

#ICLRCORO2024

Workshop Four

Restorative Justice and its
application to legal regulation



ICLR+CORO2024

International Conference of Legal Regulators +
Conference of Regulatory Officers

16-18 October 2024 | Langham Melbourne

Linkedin #ICLRCORO

Workshopping restorative justice & legal regulation

Stan Winford
ICLR+CORO 2024



Acknowledgement of Country

RMIT University acknowledges the people of the Woi Wurrung and Boon Wurrung language groups of the eastern Kulin Nation on whose unceded lands we conduct the business of the University.

RMIT University respectfully acknowledges their Ancestors and Elders, past and present. RMIT also acknowledges the Traditional Custodians and their Ancestors of the lands and waters across Australia where we conduct our business.

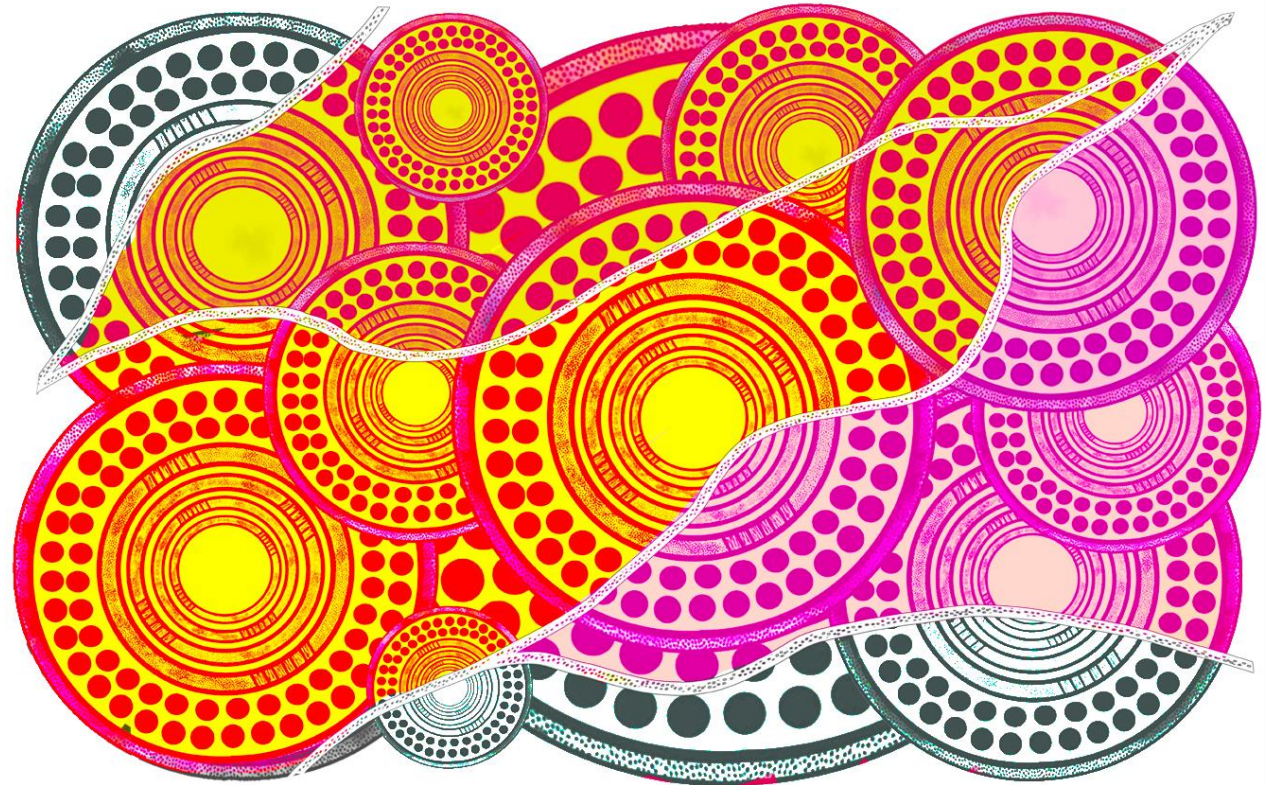


Image source: Mark Cleaver Luwaytini

About the Centre for Innovative Justice



- The CIJ was established at RMIT University in 2013 by former Victorian Attorney-General Rob Hulls.
- We aim to make the justice system and processes a positive intervention in people's lives, drawing on therapeutic and restorative justice and human-centred design principles, including working with people closest to justice system problems to develop solutions.
- In 2019, we established Open Circle, our restorative justice arm.
- Open Circle provides a range of services including:
 - Research, advocacy and policy development
 - Restorative justice practice – expert facilitation services in response to a variety of harms (sexual violence, racial discrimination, death or serious injury from motor vehicle collisions)
 - Restorative program design for organisations and institutions
 - Restorative justice training

Agenda

1. Outline of this session
2. Understanding restorative justice
3. Harm and injustice – what are people seeking?
4. Regulating lawyers – what are your aims and methods?
5. How might this work in your jurisdiction?
—*Opportunities and barriers*
6. What would you need to make it happen?
—*Practical steps in developing and delivering restorative justice*
7. Questions, reflections, close

What is restorative justice?



“Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offence or harm, and to collectively identify and address harms, needs, and obligations in order to heal and put things as right as possible.”

Howard Zehr, The Little Book of Restorative Justice (2015: 48)

“The creation of a safe space to have difficult conversations.”

*Dr Jane Bolitho, Diana Unwin Chair in Restorative Justice,
Te Herenga Waka – Victoria University of Wellington*

Restorative justice and traditional justice



Traditional justice response

Adversarial
Disputation over rights/interests
Harm = breach of laws/rules/standards

Restorative justice

Non-adversarial
Focus on conflict resolution
Harm = impact on people and relationships

What law has been broken?

Who broke that law?

What does that person deserve?

Who has been hurt?

What are their needs?

Who has obligations to meet these needs?

What is an appropriate process to respond to needs and obligations?

Harm and injustice –
what are people seeking?



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Harm and injustice – what are people seeking? ‘Justice needs’



Justice Need	Description
Voice	The need or desire to tell the story of what happened and its impact.
Validation	To have others believe and affirm their experience.
Information	The need to understand more about the harm, about what happened and why.
Accountability	May encompass punishment, public acknowledgement, apology/expression of remorse, other forms of recompense/reparation.
Relationships	To restore damaged relationships with others involved in or affected by the harm, family members and the community.
Prevention	To address the circumstances that contributed to the harm, with the hope that what happened to them does not happen to anyone else.

Legal regulation –
What are your aims
and methods?



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How might restorative justice be applied in legal regulation?



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Potential opportunities

Reducing some harms associated with some regulatory processes such as investigations or complaint resolution

Opportunity for meeting needs/addressing harms otherwise outside scope of regulatory focus or remedies (to address harms, needs and interests of consumers)

Lessons for prevention and improvement of standards (enable a broader level of insight into the impact of harms, and to enable prevention and cultural change)

Inclusion of broader range of stakeholders in responding to harm

Handing power over to participants to come up with practical solutions

Barriers, worries and concerns?

Should it be a complementary or alternative process (to regulatory processes)?

Is it within the scope of the regulator's functions? Or does it need to be an external and independent process?

When can it take place? During or only after regulatory process?

How are legal rights and interests of participants protected?

Is there any incentive to participate in the process?

Does restorative process re-direct focus of regulator away from the regulatory subject (lawyers) towards the consumers?

Practical steps developing restorative responses to harm



- Identifying where restorative responses fit within regulatory approach/strategy
- Development of framework including:
 - Rationale and purpose
 - Guiding principles (voluntary, do no harm)
 - Safeguards
 - Eligibility and suitability
 - Governance and administration
 - Relationship to associated legal and other processes
- Implementation
 - Eg skilled facilitators, support for participants, training in listening skills; meaningful apologies
 - Pathway for adopting lessons learned/outcome agreements etc

Practical steps delivering restorative processes



- Clarity about the victim's justice needs and whether these can be met by the process
- Agreement that the harm experienced by the victim is not in dispute
- Clarity about the commitment to participation – acknowledgement and acceptance of the victim's story – willingness to take responsibility and acknowledge harm
- Clarity about the available outcomes; for example:
 - Apology (if yes, by whom?)
 - Commitment to change (what does this look like?)
 - Financial reparations (yes or no?)
- Agreement about confidentiality and relationship to associated legal processes
- All necessary steps taken to provide safety, including cultural safety, for victim

Reflections & Questions?



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