

# KEEPING THEM CONNECTED: RESTORATIVE JUSTICE IN SCHOOLS IN AUSTRALIA AND NEW ZEALAND – WHAT PROGRESS?<sup>1</sup>

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*The traditional response of schools to school discipline is based on the retributive approach which has long characterised the criminal justice system. Research now indicates that this approach generally fails to satisfy the victim, the offender and the community. In the context of criminal offending, attention is increasingly being paid to the application of restorative practices. In New Zealand the restorative justice model has been operating since 1989 for youth offending and is now being implemented in the context of adult offending also. The Australian states and territories are following to varying degrees. Restorative practices move the focus from punishing the offender to requiring them to take responsibility for their actions. Because of this focus they are not seen as a 'soft option', and there are many indications of their success. Many schools are now applying this model to school discipline. A variety of different practices are being employed to keep young people in school and connected with the education process, while still not compromising school safety. This article explores the incorporation of restorative practices as alternative and proactive responses to behavioural problems within some Australian and New Zealand schools. The focus here is on particular restorative practices with the acknowledgement that there is a much wider picture which involves changes in school cultures to embrace, in a practical manner, principles of citizenship and democracy. This concept is the subject of significant research which is discussed by the author in a previous article.<sup>2</sup>*

## 1 INTRODUCTION

By taking the culprit out of the neighbourhood or school community (by imprisonment, or expulsion/suspension) we think we have removed the problem. In fact it has usually been simply relocated in time and place — and in the process, it is often exacerbated.<sup>3</sup>

Clearly schools are not immune to society's problems. Safety issues caused by the anti-social behaviour of students are of huge concern to school authorities in Australia and New Zealand, as elsewhere. How best to respond to such behaviour is the subject of much debate. Interactions within the schoolyard play an integral role in the cycle of human behaviour and the reality that twelve formative years are spent in compulsory education means that schools are uniquely placed to influence the development of patterns of human interaction. The culture of the school environment may play a negative role in the development of good social behaviour, exacerbating societal problems, or it may introduce notions which inculcate positive changes in behaviour which young people take with them outside the school gates.

Traditionally, schools' responses have been, and largely continue to be, based on the 'punitive' or 'retributive' model of the criminal justice system, resulting in some form of exclusion for the

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perpetrator. Within this process it is easy for the motivation to be seen as ‘punishment’. This perception blocks the fact that school safety is the primary justification for school exclusion, and precludes a consideration of other means by which this goal may be achieved. The need for ‘realignment’ was clearly spelt out by Keane JA of the Queensland Court of Appeal in the recent case of *R v Ng*. He said:

The purpose of the [*Education (General Provisions) Act 1989*], and particularly those provisions pursuant to which the appellant was disciplined, is to facilitate the management of schools for the benefit of the school community and the community as a whole. Disciplinary measures against disruptive individuals such as the appellant are but a necessary aspect of the maintenance of the order for the benefit of pupils and teachers engaged in the State enterprise of universal education. The idea that individual students may be subjected by school authorities to punishment, of the kind visited by the courts upon criminals is entirely alien to the regime established by the Act.<sup>4</sup>

And in the same case Mackenzie J added: ‘There is a well-established principle that regimes which regulate behaviour within an organisation do not involve punishment in their relevant sense’.<sup>5</sup>

There is a lack of evidence leading to the conclusion that the current suspension and expulsion measures succeed either in terms of furthering educational aims generally or in the positive regulation of behaviour in any sustained sense. In contrast there are many indications that considerable numbers of young people, disengaged from education, take the problems associated with their behavioural patterns back out into society. This view is supported by research into school exclusion, particularly in relation to zero tolerance practices which suggests that if students are disengaged from school there is a strong likelihood of their going down the path referred to by researchers as the ‘schoolhouse to jailhouse track’.<sup>6</sup> The reality is that, because the present system fails to hold students who misbehave truly accountable for their actions, there is a high risk of their repeating the behaviour to the detriment of the community.

Many schools now are introducing concepts aimed at addressing this pattern which represent, for many, a radical change in attitudes and perceptions.<sup>7</sup> These ‘restorative practices’ shift the emphasis from exclusion to inclusion and from punishment to acknowledgement of responsibility.

## II WHAT IS RESTORATIVE JUSTICE?

Restorative justice is way of thinking about and responding to offending which is alternative to retribution. Historically criminal justice systems have operated on the basis that a crime is an offence against the state and thus it is the role of the state to punish offenders. This system is mirrored in the legislation, policy and processes relating to school discipline. Any infraction against school rules or any antisocial behaviour is seen as an ‘offence’ against the school and the school plays the part of the state in dealing with ‘offenders’ by detention or school exclusion.

Essentially restorative justice sees it differently. Any offending is an act against the community and the individual members of the community, the victims, against whom it is directed. The process incorporates the direct participation of victims and offenders, the victims have the opportunity to participate in the resolution of the offence, and the offenders are required to confront the consequences of their actions. Not only the victim and the offender but also their wider community also have the ability to be an integral part of the process. In the view of researcher Hopkins restorative justice encompasses: ‘... the values of respect, openness,

empowerment, inclusion, tolerance, integrity and congruence' and gives central importance to building and 'repairing relationships and community'.<sup>8</sup>

### III THE PRINCIPLES

In common usage, restorative justice involves the convening of a conference of all parties with a stake in the particular event for the purpose of working towards a collective resolution of the aftermath of the offence and its implications for the future. A Canadian researcher, Susan Sharpe, has proposed five key principles of restorative justice which are: to seek full participation and consensus; to heal what is broken for the victim and for the offender; to make the offender fully and directly accountable; to reunite what has been divided; and, to strengthen the community to prevent further harm.<sup>9</sup> These points can equally be applied to restorative practices in the wider context which sees the conference as the last response in a continuum of restorative practices.<sup>10</sup>

There are two theories which support the application of restorative justice to the education system.<sup>11</sup> The first is the 'procedural justice' theory propounded in the US by Tyler.<sup>12</sup> This links the concerns of individuals with justice to social status and cooperative relationships within institutions, in turn leading to 'connectedness'. Secondly, there is the 'reintegrated shaming' theory put forward by Braithwaite and Ahmed.<sup>13</sup> In the words of Australian researcher Morrison: '[this theory] argues that shame over wrongdoing is related to an individual's sense of belonging within the relevant institutional group, such as family or school'.<sup>14</sup> Citing Nathanson,<sup>15</sup> Morrison continues: '[s]hame that is not discharged in healthy ways can lead one to attack self, attack others, avoid or withdraw'. The theory is that restorative justice practices, known as 'reintegrative shaming', may be used to break this cycle through 'shame acknowledgement' rather than 'shame displacement'. The integration of these two theories in research relating particularly to school bullying leads to the suggestion by Morrison that: '... it is important for communities to create institutional space where harmful behaviour can be addressed through processes that enable shame to be discharged, before anger and other harmful emotions arise, with early intervention being the optimal point of intervention'.<sup>16</sup>

In the criminal justice system early intervention is generally not an option as offending occurs before any formal ramifications. In contrast, schools have the perfect opportunity to influence behaviour patterns early by incorporating restorative practices into their community culture. There are however lessons to be learned from the application of the restorative practices which are integrated within the range of responses to criminal offending, particularly community conferencing.

### IV RESTORATIVE JUSTICE IN THE CRIMINAL JUSTICE SYSTEM AND ITS APPLICATION TO SCHOOLS

Restorative justice sees things differently ... Crime is a violation of people and relationships ... It creates obligations to make things right. Justice involves the victim, the offender and the community in a search for solutions which promote repair, reconciliation, and reassurance.<sup>17</sup>

In 1999, the United Nation's Economic and Social Council adopted a resolution encouraging member states to use mediation and restorative justice in appropriate cases and it called on the Commission on Crime Prevention and Criminal Justice to consider the development of guidelines

for the use of such programmes.<sup>18</sup> Basic principles adopted in 2002 further encouraged States to introduce standards to govern the use of restorative justice.

The restorative justice model, used in the New Zealand Youth Court process in the form of family group conferences, has operated successfully since 1989 when it was introduced by the *Children, Young Persons and their Families Act 1989 (NZ)*. The objects and principles of the system reflect a specific move away from the purely retributive criminal justice model to include holding young offenders accountable, encouraging them to take responsibility for their actions and dealing with them in ways which takes account of their needs and is thus more beneficial for their future development. Reparation is an essential element in the process and the offender is generally required to attempt to repair any damage caused by his or her behaviour. The conference may also agree on some kind of 'punishment', such as community service. Importantly, the system is intended to empower families to deal with their youth offenders.

In Australia, where the criminal law is primarily within the jurisdiction of Australian States and Territories, there has been a movement since the 1990s to use the New Zealand conferencing model for youth offending. The first restorative justice programs were set up in New South Wales in 1991, South Australia in 1993, in Australian Capital Territory in 1994, Tasmania in 1995, Northern Territory in 1995-1996, in Queensland in 1996. In 1993 in Western Australia two pilot Juvenile Justice teams were set up modeled also on the New Zealand program.<sup>19</sup>

Restorative justice processes are now being used in the context of adult offending also. In New Zealand there is legislative provision for restorative justice programs in the *Sentencing Act 2002 (NZ)*, the *Parole Act 2002 (NZ)* and the *Victims' Rights Act 2002 (NZ)*. These three Acts combine to encourage the use of restorative justice processes wherever possible, to give greater recognition of such practices, and to make provision, when restorative processes have been undertaken, for them to be taken into account in sentencing and parole of offenders.<sup>20</sup> In Australia adult conferencing is now taking place in Queensland, Western Australia and the Australian Capital Territory (ACT).

In New Zealand Judge Fred McElrea and Judge Stan Thorburn, both District Court Judges who deal or have dealt with criminal offending on a daily basis, are strong proponents of the application of restorative justice for all forms of offending. In the view of Judge Thorburn the problem with the adversarial approach of criminal justice is that it has the effect of encouraging the competitive approach of 'winners' and 'losers' rather than at exposing the truth, and requiring accountability for actions and responsibility for truth. One of the greatest arguments against the existing system and for restorative practices generally, and in schools in particular, is that within a retributive system, people become retributive. The system disempowers those involved to reach non-confrontational solutions and does not allow for constructive resolution of conflict.<sup>21</sup>

The reports of the application of restorative justice to youth offending in New Zealand have been extremely positive, to an extent that has led to its implementation in the context of adult offending also. Judge Fred McElrea believes that the results have 'been remarkable'.<sup>22</sup> In his view: victims are more satisfied with the restorative justice system than the retributive process because the parties are able to meet together and talk about what happened there is a much greater possibility of reconciliation and healing, and responsibility for offending is seen in a much wider context. In stressing that restorative justice is more inherently a community-based approach he says:

It can in fact be a form of participatory democracy at a community level – ordinary people, affected by conflict, taking responsibility for doing something about it and in the process, to some degree, able to hold accountable not only the offender but also others who have some responsibility for the state of affairs.<sup>23</sup>

These views are borne out in Australia also. Since the 1980s, John Braithwaite has been a foremost advocate of the use of restorative justice processes in response to offending there.<sup>24</sup> In 2002 he undertook a comprehensive re-examination of the implementation of restorative justice in light of what he refers to as its ‘extraordinary explosion ... [in] ... innovation and evaluative research’ in recent years. In his view empirical evidence about the effectiveness of restorative justice demonstrates clearly that restorative justice restores and satisfies victims, offenders and communities better than existing criminal justice practices. Braithwaite cites studies conducted in Germany, Australia, Singapore, the US and New Zealand which show a significant reduction in recidivism particularly in relation to youth justice.<sup>25</sup> This effect, in the case of youth offending, was made clear also in a 2000 study conducted by Sherman, Strang and Woods from the RISE restorative justice experiment in Canberra, Australia.<sup>26</sup> There, 1300 cases involving violent juvenile and young adult offenders were randomly assigned either to court or to a restorative justice conference. There was a sharp decline in officially-recorded repeat criminal offending of those assigned to a conference in contrast to those assigned to the court process.

Among the many arguments for adapting and applying the restorative model from criminal justice to education is that it provides an early opportunity for behavioural modification and inculcation of notions of responsibility. The retributive approach is seen to be counterproductive to the wider social purpose of furthering individual and community responsibility. Morrison uses an analogy with the healthcare model of primary, secondary and tertiary levels to describe three levels of restorative practices which may be used in schools. At the primary level all members of the school community are trained and encouraged to develop ‘social and emotional competencies’ to enable to peaceful resolution of conflict and the building of responsible and caring relationships within the school community. She cites the Resolving Conflict Creatively Program (RCCP) and the Help Increase the Peace Project (HIPP) in the US, and the Responsible Citizenship Program, developed in Australia, as examples of such whole-school programs at the primary level.

At the next, or secondary level, more targeted interventions are required for specific incidents of harmful behaviour. The responses suggested here are peer mediation-type processes and problem-solving circles introduced into classrooms.<sup>27</sup>

At the highest, which she refers to as the ‘tertiary’ level of responses, is the restorative justice conference. There are many variations on the name but generally this is the school community conference based on the criminal justice model. It is a response which has been used for the most serious offending in schools and it brings together with the offender and the victim, a wider community group to reach a resolution which best serves all.

## V THE CULTURAL ASPECT OF RESTORATIVE JUSTICE PROCESSES

In Australia and New Zealand restorative practices are seen by many as a means of incorporating the values of the Maori and Aboriginal indigenous communities within justice processes.

For both Maori and Aboriginal peoples offending is viewed in terms of acts against the community and thus calls for community involvement to promote reconciliation and to allow for reciprocity. In New Zealand it has long been advocated among Maori for a separate criminal

justice system which more appropriately reflects their traditional approaches to offending.<sup>28</sup> The restorative justice approach is seen, in the area of criminal offending, as a means of investing decision-making processes with cultural values and as an attempt to establish a means of addressing offending which is between the white, anglosaxon, bureaucratic and formal criminal justice system, and indigenous justice practices.<sup>29</sup> Through the vehicle of a conference, wider family groups (whanau) are able to have a greater say in the outcome. This process incorporates the Maori 'hui', or meeting, concept. In addition, the venue used for the conference and the procedure adopted, by being culturally appropriate, may add more relevance to the process for all involved.

A specific application of restorative justice processes within such a context is demonstrated in an example given by New Zealand researchers Wearmouth, Mckinney and Glynn.<sup>30</sup> They describe a situation in which 'Wiremu', a 15-year-old Maori boy, was causing concern because of his anti-social behaviour within his family, his school and the community. The Maori resource teacher of learning and behaviour at his school decided 'to organize a *hui whakatika* (*hui*:meeting; *whakatika*:putting things right) to address the situation'. The researchers describe the setting (the rugby clubrooms) and the process of the meeting. It began by a 'very positive portrayal of the boy' by all present and then moved to various participants speaking. These included Wiremu's mother and the old man whose garden Wiremu had damaged. The researchers then describe the acceptance of personal responsibility by Wiremu after having heard these accounts, the restoration made by him in terms of fixing the damage he had done to the garden, and the improvement in both his behaviour at school and his studies. In discussing the impact of school cultures and processes upon the development of a young person such as 'Wiremu', the researchers conclude:

The sense of belonging to, or marginalizing from, the school community affects every aspect of participation, and therefore learning within it, and necessarily affects a student's behaviour and self-perception; failing to support the development of student's understanding and ability to act in a social context risks marginalizing and alienation young people and rendering them incompetent. It is not an easy task to engage with student whose behaviour in schools is experienced as challenging or otherwise worrying. Nevertheless, these students have the same basic need to belong and to be affirmed as any others.<sup>31</sup>

And, in respect of the value to be placed on the cultural dimension, the researchers add: '[e]ducators need to acknowledge and respect cultural differences and values, and to incorporate the advice of community members in developing strategies for responding to challenging behaviour'.<sup>32</sup>

So, what progress has been made towards incorporating restorative processes into schools in Australia and New Zealand?

## VI THE INTRODUCTION OF RESTORATIVE JUSTICE INTO AUSTRALIAN SCHOOLS

In Australia, restorative justice was first introduced into 119 Queensland schools using community conferences to deal with serious cases of harmful behaviour, such as assault, use of drugs, damage to school property and theft, and serious victimisation. In 1996 the Queensland Education Department<sup>33</sup> found that: participants were highly satisfied with the process and its outcomes; there was a high compliance rate with the terms of the agreement by offenders; there were low rates of re-offending; a majority of offenders felt they were more accepted, cared about and more closely connected to other conference participants following conferencing; a majority of victims felt safer and more able to manage similar situations than before conferencing; the



majority of conference participants had closer relationships with other conference participants after conferencing; all school administrators felt that conferencing had reinforced school values; most family members expressed positive perceptions of the school and comfort in approaching the school on other matters; and, nearly all schools in the trial reported they had changed their thinking about managing behaviour from a punitive to a more restorative approach.

Also in Australia, a further study into the use of restorative justice to address school bullying was concluded in 2001 by the Centre for Restorative Justice at Australian National University in ACT.<sup>34</sup> The study draws on the research which shows shame management as an important mediating variable in the understanding of bullying and victimisation.<sup>35</sup>

Despite many positive reports implementation of restorative justice processes in schools is slow. In June 2003, a report was undertaken by Dr Ken Rigby and Dr E. Barrington Thomas for the University of South Australia, funded by the Criminology Research Council.<sup>36</sup> The study was of the approaches to bullying of a sample of 50 schools throughout Australia, both primary and secondary. The researchers found that, while there was a wide variety in the approaches used by schools, only one of the schools studied had used any form of school community conferencing. This research provides clear evidence that, despite much enthusiasm for the application of restorative justice practices to schools, there is a long way to go, at least in Australia, before they receive greater acceptance and widespread incorporation.

This point is put by Morrison in her discussion of the generally positive evaluations of various conferencing systems which are operating in schools in Australia and the US:

While these results are encouraging, the evaluation of these trials highlighted tensions between the existing philosophies and practices in controlling behaviour, typically characterised by punitive measures emphasising accountability and restorative interventions such as conferencing ... These early trials highlighted two points: first, for conferencing to be effective at a secondary and tertiary level it needs to be complemented through proactive measures; and second, all practices need to be framed within a wider framework, substantiated through integrated policy.<sup>37</sup>

The key is official action. Policy initiatives and legislation are required to ensure that the necessary procedures, training and, most importantly, sufficient funding mechanisms are put into place to give restorative practices a chance of success. This is also the case in New Zealand where the experience is similar, much enthusiasm but patchy implementation.

## VII RESTORATIVE PRACTICES IN NEW ZEALAND SCHOOLS

In New Zealand in 2000, Restorative Conferences in Schools (Te Hui Whakatika) was developed by the Ministry of Education in conjunction with the University of Waikato. Two projects on restorative conferencing were then undertaken by a team of researchers from the School of Education at Waikato University in Hamilton. The objective was to develop and trial processes for school suspension hearings using restorative justice practices and principles. The project was first initiated in five schools in the Waikato<sup>38</sup> using a process which was a combination of traditional Maori hui (meetings) for resolving conflict and conferencing used in the criminal justice system for youth offending.<sup>39</sup> A team of researchers from the University of Auckland in their evaluation of the project found that there was 'substantial satisfaction' among participants in the process.<sup>40</sup> The researchers reported however, that despite the apparent success of the trials and the huge interest from schools there was at that time no systematic introduction of restorative justice in schools.

A recent study of the effectiveness of restorative practices in schools was undertaken by Dr Gabrielle Maxwell and Sean Buckley of the Victoria University of Wellington, Institute of Policy Studies and commissioned by the Office of the Commissioner for Children. In order to conduct an in-depth examination of successful practices in different school settings, the researchers studied fifteen schools that have introduced restorative practices in recent years. The practices were characterised as those which ‘... aim to change the whole school culture—not simply aspects of that culture—by building such values into the school’s foundational ideology as well as its daily practice creating a “climate of care”. ... a school environment based on core restorative principles of inclusion, the repair of harm, and reintegration, reinforced by strong support networks’.<sup>41</sup> The researchers found that in addition to restorative conferences, the schools surveyed used a variety of other strategies. The range of approaches roughly mirrors the three-tiered approach suggested by earlier researchers (above). They included developing a restorative classroom to manage in-class problems, using a restorative thinking room, having ‘restorative chats’ which involved one staff member and a student and sometimes the victim, and conducting ‘mini-conferences’.

In their report, entitled *Respectful Schools: Restorative Practices in Education*, Buckley and Maxwell state that the restorative practices used by schools are as diverse as the types of schools surveyed. However, the implementation of the practices were all borne out of concern over student failure, truancy, bullying, behavioural problems and parental disengagement with their children’s education. The schools’ attitudes to the new approaches were generally enthusiastic and all the teachers endorsed the value of the practices in behaviour management. All but three of the schools reported a reduction in school exclusions and overall improvement in the culture of the schools. The setbacks reported were due largely to lack of funding, the time factor and lack of staff training and commitment.

The report<sup>42</sup> identified the following core values which were necessary to underpin restorative practices:

- respect as a central concept;
- inclusion in and belonging to the school community;
- value placed on student achievement according to their ability, and
- celebration of diversity.

Key strategies were identified as follows:

- in relation to school discipline and behaviour management, it was essential for a school to be clear about its expectations of the students;
- combining traditional and restorative practices by holding a restorative conference post suspension—this reflects the practice in the criminal justice system of using restorative conferences in combination with sentencing;
- employing restorative practices to resolve student peer conflict—this changes the emphasis from ‘exclusion and punishment to inclusion and resolution of problems’;
- affirmation and recognition of achievements;
- strong support networks;
- connecting families and schools; and
- emphasis on the building of relationships between all members of the school community.

The survey identified the key role of the school principal in the establishment of the core values and practices. Also seen as essential was the availability of specialist support persons such as social workers, resource teachers, counsellors, nurses and cultural advisors; and staff training.



Fundamentally the report reinforces the view of researchers such as Braithwaite that a whole school approach is fundamental to the establishment and effectiveness of a restorative school. This includes students, management, staff, board members, family and caregivers, ancillary services, the Ministry of Education and the local community. It points definitively to the conclusion that much greater resourcing is vital for a restorative system to succeed.

## VIII CONCLUSION

Much controversy surrounds school safety, and disruptive and anti-social behaviour by students. At the same time New Zealand statistics show that unacceptable numbers of students are being excluded from school. In 2004, 2.8% of the national school population was involved in stand-down<sup>43</sup> cases and 0.7% in suspension cases, an increase from 2003. The most common reasons to stand-down and suspend students were continual disobedience (which suggests antisocial behaviour), physical and verbal assault and drugs.<sup>44</sup> Australia is no different. Many schools, it would seem, in Australia, New Zealand as well as elsewhere, continue to deal with behaviour issues by 'getting rid of troublemakers'. This is understandable as schools are overwhelmingly feeling the pressure of maintaining school safety

In a view which is slowly gaining traction, it is possible to change school cultures by implementing restorative practices while not compromising school safety. As expressed by Australian researcher Morrison these processes '... offer us the opportunity to get off the seesaw between punitive and moralistic approaches'.<sup>45</sup> Currently, the introduction of restorative practices is left to individual schools, and to trials conducted by educational researchers. It requires much more. There are many indications from results achieved in the criminal justice system and from the trials conducted in schools, that restorative practices are a direction worth pursuing by education policy makers in a more deliberate, co-ordinated and, importantly, a more resourced fashion. This view is strongly reinforced by the recent New Zealand research of Buckley and Maxwell, and Morrison in Australia.<sup>46</sup> An education system which embraces restorative practices requires a different mindset on the part of educators, administrators and those who formulate educational policy. Its implementation requires a cultural shift in the way in which providers of education perceive themselves and are perceived by others.<sup>47</sup>

Research referred to by Braithwaite suggests that there is an argument for restorative justice practices even in the case of most violent offending, irrespective of its seriousness.<sup>48</sup> This has certainly been the experience in the criminal justice system in New Zealand, as shown by a discussion of cases where conferencing has been used.<sup>49</sup> This is not to argue against schools' retention of the ability to react swiftly at the level of the most serious and immediate threats to safety. However, experience has shown that: '[t]he tension between retributive and restorative principles can be blended'.<sup>50</sup> The challenge for schools is to use the restorative process in a way that optimises the reintegration of the student wrongdoer into the school community while not undermining the right of the wronged person, and all members of the school community, to a safe and secure learning environment.

Despite the introduction of the restorative practices discussed above and positive feedback from those involved, implementation is spasmodic. Such a change requires energy, dedication and resources. In both Australia and New Zealand, the current disciplinary procedures provided for in education legislation are generally silent on any aspect of restorative practices such as victim and community consultation, participation and restoration. What is required is policy development at government level, followed by training at the teacher education stage and training of existing staff

to widen the concept from simply teaching ‘citizenship’ or democratic processes to practising them also. It requires the same legislative response and resourcing as has been the case in the criminal justice system. Restorative practices may be seen as a step towards resolving the tension in schools between the need to ensure a safe educational environment, and conflict resolution which prioritises the need to keep all students engaged. There is an increasing body of evidence which points towards both the need for change and the potential for restorative justice practices to keep students in school and keep schools safe.

*Keywords:* school discipline; restorative practices; responsibility; respect; participation; citizenship.

## ENDNOTES

1. This article is based on a paper presented by the author at the Annual Conference of the Socio-Legal Studies Association, University of Kent, Canterbury, United Kingdom, 3rd to 5th April 2007. It expands upon an earlier article by the author, see Sally Varnham, ‘Seeing Things Differently: Restorative Justice and School Discipline’ (2005) 17(3) *Education and the Law* 87.
2. See Sally Varnham, ‘Citizenship in Schools: The Gap Between Theory and Practice’ (2005) 17(1-2) *Education and the Law* 53.
3. Judge Fred McElrea (1997) New Zealand District Court.
4. [2006] QCA 218 (16 June 2006), [73] per Keane JA.
5. Ibid [78] per Mackenzie J.
6. T. Cavanagh, and A. Foster, ‘Building a School Community of Caring and Trust Rather than Zero Tolerance’ (Paper presented at the US Embassy, Wellington, 10th March 2005).
7. While this article concentrates on the experience in Australia and New Zealand it is of interest to note the mounting tide of similar initiatives in other countries, for example in the United States, as discussed in Carol Chmelynski, ‘Restorative Justice for Discipline with Respect’ (2005) 25 (May 17) *School Board News* 5; and L. M. Christensen, ‘The Social Inclusion Approach: An Alternative to Peer Mediation Programs to Combat Bullying in our Schools’, Proceedings of the Annual Conference of the Education Law Association, San Diego, USA, 16-18 November, 2007.
8. Belinda Hopkins, *Just Schools: A Whole-School Approach to Restorative Justice* (2004) 20.
9. Susan Sharpe, *Restorative Justice: A Vision for Healing and Change* (1998) 7.
10. See Brenda Morrison, *Restoring Safe School Communities* (2007).
11. For a comprehensive discussion see Brenda Morrison, (2005) ‘Restorative Justice in Schools’ in E. Elliott and R. Gordon (eds), *New Directions in Restorative Justice: Issues, practice, evaluation* (2005) 26.
12. Tom Tyler and Steven Blader, *Cooperation in Groups: Procedural Justice, Social Identity and Behavioural Engagement* (2000).
13. John Braithwaite, *Crime, Shame and Reintegration* (1989); Eliza Ahmed, Nathan Harris, John Braithwaite and Valerie Braithwaite, *Shame Management Through Reintegration* (2001).
14. Morrison, above n 11, 32.
15. Donald Nathanson, ‘Affect Theory and the Compass of Shame’ in M.R. Lansky (ed), *The Widening Scope of Shame* (1997) 339.
16. Morrison, above n 11, 35.
17. Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (1990).
18. Daniel Van Ness, Allison Morris and Gabrielle Maxwell, ‘Introducing Restorative Justice’ in A. Morris and G. Maxwell (eds), *Restorative Justice for Juveniles: Conferencing, Mediation & Circles* 243
19. This material is from Heather Strang, *Restorative Justice Programs in Australia: Report to the Criminology Research Council* (2001).
20. Ministry of Justice, *Restorative Justice in New Zealand: Best Practice* (2004) Ministry of Justice <<http://www.justice.govt.nz/restorative-justice/parta.html>> at 16 June 2008.
21. Judge Stan Thorburn, ‘The Arrival of Restorative Justice in the Courts. A Brief Outline of the New Zealand Experience’ (Paper delivered at a Symposium sponsored by the Institute of Crime Prevention

- and Control at Nanjing University, People's Republic of China, 16-17 December 2003) 3.
22. Judge F. W. M. McElrea, 'Restoring Justice' (Address given at the Law Forum, Organization of Commonwealth Caribbean Bar Associations' Fourth Conference, Nassau, Bahamas, 24-26 May 2001) 3.
  23. McElrea, above n 22, 7.
  24. Braithwaite, above n 13; John Braithwaite, 'Restorative Justice: Assessing Optimistic and Pessimistic Accounts' in M. Tonry (ed), *Crime and Justice: A Review of Research* (Vol 25) (1999) 1.
  25. John Braithwaite, 'Restorative Justice: Assessing Optimistic and Pessimistic Accounts' in M. Tonry, (ed), *Crime and Justice: A Review of Research* (Vol 25) (1999) 1, 54.
  26. See John Braithwaite, *Restorative Justice and Responsive Regulation* (2002), 57.
  27. Mark Moore, Carol Petrie, Anthony Braga, and Brenda McLaughlin, *Deadly Lessons: Understanding Lethal School Violence* (2002); Russell Skiba and Gil Noam, 'Zero Tolerance: Can Suspension and Expulsion Keep Schools Safe?' (2001) 92 *New Directions for Youth Development*; Hopkins, above n 8. These responses and the whole-school approach are discussed comprehensively in Morrison, above n 11, 43-45. For peer mediation in the US also, see Varnham, above n 1.
  28. See Moana Jackson, *The Maori and the Criminal Justice System: He Whaipaaanga Hou - A New Perspective* (Parts 1 and 2) (1987 & 1988).
  29. See particularly, Gabrielle Maxwell and Allison Morris, 'The New Zealand Model of Family Group Conferences' in C. Alder and J. Wundersitz (eds), *Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism?* (1994); and Gabrielle Maxwell and Allison Morris 'Youth Justice in New Zealand: Restorative Justice in Practice?' (2006) 62 *Journal of Social Issues* 239.
  30. Janice Wearmouth, Rawiri McKinney and Ted Glynn, 'Restorative Justice in Schools: A New Zealand Example' (2007) 49 *Educational Research* 37.
  31. Wearmouth et al., above n 30, 47.
  32. Ibid 48.
  33. Reported in L. Cameron and M. Thorsborne, 'Restorative Justice and School Discipline: Mutually Exclusive? A Practitioner's view of the Impact of Community Conferencing in Queensland Schools' (Paper presented at the Annual Conference of the Australia and New Zealand Education Law Association, Auckland, New Zealand, October 1999).
  34. Brenda Morrison, 'Social Reintegration and Shame Management for Bullies and Victims in ACT Schools: The PRISM Project' (Research Project 6/97-98, Criminology Research Council).
  35. Braithwaite, above n 13; L. Cameron, and M. Thorsborne, 'Restorative Justice and School Discipline: Mutually Exclusive?' in J. Braithwaite and H. Strang (eds), *Restorative Justice and Civil Society* (2001) 180.
  36. Ken Rigby and Thomas Barrington, 'How Australian Schools Are Responding to the Problem of Peer Victimization in Schools' (Criminology Research Council, Australia (<http://www.aic.gov.au>), 2003).
  37. Morrison, above n 11, 36-48.
  38. A provincial area in the North Island of New Zealand.
  39. In December 2003 the Restorative Practices Development Team from the School of Education at the University of Waikato published a booklet entitled *Restorative Practices for Schools* which is invaluable both for background information and for the comprehensive material on implementing the processes which it contains.
  40. Wendy Drewery and John Winslade, 'Developing Restorative Practices in Schools: Flavour of the Month or Saviour of the System?' (Paper presented at the AARE/NZARE Conference, Auckland, New Zealand, December 2003). See also W. Drewery, 'Restorative Practices in Schools: Far-Reaching Implications' in G. Maxwell and J.H. Liu (eds), *Restorative Justice and Practices in New Zealand: Towards a Restorative Society* (2007) 199.
  41. Sean Buckley and Gabrielle Maxwell, 'Respectful Schools: Restorative Practices in Education- A Summary Report' (Office of the Children's Commissioner and The Institute of Policy Studies, School of Government, Victoria University of Wellington, 2007) 7.
  42. Buckley and Maxwell, above n 41.
  43. Stand-downs were introduced in 1999 as short-term school exclusion measure.

44. Buckley and Maxwell, above n 41, 2, note that as some students were stood-down or suspended more than once, the number of students is less than the number of cases.
45. Brenda Morrison, 'Restorative Justice and School Violence: Building Theory and Practice' (Paper presented at the International Conference on Violence in Schools and Public Policies, Palais de l'UNESCO, Paris, 5th-7th March 2001). See also Brenda Morrison, *restoring safe school communities: a whole school response to bullying, violence and alienation* (2007).
46. See now S. Buckley, 'Restorative Practices in Education: The Experiences of a Group of New Zealand Schools' in G. Maxwell and J.H. Liu (eds), *Restorative Justice and Practices in New Zealand: Towards a Restorative Society* (2007) 215, and Brenda Morrison, *restoring safe school communities: a whole school response to bullying, violence and alienation* (2007).
47. See Varnham, above n 2.
48. This work by Lawrence Sherman, Heather Strang and Daniel Woods (2000), 20, <http://www.aic.gov.au>, is referred to by Braithwaite, above n 26, 57.
49. Judge S A Thorburn, 'Observing the Application of Restorative Justice in Courts of New Zealand: A Brief Survey of Cases over 10 years' (Paper presented at the International Symposium on Latest Developments in International Criminal Justice Reform, Shenzhen City, People's Republic of China, 19-20 August 2005).
50. Thorburn, above n 48, 19.