Johnston (20) appeared in the Dunedin District Court this week, he did so with the forgiveness of the 17-year-old victim and his family.

The group met for a restorative-justice conference in September where the defendant apologised and agreed to do a defensive driving course.

The court heard it was the second such meeting.

Johnston had gone to the hospital in the days following the June 11 incident in Kaikorai Valley Rd while the victim was recovering from a partially fractured vertebra along with various bumps and scrapes.

"That sort of thing takes guts," Judge Michael Crosbie said.

These stories about restorative justice and the impact that it has had for actual people in the court system are frequent. We see the simple phrase “The case was referred to the restorative justice process” in news reports every week, showing just how well integrated and accepted the process has become within the system.

**In conclusion, restorative practices in New Zealand have existed since pre-European times.**

When we looked to incorporate restorative practices into legislation traditional Māori practice, requiring community involvement, was an important influence.

Since the 1980s we have continued to adapt, develop and expand the use of restorative practices across our justice system.

The Ministry of Justice in New Zealand is on a journey to provide people-centred justice services that deliver better outcomes for New Zealanders. We continue to work with our community providers to ensure restorative justice services are of a high standard and that the fundamental principles of restorative justice are upheld.

The government has committed to \$9 million annually to fund restorative justice services - this funding is enough to meet the current demand for restorative justice before sentencing. This continued funding recognises that restorative practices, which put the people at the centre of the justice process, reduce reoffending and improve outcomes for victims.

People-centred justice means many things:

- It encompasses modern courts and tribunals wanting to get people through quickly, so they are not waiting years for their issue to be resolved – as is often quoted “justice delayed is justice denied”
- It means improved justice outcomes for Māori – reducing their over-representation in the criminal justice system and ensuring treaty settlements are completed effectively
- It means there is less crime, victimisation and harm,  
And finally
- all people who come in to contact with the justice system are treated with dignity and respect.

Restorative Justice makes a strong contribution to these goals. Nō reira tēnā koutou, tēnā koutou, tēnā tātou katoa. Thank you to everyone here for allowing me to participate today.

**ENDS**

