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Queensland Sentencing Advisor Council  
GPO Box 2360  
BRISBANE QLD 4001

Email: [info@sentencingcouncil.qld.gov.au](mailto:info@sentencingcouncil.qld.gov.au)

### **Submission: Sentencing for Child Homicide**

Please excuse the lateness of this submission.

As outlined in the Consultation Paper, the Dispute Resolution Branch's (DRB) Adult Restorative Justice Conferencing (ARJC) service is available at any stage of the criminal justice process, including:

- Prior to charges being laid
- Prior to a matter being heard in court
- After a finding has been made in the Court but before a sentence is imposed
- Post-sentence, either whilst a person is serving a term of imprisonment or some other community-based correctional order, or after the person has completed their sentence.

As set out in the Consultation Paper, ARJC in Queensland is mostly conducted for more minor matters, either prior to a charge being laid or before the matter is heard and a finding entered by the Court. ARJC has received comparatively few requests for post-sentence restorative justice processes. This may be attributable to a number of factors, including lack of awareness of its availability.

A typical restorative justice conference involves a voluntary meeting between the offender and the victim and their respective communities of support. This meeting usually involves a discussion of the offence, of the impacts of this offence and a discussion of what steps the offender can take to try to address the harm caused by their actions. If there is agreement about these steps, this can be recorded in an agreement, which is monitored by ARJC for compliance.

All restorative justice processes run by the DRB's ARJC service are conducted under the *Dispute Resolution Centres Act 1990* ('the Act'). The Act sets out a number of aspects relating to the provision of dispute resolution services, including the secrecy and privilege, which attaches to mediations. In addition, the DRB has a policy to guide the conduct of ARJC, as well as a practice guiding the conduct of restorative justice processes in the post-sentence context. The content of this practice is summarised below by reference to a number of key principles:

- *Matters should only be initiated by the victim (or secondary victim) of the offence*

The Queensland Victim's Register has indicated that they would, under no circumstances, provide the contact details of a victim upon the initiation of an offender.

There is a tension in avoiding situations where offenders may use a restorative justice process to cause further harm or to further their own ends (e.g. favourably impact parole); and supporting the choice and agency of victims of crime.

Voluntariness and informed consent are key principles in restorative justice. ARJC is experienced in approaching victims of crime to discuss the possibility of a restorative justice process, and supporting them to exercise their choice. As flagged, these processes are mostly occurring in the context of more minor offending, where the harm associated with the offence is likely to be less severe and the risk of further harm associated with a restorative justice process is lower than in the post-sentence context.

An evaluation of research comparing outcomes in victim-initiated and offender-initiated post-sentence processes should be conducted to inform future developments in this area. Consultation with victims of crime and agencies working with victims of crime should also specifically address this question.

- *Informed consent*

Parties should be provided with information regarding the process and their options, and also provided with the support and advice necessary to understand this information and exercise their choice.

- *Assessment of suitability*

The decision to proceed to a restorative justice process should be the result of a careful assessment of suitability. The DRB policy for the conduct of ARJC sets out the criteria, which underpin this assessment, including:

- that both the victim and offender provide ongoing and informed consent to participate in an Adult Restorative Justice process
- the victim and offender agree on the basic circumstances of a matter as the basis for their participation in the Adult Restorative Justice process
- the offender accepts responsibility for their offending behaviour and is willing to take steps to repair the harm caused
- the victim is not seeking retribution in relation to the offender
- power dynamics, which may impact on the process or the ability for the parties to negotiate in their own interests can be appropriately managed within the restorative justice process
- the Adult Restorative Justice process is unlikely to result in further harm being caused to the parties, in particular the victim.

The DRB's practice for the conduct of post-sentence restorative justice conferencing also foresees the following as relevant suitability considerations:

- There is likelihood that the offender will come into contact with the victim after release
  - The offender will be released into the same town in which the victim resides
  - The offender will be living with the victim
  - The offender will be returning to an aboriginal community in which the victim resides
  - The offender has children or other relatives in common with the victim.
- The offender is currently in contact with the victim.
- There is a fear on the part of victim or offender about meeting the other person after release. Restorative justice conferencing can be used to negotiate terms of contact.
- The victim has requested the restorative justice conferencing and wishes to meet the offender to ask questions about what happened and express their feelings as victims of the offence/s. Motivations for attendance must be positively linked to the victim's healing process and not based on a desire to exact retribution.
- The victim wishes to discuss a criminal compensation claim with the offender.
- The offender wishes to apologise or express remorse for the offence/s and after assessment it is considered the motivations for attendance are not to cause re-victimisation or to secure favourable treatment in relation to their sentence management.
- The allied health professionals for both the victim and offender are supportive of the restorative justice conferencing process after considering the potential benefits and risks to their clients.
- After careful exploration with both the victim and the offender it is considered likely that the expectations of both individuals may be met to some extent by a restorative justice conferencing process.
- That a meeting between the offender and victim will not pose a danger to either party, the conference conveners or any other person involved in the conference process.

In the post-sentence context, suitability assessment has a number of distinct stages:

- At least one face-to-face interview with the victim(s)
  - Initial consideration by QCS in liaison with the individual Correctional Centre
  - Consideration of the case by members of the ARJC team in conjunction with the Correctional Centre and the offender's professional support workers
  - At least one face-to-face interview with the offender and a professional support worker.
- *Party support*

Victims and offenders who participate in an Adult Restorative Justice process should be engaged with appropriate personal and professional supports. ARJC will take steps to encourage the participation of personal and professional supports, including by actively making referrals to support agencies.

- *Confidentiality*

Information sharing or exchange between the parties (facilitated by ARJC), with and between the agencies is only done so with the explicit permission of the parties and/or the agency.

- *Process flexibility*

ARJC should be responsive to the needs of the parties, in particular the victim. In this way, a restorative justice process may vary from a facilitated exchange of letters, ARJC staff facilitating the exchange of information verbally (shuttle), a face-to-face meeting, or all of the above.

### Benefits of Adult Restorative Justice Conferencing

For 2017-18 Adult Restorative Justice Conferencing in Queensland achieved:

- Ninety-two percent satisfaction rate with the RJ process, which was consistent amongst victims and offenders (this rose to 93% for support people). This was assessed over a number of measures, including:
  - Preparedness for the meeting
  - Safety
  - Fairness
  - Being listened to
  - Expressing my perspective
  - Dealing with the offence.
- Ninety-six percent compliance rate with outcomes agreed to in ARJC. ARJC suggests that this represents a reflection of the offender's role in identifying and agreeing to steps they can take to address the harm, as well as reality testing conducted by ARJC staff.

More broadly, RJ has been assessed for effectiveness internationally. The most comprehensive of these analyses was a conducted by the Campbell Collaboration

(<https://campbellcollaboration.org/library/restorative-justice-conferencing-recidivism-victim-satisfaction.html>), which reported the following:

- A cost-effectiveness estimate of 8 times more benefit in costs of crimes prevented than the cost of delivering RJs.
- Improved victim outcomes, over a number of measures, including:
  - Material restoration
  - Emotional restoration
  - Satisfaction with the process
  - Dissatisfaction with the process
  - Desire for revenge
  - Post-traumatic stress symptoms.

### More information regarding post-sentence restorative justice

Further information regarding the use of restorative justice post-sentence is available here: [https://www.fh-kiel.de/fileadmin/data/sug/pdf-Dokument/Hagemann/Book\\_Final\\_without\\_coverpage.pdf](https://www.fh-kiel.de/fileadmin/data/sug/pdf-Dokument/Hagemann/Book_Final_without_coverpage.pdf) and by consultation with the NSW Restorative Justice Unit ([restorative.justice@justice.nsw.gov.au](mailto:restorative.justice@justice.nsw.gov.au)) and the ACT Restorative Justice Unit ([restorativejustice@act.gov.au](mailto:restorativejustice@act.gov.au))

### Pre-sentence Restorative Justice Processes


Whilst I note that pre-sentence restorative justice processes are not specifically the subject of consultation, this is an area where there is potential for highlighting victims voices in the sentencing process.

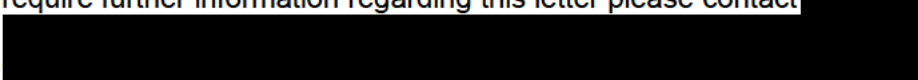
In New Zealand since 2014 cases, which meet certain criteria can be adjourned for consideration of whether a restorative justice process is appropriate prior to sentencing. Services are provided by a network of non-government organisations funded by the Ministry of Justice. The Ministry produces best-practice guidelines as well as specialist standards for family violence and sexual offending. Professional body Resolution Institute oversees Training and accreditation.

According to the Ministry of Justice Annual Reports, in 2015-16 (<https://www.justice.govt.nz/assets/Documents/Publications/moj-2015-16-annual-report.pdf>) there were 12,518 referrals to restorative justice services, and 2981 conferences held. In 2016-17 (<https://www.justice.govt.nz/assets/Documents/Publications/moj-2016-17-annual-report-screen.pdf>) this increased to an estimated 3200 conferences.

These conferences have had favourable impacts on reoffending as well as the victim experience. At 2016 evaluation (<http://www.victiminfo.govt.nz/assets/Research/20170303-RJ-Victim-Report.pdf>) revealed that 84% of victims were satisfied with the restorative justice conference they attended, and 81% said they would recommend restorative justice to others in a similar situation. Sixty-four percent reported that the restorative justice meeting made them feel better, with 75% able to name at least one way that restorative justice had benefited them.

I also highlight that the New South Wales Sentencing Council has recently conducted a review of victims' involvement in the sentencing process, including specifically considering the role of restorative justice. The report was submitted to the NSW Attorney-General on 1 March 2018, but it does not yet appear to have been public released.

I trust this information will be of assistance in your review. Should you require further information regarding this letter please contact 



Yours sincerely



Lindsay Smith  
Executive Manager  
**Dispute Resolution Branch**