

行政院及所屬各機關因公出國人員報告  
(出國類別・考察)

## 2012 年紐西蘭、澳洲「修復式司法」考察報告

### **A 2012 Research Report on Restorative Justice practiced in New Zealand & Australia**

**By  
Huei-huang Lin, Director of JPTI**

**Yen-li Chao, Public Prosecutor of  
Taiwan Taoyuan District  
Prosecutor's Office &  
Mentor of JPTI**

	<u>服</u> <u>務</u> <u>機</u> <u>關</u>	<u>職</u> <u>務</u>	<u>姓</u> <u>名</u>
出 國 人	法務部司法官訓練所	所 長	林輝煌
	法務部司法官訓練所	導 師	趙燕利

出國地點：紐西蘭、澳洲

出國期間：2012 年 5 月 5 日至 5 月 11 日

報告日期：2012 年 6 月

---

## 摘 要

隨著自由化、民主化的國際潮流，我國各種政策思維亦跟隨自由民主開放的步履逐漸轉變，在司法領域，最顯著的變化之一，就是刑事司法政策，由原本強調權威、應報、懲罰的剛性司法，逐漸轉變為以包容、關懷、互信等人本價值為主的柔性司法。舉例言之，一個人犯了罪，以剛性司法的思維而論，應該是要讓他先歷經刑事訴訟程序的震憾，再將他送監執行接受與世隔離的懲罰，或最低限度也要讓其付出慘痛代價知所警惕，如此社會秩序才能得到維持，正義才能得到伸張。但實情真是如此嗎？社會秩序因犯罪所造成的騷動，社區因犯罪所造成的不安，被害人及其家庭因犯罪所造成的心理痛楚和物質上損失，犯罪者因犯罪所造成的標籤化及其家庭所受到的牽累，有因為上述的處理方式而受到發抒、導正和治療嗎？答案顯而易見是否定的。柔性司法的理念於焉而生，希望藉由更細緻、全面、人性的思維，解決犯罪所帶來的諸多問題。

在柔性司法的理念下，提倡修復式司法制度的呼聲日趨高漲，法務部自民國 97 年 5 月起，將推動修復式司法制度列為重要政策，希望未來處理犯罪能朝尋求真相、協助當事人療癒創傷、恢復平衡及復原破裂關係等方向上邁進，並在「理念倡導」、「深化理論架構」、「執行模式之試行」及「融入學校課程」等四大面向上開始進行，如今已在士林等 8 個地方法院檢察署推動試行方案。本所肩負準司法官及在職司法人員培訓任務，對此重要之司法政策，自當配合並研究如何融入課程設計及教材研發，以利體系人員對政策之推動及執行。此次考察選擇紐西蘭、澳洲 2 國，係因 2 國推行修復式司法制度已歷多年，運作已臻純熟，法令亦稱完備，冀望藉由此

---

考察，瞭解 2 國在修復式司法制度上的最新運作狀況及法制化歷程，並將所見所聞化為文字，闡明心得感想，並嘗試提出建議，做為法務部推行此制度及本所安排課程上之參考，以達「他山之石可以攻錯」之目標。

---

---

## 目 錄

壹、前言 .....	1
一、緣起 .....	1
二、致謝 .....	2
三、行程簡表 .....	3
貳、紐西蘭國情簡介 .....	6
一、地理位置及簡史 .....	6
二、憲政體制 .....	6
三、現況概述 .....	9
參、澳洲國情簡介 .....	11
一、地理位置及簡史 .....	11
二、憲政體制 .....	12
三、現況概述 .....	13
肆、紐西蘭推動修復式司法概述 .....	15
一、前言 .....	15
二、背景因素 .....	15
三、實踐情形 .....	16
四、實務狀況 .....	20
伍、澳洲推動修復式司法概述 .....	24

---

---

一、背景因素 .....	24
二、實踐情形 .....	24
三、澳洲 ACT 政府推動修復式司法立法簡介 .....	25
陸、參訪機構簡介 .....	35
柒、紐澳參訪紀要 .....	39
捌、心得感想及建議 .....	46
一、心得感想 .....	46
二、建議 .....	48
附件 1 .....	50
附件 2 .....	51
附件 3 .....	64
附件 4 .....	72
附件 5 .....	75
附件 6 .....	77
附件 7 .....	78
附件 8 .....	91

---

## 壹、前言

### 一、緣起

現有的刑事司法制度，將處理犯罪的權力賦與國家，並採刑罰的方式懲罰犯罪者，以維護法秩序及公平正義。然而，當一件有被害人的犯罪事件發生了，除了既有的法律秩序受到破壞外，對加害人、被害人、雙方家庭成員、社區及整體社會也帶來了傷害與裂痕，僅藉由施加刑罰的方式，無法滿足相關人等的需要，如能選擇合適的處理方法，促進所有利害當事人真誠溝通，並導引出自我情感復原的力量，共同修復犯罪所帶來的傷害，不僅能實質給予被害人走出創傷的力量與支持，也能讓加害人充份認知其行為所帶來的負面結果，進而真誠地認錯悔改，承擔責任，減少將來再犯罪的可能，這就是修復式司法所想實踐的核心價值及目標，相信也較能符合當事人對刑事司法制度的期待。

法務部對以上期待的回應，就是自民國 97 年 5 月起，將推動修復式司法制度列為重要政策，希望藉由此制度所強調之尊重、撫慰、負責與復原等價值，重新建構我國刑事司法思維，以契合推動「柔性司法」的目標。本所林所長曾於民國 86 年 8 月至 88 年 4 月間擔任法務部保護司司長，任內即對犯罪被害人之權益甚為重視，自接任本所所長後，於教學理念上，亦投注甚多心力教導學員在思考對犯罪者「罰當其罪」的同時，如何能兼顧被害者權益及使犯罪者有重返社會之可能。此次出國考察「修復式司法」此一主題，目的即係在此，希望透過與紐、澳 2 國官員、學者及實務操作者的對談，印證修復式司法在當地運作的實際成效，做為本所配合法務部推動上揭政策時，如何安排設計課程及研發教材之參考。

---

## 二、致謝

本次參訪之行前準備工作，在所長指導下，本所教務組侯組長千姬及鍾導師曉亞竭盡心力安排參訪行程、食宿交通等細項，並代為蒐集相關資料，總務組曾組長重舜及其他同仁，於後勤支援上煞費苦心。訓導組郭組長棋湧及導師室全體同仁則在工作分擔上給予全力支援與協助。至於外館部分，在我國駐澳洲張代表小月、陳秘書啟嘉、及駐紐西蘭奧克蘭辦事處丁處長樂群、周組長志堅等人積極奔走、鼎力協助下、雖最終未能如願拜訪奧克蘭地區法院院長，惟仍促成與紐西蘭檢察官及在操作修復式司法方面有許多經驗的律師進行實質座談交流，獲得超出預期之成果，萬分感謝。

此次行程極其緊湊，尚須應付時差、長途搭機、進出關等身心挑戰，然在所內、外同仁的鼎力支持及祝福下，得以神采奕奕地完成此次參訪行程，致謝之餘，實應將此行之所見所思，詳載於考察報告中，期能供我國借鏡參考。

### 三、行程簡表

日期	行 程
101 年 5 月 5 日 (星期六) 101 年 5 月 6 日 (星期日)	臺北時間 5 月 5 日 23 時 50 分，搭乘中華航空公司 CI-53 班機，由桃園國際機場離境，於紐西蘭當地時間 5 月 6 日 17 時 15 分抵達奧克蘭國際機場。由我國駐奧克蘭台北經濟文化辦事處周志堅組長前來接機，19 時參加由丁樂群處長舉行之歡迎晚宴，陪賓有紐西蘭國會議員 Phil Goff 夫婦及霍建強夫婦等人。當日住宿市中心之 Rydges Hotel 旅館。 59 Federal Street Cnr Kingston Street, Central City, Auckland 1010 NZ Phone: +64 9 375 5900
101 年 5 月 7 日 (星期一) 10:00-12:20	奧克蘭當地時間 10 時，前往皇家律師事務所 (Prestige Lawyers)，與主持律師汪君尊 (Royal Reed)、紐國國家法律辦公室 (The Crown Law Office) 所屬檢察官 Simon Moore SC 律師，及紐西蘭修復式司法基金會管理人 (Trustee of NZ Restorative Justice Trust) Jim Boyack 和 Helen Bowen 律師進行「修復式司法」座談。
14:00-16:00	下午 14 時參訪奧克蘭地區法院 (Auckland District Court)，由該院刑事檢察主任 (District Prosecution Manager) Louise Murdoch 女士接待。
101 年 5 月 8 日 (星期二)	10 時至我國駐奧克蘭台北經濟文化辦事處拜會，由丁樂群處長接待。15 時 45 分搭乘澳洲航空公司 QF-56 號班機，由奧克蘭國際機場飛

	<p>往澳洲雪梨國際機場，於澳洲當地時間 17 時 25 分抵達後，轉搭 19 時 35 分之澳航國內航線 QF-1495 號班機，於 20 時 25 分抵達澳洲首都坎培拉，由我國駐澳洲代表處秘書陳啟嘉先生前來接機。夜宿 DIAMANT HOTEL 旅館。</p> <p>15 Edinburgh Avenue Canberra ACT 2601</p> <p>Phone: +61 2 6175 2222</p>
<p>101 年 5 月 9 日 (星期三) 10:00-12:00</p>	<p>澳洲當地時間上午 10 時，前往位在澳洲國立大學校區內之澳洲國家司法學院(National Judicial College Of Australia, NJCA)秘書處拜會，由主任(director)John McGinness 先生及副主任(deputy director)Anne O' Connell 女士接待及並行座談。</p>
<p>14:30-15:30</p>	<p>14 時 30 分前往澳洲國立大學(The Australian National University, ANU)亞太學院拜會 John Braithwaite 教授並進行座談。</p>
<p>101 年 5 月 10 日 (星期四) 9:30-11:30</p>	<p>上午 9 時 30 分，抵達澳洲首都特區(Australia Capital Territory, ACT)政府下之司法及社區安全理事會修復式司法組(Justice and Community Safety Directorate, Restorative Justice Unit, ACT Government )拜會，由主任 Dymphna Lowrey 女士接待並舉行座談。</p>
<p>12:00-14:00</p>	<p>中午由我國駐澳洲代表處秘書陳啟嘉先生以午宴款待，陪賓為澳洲國家司法學院秘書處主任 John McGinness 先生。下午 14 時 30 分參觀澳洲高等法院，並於 18 時 30 分，搭乘澳航國內航線 QF-806 號班機，於 19 時 20 分抵達雪梨國</p>

	際機場，轉搭 22 時 10 分之中華航空公司 CI-52 號班機返國。
101 年 5 月 11 日 (星期五) 5:40	抵達桃園國際機場。

---

## 貳、紐西蘭國情簡介

### 一、地理位置及簡史

紐西蘭是個島嶼國家，分南北 2 大島，位於南半球西南太平洋，於南緯 34 度至 47 度之間，地形呈南北向，南北長達 1,600 公里，南北兩島間之庫克海峽寬約 35 公里。北島有一座山脈縱貫，兩側是起伏平緩的農地，北島中部為火山高原，是個活火山與地熱區域。巨大的南阿爾卑斯山構成整個南島的背脊，擁有較多起伏的農地以及遼闊平坦的坎特伯里平原地形。全國人口約有 430 萬人，總面積 270,534 平方公里，是全世界人口最不稠密的國家之一。



紐西蘭是毛利人(MAORI)的故鄉，至西元 17 世紀為止，毛利人在這塊土地上過著自給自足，無外力干擾的生活，惟至西元 1769 年，當英國探險家詹姆斯·庫克船長 (Captain James Cook, 1728—1779) 率領船員及調查人員發現紐西蘭後，正式揭開英國人及其他歐洲人在這塊純淨大地的殖民歷史。而毛利人在此殖民時代，雖然曾嚐試尋求獨立建國，但終究不敵英國人的統治，於是在 1840 年毛利人與英國政府簽訂 TREATY OF WAITANGI(中譯外湯頓條約)，正式承認英國的合法統治地位<sup>1</sup>。

### 二、憲政體制

紐西蘭直至 1947 年方脫離英國成為獨立國家，仍是大英國協一員，憲政制度深受英國影響，是採君主立憲制混合英國式議會民

---

<sup>1</sup> 參見石中山著「當代紐西蘭憲政體制」，台灣國際研究季刊第 2 卷第 1 期，2006 年

---

主制，因此並無成文憲法。紐西蘭的政府體制是採行政、立法、司法三權分立的體制。「國家元首」是英國女王伊麗莎白二世，亦即紐西蘭女王，但不具實權，由其代理人即總督代表英國女王行使憲政上的功能，即簽署法案、任免官員、召集或解散國會、主持儀式及其他社群性功能等。總督的產生方式是由紐西蘭政府提議，英國女王任命，任期 5 年。

立法部門(即國會)主要由兩部分所組成，一是紐西蘭國家元首(英國女王)，另一為眾議院(The House of Representatives)。紐西蘭國家元首之所以構成國會的一部分，係因所有眾議院通過的法案必須經其簽署始具效力，而被視為是國會組成的一部分。至於眾議院係由 120 名議員所組成，採用單一選區兩票制與聯立制的選舉制度，各政黨依其政黨得票比例分配席位。國會議員任期為三年。其功能有(1)組成政府。在紐西蘭國會選舉中，若某一政黨贏得過半之國會席次，則該黨便可自組多數政府(Majority Government)。若選舉中，沒有任何一個政黨獲得選民多數之選票，則政黨亦可透過聯盟，將所得席次加總超過國會過半之席次後，組成多數聯合政府(Majority Coalition Government)。在特殊情況下，紐西蘭的憲政體制亦不排除少數政府(Minority Government)的成立。這種情況的發生，通常是因為沒有一個政黨可以囊括過半之國會席次，或者聯合政府之產生困難所致。(2)制定法律。在法案正式成為法律前，國會必須針對法案進行審議，且所有的法律條文皆需要通過國會的審議才可通過。國會除了訂定新法外，也對現行法規進行修正。(3)監督政府行政由於各行政部長首長必須向國會負責，因此，反對黨可透過質詢權的行使，要求政府當局答覆，

---

藉此了解政府施政的方針和內容，從而加以督促或糾正。(4) 分配政府機構預算與服務。透過賦稅項目的決定；國家預算以及其他特別撥款的討論與決定；質詢、辯論、批准政府經費支出；及審查公共項目等，代替人民政府預算與服務進行分配。

行政部門主要由行政會議、總理 (Prime Minister) 和內閣 (Cabinet) 三部分組成。行政會議是政府的最高正式機關，是政府向總督提供意見的機構。行政會議成員的產生方式係依總理的建議，由總督任命。成員必須身為國會議員，並同時擔任部長。其主要任務是藉著行政會議的舉行，讓部長有機會向總督報告重要政治及憲政議題和簽署行政命令 (orders in Council)，如法令與人事任命令。總理是內閣(政府)的首長，由總督任命。一般而言，總理之產生係依據國會大選選舉結果而定。其主要工作是擔任內閣主席，任命並領導內閣成員，訂定施政方針，為政策進行溝通與辯護等。至於內閣，是紐西蘭所有重要政府決策和立法提案的來源。內閣由各部會首長組成，他們多半是執政黨國會議員，也有部分來自國會其他政黨。由於成員身兼國會議員，必須同時盡到內閣部長的行政責任，還得善盡國會議員的立法職責。

司法部門是由二部分組成，一是法務部 (MINISTRY OF JUSTICE)，另一則是各級法院。法務部的任務除了打擊國內外犯罪外，還有一項重要的功能就是提供政府相關的法務立法諮詢。至於紐西蘭的法院系統初略可分為 4 級，由下至上第 1 級是地方法院，因管轄事務之不同而有多種不同的特別法庭，分別是：「刑事法庭」(Criminal Court)、「民事法庭」(Civil Court)、「青少年法庭」(Youth Court)、以及「家事法庭」(Family Court)。和地方法院

---

平行的其他法院還有「環境法院」(Environment Court)，以及其他管轄不同事務之特別法庭和司法機構 (tribunals 或 authorities)。如果不滿地方法院或與之平行之其他法院、司法機構之判決或裁處，當事人可上訴至第 2 級之「高等法院」。和高等法院同層級的其他法院則有「軍事法庭上訴法院」(Courts Martial Appeal Court)，以及「毛利原住民上訴法院」(Maori Appellate Court)。毛利原住民上訴法院的主要業務，是處理來自「毛利原住民土地法院」(Maori Land Court) 的上訴案件。關於高等法院、軍事法庭上訴法院、以及毛利原住民上訴法院的判決，當事人有權繼續上訴至第 3 級之「上訴法院」(Court of Appeal)。若當事人仍不滿上訴法院的判決，那麼其所剩最後之司法救濟管道便只有請求第 4 級「最高法院」(Supreme Court) 作出最終裁判一途。紐西蘭的法院系統中，還有一個特殊的司法單位叫做 Waitangi Tribunal(中譯外湯頤法庭)，專門負責調查自 1840 年『外湯頤條約』簽訂以來至 1992 年間，政府政策與行為中違反條約內容的申訴案件<sup>2</sup>。

### 三、現況概述

紐西蘭位在南半球，氣候溫和，冬季溫暖濕潤，夏季涼爽乾燥，屬於溫帶海洋性氣候。一月和二月是最溫暖的月份，秋季是從三月到五月，冬季是從七月到八月，春季從九月到十一月。

行政區域主要分為三個島區：北島 (North Island)、南島 (South Island) 及查塔姆群島 (Chatham Islands)。北島又分為以下 9 大地區：北部地區 (Northland)、奧克蘭 (Auckland)、懷

---

<sup>2</sup> 參前揭註 1

卡托 (Waikato)、豐盛灣 (Bay of Plenty)、吉斯伯恩 (Gisborne)、豪克斯灣 (Hawke's Bay)、塔拉納奇 (Taranaki)、馬納瓦圖-旺加努伊 (Manawatu-Wanganui) 及威靈頓 (Wellington)。南島則分為以下 7 大地區：塔斯曼 (Tasman)、尼爾遜 (Nelson)、馬爾堡 (Marlborough)、西岸 (West coast)、坎特伯雷 (canterbury)、奧塔哥地區 (Otago) 及南部地區 (southland)。紐西蘭首都為威靈頓 (wellington)。



由於深受殖民文化的影響，紐西蘭的民族融合不斷的在進行中，紐西蘭的移民主要可分為 3 大區塊，第一是歐洲裔移民，以英裔佔最多數，第二是亞洲裔移民，第三則是太平洋島民。至於毛利原住民則佔紐西蘭總人口數百分之十六左右。

紐西蘭經濟屬市場經濟，十分依賴國際貿易，製造業和高技術產業規模不大，主要產業為農牧業及旅遊業。農牧產品出口佔出口總量百分之五十，羊肉和奶製品出口居世界首位。過去幾十年的自由市場改革，取消了外商投資的許多障礙。世界銀行在 2005 年將紐西蘭列為世界上最方便營商的國家。

---

## 參、澳洲國情簡介

### 一、地理位置及簡史

澳大利亞聯邦通稱澳洲，是全球面積第 6 大的國家，位於南半球南緯 10 度 41 分至 43 度 39 分；東經 113 度 9 分至 153 度 39 分之間。四面環海，全境平均海拔 300 米，超過 1,000 米的山地面積低於 1%，低於 500 公尺者達 87%，乃地表起伏最和緩的大陸，海岸線較為平直，東北部沿海的大堡礁是全球最大的珊瑚礁。面積 7,686,850 平方公里、人口數約 2 千 3 百萬人。



澳洲最早的居民，也就是澳洲原住民，擁有世界上最長久延續的文化史，其起源可追溯到最後一次冰河時期。一般認為，第一批人類是在大約 7 萬年前，從印尼飄洋過海來到澳洲。從 16 世紀起，歐洲人開始探索澳洲。1770 年，詹姆斯庫克船長沿著整個東海岸航行，不久他宣佈澳洲大陸屬英國所有，並將其命名為新南威爾士。澳洲一度是英國流放囚犯的地方，後來開始吸引自由拓荒者前來。至 1850 年代發現金礦後，大量移民湧入，隨著新的拓荒者佔用土地從事耕作或採礦，原住民無情地被驅趕出他們的部落土地。1901 年 1 月 1 日，澳洲 6 個殖民區改制為州，組成澳大利亞聯邦，成為大英帝國的聯邦或自治領。1931 年，澳洲取得內政外交的獨立自主權。1986 年，英女王伊麗莎白二世前往澳洲簽署《與澳大利亞關係法》，規定澳洲最高法院擁有終審權，英國法律不再對澳洲有效，澳洲正式脫離英國而成為獨立國家。但仍為大英國協的成員。憲政體制仍被歸類為君

---

主立憲制國家。

## 二、憲政體制

澳洲的憲政政體是君主立憲、內閣制及聯邦體制的綜合體，奉英國女王為國家元首。其代表人總督係由總理推薦並經女王任命，有權批准國會通過的法律並解散國會。聯邦政府組織採三權分立，在行政權部分，由總理及其任命之內閣閣員組成行政會議（Executive Council），決定國家重要政策，內閣總理由眾議院多數黨領袖擔任。內閣成員亦是國會議員。立法權屬聯邦議會，分眾議院（The House of Representatives）和參議院（The Senate），參議員共 76 席，代表各州及 2 個特區，任期 6 年；眾議院議員共 150 名，任期 3 年。依據澳洲憲法，聯邦議會享有澳洲各州（含領地）與國際間有關貿易、稅捐、貨幣、外交、金融、婚姻、移民等方面的立法權。至於司法權部分，澳洲的法院分為聯邦法院和州法院兩套系統。聯邦高等法院是澳大利亞法律體系中的最高法院，設在首都坎培拉。屬於聯邦層級的法院還有家事法院、工業關係法院等專業法院。聯邦高等法院受理各州的上訴案件和涉及聯邦事務的一審案件。澳洲認為公民的離婚案件屬於聯邦事務，由聯邦級法院審理。另外，州與州之間的工業關係案件等也都由聯邦法院審理。州級法院分為：州最高法院、地區法院、地方法院，此外還有兒童法庭、賠償法庭、租賃關係法庭等專業法庭。聯邦法院與州法院之間沒有領導和隸屬關係。各級法院的管轄權都由憲法明確規定，即使是州級法院內部的管轄權也由一個專門的法院議案（章程）明確規定<sup>3</sup>。

---

<sup>3</sup> 參見「澳洲新快網」2009 年 6 月 14 日刊登之「澳洲司法體系介紹」  
<http://www.xkb.com.au/html/immi/shenghuozixun/2009/0614/6270.html>，最後瀏覽

澳洲為聯邦制國家，國家權力在聯邦與洲之間是垂直劃分的關係，每個州各有州憲法，但不得與聯邦憲法抵觸。各州亦有州議會，可制定與州有關的司法、警政、教育、衛生、公共工程及稅捐等方面的法律，權力看似很大，但依據澳洲憲法，若各州立法與聯邦立法不一致時，聯邦法律有效而相對應的州法律無效<sup>4</sup>。

### 三、現況概述

澳洲氣候，在西部高原和內陸沙漠屬熱帶沙漠氣候，乾旱少雨，人口稀少，西南部屬溫帶草原氣候，呈夏乾冬雨的類型。北部屬熱帶草原氣候，少部份屬亞熱帶；東部新英格蘭山地以南屬溫帶闊葉林氣候，溫和濕潤，為澳洲的精華區。

澳洲四季分明，春季由 9 至 11 月，夏季由 12 至 2 月，秋季由 3 至 5 月，冬季則由 6 至 8 月。在行政區域方面，澳洲由 6 個州及 2 個自治區領地組成，分別為新南威爾斯(New South Wales)、維多利亞 Victoria、昆士蘭



(Queensland)，、南澳洲(South Australia)、西澳洲(Western Australia)和塔斯馬尼亞州(Tasmania)，以及澳洲首都坎培拉所在的澳洲首都特區(Australia Capital Territory 包括賈維斯海灣區)和北領地(Northern Territory)。

日期 101 年 6 月 18 日

<sup>4</sup> 參見李美君著，「澳大利亞司法制度(一)」，2009 年 9 月 4 日刊登於新浪網 [http://blog.sina.com.cn/s/blog\\_5ee28eca0100emi6.html](http://blog.sina.com.cn/s/blog_5ee28eca0100emi6.html)，最後瀏覽日期 101 年 6 月 18 日

---

澳洲是外來移民人口比例佔絕大多數的國家，其外來移民數量居世界第一。目前多數澳洲人的祖先是 19、20 世紀的英國移民。澳洲最早的原住民如今不及總人口的 1%。澳洲人平均擁有國土面積乃世界最廣闊的國家之一，在每年世界最佳居住城市評選中，澳洲名列前茅的城市數目在全球國家之先，是世界高度發達國家之一。澳洲人平均國民生產總值排名世界第 6，是 2,000 萬人口以上的國家中最高的。經濟方面，澳洲饒富天然資源，農產豐富，礦產油氣不虞匱乏，生化、製藥與資訊等產業實力雄厚，極具經濟發展實力，主要重點是高效率的能源和畜牧業。另外在旅遊觀光方面，澳洲有多樣的自然景觀，包括熱帶雨林、沙漠、海濱及世界聞名的大堡礁，澳洲和美國是並列擁有世界自然遺產最多的國家。

---

## 肆、紐西蘭推動修復式司法概述

### 一、前言

「修復式司法(Restorative Justice，下稱RJ)」一詞，並沒有放諸四海皆準的統一定義，一般來說，它是一種「儘可能將與犯罪有關之人(例如加害人、被害人、雙方親友、社區代表等)自願性地集合起來，透過一種聚會形態(通常稱為修復式司法會議)，讓加害人、被害人可以講述自己的故事，發抒自己的情緒，最後在加害人願意認錯並承擔責任的前提下，消弭被害者的傷害，滿足被害人的需求及解決社會衝突」的過程。這樣的過程，並不強調固定的步驟，相反地，保持彈性與靈活才是重點，只要是在修復式司法的核心價值下(Core restorative justice values)<sup>5</sup>運行，就可以視為是在進行修復式司法程序。修復式司法的提倡者認為，修復式司法過程在任何階段均可運用，但一般而言，運用最多的還是在判決前進行修復式司法會議(pre-sentencing conferencing)。

### 二、背景因素

紐西蘭推行修復式司法有其刑事政策面、文化面及法制面上的背景因素。在刑事政策方面，受到居高不下的監禁人口及監禁率的影響，迫切地想要尋求解決改革之道。文化方面，則是受到原住民毛利人傳統解決紛爭方式的啟發(毛利人是以家庭團體會議 Family Group Conferencing(FGC)方式來解決族人間的紛爭，藉以消弭對立雙方及其家族，甚至全部落，因衝突所帶來的傷痕)。至

---

<sup>5</sup>依據紐西蘭司法部於2004年推行之「修復式司法最佳實踐原則(RESTORATIVE JUSTICE IN NEW ZEALAND-BEST PRACTICE)」，RJ核心價值計有 participation(參與); respect(尊重); honesty(誠實); humility(謙遜); interconnectedness 相互連繫); accountability(責任); empowerment(活力); and hope(希望)。

---

於在法制面上，紐西蘭在 1989 年所施行的兒童、少年及其家庭法 (Children Young Persons and Their Families Act) 中，採行上述家庭團體會議模式<sup>6</sup>的立法，用以解決少年事件，經獲致正面評價後，擴大及於成年犯，並推動試行方案。

### 三、實踐情形

承前所述，紐西蘭式的修復式司法最早出現在處理兒童及少年犯的問題上，並 1989 年完成法制化。其影響擴而及之成年犯，於 1995 至 1999 年間，共有數個轉向試行方案在 Hoani Waititi Marae、Timaru、Rotorua、Foxton、Rangiora 等地推行。2001 年，紐西蘭司法部主導推動「法院轉介之修復式司法試行方案」(court-referred restorative justice pilot schemes)，此一方案主要適用於法院量刑前(Pre-sentencing)，在 Auckland City, Waitakere, Hamilton, Dunedin 四地方法院進行加害人與被害人對談的實務操作。後於 2002 年，修正被害人權利法(The Victims Rights act)、審判法(The Sentencing Act)及假釋法(The Parole Act)，2004 年修正矯正法(The Corrections Act)，使修復式司法程序，在紐西蘭的刑事司法制度中取得明確的法律地位<sup>7</sup>，並幾乎

---

<sup>6</sup> 該法案第 20 條至 38 條，針對家庭團體會議之召開前準備工作、召集程序、參加人、功能等均有詳細之規範，查詢法案全文可至 <http://www.legislation.govt.nz/act/public/1989/0024/latest/DLM147088.htm> 1 網頁，最後瀏覽日期為 101 年 6 月 18 日

<sup>7</sup> 以下節錄 4 項法律中有關修復式司法之條文：

#### Victims' Rights Act 2002(被害人權利法)

##### **第 9 條(9 Meetings to resolve issues relating to offence)**

- (1) If a suitable person is available to arrange and facilitate a meeting between a victim and an offender to resolve issues relating to the offence,

---

---

a judicial officer, lawyer for an offender, member of court staff, probation officer, or prosecutor should, if he or she is satisfied of the matters stated in subsection (2), encourage the holding of a meeting of that kind.

(2) The matters are—

- (a) that the victim and offender agree to the holding of a meeting of that kind; and
- (b) that the resources required for a meeting of that kind to be arranged, facilitated, and held, are available; and
- (c) that the holding of a meeting of that kind is otherwise practicable, and is in all the circumstances appropriate.

#### Sentencing Act 2002(審判法)

##### **第 7 條(7 Purposes of sentencing or otherwise dealing with offenders)**

(1) The purposes for which a court may sentence or otherwise deal with an offender are—

- (a) to hold the offender accountable for harm done to the victim and the community by the offending; or
- (b) to promote in the offender a sense of responsibility for, and an acknowledgment of, that harm; or
- (c) to provide for the interests of the victim of the offence; or
- (d) to provide reparation for harm done by the offending; or
- (e) to denounce the conduct in which the offender was involved; or
- (f) to deter the offender or other persons from committing the same or a similar offence; or
- (g) to protect the community from the offender; or
- (h) to assist in the offender's rehabilitation and reintegration; or
- (i) a combination of 2 or more of the purposes in paragraphs (a) to (h).

(2) To avoid doubt, nothing about the order in which the purposes appear in this section implies that any purpose referred to must be given greater weight than any other purpose referred to.

##### **第 8 條(8 Principles of sentencing or otherwise dealing with offenders)**

In sentencing or otherwise dealing with an offender the court—

.....

- (j) must take into account any outcomes of restorative justice processes that have occurred, or that the court is satisfied are likely to occur, in

---

---

relation to the particular case (including, without limitation, anything referred to in section 10).

**第 9 條(9 Aggravating and mitigating factors)**

.....

(2) In sentencing or otherwise dealing with an offender the court must take into account the following mitigating factors to the extent that they are applicable in the case:

- (a) the age of the offender:
- (b) whether and when the offender pleaded guilty:
- (c) the conduct of the victim:
- (d) that there was a limited involvement in the offence on the offender's part:
- (e) that the offender has, or had at the time the offence was committed, diminished intellectual capacity or understanding:
- (f) any remorse shown by the offender, or anything as described in section 10:
- (g) any evidence of the offender's previous good character.

...

**第 10 條(10 Court must take into account offer, agreement, response, or measure to make amends)**

(1) In sentencing or otherwise dealing with an offender the court must take into account—

- (a) any offer of amends, whether financial or by means of the performance of any work or service, made by or on behalf of the offender to the victim:
- (b) any agreement between the offender and the victim as to how the offender may remedy the wrong, loss, or damage caused by the offender or ensure that the offending will not continue or recur:
- (c) the response of the offender or the offender's family, whanau, or family group to the offending:
- (d) any measures taken or proposed to be taken by the offender or the family, whanau, or family group of the offender to—
  - (i) make compensation to any victim of the offending or family, whanau, or family group of the victim; or
  - (ii) apologise to any victim of the offending or family, whanau, or family group of the victim; or

- 
- 
- (iii) otherwise make good the harm that has occurred:
- (e) any remedial action taken or proposed to be taken by the offender in relation to the circumstances of the offending.
- .....

#### Parole Act 2002(假释法)

##### 第 7 條(7 Guiding principles)

.....

- (2) Other principles that must guide the Board's decisions are—

.....

- (d) that the rights of victims (as defined in section 4 of the Victims' Rights Act 2002) are upheld, and submissions by victims (as so defined) and any restorative justice outcomes are given due weight.

.....

##### 第 33 條(33 Residential restrictions)

.....

- (5) In any case where the conditions are of the kind specified in subsection (2)(c)(ii), the offender may, with the approval of a probation officer, leave the residence to which the residential restrictions relate—

.....

- (d) to attend a restorative justice conference or other process relating to the offender's offending; or
- (e) to carry out any undertaking arising from any restorative justice process; or.....

##### 第 43 條(43 Start of process)

- (1) When an offender is due to be released at his or her statutory release date, or to be considered by the Board for parole, the Department of Corrections must provide the Board with—

.....

- (b) if the offender has engaged in any restorative justice processes, any reports arising from those processes; and.....

#### Corrections Act 2004(矯正法)

##### 第 6 條(6 Principles guiding corrections system)

---

在個案刑事程序進行中的每個階段均可適用。至目前為止，紐西蘭司法部在全國各地共資助 23 個以社區為基礎的修復式司法團體(provider)，並在 31 個地區法院提供量刑前修復式司法程序。另外，尚有數個不受司法部資助之民間團體亦在其他地區法院投入修復式司法工作。

#### 四、實務狀況

紐西蘭式修復式司法最獨特處，就是運作修復式會議。在兒童及少年部分，稱之為「家庭團體會議(又稱家庭協商會議)」<sup>1</sup>。其目的在提供兒童及少年保護，使其等能夠真正理解族群、文化的意涵，知悉並承擔自己的責任，並強化家庭、社區及族群功能，修復因犯罪所造成的裂痕。在成年犯部分，進行修復式會議強調的是被害人權利的重視及法院量刑必須考量修復的過程或修復計劃。兩者運作方式簡述如下：

1、在少年犯部分，紐西蘭在 1989 年的兒童、少年及其家庭法(Children Young Persons and Their Families Act)中，將家庭團體會議法制化，開啟家庭團體會議程序是先由司法部派出一位個案協調人(coordinator)詢問加害少年、被害人、雙方親友等相關人員有無參加會議的意願，而承辦警察或其他有助於會議目的達成之人(例如律師、社工人員、通譯或具有醫療、教育等專業背景者)，

---

(1) The principles that guide the operation of the corrections system are that—

.....

(d) offenders must, where appropriate and so far as is reasonable and practicable in the circumstances, be provided with access to any process designed to promote restorative justice between offenders and victims:

.....

---

亦可共同參與會議。條件充足後即召開，會議一開始通常先由承辦警察說明案情，若加害少年拒絕承認警方的說法，會議即會終結不再進行。反之，若少年承認犯行(guilty plea)，就會進入共同討論對話的階段，由加害少年說明案發歷程，被害人說明受害經驗及感受，雙方親友可提出問題，之後討論如何修復傷害(例如賠償被害人、社區勞動服務或其他處遇)，而家庭團體會議的協議可以取代判決，也可以做為法官判決的參考。

2、成年犯部分，紐西蘭司法部綜合多方意見，在 2004 年 3 月制訂「RESTORATIVE JUSTICE IN NEW ZEALAND -BEST PRACTICE」<sup>8</sup>，並在 2009 年 6 月公布量刑前之修復式司法會議流程(Pre-Sentence Restorative Justice Process，見附件 1)。程序開始前亦是以成年

---

<sup>8</sup>見前註 5，此最佳實踐原則揭櫫操作修復式司法程序應遵守之 8 項原則：

1. Restorative justice processes are underpinned by voluntariness(自願性原則)
2. Full participation of the victim and offender should be encouraged(充份自主參與原則)
3. Effective participation requires that participants, particularly the victim and offender, are well informed(有效參與原則)
4. Restorative justice processes must hold the offender accountable(犯罪者承擔責任原則)
5. Flexibility and responsiveness are inherent characteristics of restorative justice processes(彈性運用及同理心原則)
6. Emotional and physical safety of participants is an over-riding concern(安全至上原則)
7. Restorative justice providers (and Facilitators) must ensure the delivery of an effective process(專業與效率原則)
8. Restorative justice processes should only be undertaken in appropriate cases(適當選案原則)

---

犯認罪<sup>9</sup>為前提，法官可決定暫休庭，將案件轉介予 RJ Provider 及 VA(Victim Advisor)蒐集個案資訊，確認加害人、被害人有無意願參與，並評估個案是否適合進行修復式司法會議，若 RJ Provider 認為個案適合進行，就會將個案交給 Facilitator(中譯對話促進者)召開會議。會議若達成結論(OUTCOME)，必須提交報告送交法官做為量刑的參考。

值得一提者，由於修復式司法會議成功與否，對話促進者

---

<sup>9</sup> 在紐西蘭，並非所有犯罪均適用RJ程序，在前揭最佳實踐原則中即提到，有關家暴犯罪、性犯罪及涉及兒童少年之犯罪必須謹慎考慮是否適合進行RJ程序。而上述由紐西蘭司法部在2001年主導推動之「法院轉介之修復式司法試行方案」(court-referred restorative justice pilot schemes)中，亦未明確提及選案之標準，但其後在2005年由司法部所發表「Evaluation of the Court-Referred Restorative Justice Pilot:Technical Report」之評估報告中，則有「Violent offences、Burglary、Other dishonesty、Property damage、Careless driving causing death or injury、Other」之分類。另本次考察在與Helen Bowen、Jim Boyack等律師進行座談時，其等明確表示目前在紐西蘭有關性犯罪及家暴案件並不進行RJ程序。此外，二位律師在2003年所合著之「ADULT RESTORATIVE JUSTICE IN NEW ZEALAND/AOTEAROA」一文中曾表示：法院轉介之修復式司法試行方案以較嚴重之犯罪案件為目標。財產犯罪至少刑期為2年以上有期徒刑者，其他案件則是刑期為2年以上7年以下有期徒刑者，但不包括家暴案件。例外地，最高可處14年有期從刑之加重搶劫罪則包括在內。迄今而言，主要以：竊盜、偷竊、詐欺、傷害、重傷害、槍械案件、危險駕駛及過失駕駛致死或致傷等案件為大宗。(原文:The pilot targets serious crime. This is because the pilot administrators believe that where the damage caused by the offence has been the greatest, restorative justice may have the greatest impact. Offences that are being referred include property offences where the maximum penalty is at least two years imprisonment, and other offences where the maximum penalty is no less than two years and no more than seven years. There are exceptions to this, however, including the offence of aggravated robbery, where the maximum penalty is 14 years. Domestic violence cases are excluded. To date, the offences of burglary, theft, fraud, assault and aggravated assault, firearms offences and dangerous or careless driving causing death or injury have predominated. 原文全文網址：[http://www.iirp.edu/article\\_detail.php?article\\_id=NDIy](http://www.iirp.edu/article_detail.php?article_id=NDIy)

---

Facilitator 所扮演的角色極其重要，故對於其等的選擇與訓練不可等閒視之，目前紐西蘭的對話促進者主要是從司法部約聘的社區團體中挑選，必需於受訓後方可擔任此項工作。此次考察，紐西蘭修復式司法基金會(Restorative Justice Trust)之 Helen bowen 律師提供一份該基金會於 2010 年 3 月份，在紐西蘭 Wairarapa 地區所舉辦之對話促進者研討會講義<sup>10</sup>，由內容可知，訓練對話促進者的目標是要他們知道自己的定位、熟悉會談前的準備工作、培養他們的個案評估能力、溝通技巧、理解修復式司法程序的核心價值、知道加害人、被害人在此程序中的角色及定位是什麼、發展與所處社區的關係和網絡、發展理解少數民族(例如毛利人)議題的能力，和主持會議的能力。

---

<sup>10</sup>此份講義之標題為「A Restorative justice facilitator workshop Wairarapa March 5, 6 2010」，見附件 2

---

## 伍、澳洲推動修復式司法概述

### 一、背景因素

澳洲推動修復式司法則有其內、外在的背景因素，內在因素有①對少年犯轉向制度的反省。澳洲司法自 19 世紀末期開始關注少年犯的處理方式，並設立兒童法庭。惟操作結果，招致許多批評，認為未能有效幫助少年回歸社會並帶來標籤化的不良後果，於是各種進入法院前的「轉向制度」應運而生，且在運作上，逐漸發生質變，即由「懲罰」調整到「修復」的方向。②是對原住民犯罪人口比率過高及不信任司法體系的回應。希望藉由設立瞭解並具有原住民文化特色的法庭，來降低原住民的監禁率，並提高原住民對於司法系統的參與度與信任度。最著名的例子，就是位在南澳首府阿得雷得（Adelaide）的納加法庭（Nunga Court），它是全澳第一個在操作上富含修復式正義的原住民審判法庭<sup>11</sup>。至於外在因素則是受到上述紐西蘭在處理少年犯問題上，採行含修復式正義精神的立法啟發。此外，刑事司法體系中相關人士的支持與民間團體的力量，亦是重要的推動因素。

### 二、實踐情形

澳洲為一聯邦國家，各州對於採行修復式司法的腳步並不一致，最初的發展是在新南威爾斯州（New South Wales），推行兒童及少年司法的修復式司法方案（稱為 wagga wagga 方案）<sup>12</sup>，後來各州及地區紛紛仿效並將少年修復式會議法制化。至於一般成年犯部

---

<sup>11</sup> 參見「修復式正義理念運用於刑事司法制度之探討期末報告」第 94 至 96 頁，法務部。

<sup>12</sup> 該方案於 1991 年在澳洲新南威爾斯的 Wagga Wagga 市內推動，主要是受到紐西蘭家庭團體會議的影響。此方案的協調者是由警察擔任，並由警察主導會議進行及監督加害人是否履行承諾。

---

分，僅新南威爾斯州及澳洲首都特區(Australia Capital Territory，ACT)完成一般成年犯適用修復式司法程序的法制化(ACT 政府立法介紹詳後述)。值得一提的是，澳洲在原住民部分推動修復式司法著力甚深，除前述於 1999 年在南澳州成立的納加法庭外，各州自 2002 年開始相繼執行原住民審判圈法庭<sup>13</sup>(塔斯馬尼亞州除外)

### 三、澳洲 ACT 政府推動修復式司法立法介紹

ACT 政府於 2011 年 7 月 1 日修正施行刑法修復式司法章「Crimes(Restorative Justice)Act 2004」，對於修復式司法制度有甚為詳盡之立法，頗值借鏡，茲簡要介紹如下：

- 1、該部法案共分 10 部分，計有前言(Preliminary)、基本原則(Underlying principle)、關鍵概念(key concepts)、法案適用(Application of Act)、修復式司法之適格性(Eligibility for restorative justice)、修復式司法之轉介(Referral for restorative justice)、修復式司法之合適性(Suitability for restorative justice)、修復式司法會議及協議(Restorative justice conferences and agreements)、實施(Administration)、其他(Miscellaneous)，共 74 條<sup>14</sup>。

- 2、該法之目標為①強化犯罪被害人之權利，使他們得以藉由修

---

<sup>13</sup> 審判圈(Sentencing Circles)法庭，是個與修復式會議有異曲同工之處的產物，它源自於印地安人傳統上解決紛爭的方式，自部落概念演化而來，認為犯罪與社區有著密切關係，必須結合社區的力量來處理犯罪，其參與者包括了被害人、社區人士、司法人員、律師、警察、社工人員等。由多元人士圍坐成一圓圈，彼此共同討論決定結論，形成司法判決。

<sup>14</sup> 法案全文可至下列網址查詢  
[http://corrigan.austlii.edu.au/au/legis/act/consol\\_act/cja2004303/](http://corrigan.austlii.edu.au/au/legis/act/consol_act/cja2004303/)最後瀏覽日期為 101 年 6 月 8 日

---

復式司法程序來決定如何修補犯罪所帶來之傷害。②建立一個可以提供被害人、加害人、支持者安全及受到管理之修復式司法系統。③確立被害人之權益，在運作修復式司法程序中，具有較優先之地位。④RJ 程序在刑事司法程序中的每個階段均可實踐，但不得取代或改變現有的刑事司法程序。⑤使參與刑事司法系統之每個機構均可轉介犯罪進入 RJ 程序。(見第 6 條)<sup>15</sup>

3、該法適用之加害人範圍，除少年犯(young offender, 指行為時為 10 歲以上未滿 18 歲者)外，亦包括成年犯(adult offender, 指行為時 18 歲以上，見第 12 條)。

4、該法適用之被害人範圍，包括兒童及少年(child victim, 指 18 歲以下)、及其法定代理人和 18 歲以上之被害人(見第 12 條)

---

<sup>15</sup> 第 6 條(6 Objects of Act)

The objects of this Act are as follows:

- (a) to enhance the rights of victims of offences by providing restorative justice as a way of empowering victims to make decisions about how to repair the harm done by offences;
- (b) to set up a system of restorative justice that brings together victims, offenders and their personal supporters in a carefully managed, safe environment;
- (c) to ensure that the interests of victims of offences are given high priority in the administration of restorative justice under this Act;
- (d) to enable access to restorative justice at every stage of the criminal justice process without substituting for the criminal justice system or changing the normal process of criminal justice;
- (e) to enable agencies that have a role in the criminal justice system to refer offences for restorative justice.

*Note* **Offence** includes an offence that is alleged to have been committed, but has not yet been tried in court, or proven (see s 12).

---

5、該法案適用之犯罪，在少年犯部分，除輕微犯罪(含輕微性犯罪 less serious sexual offence，其定義規範在 ACT 政府 1900 年犯罪法案 Crimes Act 1900 第 59 條至第 63 條)外，重罪則是在被起訴並且認罪或被認定有罪時，亦可適用。成年犯部分亦同<sup>16</sup>

---

<sup>16</sup> 所謂重罪 serious offence，依該法案第 12 條規定，是指涉及財產犯罪，刑期在 14 年以上者，或涉及其他犯罪，刑期在 10 年以上者。  
第12條(12 Definitions—offences and offenders)

In this Act:

**adult offender**, in relation to an offence, means an offender who was an adult when the offence was committed.

*Note* An **adult** is an individual who is at least 18 years old (see Legislation Act, dict, pt 1, def **adult**).

**commission**, of an offence that is alleged to have been committed, includes the alleged commission of the offence.

*Note* **Offence** is defined to include an offence that is alleged to have been committed. **Offender** is defined in similar terms. See definitions of **offence** and **offender** in this section.

**domestic violence offence**—an offence is a **domestic violence offence** if the conduct making up the offence is domestic violence under the Domestic Violence and Protection Orders Act 2008.

**less serious offence** means an offence other than a serious offence.

**offence**—

- (a) means an offence against a territory law; and
- (b) includes an offence against a territory law that is alleged to have been committed by a person, unless—
  - (i) a court has acquitted the person of the offence; or
  - (ii) a court has dismissed a proceeding against the person for the offence without finding the person guilty.

**offender**—

- (a) means a person who has been convicted or found guilty of an offence against a territory law; and
- (b) includes a person who is alleged to have committed an offence against a territory law, unless—
  - (i) a court has acquitted the person of the offence; or

- 
- 6、在家庭暴力犯罪(domestic violence offence)方面，少年犯可適用(不論起訴與否)，成年犯則必需是在被起訴並且認罪或被認定有罪時，方可適用(第 16 條)。
- 7、由於該法訂有分段實施之規定，目前僅少年所犯輕微犯罪適用 RJ 程序，其餘如①少年犯輕微性犯罪(less serious sexual offence)、②少年犯重罪、③少年犯家暴案件及④成年犯之案件(不論輕微、家暴或重罪)，均必須在司法部長以書面公布第 2 階段(phase 2 application day)開始後方能適用 RJ 程序(見第 14、15、16 條)
- 8、RJ 程序，必需在充足下列條件後，才能開始：①案件要有適格的主體(指被害人、加害人、法定代理人)。②案件必需經由轉介單位(referring entity)的轉介。③案件需經轉介單位的負責人(director-general)評估適合進行 RJ 程序<sup>17</sup>。(第 8 條)，
- 9、無論是參與或進行 RJ 程序，均必需出於自願(見第 9 條)。
- 10、該法案之適格加害人是指符合法案第 4 部分(即第 14 至 16 條)，所述加害人及犯罪之定義，且對於犯罪表示願意承擔

---

(ii) a court has dismissed a proceeding against the person for the offence without finding the person guilty.

**serious offence** means an offence punishable by imprisonment for a term longer than—

- (a) if the offence relates to money or other property—14 years; or  
(b) in any other case—10 years.

**young offender**, in relation to an offence, means an offender who was less than 18 years old, but at least 10 years old, when the offence was committed or allegedly committed.

<sup>17</sup>合適與否的判斷規範在第 7 部分，第 29 條至第 36 條，且為方便評估，ACT 政府制訂評估表格供相關人員使用，詳附件 3

---

責任<sup>18</sup>、以及犯罪或被指稱犯罪時已滿 10 歲，並且有同意進行 RJ 程序能力之人。（見第 19 條）

- 11、案件在轉介之前，轉介單位必需充份向加害人說明①RJ 程序的目的、本質②可以參加的人員③協議的性質④可以尋求諮詢⑤必需出於自願⑥加害人在 RJ 程序進行中所為之承擔責任之表示，不會阻止其在刑事司法程序中主張無罪抗辯⑦法院在判決前可能會考量加害人在 RJ 程序中表示承擔責任，但不會強制要求法官必需從輕量刑⑧法院不能因為加害人選擇不參加或不續行 RJ 程序而加諸不利益等資訊（第 25 條）<sup>19</sup>。

---

<sup>18</sup> 據澳洲 ACT 政府司法及社區安全理事會修復式司法組 Dymphna Lowrey 主任於座談時表示，所謂「願意承擔責任」，除認罪外，「部分承認 partial admission」的情形，亦包括在內，可以適用 RJ 程序，其舉例，設某乙行竊時，某甲在路口把風，若某甲僅承認案發時在路口把風，並未下手行竊，則某甲還是可以適用 RJ 程序。此與在紐西蘭適用 RJ 程序，必須以加害人認罪為前提有所不同。

<sup>19</sup> 第25條(25 Explanation of restorative justice)

Before an offence is referred for restorative justice, the referring entity must ensure that reasonable steps are taken to explain to the eligible offender (in language that the offender can readily understand)—

- (a) the purpose of restorative justice generally and for the particular offence; and
- (b) the nature of restorative justice, including the following:
  - (i) the nature of a restorative justice conference;
  - (ii) who may take part in a restorative justice conference;
  - (iii) the nature of a restorative justice agreement; and
- (c) that the offender may seek independent legal advice about taking part in restorative justice; and
- (d) that no-one is under an obligation to take part, or continue to take part, in restorative justice after it has started; and
- (e) if the offender has not entered a plea for the offence—that the acceptance of responsibility for the commission of the offence by the offender for the purpose of restorative justice does not prevent the offender from pleading not guilty to the offence; and
- (f) if a sentence-related order has not been made for the offender—that, if the

- 
- 12、在判斷案件是否適合進行 RJ 程序，必需考量①有關此類案件的政府政策②犯罪的本質及其所造成的傷害③案件目前進行的刑事司法程序，是否適合引進④任何潛在的不對等權力關係⑤參與 RJ 程序者的身體及心理上安全(第 33 條)
- 13、當案件決定進行 RJ 程序後，負責人必須擇定 1 位會議召集人(convenor)來負責召開 RJ 會議<sup>20</sup>。(第 39 條)
- 14、會議召集人必須具備下列條件①依據法令具有一定之資格及經驗②若會議召集人非律師，則此人必須接受或有能力接受足夠的法律訓練，得以對 RJ 參與者提出建議，或是實行此法案授與召集人的功能(第 40 條)。
- 15、舉凡諮詢專家、邀請有關人士參加會議、決定會面及溝通方式、決定會議召開的時間及地點、確認爭點、促進會議進行及協議達成等行為，只要是必須且適合者，會議召集人均可從事(第 41 條)。
- 16、會議召集人(convenor)在會議開始前必須向與會者善盡告知義務(第 45 條)<sup>21</sup>

---

offender is found guilty of the offence, a court, in sentencing the offender—

(i) may consider whether the offender accepts responsibility for the offence to take part in restorative justice, but is not required to reduce the severity of any sentence as a result; and

(ii) must not consider whether the offender has chosen not to take part, or not to continue to take part, in restorative justice.

<sup>20</sup> 為使 convenor 能夠掌握會議進行中的詢問重點，ACT 政府制定有表格供 convenor 使用，見附件 4

<sup>21</sup> ACT 政府對於是否善盡告知義務，設計表格供相關人員於閱覽後簽名避免爭議，見附件 5。

第 45 條 (45 Explanation for participants)

Before a restorative justice conference begins, the convenor must ensure that reasonable steps are taken to explain to each person who is to take part in the

- 
- 17、會議可以使用面對面、交換書信或電子郵件、交換預先錄製之影帶、電話或視訊等方式進行(非單一選項，可相互結合，第 46 條)。
- 18、會議在一定條件下可以在開始前停止運作或開始後中止進行(第 47 條)。
- 19、會議召集人在會議結束後必須向轉介機構提出報告，詳載會議的細節及是否產生協議(第 48 條)。
- 20、RJ 程序的主要目標是要修補犯罪所引致的傷害，故 RJ 協議中所定之方法必須適於達成此目標，方法可以是①道歉②說

---

conference (in language that each can readily understand)—

- (a) the objects of this Act in relation to the conference, including the purpose of restorative justice generally and for the particular offence; and
- (b) the nature of restorative justice, including the following:
  - (i) the nature of a restorative justice conference;
  - (ii) who may take part in a restorative justice conference;
  - (iii) the nature of a restorative justice agreement; and
- (c) that the person may, before and after the conference is called, seek independent legal advice about taking part in a restorative justice conference and about the effect of any restorative justice agreement reached at a conference; and
- (d) that no-one is under an obligation to take part in the conference, or to continue to take part in conference after it has started; and
- (e) if the offender has not entered a plea for the offence—that the acceptance of responsibility for the commission of the offence by the offender for the purpose of restorative justice does not prevent the offender from pleading not guilty to the offence and
- (f) if a sentence-related order has not been made for the offender—that, if the offender is found guilty of the offence, a court, in sentencing the offender—
  - (i) may consider whether the offender accepts responsibility for the offence to take part in restorative justice, but is not required to reduce the severity of any sentence as a result; and
  - (ii) must not consider whether the offender has chosen not to take part, or not to continue to take part, in restorative justice.

---

明犯行③具實現可能性之工作計劃，目的是為了被害人或其父母之利益④具實現可能性的工作計劃，目的是為了社區利益⑤針對被害人或其父母之金錢賠償。⑥其他經 RJ 參與者同意有助於修補因犯罪所造成之傷害的方法。以上方法可選擇其一或結合多種方法，但不得違背法律、不得要求拘留加害人或其他人，亦不得羞辱加害人或其他人及造成渠等痛苦。且執行上揭方式有期間限制，即自協議達成日或另訂之執行日起，不得超過 6 個月。(第 51 條)<sup>22</sup>。

---

<sup>22</sup> 第51條(51 Nature of agreement)

- (1) A restorative justice agreement in relation to an offence must include measures intended to repair the harm caused by the offence.
- (2) The agreement may include 1 or more of the following:
  - (a) an apology by the offender to any victim or parent of a victim;
  - (b) a plan to address the offending behaviour of the offender;
  - (c) a work plan to be carried out by the offender for the benefit of any victim or parent of a victim;
  - (d) a work plan to be carried out by the offender for the benefit of the community or a part of the community;
  - (e) financial reparation to be paid by the offender to any victim or parent of a victim;
  - (f) anything else that each required participant and substitute participant in the conference agree would help repair the harm caused by the offence.
- (3) The agreement must be fair and, in the opinion of each required participant and substitute participant in the conference and the convenor, reasonably able to be carried out by the offender.
- (4) The agreement must not require the offender or anyone else to do anything that would—
  - (a) be unlawful; or
  - (b) require the detention of the offender (whether full-time or for any period); or
  - (c) be degrading or humiliating to the offender or anyone else; or
  - (d) cause distress to the offender or anyone else.
- (5) The agreement must be for a term of no longer than 6 months, starting on—
  - (a) the date the agreement is made; or

---

21、協議達成後，必須形諸書面並且由參與者簽署<sup>23</sup>，且在簽署前，會議召集人必須善盡告知義務，說明①協議的性質、目的和效果②無須違背己意簽署③可以在簽署前尋求法律諮詢以瞭解協議的效果④在尚未進入答辯程序之前，加害人在協議中有關承擔責任的任何陳述，不會阻止其在刑事司法程序中主張無罪抗辯④法院在判決前可能會考量加害人在 RJ 程序中表示承擔責任，但法官不會被強制要求必需從輕量刑⑤法院不能因為加害人未選擇或未繼續 RJ 程序而加諸不利益：等資訊(第 53 條)<sup>24</sup>。

---

(b) if a later starting date is stated in the agreement—the later date.

*Note* The term of the agreement may be extended beyond this period, or reduced, by an amendment under s 55.

<sup>23</sup> 相關表格見附件 6。

<sup>24</sup> 第53條(53 Explanation of effect of agreement)

Before a restorative justice agreement is signed, the convenor must ensure that reasonable steps are taken to explain to each required participant in the conference (in language that each can readily understand)—

- (a) the nature, purpose and effect of the agreement; and
- (b) that no-one is under an obligation to sign the agreement; and
- (c) that the participant may, before signing the agreement, seek independent legal advice about the effect of the proposed agreement; and
- (d) if the offender has not entered a plea for the offence—that any statement in the agreement that the offender accepts responsibility for the commission of the offence does not prevent the offender from pleading not guilty to the offence; and
- (e) if a sentence-related order has not been made for the offender—that, if the offender is found guilty of the offence, a court, in sentencing the offender—
  - (i) may consider whether the offender accepts responsibility for the offence to take part in restorative justice, but is not required to reduce the severity of any sentence as a result; and
  - (ii) must not consider whether the offender has chosen not to take part, or not to continue to take part, in restorative justice.

- 
- 22、原協議可因情事變更而進行修正(第 55 條)。
- 23、在監督協議履行方面，非僅 RJ 程序負責人，轉介單位負責人亦可監督協議履行(第 57、58 條)。
- 24、RJ 程序負責人可就轉介程序、如何管理、指揮 RJ 會議、如何監督 RJ 會議及在實施方面有必要性之事項發布指導原則(RJ guidelines)(第 61 條)。
- 25、保密規定與罰則(第 64 至 66 條)。
- 26、提交報告及保存紀錄之規定(第 68 至 71 條)<sup>25</sup>。

---

<sup>25</sup> 為追蹤會議成效，ACT 政府制定有回饋問卷，見附件 7。

---

## 陸、參訪機構簡介

### 一、奧克蘭地方法院

位在紐西蘭最大城奧克蘭市中心區 Albert Street. 上，該院歷史悠久，於 1840 年或 1841 年時即存在，目前的建物係在 1987 年開始使用。管轄區域即奧克蘭市地區，目前共有民事法庭(含 Disputes Tribunal and



奧克蘭地方法院大樓

Tenancy Tribunal 二種特別法庭)、刑事法庭(包括 summary 及 jury)，及家事法庭(The Family Court)

### 二、澳洲國家司法學院(National Judicial College of Australia, NJCA)

澳洲國家司法學院成立於 2002 年 5 月，由聯邦政府及一些參與的州及地區政府捐款資助。它是由一個理事會運作，共有 6 名成員，其中 4 位成員為法官，1 位成員由聯邦檢察總長指派，另 1 位成員由參與的州或地區政府之檢察長指派。該院設立宗旨在於提供法官經驗分享、專業課程、教育課程，俾利其等將來在執行職務時能體察社會變化、有充足的專業知識、案件管理技巧並保持身心健康。其秘書處設在澳洲國立大學校區內，主管該院行政事務。

### 三、國立澳洲大學(Australian National University, ANU)

澳洲國立大學的創立是依據澳洲國會在 1946 年通過的專案法。創校宗旨，在於建立一所對發展民族團結和認同，以及促進澳洲和鄰國經濟發展和社會團結有著持久重要性的頂尖研究型國立大學，以提升澳洲的整體學術研究實力。ANU 也成了澳洲唯一由聯

邦國會立法設立的國立大學（校名：National），不同於其它澳洲公立大學皆是由各地州議會立法設立。



澳洲國立大學法學院大樓

澳洲國立大學現階段包含了七大學院（Colleges，計有法學院、人文與社會科學學院、亞太學院、商學與經濟學院、工程與電腦科學學院、醫學生物暨環境學院、自然科學暨數學學院）。各學院除了進行學術研究外，也負責研究生和大學生的教學；學院底下另設有研究所（Research Schools）和學院智庫中心（University Centres）擔任聯邦政府智庫角色，僅專注於學術研究。

#### 四、澳洲首都特區司法及社區安全理事會修復司法組

(Restorative Justice Unit, Justice and Community Safety Directorate, ACT Government)

司法及社區安全理事會是澳洲首都特區(Australian Capital Territory, ACT)政府下的一個重要部門，業務職掌包括司法行政、司法審判、法律服務、人權保護、商業管理、緊急服務、選舉事務等。共有矯治(Corrective Services)部門、審判法庭(Courts/Tribunal)、緊急服務機構(Emergency Services Agency)、政府法律顧問(Government Solicitor)、立法及政策部門(Legislation and Policy)、商業管理辦公室(Office of Regulatory Services)、議會諮商辦公室(Parliamentary Counsel, s Office)、警察部門(Police)、保安部門(Security and Protection)、犯罪被害人保護(Victim Support)等單位。而修復式司法組(RJU)隸屬立法及政

策部門，自 1994 年開始操作具修復式司法精神的 diversionary conferencing 會議，而真正令該部門著有名聲者，是自 1995 年開始，與澳洲國立大學(ANU) 學者 Professor John Braithwaite、Dr Heather Strang 和 Professor Lawrence Sherman 合作，在召開上開會議時，採用明恥整合理論(Reintegrative Shaming Experiment (RISE))。

## 五、澳洲高等法院(Hight Court Of Australia)

澳洲高等法院是澳洲最高司法機關，其最早於西元 1903 年 10 月 6 日在澳洲墨爾本首次開庭，1973 元遷至雪梨，1980 年 5 月遷往首都坎培拉迄今。該院目前有 7 位大法官，其中 1 位為首席大法官，大法官之產生為澳總督提名並任命。

該院審理案件包括涉及憲法之案件，由 7 位大法官全體參與審理。其他聯邦法院、家事法院及各州及特區最高法院上訴之案件，由 5 位大法官參與審理。是所有案件之終審法院。

法院大樓座落格里芬湖(Lake Burley Griffin)南岸，外型獨特雄偉，內部分為公共區域、法庭區(共有 3 個法庭，分別為憲法法庭、上訴法庭及程序審查庭)、辦公區及大法官專用區，設計結合美學與人性化，讓



澳洲高等法院正面全景



憲法法庭全景



上訴法庭全景



程序審查庭全景

---

人徜徉其中不禁忘記身處法院內部。



法院大樓內部一景

## 柒、紐澳參訪紀要

### 一、5月6日星期日（紐西蘭奧克蘭 Auckland）

紐西蘭當地時間5月6日下午5時15分許抵達奧克蘭後，我國駐奧克蘭辦事處周組長志堅已在出境處等候接機，嗣抵達下榻之 RYGDES 旅館後，隨即換裝參加由丁樂群處長(前排左二)所舉行之歡迎晚宴，



所長與丁處長及與會貴賓於5月6日晚宴合影

參加人員計有丁處長夫人(前排左一)、紐國勞工黨(Labour)國會議員兼影子內閣外交部長(亦係勞工黨前任黨魁及前任司法部長)Phil Goff 議員(前排右三)夫婦、勞工黨華裔霍建強議員(Rymound Huo, 後排右三)夫婦、皇家律師事務所(Prestige Lawyers) 台裔律師汪君尊(Royal Reed, 後排右二)及夫婿 Stephen Reed 先生及周志堅組長、吳懷健組長。晚宴氣氛極其融洽，由於丁處長及2位紐國議員均是法律系畢業，霍議員亦具律師身分，席間，所長與處長及2位紐國議員不斷交流2國司法制度與政經情勢，並誠心邀請2位議員若至臺灣訪問，定需至本所參訪，以瞭解臺灣司法改革成效及司法官養成教育。



所長與 Phil Goff 及霍議員合影

## 二、5月7日星期一（皇家律師事務所）

本日上午10時許，在周志堅組長接送下，抵達皇家律師事務所(Prestige Lawyers)與主持律師汪君尊(Royal Reed，照片左一)、紐國國家法律辦公室(The Crown Law Office)所屬檢察官



Simon Moore SC(照片右二)律師，及紐西蘭修復式司法基金會管理人(Trustee of NZ Restorative Justice Trust)Jim Boyack(照片左三)和 Helen Bowen (照片左二)律師進行「修復式司法」座談會。汪律師為臺裔，臺北市立第一女子高級中學畢業，曾就讀臺灣大學法律系，後留學紐西蘭，畢業於奧克蘭大學。Simon 檢察官在奧克蘭當地頗負盛名，受紐西蘭政府委託追訴多起重大案件，而 Jim Boyack 和 Helen Bowen 2 位律師在修復式司法領域有豐富的經驗，不僅參與紐西蘭、英國、義大利等國的 facilitator 訓練計劃，更著有專書(Helen Bowen 與其父 Jim Consedine 合著有 Restorative Justice - Contemporary Themes and Practice，並與 Jim Boyack、Chris Marshall 合著 How Does Restorative Justice Ensure Good Practice?)。大家在輕鬆的氣氛下，就紐國推行修復式司法制度的背景、運作模式、立法過程進行實質座談，Helen Bowen 律師尚提供 Facilitator 的訓練計劃資料供我方參考，獲益



所長與汪律師及趙燕利導師在

皇家律師事務所前合影

良多。

### 三、5月7日星期一下午（奧克蘭地區法院）

下午2時許，在周組長及汪律師陪同下，參訪奧克蘭地方法院，由該院刑事檢察主任(District Prosecution Manager)Louise Murdoch 女士接待，該院計有民刑事法庭、家事法庭等，參訪過程



奧克蘭地方法院一隅

中，Louise Murdoch 主任安排我們一行人進入刑事法庭旁聽，

紐國法庭布置甚為簡約高雅(可惜無法拍照)、法官(Judge or magistrate)高座法檯中央，面對法檯下方處為控、辯雙方及法庭工作人員之座位，法檯前方左右2邊是 probation officer 和法院工作人員的座位，旁聽席則在法庭最後方。被告席在法庭最側邊，以一道玻璃做為區隔。值得一提的是，紐國法庭可使用遠距視訊設備(Audio Visual Links, AVL)訊問被告及相關人員，我國應可參考推行，俾節省司法資源的耗費。

### 四、5月8日上午(我國駐奧克蘭台北經濟文化辦事處)



所長與丁處長及趙燕利導師在辦事處內合影

5月8日上午，原先安排拜會奧克蘭地方法院院長之行程因故取消，遂至我駐奧克蘭台北經濟文化辦事處(下稱駐奧克蘭辦事處)參觀，我國駐奧克蘭辦事處位在市中心

Albert Street 某大樓 18 樓，交通便利，雖小而美，在丁處長解

說下，奧克蘭辦事處計有處長 1 人，組長 2 員、移民署、僑委會專員各 1 人，僱員 4 人，業務主要以領務及僑務為主，現在由於台裔移民及我國赴紐西蘭打工渡假人數漸多及雙邊貿易量增加，辦事處業務量擴增，現有人力已甚為吃緊，然此在困難的環境下，聽聞處長說明，紐國與我關係有日漸升溫的感覺，不禁為他們感到驕傲與高興。結束上午拜會行程，下午即啟程前往奧克蘭國際機場，搭乘澳亞航 QF-56 班機至澳洲雪梨國際機場轉搭國內航班 QF-1495 班機前往澳洲首都坎培拉(canberra)，甫抵達坎培拉機場，即見我國駐澳大利亞代表處秘書陳啟嘉先生前來接機並載送至當晚住宿之 Diamant Boutique Hotel 旅館。



所長與丁處長及辦事處人員茶敘

## 五、5 月 9 日上午(澳洲國家司法學院秘書處)

本日上午 10 時許，在陳秘書陪同下，前往位在澳洲國立大學校區內之澳洲國家司法學院(national judicial college of australia, njca)秘書處拜會主任(director)John McGinness(照



片右上方)先生及副主任(deputy director)Anne O'Connell 女士

(照片右下方)及並行座談。雙方就法官訓練宗旨、課程設計、寫作技巧、陪審制度、修復式司法、法官倫理等議題進行廣泛討論及交流。



所長與 John McGinness 主任及 Anne O'Connell 副主任合影

## 六、5月9日下午(澳洲國立大學)

本日下午2時30分前往澳洲國立大學(The Australian National University, ANU)亞太學院拜會享譽國際之犯罪學學者 John Braithwaite 教授



(照片右上方)，並在我國留學生黃曉芬小姐(照片右下方)陪同下舉行座談。教授所提出之明恥理論(Reintegrative Shaming Experiment)對架構修復式司法理論內容與實務操作均有重大影響。雙方在融洽輕鬆的氣氛中，就修復式司法的內涵、現況及目前進行之研究計劃(針對家庭暴力案件進行修復式司法程序)進行深入之對談。所長並就即將設在本所之犯罪研究中心，請教授提供建議。



所長與 Braithwaite 教授合影並致贈禮品

## 七、5月10日上午(澳洲首都特區政府司法及社區安全理事會修復式司法組)

本日上午 10 時許，在陳啟嘉秘書陪同下抵達澳洲首都特區 (Australia Capital Territory, ACT) 政府下之司法及社區安全理事會修復式司法組 (Justice and Community Safety Directorate, Restorative Justice Unit, ACT Government) 拜會，並與主任 Dymphna Lowrey 女士(照片右二)及會議召集人 (convenor) Tracey Blundell 女士(照片右一)座談，雙方就 ACT 政府運作修復式司法的現狀、成效、預算編列，修復式會議如何開始、如何準備、操作程序、監督協議事項落實等實務面進行討論與交流，Dymphna Lowrey 主任表示，目前 ACT 特區僅就少年犯進行修復式程序，成年犯部分，例如家暴、性侵害雖有計劃但因欠缺經費致未能實行。會後，Dymphna Lowrey 主任並提供 ACT 特區議會於 2004 年所通過之犯罪法案相關表格供我方攜回參考。



所長與 Dymphna Lowrey 主任及  
Tracey Blundell 女士合影

## 八、5月10日下午(澳洲高等法院 High Court Of Australia)

本日下午忙裏偷閒，趁搭機前夕走訪澳洲高等法院，雖曰「高等」，實為澳洲最高司法機關，由於係臨時安排之行程，故未與該院官員接觸，一行人悠遊於此棟美侖美奐的法庭大

樓內外，除讚嘆設計之雄偉、新穎外，更令人驚訝的是法院內部猶如藝術館般精緻美麗。

由於該院係屬國家級建築物，故一般民眾均可自由入內參觀，本日下午即見許多當地學生前來參訪，院內亦配有解說志工，溫文儒雅，令人印象深刻。凡此種種，均足為我國法院借鏡參考。



澳洲高等法院一隅



由格里芬湖畔遠眺澳洲高等法院

## 捌、心得感想及建議

### 一、心得感想

此次至紐西蘭及澳洲考察修復式司法制度，行程固僅有 7 日，然扣除候機及飛行時間，實際能從事拜會及座談之日數，僅有 4 天。雖來去匆匆，卻也是收穫頗豐，不虛此行。

往昔刑事司法採應報主義，處罰與隔離是對付犯罪的主要基調，這樣的思維對於嚇阻犯罪，穩定社會秩序固然有其作用，但對於犯罪所引發的情感傷痛、物質傷害及社會裂痕往往無甚幫助，遑論修補甚至鼓勵犯罪者從新走入正常生活，而修復式司法的存在目標就是要解決後者現象。藉由此次考察行前的資料蒐集與研讀，到行程中與拜會對象的座談與經驗交流，吾人對「修復式司法」在異邦的存在意義與運作狀況有了更深一步的瞭解與印證，爰將此次行程之觀察及體驗，化為綜合之心得與感想，整理如下：

#### （一）紐澳二國修復式司法的興起與其殖民歷史有著密切的連結。

紐西蘭及澳洲過去都是殖民國家，強行將殖民國的法律制度移植的結果，就是使原住民族被迫放棄固有的衝突解決方式。同時間也解離了原住民群體間的向心力，使傳統文化不再發揮安定人心的作用。這對統治者而言，固然有助於達成統治目標，但終究不敵衍生出來的各種衝突與矛盾，例如原住民族犯罪率提升、不信任移植而來的司法體系，為因應這些日漸形成的隱憂，參考原住民傳統解決紛爭的作法應運而生。上述紐西蘭所採行的家庭團體會議模式就是參考原住毛利族人的衝突解決方式。

## (二) 修復式司法的發展與國家的人權保障是成正比關係。

修復式司法對於看待「犯罪」的觀點與處理方式皆與應報式司法不同，申言之，前者認為犯罪是破壞人與人之間的關係，而不僅是對國家及法律的侵害。司法的功能是要共同努力修補犯罪所帶來的傷害，而不僅只是決定罪責與刑罰。解決衝突的焦點應是在於如何使加害人瞭解並承擔其責任，並滿足被害人的需求，而非僅重視加害人應受到何種懲罰。程序的進行要在雙方皆自願並充份被告知和保護的狀況下才可開始，而不是由任何一方或國家政府單方面決定。以上所述，均是以尊重並保障人權為出發點的思維，故修復式司法發展愈成熟的國家，該國的人權保障亦愈成熟。

## (三) 修復式司法的成敗與國民的法律感情有密切關係。

「修復式司法」是一種價值取向的制度，它的核心價值計有 participation(參與); respect(尊重); honesty(誠實); humility(謙遜); interconnectedness 相互連繫); accountability(責任); empowerment(活力); and hope(希望). 等。這些價值與傳統應報主義所彰顯的強制、威嚇、對抗、隔離、懲罰等價值截然不同，故提倡修復式司法對習於應報主義氛圍的社會來說，是一種很困難的群體法律感情轉換過程。無怪乎紐西蘭及澳洲在正式立法前，均必須經過推動試行方案的階段，以凝聚共識<sup>26</sup>。

## (四) 修復式司法的發展與民間團體的參與有著密切關係。

政府之力有時而窮，從紐西蘭的發展過程看來，推

---

<sup>26</sup>在拜會澳洲 act 政府司法及社區安全理事會修復式司法組時，主任 Dymphna Lowrey 女士提供宣導修復式司法的文宣品，例如漫畫及宣導手冊(詳附件 8)，頗值得參考。

動修復式司法與民間團體有著密不可分的關係，至 2010 年為止，共有 23 個民間團體與紐西蘭司法部簽約參與紐西蘭修復式司法的運作，在成年犯的執行上佔有重要地位。它們可以提供的協助甚廣，包括社福及醫療協助，甚至從事對話促進者 (Facilitator) 的訓練工作。

## 二、建議

本次考察所提出之建議如下：

### (一) 設立專責單位，擴充人力

以本次考察的紐西蘭及澳洲 2 國為例，紐西蘭推動 RJ 是由司法部下轄的修復式司法團隊 (Restorative Justice Team) 負責，而澳洲 ACT 政府是由司法及社區安全理事會修復式司法組負責 (Justice and Community Safety Directorate, Restorative Justice Unit)，2 者均為專業單位。反觀我國，RJ 目前處於試行階段，主要推動者是法務部保護司，試行計劃之末端執行者為各地方法院檢察署<sup>27</sup>，人員均為兼辦性質。若有朝一日 RJ 成為我國長期實施之司法作為時，宜增設專責單位或由專人來負責運行。

### (二) 強化人員的專業訓練

俗語說「工欲善其事，必先利其器」，RJ 程序能否精緻有效率地運行、操作能否契合核心價值的要求，參與者的滿意度能否提升，人的因素厥為重要，故對於「修復促進員」<sup>28</sup> (相當於 facilitator、convenor) 的訓練絕不可

---

<sup>27</sup> 參見法務部「台灣推動修復式司法試行方案之現況與展望」一文。

<sup>28</sup> 此為上揭文內用語。

輕忽，除必需遴聘具有熱忱、專業背景或相關經驗的人員外，亦必需不斷充實在職後的訓練，且考核及監督亦必須同時間進行，甚至應該擬定倫理規範。

### （三）訂定專法或專章，授予 RJ 明確的法律定位。

我國的試行方案初期以不修法為前提，而與刑事程序併行，即當事人參與修復式司法試行方案時，其原繫屬案件之偵審程序仍繼續進行，不因之暫時中止<sup>29</sup>。但長期觀之，仍以訂立專法或專章為宜。蓋推動修復式司法既是政策，惟有立法才能落實其所欲設立的目標與法律效果，此觀紐西蘭及澳洲皆有完成修復式司法之立法即可得知，但立法技術上仍應保持靈活與彈性，避免過度抑制操作修復式會議應有的創意及空間<sup>30</sup>。

---

<sup>29</sup> 參見前揭註 25 文。

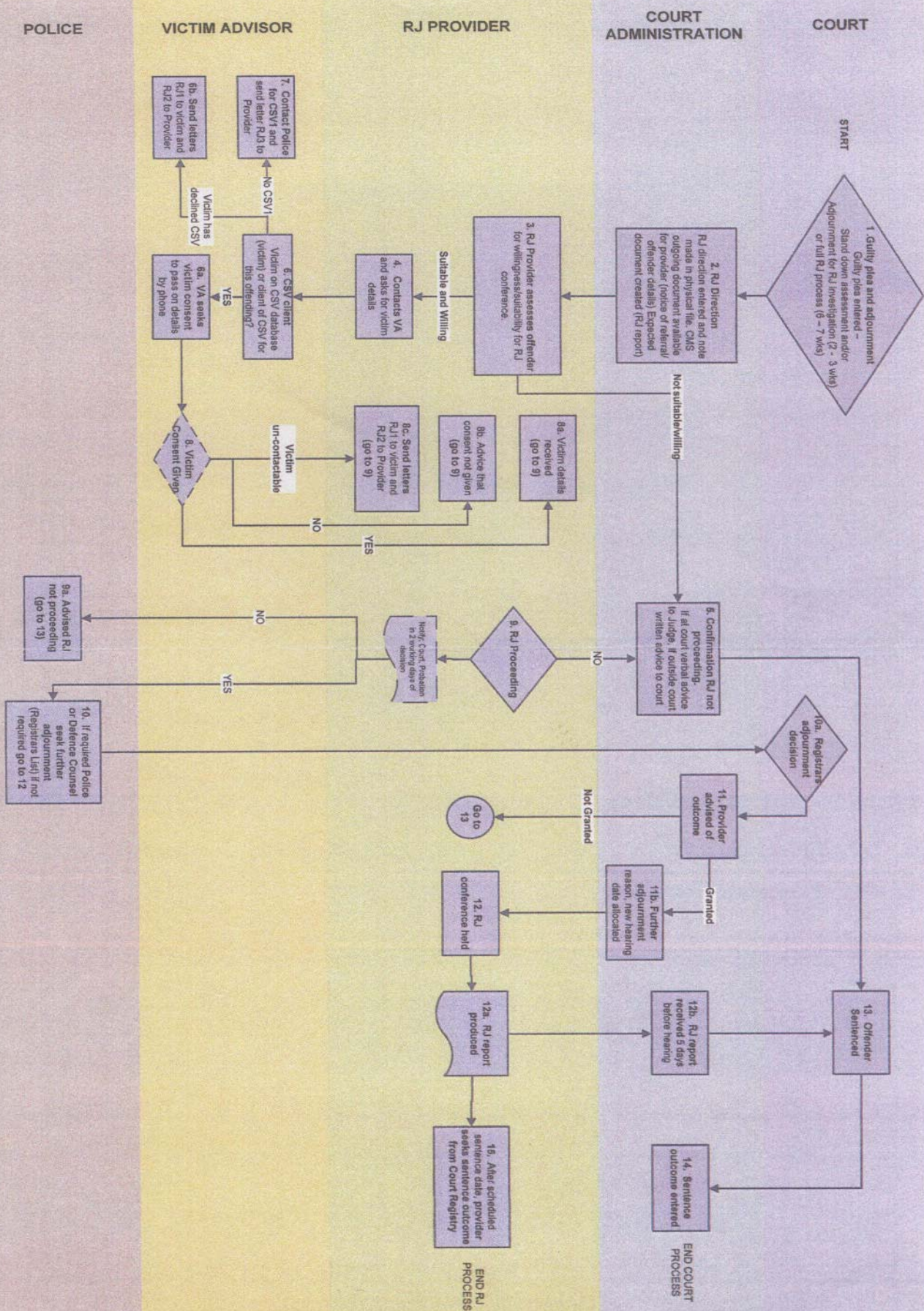
<sup>30</sup> 例如在選擇適用案件、會議程序如何進行、修復促進員之指揮權限、可達成之修復式協議種類等面向上，可適度採授權命令之立法方式，以保持與時俱進、因地制宜的彈性。

# Pre-Sentence Restorative Justice Process

## RJ Referral

## RJ Investigation and Process

## Post Sentence



# A Restorative Justice Facilitator workshop

Wairarapa  
March 5,6 2010

Presented by Helen Bowen, Jim Boyack, Jackie Katounas

[www.restorativejustice.org.nz](http://www.restorativejustice.org.nz)

*With facilitation from Maxine Rennie & Mike Hinton*

1

## Welcome and Introductions

- My name is..
- I am from ..
- Restorative Justice means to me...
- I hope to achieve.....  
from this workshop

# Aims of Restorative Justice Facilitator workshop

- Understand the roles of victim and offender
- Understand the basic rj conference process including pre-conference
- Develop an understanding of issues for local Maori within this process
- Develop relationships and networks within the Wairarapa community

3

## Restorative Justice

- Aim of Pre-conference - get information, check suitability, communicate how process works, develop trust
- Conference Process:
  - Introduction - parties, ground rules, confidentiality
  - Facts
  - Stories – offender/Victim (victim chooses order)
  - Consequences- expressions of harm, loss
  - Outcomes

4

# Pre-conference

- Call victim/offender set up meeting
- Confirm date, time and venue
- At pre-conference explain:
  - rj process including confidentiality;
  - roles;
  - listen to stories
  - ask about reparation
- Seek consent
- Set date, time, venue
- (see checklist pre-conference)

5

## Victim/Offender group exercise (groups of 4)

- What comes to mind when you think of the word "Victim" ?
- What comes to mind when you think of the word "offender"?

6

# Victim/ Offender Discussion

7

## Building a relationship between facilitator and Victim (whole group)

- Remember control issues
  - Rjc allows self-determination for victim
  - Facilitator needs:
    - To understand and communicate rj principles,rj process - how it works
    - To understand and communicate purpose of conference
    - To acquire knowledge of offence
    - To listen first before telling victim what to expect
    - To develop trust
    - To explain process and role of victim at rjc
    - To establish whether Victim wants to take part or needs more time that there is a choice
- To encourage them to express their emotions direct to the Offender  
To advise about confidentiality

Discussion

Read Module 3 MOJ website for further information

8

## Case study (group) Role Play 1 Pre-conference victim

- Identify roles: victim, victim support, facilitator, observer
- Read case study
- Purpose of role play: to describe range of emotions experienced by victim
- Observer to record these at conclusion

9

## “Victims” describe to plenary

- Range of emotions
- How pre-conference process felt
- What they learned about the rjc
- New ideas since victim/offender exercise

10

# Building the relationship between Facilitator and Offender:

- Facilitator needs to:
  - Understand rj principles and process and be able to explain these;
  - Find out what happened from offender's perspective;
  - Describe confidentiality and make sure it is understood and agreed to;
  - Develop trust;
  - Explain role of offender at rjc;
  - Confirm that summary of facts will be read and is agreed to;
  - That rjc is not a place to dispute facts
  - Establish suitability of offender to take part in rj process
  - It is usual to pre-conference offender first
- Discussion

11

## Offender pre-conference exercise Same Case Study ( Group) Role Play 2

- Identify roles- Victim, Offender, facilitator, observer
- Pre-conference offender
- Identify range of emotions experienced by offender
- Observer to record

12

## “Offender” describes to whole group

- Range of Emotions
- How pre-conference process felt
- What they learned about the rjc and their role
- New ideas since v/o exercise

13

## The Sentencing Act 2002 obliges Court to take into account:

- Restorative processes
- Hold Offender accountable for harm done to Victim
- Promote a sense of responsibility
- Provide for the interests of victims
- Provide reparation for harm done

14

## S 10

Court must give weight to:

- Offer to make amends
- Agreement between Victim and Offender
- Response of Offender to the Offence
- Compensation
- Input of wider family group

15

## Parole Act 2002 and Victims Rights Act 2002

- Board to give weight to restorative outcomes
- Restorative meetings encouraged subject to victim's wishes

16

# The Lawyer's Role

- Encourage Offenders to take part in Restorative Justice
- Encourage Judges to explore the Restorative option
- Explain to Offenders what Restorative Justice means

17

# Police Role

- Read summary of facts
- Support victim
- Observer

18

# “Justice” group exercise

- What comes to mind when you think of the word “justice”?
- From the perspective of the victim
- From the perspective of the offender

19

## Conference overview

- Welcome
- Introduction
- Describe Purpose
- Describe Process
- Ground Rules
- Facts
- Consequences
- Outcomes
- (see checklist and conference guide for facilitators)

20

# First stage of conference- Introduction

- Welcome
- Purpose of rjc explained
- Process described

Facts, consequences, outcomes

- Ground Rules:

No disputes re facts, respectful, safe, no interruptions, voluntary, time out, truthful

- Confidentiality
- Relationship to Court

21

## Second Stage RJC facts and consequences (emotional and material)

- Facts read
- Who speaks first? (Get views at pre-conference)

Be prepared for:

- High Emotion
- Silences
- Interruptions
- Minimizing (watch for)

22

## Third Stage: Outcomes

- Victim views
- Agreed Outcomes
- How will they be implemented
- Who will manage
- Are they do able, specific and timeframed
- What role will Court have

23

## Conference Role Play Case Study

- Appoint roles, assign spokesperson
- Conference takes place taking into account pre-conference
- De-brief
- Describe process

24

# Ways forward

- Discussion/ feedback
- Email contact
- Follow up training



**ACT**  
Government

Justice and Community Safety

**Suitability Assessment (Part 7 of Crimes (RJ) Act 2004)**

Case Number: \_\_\_\_\_ Date Referral Received: \_\_\_\_\_



Restorative  
Justice Unit

**Suitability (Section 30, 33, 34, 35 & 36):**

附件 3

- ☐ Yes ☐ No Evidence of eligible victim(s) and/or eligible parent(s)
- ☐ Yes ☐ No Evidence of eligible offender(s)
- ☐ Yes ☐ No Referring entity is eligible to refer at this stage of criminal justice process (Table 22 of the Act)
- ☐ Yes ☐ No Referral complies with general considerations (Section 33 of the Act):
- ☐ Yes ☐ No Any government or administrative policy relating to the treatment of the offence(s) of any relevant kind
  - ☐ Yes ☐ No Nature and context of the offence(s) including any level of harm caused by or violence involved in its commission (**see reverse**)
  - ☐ Yes ☐ No Appropriateness of restorative justice at the current stage of the criminal justice process in relation to the offence(s)
  - ☐ Yes ☐ No Potential power imbalance between the participants taking part in restorative justice for the offence(s)
  - ☐ Yes ☐ No Physical and psychological safety of anyone who is taking part in restorative justice for the offence(s)
- ☐ Yes ☐ No Evidence of suitable victim(s) \*
- ☐ Yes ☐ No Evidence of suitable eligible parent(s) \*
- ☐ Yes ☐ No Evidence of suitable offender(s) \*

\* Refer to individual suitability assessments

**The following offences have been found eligible and suitable:**

Charge No.	Offence	Victim/Eligible Parent	Offender	Conference Format

**The following offences have been found NOT suitable:**

Charge No.	Offence(s)	Victim/Eligible Parent	Offender	Reason Not Suitable

**Suitability Decision (Section 32):**

☐ Approved ☐ Not Approved to proceed to conference

Manager's Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Convenor's Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Written consent for conference to be called received from:

☐ Yes ☐ No Eligible victim(s) and/or eligible parent(s) ☐ Yes ☐ No Eligible offender(s)

Summary of Assessment: \_\_\_\_\_

### Offence - Indicator Checklist \*

The following is not prescriptive but intended to provide an indication of the suitability of this offence for restorative justice at this point in the criminal justice continuum.

Table 22 – Item /Referring Points

Suitable	Categories	Criteria and Examples	Tick	1	2	3	4	5
	Premeditation	the offence appears to have been committed impulsively with little attempt to avoid detection		x				
		the offence appears to have involved some planning (eg offender has carried tools to the scene necessary for offence)		x	x			
		the offence has involved sophisticated planning (eg planning prior to the day of offence eg arranging a buyer for goods prior to stealing them)			x	x	x	x
	Degree of Violence	there is no violence involved		x				
		offence caused fear in a person of reasonable firmness		x	x			
		offender intended to cause pain, but not to inflict injury			x	x	x	
		offence involves actions likely to inflict serious injury (eg multiple blows, the use of a weapon of any sort)					x	x
	Harm – Physical	no physical harm		x				
		actual bodily harm of a non-serious nature (eg visible redness, slight swelling and soreness)		x	x			
		bodily harm involving wounding (eg wound requires stitching or bones broken)			x	x	x	
		grievous bodily harm (eg injury likely to cause permanent damage)					x	x
	Harm – Psychological	there is no psychological injury		x				
		victim is temporarily shaken		x				
		victim has fear/anger responses lasting more than a week (eg several weeks the victim feels uneasy at home alone after a break-in)		x	x	x		
		victim has trauma symptoms lasting several weeks or months e.g. nightmares and panic attacks, depression, loss of self-confidence, significant constriction of routine			x	x	x	x
	Harm – Financial Loss	there are no losses, or losses are insignificant (eg a shop lifted item is returned undamaged)		x				
		losses create temporary hardship (eg victim loses a sum of money larger than weekly earnings and as a result must delay a major purchase)		x	x	x		
		losses cause major disruption to victim's lifestyle (eg victim is \$30,000 out of pocket; must absorb uninsured losses by extending mortgage)				x	x	x
	Harm – Impact	victim is unaware offence has occurred, or incurs minor inconvenience		x				
		inconvenience lasting more than a week (eg victim forced to commute via public transport while car is repaired and unable to attend some normal activities)		x	x			
		offence causes a major change in the victims life circumstances eg victim needs to move house or change job			x	x	x	x

\* Above table modified from a determinations tool developed by David Tucker, Youth justice Conference Manager, NSW Dept of Juvenile Justice.



**ACT**  
Government

Justice and Community Safety

## Suitability Assessment – Victim

### (Section 34 of Crimes (RJ) Act 2004)



Case Number: \_\_\_\_\_ Participant's Name: \_\_\_\_\_  
Assessment Date: \_\_\_\_\_ Participation Type: \_\_\_\_\_

**Suitability Assessment** – see reverse for indicators

**Victim's personal characteristics:**

Criteria	No Concerns	Addressed in Preparation	External advice sought	Details	Suitable
Emotional State					
Mental Health Issues					
Intellectual Disability					
General Health					
Alcohol / Drug Usage					

**Victim's motivation for taking part in restorative justice:**

Criteria	No Concerns	Addressed in Preparation	External advice sought	Details	Suitable
Attitude To Offender					
Expectations Of Restorative Justice					
Conference Dynamic					

**Impact of the offence as perceived by the victim:**

Criteria	No Concerns	Addressed in Preparation	External advice sought	Details	Suitable
Perception Of Impact of Offence					

**Special needs/requirements:**

Criteria	No Concerns	Addressed in Preparation	External advice sought	Details	Suitable
Special need / requirements					

**Care and protection issues:**

Criteria	No Concerns	Addressed in Preparation	External advice sought	Details	Suitable
Care and protection issues					

**Other:**

Criteria	No Concerns	Addressed in Preparation	External advice sought	Details	Suitable
Other					

Summary of Assessment: \_\_\_\_\_

The victim has been found:

☐ SUITABLE

☐ NOT SUITABLE

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

### Indicator Checklist

Criteria	Positive Indicators	Negative Indicators	Comments
Emotional State	<input type="checkbox"/> Appears rational and stable <input type="checkbox"/> Emotional response appears commensurate with offence <input type="checkbox"/> Other	<input type="checkbox"/> Self-report <input type="checkbox"/> Has existing emotional issues <input type="checkbox"/> Emotional response appears disproportionate to offence <input type="checkbox"/> Other	
Mental Health	<input type="checkbox"/> Absence of indicators of mental health issues <input type="checkbox"/> Diagnosed condition & currently stabilised <input type="checkbox"/> Other	<input type="checkbox"/> Self-report <input type="checkbox"/> Exhibits dramatic mood changes <input type="checkbox"/> Psychosis <input type="checkbox"/> Self-harm or suicidal ideation <input type="checkbox"/> Other	
Intellectual Capacity	<input type="checkbox"/> Able to follow & participate in ordinary conversation <input type="checkbox"/> Issues identified but adequate support for restorative justice <input type="checkbox"/> Exhibits maturity to participate <input type="checkbox"/> Other	<input type="checkbox"/> Self-report <input type="checkbox"/> Slow to react or respond in conversation <input type="checkbox"/> Unusual behaviours <input type="checkbox"/> Poor interpersonal skills <input type="checkbox"/> Other	
General Health	<input type="checkbox"/> No issues identified or obvious <input type="checkbox"/> Other	<input type="checkbox"/> Self-report <input type="checkbox"/> Serious Illness <input type="checkbox"/> Physical disability <input type="checkbox"/> Special needs <input type="checkbox"/> Other	
AOD Issues	<input type="checkbox"/> No issues identified or obvious <input type="checkbox"/> Other	<input type="checkbox"/> Self-report <input type="checkbox"/> Alcohol or drug dependant <input type="checkbox"/> Presents apparently alcohol or drug affected <input type="checkbox"/> Other	
Attitude To Offender	<input type="checkbox"/> Express concern <input type="checkbox"/> Keen to make amends <input type="checkbox"/> Willing to participate <input type="checkbox"/> Other	<input type="checkbox"/> Threatening or intimidating behaviour <input type="checkbox"/> Disproportionate response <input type="checkbox"/> Strongly expressed anger or fear <input type="checkbox"/> Other	
Expectations Of Restorative Justice	<input type="checkbox"/> Shows realistic understanding <input type="checkbox"/> Interested or curious <input type="checkbox"/> Other	<input type="checkbox"/> Expresses vengeful / vindictive attitudes <input type="checkbox"/> Excessively punitive <input type="checkbox"/> Other	
Conference Dynamics	<input type="checkbox"/> Willingness to participate <input type="checkbox"/> Good support networks <input type="checkbox"/> Relevant life experiences <input type="checkbox"/> Other	<input type="checkbox"/> Power-imbalance <input type="checkbox"/> Socio-economic disparity <input type="checkbox"/> Racism <input type="checkbox"/> Gender / Sexuality / Prejudice <input type="checkbox"/> Other	
Perception Of Impact Of Offence	<input type="checkbox"/> Perception commensurate with offence <input type="checkbox"/> Other	<input type="checkbox"/> Perception not commensurate with offence / evidence <input type="checkbox"/> Other	
Special needs / requirements	<input type="checkbox"/> No issues identified or obvious <input type="checkbox"/> Other	<input type="checkbox"/> Interpreter <input type="checkbox"/> Disabled access <input type="checkbox"/> Hearing / Visual impairment <input type="checkbox"/> Cultural requirements <input type="checkbox"/> Other	
Care and protection issues	<input type="checkbox"/> No issues identified or obvious <input type="checkbox"/> Other	<input type="checkbox"/> Care and protection case worker <input type="checkbox"/> Care and protection order <input type="checkbox"/> Personal protection order <input type="checkbox"/> Criminal history sighted <input type="checkbox"/> Other	
Other:	<input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____	<input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____	

**Restorative Justice Unit**  
 Telephone (02) 6207 3992 Facsimile (02) 6207 3961  
 Level 12/14 Moore Street, GPO Box 158, Canberra ACT 2601



**ACT**  
Government

Justice and Community Safety

## Suitability Assessment – Offender (Section 36 of Crimes (RJ) Act 2004)



Case Number: \_\_\_\_\_ Participant's Name: \_\_\_\_\_  
Assessment Date: \_\_\_\_\_ Participation Type: \_\_\_\_\_

### Suitability Assessment – see reverse for indicators

#### Extent (if any) of the offender's contrition or remorse for the offence:

Criteria	No Concerns	Addressed in Preparation	External advice sought	Details	Suitable
Expression of contrition or remorse					

#### Offender's personal characteristics:

Criteria	No Concerns	Addressed in Preparation	External advice sought	Details	Suitable
Emotional State					
Mental Health Issues					
Intellectual Capacity					
General Health					
Alcohol / Drug Usage					

#### Offender's motivation for taking part in restorative justice:

Criteria	No Concerns	Addressed in Preparation	External advice sought	Details	Suitable
Attitude To Victim					
Expectations Of Restorative Justice					
Conference Dynamic					

#### Impact of the offence as perceived by the offender:

Criteria	No Concerns	Addressed in Preparation	External advice sought	Details	Suitable
Perception Of Impact Of Offence					

#### Special needs/requirements:

Criteria	No Concerns	Addressed in Preparation	External advice sought	Details	Suitable
Special need / requirements					

#### Care and protection issues:

Criteria	No Concerns	Addressed in Preparation	External advice sought	Details	Suitable
Care and protection issues					

#### Other:

Criteria	No Concerns	Addressed in Preparation	External advice sought	Details	Suitable
Other					

Summary of Assessment: \_\_\_\_\_

The offender has been found:

☐ SUITABLE

☐ NOT SUITABLE

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

### Indicator Checklist

Criteria	Positive Indicators	Negative Indicators	Comments
Expression of contrition or remorse	<input type="checkbox"/> Wants to apologise <input type="checkbox"/> Is sorry for the harm caused <input type="checkbox"/> Concerned about welfare of victim <input type="checkbox"/> Other	<input type="checkbox"/> Incomplete acceptance of responsibility <input type="checkbox"/> Blames victim / others <input type="checkbox"/> Other	
Emotional State	<input type="checkbox"/> Appears rational and stable <input type="checkbox"/> Emotional response appears commensurate with offence <input type="checkbox"/> Other	<input type="checkbox"/> Self-report <input type="checkbox"/> Has existing emotional issues <input type="checkbox"/> Emotional response appears disproportionate to offence <input type="checkbox"/> Other	
Mental Health	<input type="checkbox"/> Absence of indicators of mental health issues <input type="checkbox"/> Diagnosed condition & currently stabilised <input type="checkbox"/> Other	<input type="checkbox"/> Self-report <input type="checkbox"/> Exhibits dramatic mood changes <input type="checkbox"/> Psychosis <input type="checkbox"/> Self-harm or suicidal ideation <input type="checkbox"/> Other	
Intellectual Capacity	<input type="checkbox"/> Able to follow & participate in ordinary conversation <input type="checkbox"/> Issues identified but adequate support for restorative justice <input type="checkbox"/> Exhibits maturity to participate <input type="checkbox"/> Other	<input type="checkbox"/> Self-report <input type="checkbox"/> Slow to react or respond in conversation <input type="checkbox"/> Unusual behaviours <input type="checkbox"/> Poor interpersonal skills <input type="checkbox"/> Other	
General Health	<input type="checkbox"/> No issues identified or obvious <input type="checkbox"/> Other	<input type="checkbox"/> Self-report <input type="checkbox"/> Serious illness <input type="checkbox"/> Physical disability <input type="checkbox"/> Special needs <input type="checkbox"/> Other	
AOD Issues	<input type="checkbox"/> No issues identified or obvious <input type="checkbox"/> Other	<input type="checkbox"/> Self-Report <input type="checkbox"/> Alcohol or drug dependant <input type="checkbox"/> Presents apparently alcohol or drug affected <input type="checkbox"/> Other	
Attitude To Victim	<input type="checkbox"/> Expresses concern <input type="checkbox"/> Keen to make amends <input type="checkbox"/> Willing to participate <input type="checkbox"/> Other	<input type="checkbox"/> Threatening or intimidating behaviour <input type="checkbox"/> Disproportionate response <input type="checkbox"/> Can't identify a victim <input type="checkbox"/> Other	
Expectations Of Restorative Justice	<input type="checkbox"/> Shows realistic understanding <input type="checkbox"/> Interested or curious <input type="checkbox"/> Other	<input type="checkbox"/> Sees as a soft-option <input type="checkbox"/> Expectation of forgiveness by the victim <input type="checkbox"/> Other	
Conference Dynamics	<input type="checkbox"/> Willingness to participate <input type="checkbox"/> Good support networks <input type="checkbox"/> Relevant life experiences <input type="checkbox"/> Other	<input type="checkbox"/> Power-imbalance <input type="checkbox"/> Socio-economic disparity <input type="checkbox"/> Racism <input type="checkbox"/> Gender / Sexuality / Prejudice <input type="checkbox"/> Other	
Perception Of Impact Of Offence	<input type="checkbox"/> Acknowledges harm to others <input type="checkbox"/> Willingness to repair harm <input type="checkbox"/> Insight into how someone has been harmed <input type="checkbox"/> Other	<input type="checkbox"/> Has difficulty accepting someone has been harmed <input type="checkbox"/> Minimises role in offence <input type="checkbox"/> States justification of offence <input type="checkbox"/> Other	
Special needs / requirements	<input type="checkbox"/> No issues identified or obvious <input type="checkbox"/> Other	<input type="checkbox"/> Interpreter <input type="checkbox"/> Disabled access <input type="checkbox"/> Hearing / Visual impairment <input type="checkbox"/> Cultural requirements <input type="checkbox"/> Other	
Care and protection issues	<input type="checkbox"/> No issues identified or obvious <input type="checkbox"/> Other	<input type="checkbox"/> Care and protection case worker <input type="checkbox"/> Care and protection order <input type="checkbox"/> Personal protection order <input type="checkbox"/> Criminal history sighted <input type="checkbox"/> Other	
Other:	<input type="checkbox"/> _____ <input type="checkbox"/> _____	<input type="checkbox"/> _____ <input type="checkbox"/> _____	



**ACT**  
Government

Justice and Community Safety

## Suitability Assessment –Non Required Participant



Case Number: \_\_\_\_\_ Participant's Name: \_\_\_\_\_  
Assessment Date: \_\_\_\_\_ Participation Type: \_\_\_\_\_

### Suitability Assessment (See reverse for indicators)

#### **Relationship with the required participant:**

Criteria	No Concerns	Addressed in Preparation	External advice sought	Details	Suitable
Relationship with the required participant					

#### **Personal characteristics:**

Criteria	No Concerns	Addressed in Preparation	External advice sought	Details	Suitable
Emotional state					
Mental health issues					
Intellectual disability					
General health					
Alcohol / Drug usage					

#### **Motivation for taking part in restorative justice:**

Criteria	No Concerns	Addressed in Preparation	External advice sought	Details	Suitable
Attitude to offence / offender / victim					
Expectations of restorative justice					
Conference dynamic					

#### **Impact of the offence as perceived by the participant:**

Criteria	No Concerns	Addressed in Preparation	External advice sought	Details	Suitable
Perception of impact of offence					

#### **Special needs/requirements:**

Criteria	No Concerns	Addressed in Preparation	External advice sought	Details	Suitable
Special need / requirements					

#### **Care and protection issues:**

Criteria	No Concerns	Addressed in Preparation	External advice sought	Details	Suitable
Care and protection issues					

#### **Other:**

Criteria	No Concerns	Addressed in Preparation	External advice sought	Details	Suitable
Other					

Summary of Assessment: \_\_\_\_\_

The non-required participant has been found:

☐ SUITABLE

☐ NOT SUITABLE

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

### Indicator Checklist

Criteria	Positive Indicators	Negative Indicators	Comments
Relationship with the required participant	<input type="checkbox"/> Required participant responds or relates well to participant <input type="checkbox"/> Participant responds or relates well to required participant <input type="checkbox"/> Participant is supportive of required participant <input type="checkbox"/> Other	<input type="checkbox"/> Participant doesn't respond well to required participant <input type="checkbox"/> Participant blames required participant <input type="checkbox"/> Family dynamics – unit unstable <input type="checkbox"/> Other	
Emotional state	<input type="checkbox"/> Appears rationally stable <input type="checkbox"/> Emotional response appears commensurate with offence <input type="checkbox"/> Other	<input type="checkbox"/> Self-report <input type="checkbox"/> Has existing emotional issues <input type="checkbox"/> Emotional response appears disproportionate to offence <input type="checkbox"/> Other	
Mental health	<input type="checkbox"/> Absence of indicators of mental health <input type="checkbox"/> Diagnosis condition & currently stabilised <input type="checkbox"/> Other	<input type="checkbox"/> Self-report <input type="checkbox"/> Exhibits dramatic mood changes <input type="checkbox"/> Psychosis <input type="checkbox"/> Self-harm or suicidal ideation <input type="checkbox"/> Other	
Intellectual capacity	<input type="checkbox"/> Able to follow & participate in ordinary conversation <input type="checkbox"/> Issues identified but supported for restorative justice <input type="checkbox"/> Maturity to participate <input type="checkbox"/> Other	<input type="checkbox"/> Self-report <input type="checkbox"/> Slow to react or respond in conversation <input type="checkbox"/> Unusual behaviour <input type="checkbox"/> Poor interpersonal skills <input type="checkbox"/> Other	
General health	<input type="checkbox"/> No issues identified or obvious <input type="checkbox"/> Other	<input type="checkbox"/> Self-report <input type="checkbox"/> Serious illness <input type="checkbox"/> Physical disability <input type="checkbox"/> Special needs <input type="checkbox"/> Other	
AOD issues	<input type="checkbox"/> No issues identified or obvious <input type="checkbox"/> Other	<input type="checkbox"/> Self-report <input type="checkbox"/> Alcohol or drug dependant <input type="checkbox"/> Presents apparently alcohol or drug affected <input type="checkbox"/> Other	
Attitude to offence / victim	<input type="checkbox"/> Express concern <input type="checkbox"/> Keen to make amends <input type="checkbox"/> Willing to participate <input type="checkbox"/> Other	<input type="checkbox"/> Threatening or intimidating behaviour <input type="checkbox"/> Disproportionate response <input type="checkbox"/> Other	
Expectations of restorative justice	<input type="checkbox"/> Shows realistic understanding <input type="checkbox"/> Interested or curious <input type="checkbox"/> Other	<input type="checkbox"/> Sees as a soft-option <input type="checkbox"/> Expectation of apology by the offender <input type="checkbox"/> Other	
Conference dynamics	<input type="checkbox"/> Willingness to participate <input type="checkbox"/> Good support networks <input type="checkbox"/> Relevant life experiences <input type="checkbox"/> Other	<input type="checkbox"/> Power-imbalance <input type="checkbox"/> Socio-economic disparity <input type="checkbox"/> Racism <input type="checkbox"/> Gender / Sexuality / Prejudice <input type="checkbox"/> Other	
Perception of impact of offence	<input type="checkbox"/> Perception commensurate with offence <input type="checkbox"/> Other	<input type="checkbox"/> Irrationally angry towards offender <input type="checkbox"/> Perception not commensurate with offence <input type="checkbox"/> Other	
Special needs / requirements	<input type="checkbox"/> No issues identified or obvious <input type="checkbox"/> Other	<input type="checkbox"/> Interpreter <input type="checkbox"/> Disabled access <input type="checkbox"/> Hearing / Visual impairment <input type="checkbox"/> Cultural requirements <input type="checkbox"/> Other	
Care and protection issues	<input type="checkbox"/> No issues identified or obvious <input type="checkbox"/> Other	<input type="checkbox"/> Care and protection case worker <input type="checkbox"/> Care and protection order <input type="checkbox"/> Personal protection order <input type="checkbox"/> Criminal history sighted <input type="checkbox"/> Other	
Other:	<input type="checkbox"/> _____ <input type="checkbox"/> _____	<input type="checkbox"/> _____ <input type="checkbox"/> _____	

## WELCOME & INTRODUCTIONS

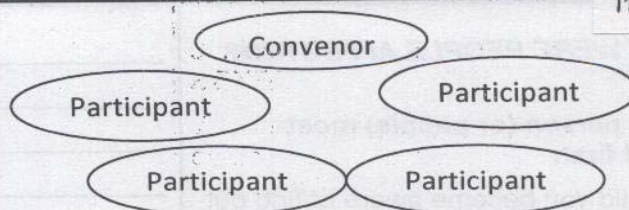
Hello, as you know my name is **CONVENOR**, I will be convening this conference today.

Before we begin I will introduce everyone:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

Everyone here today has agreed to take part in this conference and to participate in accordance with the goals and purpose of restorative justice.

I must remind everyone that this is a voluntary process and if anyone no longer wishes to participate then they are free to leave at any time. If someone does choose to withdraw their participation I will need to have a quick discussion with that person around the reasons why they no longer wish to participate. I am also required to advise the **referring entity**.



## THE INCIDENT

The purpose of this conference is to come together to talk about what happened, who has been affected and how to make things better.

Today we will be discussing the **OFFENCE** matter that occurred on **OFFENCE DATE** at **LOCATION**. The **OFFENDER** has accepted responsibility for their part in this matter.

Under the *Crimes (Restorative Justice) Act* I am strictly bound by confidentiality. As participants of the conference you are not bound but I would remind everyone of the purpose we are here today and that everyone needs to respect the privacy of any information that shared during this conference.

By discussing this incident in an open and honest forum we can focus on how to make things better. When it comes to focusing on how to make things better I would like the group to think about specific things that **OFFENDER** can do to repair any damage or harm that resulted from the matter. I would also like the group to think about specific things that **OFFENDER** can do or commit to that will support them not to do this again.

## 1. WHAT HAPPENED?

**Ask the young person (offender):**

1. What happened?
2. What were you thinking at the time?
3. What have you thought about since?
4. Who has been affected by what you have done? In what way?

[illegible]

**Ask the person (or people) most affected first:**

1. How did you become aware of/find out about what had happened?
2. What did you think at the time?
3. How did you feel at the time?
4. How have you felt about this since?
5. How have you been affected?
6. What was the hardest thing for you?
7. Who else has been affected?

1. How did you become aware of/find out about what had happened?
2. What did you think at the time?
3. How did you feel at the time?
4. How have you felt about this since?
5. How have you been affected?
6. What was the hardest thing for you?
7. Who else has been affected?

1. How did you become aware of/find out about what had happened?
2. What did you think at the time?
3. How did you feel at the time?
4. How have you felt about this since?
5. How have you been affected?
6. What was the hardest thing for you?
7. Who else has been affected?

**OFFENDER** now you have heard how this incident has affected others.

1. How do you feel about what happened now?
2. Is there anything else you would like to say?

**EVERYONE** - Before we move on is there anything anyone else would like to say or ask?

[illegible]

### **3. HOW CAN WE MAKE THINGS BETTER?**

We have now come to the final part of the conference where we need to focus on how to make things better.

#### **Ask the young person (offender):**

1. What do you think you could do to make things better?
2. What do you think could stop this happening again?
3. What would you like to come out of this meeting?

#### **Ask the person (or people) most affected:**

1. What would make things better for you personally?
2. What do you think could stop this happening again?
3. What would you like to come out of this meeting?

#### **Ask supporters of those most affected next:**

1. What would make things better for you personally?
2. What do you think could stop this happening again?
3. What would you like to come out of this meeting?

#### **Ask supporters of young person (offender) next:**

1. What would make things better for you personally?
2. What do you think could stop this happening again?
3. What would you like to come out of this meeting?

#### **EVERYONE**

1. Is that fair and reasonable?
2. How can that be achieved?

It will take me a few minutes to write up the agreement so please feel free to chat amongst yourselves and have some refreshments.

Before I conclude the conference does anyone have anything else they wish to say?

Thank you all for your participation in this conference. I hope you have a safe journey home.



## Consent for a Restorative Justice Process Young Person & Supporters

附件 5



Case Reference Number: \_\_\_\_\_

I understand and agree:

Offences: \_\_\_\_\_

- My participation in restorative justice (RJ) is voluntary and that I can pull out at any time, up until the point I sign an agreement, then I understand, I am obligated to fulfil that agreement
- That no one has to take part in a RJ process or continue to take part after it has started, including me, my supporters and the victim and their supporters
- That taking part in RJ means I accept responsibility for the offences above and that I want to make it right
- A convenor has explained that RJ processes may be direct (face-to-face) or indirect (e.g. by letter)
- I don't have to sign an agreement if I don't want to and I am aware that the agency that referred my matter will be notified of this
- I know I can get legal advice about taking part in a RJ process and prior to signing an agreement reached through a RJ process
- The convenor can talk to my legal representative and other support people including; my parent/s or guardian/s, my Community Youth Justice worker or others nominated by me about my participation in RJ
- The convenor will talk to the victim/s of my offence/s for preparation of the process
- If the convenor is concerned about anything before or during the RJ process, the convenor may decide to stop the RJ process before it has started or stop it at any time after it has started
- A brief report about the RJ process and any agreements reached as a result of the process will be given to the agency that referred this matter
- If the agency that referred my matter is the court, the court can take into consideration in sentencing me that I have accepted responsibility for the offence, and may reduce any sentence or penalty given to me, but is not required under law to do so
- If I decide not to take part in RJ or pull out once the process has started, the court can not consider this when sentencing me
- The convenor has explained that the RJU has an observer program for interested stakeholders and that where consent is given by both myself and the victim, a person (observer), may sit in on the RJ process ^
- I have been talked to about the goals and purpose of RJ and given a copy of the pamphlet "An Explanation of RJ for people who have been cautioned, charged or convicted of a criminal offence".

I, \_\_\_\_\_ Date of Birth: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ have read and understand the above information. The convenor has talked to me about the things written on this form and I have been able to ask questions about anything that I didn't understand on this form.

I agree to take part in a direct / indirect restorative justice process.

Signature: \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

^ I agree to a person observing my restorative justice conference: YES / NO

If under the age of 18, signature of parent or guardian:

Name: \_\_\_\_\_ Relationship to participant: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Witness Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Restorative Justice Unit

Telephone (02) 6207 3992 Facsimile (02) 6207 3961 Ground Floor, 12 Moore Street, GPO Box 158, Canberra ACT 2601



## Consent for a Restorative Justice Process Victim & Supporters



Case Reference Number: \_\_\_\_\_

I understand and agree:

- That restorative justice is voluntary for all participants and no one has to take part in restorative justice or continue to take part after it has started, including me, my supporters and the young person and their supporters
- I can nominate a person to participate in restorative justice on my behalf \*
- A convenor has explained that restorative justice processes may be direct (face-to-face meetings) or indirect (e.g. by letter)
- I know I can get legal advice about taking part in a restorative justice process and prior to signing an agreement reached through a restorative justice process
- I don't have to sign the agreement if I consider that the content does not meet my needs
- If the convenor is concerned about anything before or during the conference, they may decide to stop the restorative justice process before it has started or stop it at any time after it has started
- A brief report about the restorative justice conference and any agreement/s reached, will be given to the agency that referred this matter
- If the agency that referred the matter is the Court, in sentencing the young person, the Court may take into account that the young person has accepted responsibility for the offence and participated in restorative justice for the offence
- I have been talked to about the goals and purpose of restorative justice and given a copy of the pamphlet "An Explanation of Restorative Justice for people who are victims of a criminal offence"
- The convenor has explained that the RJU has an observer program for interested stakeholders and that where consent is given by both myself and the young person, a person (observer), may sit in on the restorative justice conference. ^

The convenor has talked to me about the things written on this form. I have been able to ask questions about anything that I didn't understand on this form.

I, \_\_\_\_\_ Date of Birth: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ have read and understand the above information. I agree to take part in a direct / indirect restorative justice process.

Signature: \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

\* I wish to nominate someone else to participate on my behalf: YES / NO

Name of substitute participant: \_\_\_\_\_

Contact details: \_\_\_\_\_

^ I agree to a person observing my restorative justice conference: YES / NO

Witness Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Restorative Justice Unit  
Telephone (02) 6207 3992 Facsimile (02) 6207 3961  
Ground Floor, 12 Moore Street, GPO Box 158, Canberra ACT 2601



附件 6

RESTORATIVE JUSTICE CONFERENCE AGREEMENT

Telephone (02) 6207 3992 Facsimile (02) 6207 3961  
Ground Floor, 12 Moore Street, GPO Box 158, Canberra ACT 2601



Case No.: \_\_\_\_\_ Agreement To Be Completed By: \_\_\_\_\_ Date of Conference: \_\_\_\_\_

Start Time: \_\_\_\_\_ Finish Time: \_\_\_\_\_ Location: \_\_\_\_\_

Agreement Details:

Tasks To Be Completed	Start Date	Due Date	Monitoring	Completed (Signature & Date)
_____	___/___/___	___/___/___	_____	___/___/___
_____	___/___/___	___/___/___	_____	___/___/___
_____	___/___/___	___/___/___	_____	___/___/___
_____	___/___/___	___/___/___	_____	___/___/___
_____	___/___/___	___/___/___	_____	___/___/___
_____	___/___/___	___/___/___	_____	___/___/___
_____	___/___/___	___/___/___	_____	___/___/___
_____	___/___/___	___/___/___	_____	___/___/___
_____	___/___/___	___/___/___	_____	___/___/___

**Proof of completion may be required for the above tasks. This must be forwarded to the Restorative Justice Unit as soon as the task has been completed.**  
This agreement will be monitored with the young person by the Restorative Justice Unit at the following intervals: 2 weeks, 4 weeks, 6 weeks, 8 weeks & 3 months.  
If you are not able to complete these tasks by the due date, you must contact the convenor as soon as possible on 02 6207 3992.  
**Failure to complete this agreement by the agreed dates will be reported to the referring entity.**

We, the following persons who attended the conference, agree to the Restorative Justice Conference Agreement documented above:

Young Person: _____	Date: _____	Victim: _____	Date: _____
Parent/Guardian: _____	Date: _____	Victim: _____	Date: _____
Supporter: _____	Date: _____	Victim: _____	Date: _____
Supporter: _____	Date: _____	Supporter: _____	Date: _____
Convenor: _____	Date: _____	Supporter: _____	Date: _____
Monitor: _____	Date: _____	Supporter: _____	Date: _____
Monitor: _____	Date: _____	Supporter: _____	Date: _____

**Victim (Conference)**

**Case Reference No:** \_\_\_\_\_ **Date of Conference:** \_\_\_\_\_

**Convenor's Name:** \_\_\_\_\_

**Respondent's Name:** \_\_\_\_\_ **Victim Type:** \_\_\_\_\_

**Interviewer's Name:** \_\_\_\_\_ **Date of Interview:** \_\_\_\_\_

Thank you for speaking with me today. Your feedback about the offence and the conference are very important in helping us to better understand how to improve this process for you and people like you.

There are a number of statements in this questionnaire which I will read out to you and then ask which of the following answers best fits your experience – for example: You like coffee – would you - strongly agree, agree, disagree, strongly disagree.

**1. Firstly, I'd like to ask you how you felt the conference went?**

\_\_\_\_\_

\_\_\_\_\_

**2. You were given enough information on what would happen at the conference? Please circle:**

Yes

Mostly

Not Really

No

**Comments:** \_\_\_\_\_

\_\_\_\_\_

**3. You were able to say what you wanted to say? Please circle:**

Strongly Agree

Agree

Disagree

Strongly Disagree

**Comments:** \_\_\_\_\_

\_\_\_\_\_

**4. You were pleased with what the offender(s) said? Please circle:**

Yes, Very Pleased

Pleased

Not Really Pleased

No, Not Pleased

**Comments:** \_\_\_\_\_

\_\_\_\_\_

**5. You were pleased with the outcome? Please circle:**

Yes, Very Pleased

Pleased

Not Really Pleased

No, Not Pleased

If "Not Really Pleased" or "No, Not Pleased", what else do you believe should have been included in the outcome agreement?

\_\_\_\_\_

\_\_\_\_\_

6. Do you have any concerns about what happened at the conference? Please circle:

Yes

No

If "Yes", can you tell me your concerns?

---

---

7. Before the conference, how angry did you feel with the offender(s)? Please circle:

Very Angry

Quite Angry

Not Very Angry

Not At All Angry

8. After the conference, how angry did you feel with the offender(s)? Please circle:

Very Angry

Quite Angry

Not Very Angry

Not At All Angry

9. Were you afraid of the offender(s) before the conference? Please circle:

Very Afraid

Quite Afraid

Not Very Afraid

Not At All Afraid

10. Were you afraid of the offender(s) after the conference? Please circle:

Very Afraid

Quite Afraid

Not Very Afraid

Not At All Afraid

11. Before the conference, how anxious were you about the offence(s) happening again?  
Please circle:

Very Anxious

Quite Anxious

A Little Anxious

Not At All Anxious

12. After the conference, how anxious were you about the offence(s) happening again? Please  
circle:

Very Anxious

Quite Anxious

A Little Anxious

Not At All Anxious

13. How sympathetic did you feel towards the offender(s) before the conference? Please circle:

Very Unsympathetic

Unsympathetic

Sympathetic

Very Sympathetic

14. How sympathetic did you feel towards the offender(s) after the conference? Please circle:

Very Unsympathetic

Unsympathetic

Sympathetic

Very Sympathetic

15. You felt pressured to attend the conference. Please circle:

Strongly Disagree

Disagree

Agree

Strongly Agree

If "Agree" or "Strongly Agree", please explain what made you feel pressured?

---

---

16. Why did you decide to participate in restorative justice?

---

---

---

**17. How fair did you think the conference was for you? Would you say that it was?** Please circle:

Very Fair

Somewhat Fair

Somewhat Unfair

Very Unfair

Comments:

---

**18. How fair did you think the conference was to the offender(s)? Would you say that it was?** Please circle:

Very Fair

Somewhat Fair

Somewhat Unfair

Very Unfair

Comments:

---

**19. You feel you were treated with respect during the conference...** Please circle:

Strongly Agree

Agree

Neither Agree  
Nor Disagree

Disagree

Strongly Disagree

If "Disagree" or "Strongly Disagree", please identify who did not treat you with respect?

---

**20. The conference took account of what you said in deciding what should be done?** Please circle:

Strongly Agree

Agree

Neither Agree  
Nor Disagree

Disagree

Strongly Disagree

Comments:

---

**21. How much did you feel the conference respected your rights?** Please circle:

Not At All

A Little

A Fair Bit

A Lot

Comments:

---

**22. Immediately after conference, you were satisfied with outcome?** Please circle:

Strongly Agree

Agree

Neither Agree  
Nor Disagree

Disagree

Strongly Disagree

Comments:

---

**23. Now, you are still satisfied with the outcome?** Please circle:

Strongly Agree

Agree

Neither Agree  
Nor Disagree

Disagree

Strongly Disagree

Confidential

3

Comments: \_\_\_\_\_

**24. Would you attend a conference again? Please circle:**

Yes

No

Comments: \_\_\_\_\_

**25. Would you recommend it to someone else? Please circle:**

Yes

No

Comments: \_\_\_\_\_

**26. How do you feel now about meeting the offender(s)?**

**27. Has anything negative happened as a result of agreeing to take part in the restorative justice conference? Please circle:**

Yes

No

If "Yes", can you tell me what are the negative consequences?

**28. To help us with future conferences is there anything we could do better?**

**29. Would you like to be referred to a Victim Support Agency?**

Yes

No

**Thank you for your time**

## Restorative Justice Unit - Feedback Questionnaire

### Victim Supporter (Conference)

Case Reference No: \_\_\_\_\_ Date of Conference: \_\_\_\_\_  
Convenor's Name: \_\_\_\_\_  
Respondent's Name: \_\_\_\_\_ Relationship To Victim: \_\_\_\_\_  
Interviewer's Name: \_\_\_\_\_ Date of Interview: \_\_\_\_\_

Thank you for speaking with me today. Your feedback about the offence and the conference are very important in helping us to better understand the strengths and weaknesses of this process and how we can continue to improve the process for you and people like you.

There are a number of statements in this questionnaire which I will read out to you and then ask which of the following answers best fits your experience – for example: You like coffee – would you - strongly agree, agree, disagree, strongly disagree.

**1. Firstly, I'd like to ask you how you felt the conference went?**

---

---

---

**2. You were given enough information on what would happen at the conference? Please circle:**

Yes

Mostly

Not Really

No

Comments: \_\_\_\_\_

**3. You were able to say what you wanted to say? Please circle:**

Strongly Agree

Agree

Disagree

Strongly Disagree

Comments: \_\_\_\_\_

**4. You were pleased with what the offender(s) said? Please circle:**

Yes, Very Pleased

Pleased

Not Really Pleased

No, Not Pleased

Comments: \_\_\_\_\_

**5. You were pleased with the outcome? Please circle:**

Yes, Very Pleased

Pleased

Not Really Pleased

No, Not Pleased

If "Not Really Pleased" or "No, Not Pleased", what else do you believe should have been included in the outcome agreement?

---

---

Confidential

1

6. Do you have any concerns about what happened at the conference? Please circle:

Yes

No

If "Yes", can you tell me your concerns?

---

---

7. You felt pressured to attend the conference? Please circle:

Strongly Disagree

Disagree

Agree

Strongly Agree

If "Agree" or "Strongly Agree", please explain what made you feel pressured?

---

---

8. How fair did you think the conference was? Would you say that it was? Please circle:

Very Fair

Somewhat Fair

Somewhat Unfair

Very Unfair

9. How fair did you think the conference was to the offender(s)? Would you say that it was?  
Please circle:

Very Fair

Somewhat Fair

Somewhat Unfair

Very Unfair

10. You feel you were treated with respect during the conference? Please circle:

Strongly Agree

Agree

Neither Agree  
Nor Disagree

Disagree

Strongly Disagree

If "Disagree" or "Strongly Disagree", please identify who did not treat you with respect?

---

---

11. The conference took account of what you said in deciding what should be done? Please circle:

Strongly Agree

Agree

Neither Agree  
Nor Disagree

Disagree

Strongly Disagree

12. How much did you feel the conference respected your rights? Please circle:

Not At All

A Little

A Fair Bit

A Lot

13. Would you attend a conference again? Please circle:

Yes

No

Comments:

---

---

14. Would you recommend it to someone else? Please circle:

Yes

No

Comments:

---

---

Confidential

2

---

---

**15. Has anything negative happened as a result of agreeing to take part in the restorative justice conference? Please circle:**

Yes

No

If "Yes", can you tell me what are the negative consequences?

---

---

**16. To help us with future conferences is there anything we could do better?**

---

---

---

**Thank you for your time**

## Restorative Justice Unit - Feedback Questionnaire

### Offender (Conference)

Case Reference No: \_\_\_\_\_ Date of Conference: \_\_\_\_\_

Convenor's Name: \_\_\_\_\_

Respondent's Name: \_\_\_\_\_ Offender Type: \_\_\_\_\_

Interviewer's Name: \_\_\_\_\_ Date of Interview: \_\_\_\_\_

Thank you for speaking with me today. Your feedback about the offence and the conference are very important in helping us to better understand how to improve this process for you and people like you.

There are a number of statements in this questionnaire which I will read out to you and then ask which of the following answers best fits your experience – for example: You like coffee – would you - strongly agree, agree, disagree, strongly disagree.

**1. Firstly, I'd like to ask you how did felt the conference went?**

---

---

---

**2. You were given enough information on what would happen at the conference? Please circle:**

Yes

Mostly

Not Really

No

Comments: \_\_\_\_\_

**3. You were able to say what you wanted to say? Please circle:**

Strongly Agree

Agree

Disagree

Strongly Disagree

Comments: \_\_\_\_\_

**4. You were pleased with what the victim(s) said? Please circle:**

Yes, Very Pleased

Pleased

Not Really Pleased

No, Not Pleased

Comments: \_\_\_\_\_

**5. The conference took account of what you said in deciding what should be done? Please circle:**

Strongly Agree

Agree

Neither Agree  
Nor Disagree

Disagree

Strongly Disagree

**6. How much did you feel the conference respected your rights? Please circle:**

Not At All

A Little

A Fair Bit

A Lot

Confidential

1

**7. You were pleased with the outcome?** Please circle:

Yes, Very Pleased

Pleased

Not Really Pleased

No, Not Pleased

If "Not Really Pleased" or "No, Not Pleased", what else do you believe should have been included in the outcome agreement?

---

**8. Do you have any concerns about what happened at the conference?** Please circle:

Yes

No

If "Yes", can you tell me your concerns?

---

**9. You felt pressured to attend the conference?** Please circle:

Strongly Disagree

Disagree

Agree

Strongly Agree

If "Agree" or "Strongly Agree", please explain what made you feel pressured?

---

**10. Why did you decide to participate in restorative justice?**

---

**11. How fair did you think the agreement was?** Please circle:

Very Fair

Somewhat Fair

Somewhat Unfair

Very Unfair

**12. How fair did you think the conference was for you? Would you say that it was?** Please circle:

Very Fair

Somewhat Fair

Somewhat Unfair

Very Unfair

**13. You feel you were treated with respect during the conference?** Please circle:

Strongly Agree

Agree

Neither Agree  
Nor Disagree

Disagree

Strongly Disagree

If "Disagree" or "Strongly Disagree", please identify who did not treat you with respect?

---

**14. Would you attend a conference again?** Please circle:

Yes

No

Comments:

---

**15. Would you recommend it to someone else? Please circle:**

Yes

No

Comments: \_\_\_\_\_  
\_\_\_\_\_

**16. How do you feel now about meeting the victim(s)?**  
\_\_\_\_\_  
\_\_\_\_\_

**17. Has anything negative happened as a result of agreeing to take part in the conference?**  
Please circle:

Yes

No

If "Yes", can you tell me what are the negative consequences?  
\_\_\_\_\_  
\_\_\_\_\_

**18. To help us with future conferences is there anything we could do better?**  
\_\_\_\_\_  
\_\_\_\_\_

**Thank you for your time**

## Restorative Justice Unit - Feedback Questionnaire

### Offender Supporter (Conference)

Case Reference No: \_\_\_\_\_ Date of Conference: \_\_\_\_\_  
Convenor's Name: \_\_\_\_\_  
Respondent's Name: \_\_\_\_\_ Relationship To Offender: \_\_\_\_\_  
Interviewer's Name: \_\_\_\_\_ Date of Interview: \_\_\_\_\_

Thank you for speaking with me today. Your feedback about the offence and the conference are very important in helping us to better understand the strengths and weaknesses of this process and how we can continue to improve the process for you and people like you.

There are a number of statements in this questionnaire which I will read out to you and then ask which of the following answers best fits your experience – for example: You like coffee – would you - strongly agree, agree, disagree, strongly disagree.

**1. Firstly, I'd like to ask you how you felt the conference went?**

---

---

---

**2. You were given enough information on what would happen at the conference? Please circle:**

Yes

Mostly

Not Really

No

Comments: \_\_\_\_\_

**3. You were able to say what you wanted to say? Please circle:**

Strongly Agree

Agree

Disagree

Strongly Disagree

Comments: \_\_\_\_\_

**4. You were pleased with the information that was provided to you by the convenor about what the victim(s) said? Please circle:**

Yes, Very Pleased

Pleased

Not Really Pleased

No, Not Pleased

Comments: \_\_\_\_\_

**5. You were pleased with the outcome? Please circle:**

Yes, Very Pleased

Pleased

Not Really Pleased

No, Not Pleased

If "Not Really Pleased" or "No, Not Pleased", what else do you believe should have been included in the outcome agreement?

---

Confidential

1

6. Do you have any concerns about what happened at the conference? Please circle:

Yes

No

If "Yes", can you tell me your concerns?

7. You felt pressured to attend the conference? Please circle:

Strongly Disagree

Disagree

Agree

Strongly Agree

If "Agree" or "Strongly Agree", please identify why you felt pressured?

8. How fair did you think the conference was? Would you say that it was? Please circle:

Very Fair

Somewhat Fair

Somewhat Unfair

Very Unfair

9. How fair did you think the conference was to the offender(s)? Would you say that it was?  
Please circle:

Very Fair

Somewhat Fair

Somewhat Unfair

Very Unfair

10. You feel you were treated with respect during the conference? Please circle:

Strongly Agree

Agree

Neither Agree  
Nor Disagree

Disagree

Strongly Disagree

If "Disagree" or "Strongly Disagree", please identify who did not treat you with respect?

11. The conference took account of what you said in deciding what should be done? Please circle:

Strongly Agree

Agree

Neither Agree  
Nor Disagree

Disagree

Strongly Disagree

12. How helpful did you find the conference? Please circle:

Very Helpful

Helpful

Neither Helpful  
Or Unhelpful

Unhelpful

Very  
Unhelpful

13. How much did you feel the conference respected your rights? Please circle:

Not At All

A Little

A Fair Bit

A Lot

Comments:

**14. Would you attend a conference again? Please circle:**

Yes

No

Comments: \_\_\_\_\_

**15. Would you recommend it to someone else? Please circle:**

Yes

No

Comments: \_\_\_\_\_

**16. Has anything negative happened as a result of agreeing to take part in the restorative justice conference? Please circle:**

Yes

No

If "Yes", can you tell me what are the negative consequences?

**17. To help us with future conferences is there anything we could do better?**

**Thank you for your time**

## 9. Monitoring of RJ agreements:

The convenor can do anything reasonable to check whether you are doing what you agreed to do in the RJ agreement.

If the convenor is satisfied that the RJ agreement has been completed, they must report that to the agency that referred the offence to RJ.

If they are not satisfied that the RJ agreement has been completed, the convenor must report that to the agency that referred the offence to RJ.

## 10. Writing an apology letter

An apology letter is a way of telling everyone that you are sorry for what you did. Your letter should be in your own words, telling people how you feel about the offence now that you have gone through RJ and heard what everyone has said.

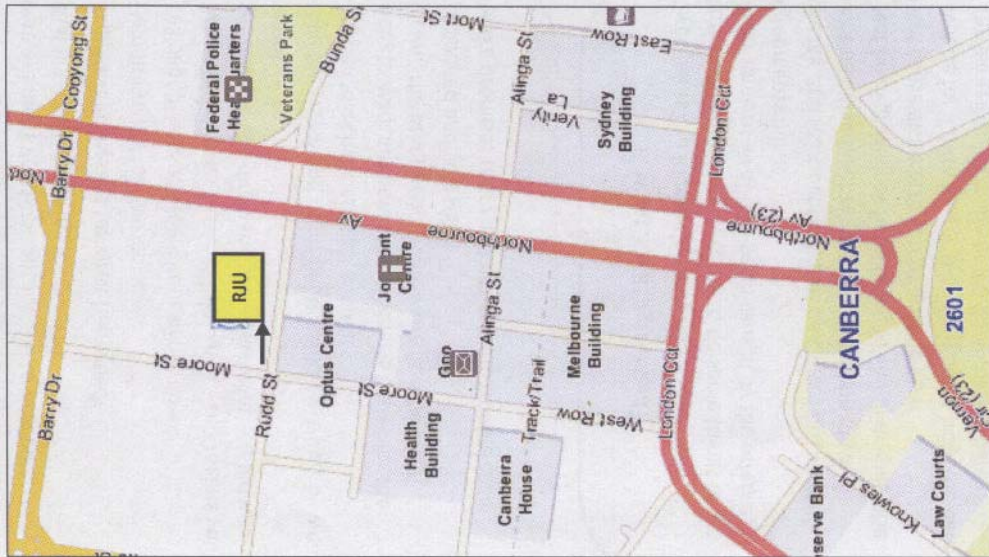
Try to make your apology letter personal. You may want to include some of the following things:

- Important things said in the RJ process
- How being involved in RJ made you feel
- How you feel about the offence now
- What you felt when you heard other people's side of the story – you may have been sad or surprised by what was said
- Any changes in your life since the RJ meeting – like a new job or apprenticeship, returning to school etc

Some things to think about before writing your apology letter:

- Write the letter soon after the RJ meeting while things are fresh in your mind
- Check your RJ agreement to make sure you have lots of time to write it and get it into the Restorative Justice Unit before its due date
- Get someone to help if you need it - ask a friend, a family member or call the Restorative Justice Unit if you need some help

## Restorative Justice Unit (RJU):



Location: Ground Floor, 12 Moore St,  
Canberra ACT 2601

Postal: GPO Box 158,  
Canberra ACT 2601

Phone: 02 6207 3992

Fax: 02 6207 3961

Email: [restorativejustice@act.gov.au](mailto:restorativejustice@act.gov.au)

Website: [http://www.justice.act.gov.au/?/restorative\\_justice](http://www.justice.act.gov.au/?/restorative_justice)

## RESTORATIVE JUSTICE (RJ)

An explanation of restorative justice for people who have been cautioned, charged or convicted of a criminal offence

### 1. What is restorative justice (RJ)?

RJ is an exchange of information between the people most affected by an offence – you and the victim. It gives you an opportunity to accept responsibility for the offence and to repair the harm caused by the offence.

The process provides the victim/s with an opportunity to talk about how they have been affected by an offence and a chance for them to address any unresolved questions or needs they might have as a result of the offence.

Information can be exchanged either directly through a face-to-face meeting or indirectly through a series of letters or messages.

### 2. What happens in a RJ process?

RJ is co-ordinated by a person called a convenor. A convenor prepares everyone for RJ and helps everyone to talk to one another. The convenor takes participants through three stages:

**1. What happened?** You will be asked to talk about what led up to the offence and what happened during and after the offence. You will also be asked how you think others were affected.

**2. How were people affected?** Starting with the victim, the convenor asks everyone what they thought when the offence happened and how they feel now. You will find out how people were hurt by what happened and you might find out some things you didn't know.

**3. How to make things better?** The convenor asks everyone what they think needs to happen to make things better. This may form an agreement between you and the victim about what you need to do to repair the harm caused by the offence.

Everyone, including you, makes sure that what is in the agreement is fair.

### 3. Who can participate in a RJ meeting?

The convenor will talk to you about who you would like to participate in the process. It meeting usually involves:

- You and people you care about - like your family, and friends
- The victim and people who care about them
- Other people who were involved with the offence like the police informant, a teacher, sports coach or a witness

### 4. Things you should know about before agreeing to take part:

There are some things you should think about if you are going to do RJ:

- You don't have to do it if you don't want to. You can pull out at any time
- You can talk to a lawyer at any time about doing RJ and about the effects of what you may agree to do to make things better
- Accepting responsibility doesn't stop you from going to court and telling the court you are not guilty for the offence
- RJ can happen at any time in the criminal justice system:
  - Instead of going to court
  - As well as going to court
  - Once the court has sentenced you
- If you go to court for sentencing, after you have participated in RJ, the court may consider whether you have accepted responsibility for the offence but is not required to reduce your sentence as a result. This means that a court can reduce your sentence because you have participated in RJ but it is not required to
- If you decide not to take part in RJ or you pull out once the process has started the court must not consider this when sentencing
- You don't have to sign any agreement if you don't want to

### 5. Why should you do it?

There are many good reasons for you to take part:

- Feel better about yourself
- Explain your reasons for what happened
- Help the victim feel better
- Tell people how you feel about things now
- Take responsibility for what happened – this means you were there, you did it and you know what you did was wrong
- Give the victim and other people who were hurt by what happened a chance to talk about it
- Help to work out how to make things better for the victim, the other people who were hurt by what happened and yourself
- Make promises to try and not get into trouble again

### 6. What is a RJ agreement?

Participants in a RJ meeting may reach some type of agreement whereby you agree to do some things to repair some or all of that harm caused by the offence.

Agreements must:

- Be fair and reasonably able to be carried out by you
  - Not be unlawful or require the detention of you
  - Not be degrading or humiliating to you or anyone else
  - Not cause distress to you or anyone else
  - Not be for a term longer than six months from the date the agreement is made or if a later starting date is stated the later date
  - Be in writing and signed by you and the victims
- A RJ agreement may include one or more of the following:
- An apology by you - either verbal or written
  - A work plan for the benefit of the victim or the community
  - Financial reparation
  - A plan to address your offending behaviour
  - Anything else that would help repair the harm caused by the offence

### 7. Tasks in RJ agreements

Tasks in RJ agreements usually include things that help repair the harm to the victim and to try to stop you from getting in trouble again.

Examples of things that people have done for their victims include:

- Writing letters of apology or update letters
- Paying money for damaged property or doctors bills
- Paying money to a charity nominated by the victim
- Doing unpaid work for the victim or the community

Examples of things that people have done to make sure they don't get in trouble again:

- Make a promise to increase school attendance
- Abide by a curfew
- Get counselling e.g. anger management issues
- Look for employment or do work experience
- Agree not to have contact with people that get them into trouble
- Participate in programs e.g. Police Citizen's Youth Club (PCYC) Programs or defensive driver training
- Participate in courses e.g. education courses like CIT

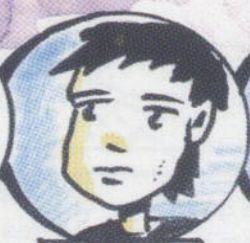
### 8. Before signing a RJ agreement you should know:

- You can seek legal advice about the effect of the proposed agreement
- You do not have to sign it if you don't want to
- You understand the agreement and what it means
- You are able to do what is in the agreement
- You understand when you need to have the agreement completed by
- The convenor must give a copy of the RJ agreement to you, the victim and the agency that referred the offence to RJ e.g. the police, DPP, courts etc
- Agreements may only be changed if there has been a change in circumstance that does not allow you to complete the original agreement. They may only be amended after the convenor has discussed any change with you and the victim.

# DOIN' RJ



JOSH



SAM



DEB



DAVE THE  
RJ GUY

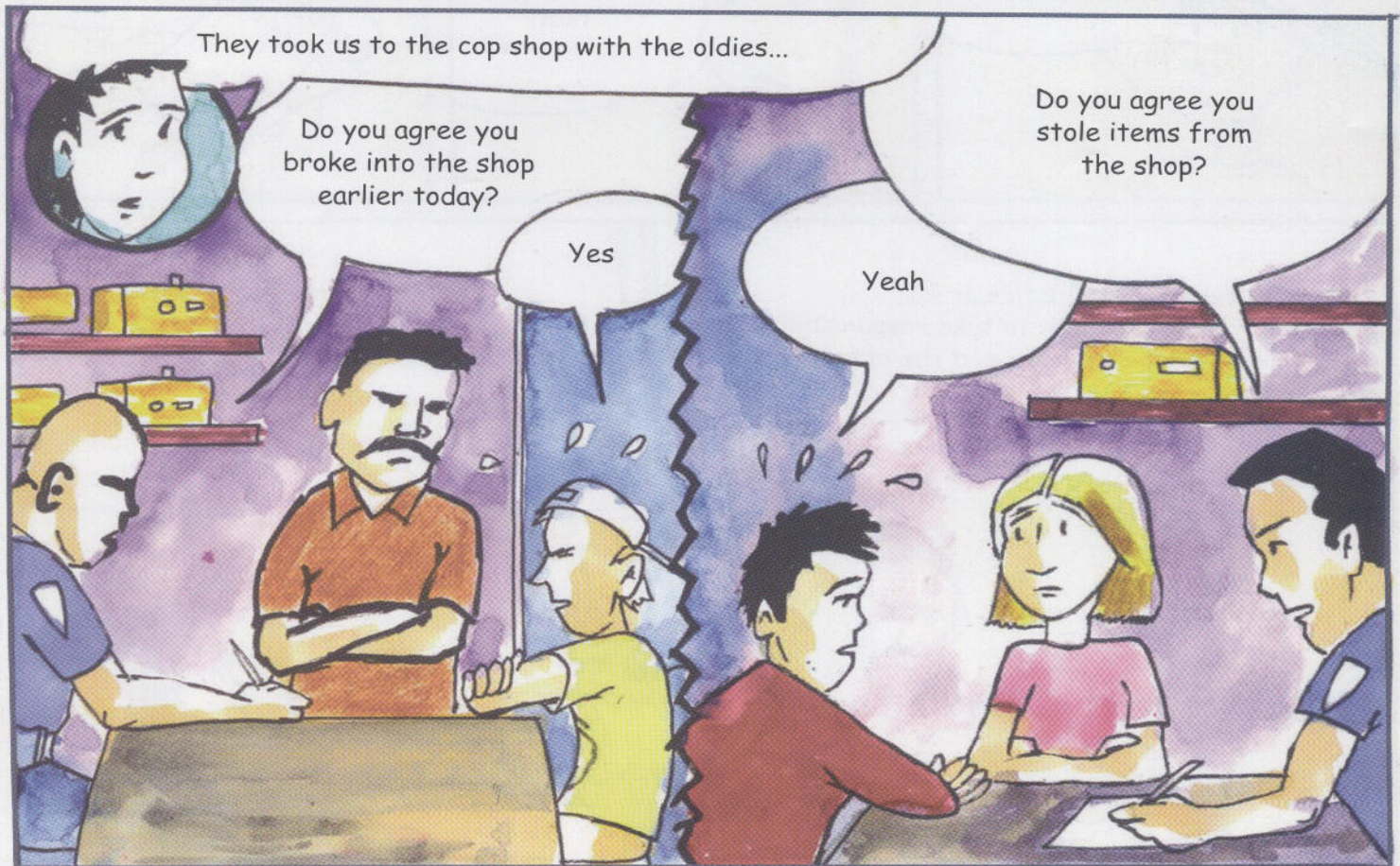


MRS PESCI  
SHOPKEEPER

ADAPTATION and  
ARTWORK by  
STEPHEN HARRISON



A few weeks later, at the skate park...



Then what happened?

They told  
us about  
RJ.

You have both accepted responsibility  
for the offence and you both  
seem sorry for doing it...

We want to  
refer you to  
RESTORATIVE  
JUSTICE.

What's  
Restorative  
Justice?

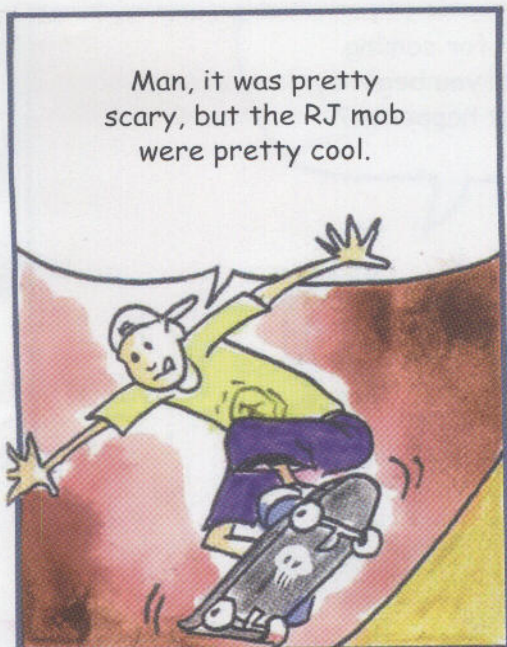
Yeah,  
what's  
that?

Here's a pamphlet that  
explains it, but...



Basically, Restorative Justice or RJ,  
is where you get a chance to take responsibility  
and help repair the harm caused the offences you  
committed.

We'll put in a referral and  
a person from the the RJ  
Unit will contact you soon.



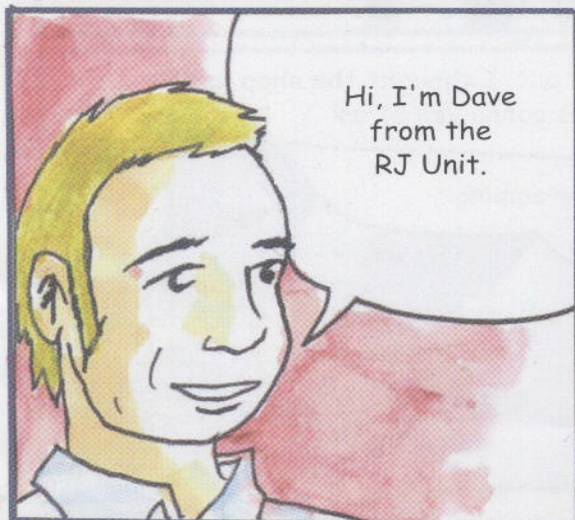
Man, it was pretty scary, but the RJ mob were pretty cool.



What did you have to do?

We agreed to do it, then a RJ person met with me and my mum...

And me and my dad.



Hi, I'm Dave from the RJ Unit.



I will meet with the shop owner and see if she would like to participate. If she does, we will get everyone together to talk about what happened.



Dave meets Mrs. Pesci, the shop owner...

We'd like you to consider participating in Restorative Justice.

I'd like to hear more about it.



You will hear about what happened that night and you will get the chance to tell the boys how you have been harmed by the offences.

I'd like the opportunity to do that.

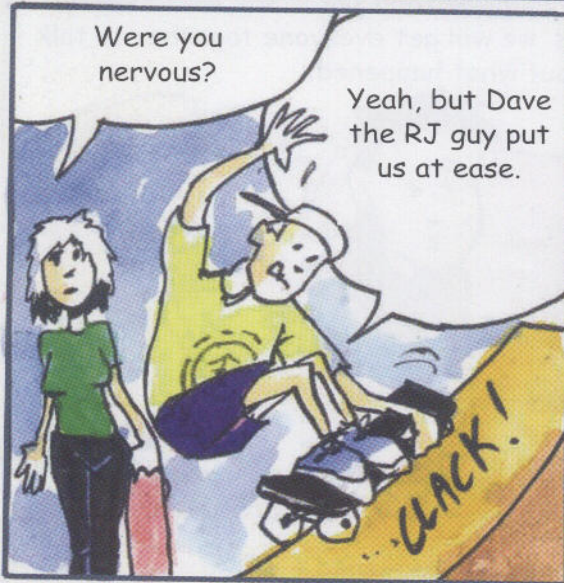
At the RJ conference...

Thank you all for coming today. Boys, can you begin by telling us what happened?



Were you nervous?

Yeah, but Dave the RJ guy put us at ease.



I was freaked out, I thought the shop lady was gonna yell at us!

But she respected us for coming...



And for talking honestly.

She said she was very upset by what we did.

I was scared and nervous, and I had to pay a lot of money to fix things. It was hard because my business is struggling right now!



What do you think you need to do to make things better?



Back at the skate park...

What did you say to that?

It was tough hearing how the shop owner was harmed. We talked about some things that we could do to make up for what we had done.

Yeah, in the end we wanted to make things better, to help out, you know.

WATCH OUT!

CLACK

CLACK!  
CLACK!

By doin' RJ we got the chance to help everyone to move on and feel better.

I told her we could help out at the shop...

And hand out fliers to drum up business for her shop.

K'CLACK

My mum thought that was a great idea!

Yeah, so did my dad and everyone else. So we made an agreement to do those things.

Most importantly, we followed through with what we said we'd do.

The shop owner was really impressed when we completed our agreement.

It made things better with our families.

Yeah, mum says she's really proud of me.

Yeah, dad and I are getting along better now too.

Yeah, I'm really glad we did it.

Well, you shouldn't have broken in to the shop to start with but it sounds like DOIN' RJ was a great way to fix things.

See...  
Even Deb's impressed!!!

WINK

The END



## RESTORATIVE JUSTICE UNIT

ACT Dept. of Justice & Community Safety

Ground Floor, 12 Moore Street, Canberra ACT 2601

GPO Box 158, Canberra ACT 2601

Ph: 02 6207 3992 Fax: 02 6207 3961

