

Geoff Lewis
Inquiry Director – More effective social services
New Zealand Productivity Commission
PO Box 8063
The Terrace
WELLINGTON 6143

Dear Geoff

INQUIRY INTO DELIVERY OF SOCIAL SERVICES

This submission responds to the New Zealand Productivity's issues paper "*More effective social services*" as a number of issues raised in the paper are relevant to members of this organisation.

Restorative Justice Aotearoa (RJA) is the national association for restorative justice and practice providers. Most of RJA's membership is comprised of organisations who are contracted by the Ministry of Justice to deliver adult pre-sentence restorative justice services to the District Courts throughout the country. Although some members are also involved in the delivery of restorative justice practices in other settings such as the workplace and in schools, most of the comments in this paper relate to the contracts with the Ministry of Justice.

Our members are a mix of specialised restorative justice practice providers or social service providers who deliver a range of services within the justice system, or the wider social sector or both. For those providers who deliver other social services, restorative justice funding only forms a small part of their overall budget.

Contracts with the Ministry of Justice are currently output focused. However, we understand that the Ministry is seeking to move to RBA outcomes based performance measures when current contracts expire on 30 June 2015. The Ministry last ran an open contestable process in July 2013. We are still awaiting confirmation of its preferred procurement approach for new contracts.

The level of funding providers receive to deliver restorative justice services to the Courts varies depending on location and the volumes of cases proceeding through the court with current contracts ranging in approximate value from between \$0.15 million and \$1.60 million over the 21 month term of the contract. A bulk payment based on the value of the contract was made on signing the contract and the remaining payments on a fee for service arrangement paid on a quarterly basis during the course of the contract.

As investment in restorative justice services remains modest and funding uncertain, the number of full time staff is relatively small. Services are mostly delivered by trained facilitators who are employed on a part-time or voluntary basis. Ironically this arrangement is advantageous as it facilitates broader community engagement in the process and gives the community a stronger sense of ownership and trust in the criminal justice process (**see q2**).

This submission is structured into three sections as follows:

1. **General remarks**
2. **Development of restorative justice practices**
3. **Response to specific lines of inquiry**

General remarks

RJA welcomes any initiative that has the effect of improving the efficiency of the contracting process with Government. However, I would be concerned if this resulted in the Government reducing the overall level of funding provided to communities. An emphasis on delivery of quality of services coupled with greater accountability means that it should not be assumed that community providers can deliver services more cheaply than the public sector¹.

I am aware that the state is carrying out a number of initiatives that impact on organisations which are contracted to deliver social services to the community on behalf of the state. Although it might be too early to anticipate the outcome of the Commission's inquiry or the content of any specific recommendations, I am concerned about the timing of the inquiry.

It would appear that the inquiry signals the prospect of further change to the way government contracts with community groups. This comes at a time when these organisations are attempting to come to terms with other changes government agencies are seeking to introduce. I am anxious about the prospect of a cycle of continuous change, particularly when there is no opportunity to evaluate the effectiveness of the prior changes.

There still appears to be no clear government plan for how it wishes to and the extent it wishes to devolve greater responsibility for the delivery of social services to the community, voluntary and private sectors.

Any case for substantive change should not be made lightly. The introduction and implementation of change has a high transactional cost for the organisation, for which it receives no compensation. Change also impacts on the ability of the providers to deliver our services.

The paper also makes a number of assumptions that need to be tested.

One of the main assumptions is that competition amongst social service providers for government contracts and funding will drive better outcomes. We would suggest that better collaboration amongst social service providers can achieve the same if not better results through innovation and addressing the needs of the client in a more comprehensive way. The challenge is to encourage providers to use their shared expertise when government agencies look at services in isolation and funding structures do not incentivise collaboration.

A further assumption is that bigger is better. Although some large scale providers may deliver a range of complementary and integrated services, and have certain economies of scale that allow them to deliver services more efficiently it should not be assumed that they are able to deliver more

¹ See Professor David Lewis in "The voluntary sector is at the centre of the government's Big Society plans. This may offer the possibility of better services, but not necessarily cheaper ones" *LSE British Politics and Policy Blog* 21 June 2011 blogs.lse.ac.uk/politicsandpolicy cited in the UK House of Commons Public Administration report on the Big Society, December 2011, 902-I, 17th Report ("Big Society"). The House of Commons report forms a good basis for understanding some of the issues covered in the Productivity Commission inquiry. The report can be found here: <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmpublicadm/902/90202.htm>

effective services than small providers in all cases. Small providers are likely to have less bureaucratic structures and be better connected to their communities. This will enable them to be more flexible and responsive to the needs of their clients.

Larger providers delivering multiple services are also more likely to prioritise those services that bring in the most income ahead of services and give less attention to those services that deliver least. This can and does result in (unintentional) poorer contractual performance in those areas.

Development of restorative justice practices

The growth and development of restorative justice practices is most closely associated with the adult criminal justice process, however restorative justice processes were introduced with the advent of the Family Group Conferencing process in the youth justice system introduced by the Children, Young Persons and Their Families Act 1989 (more on FGCs below).

Restorative justice practices were introduced into the adult courts in the 1990's as members of local communities sought alternative responses to the criminal justice process. These initial efforts were supported by the state who established a pilot programme. Eventually the benefits of restorative justice were given wider recognition through the enactment of legislation which supported the use of restorative justice practices in both the court system and in prisons.

The use of the restorative justice process in both the court system and prisons has not reached its potential and could be used more extensively². In part this is because of the lack of awareness amongst the general public of restorative justice and its potential benefits and partly due to capacity issues in the community.

There has been little done in the way of evaluation of restorative justice practices in New Zealand except in relation to reducing reoffending and improving victim satisfaction in the criminal justice process³.

The restorative justice practice paradigm is changing with a focus beyond traditional areas of practice to new opportunities. Communities are looking to restorative justice practice as an alternate approach to addressing conflict and repairing harm. Restorative justice practices are being used in a wide range of settings including but beyond the education sector and workplace disputes⁴. These initiatives have been community led. It is expected that the practice will grow and expand as better information about the effectiveness of restorative justice practice becomes available.

The practice of restorative justice is not determined by any set procedure⁵, which has allowed communities to develop their own practice methodology. This has encouraged local innovation and expansion of practice into new areas. The challenge is to ensure that all services are of a high quality and a consistent standard without bureaucratising the process and stifling innovation.

The level of support from the government for restorative justice practice has increased slowly over time:

² Only approximately 6% of eligible cases are referred by the Courts for restorative justice each year.

³ A recent report by the Ministry of Justice shows that offenders who participate in a restorative justice process are 12% less likely to re-offend within the first twelve months compared with offenders who have committed similar offences who do not participate. This is similar to international research. A 2011 survey of victims also showed a high level of satisfaction with the process and 80% of those surveyed would recommend restorative justice to others.

⁴ Such as the health sector and environmental disputes

⁵ RJA and the Ministry of Justice collaborated on the publication of Best Practice Principles and Values. The Best Practice Principles and Values are intended to guide practitioners in their work rather than provide prescriptive standards.

1. By increasing investment in the availability of restorative justice practices in courts. In March 2013 it announced that an additional \$4.42 million would be invested in adult pre-sentence restorative justice services between 1 July 2013 and 30 June 2015. This increased the average annual investment from \$3.0 million to \$5.25 million in that period.
2. By changing legislation so that restorative justice practice becomes mainstreamed in the justice system.
3. By recognising and valuing the work of restorative justice facilitators working in sensitive areas, such as family violence and sexual offending. In 2013 for the first time the Ministry of Justice tendered for the delivery of these services and awarded contracts to appropriate providers. This has been described as bold decision, but one which has been well-received.
4. By announcing an expansion in the use of restorative justice practices in education. The practice would be available in 200 secondary schools from 2017.

Responding to paper

I have elected to respond to specific issues raised in the body of the paper rather than individual questions, although many of my comments will no doubt cover some of the same ground. Some of the related points raised in Big Society should be read alongside these comments.

This submission also does not cover all areas of interest, such as the role Maori services providers might best play in the future delivery of services. I would be interested in discussing those issues in person.

My comments will revolve around four main themes:

1. Collaborative governance and delivery of services
2. Commissioning and purchasing of services
3. Funding of programmes
4. Evaluation and performance measurement

Collaborative governance

The greatest challenge facing social service providers, including the restorative justice practice movement is about retaining influence and ownership over the design and implementation of services **(see page 44 and q19, and pp 62-3 and q51-4 of the paper)**.

Kim Workman has suggested⁶ that the potential for restorative justice to achieve meaningful reform within the criminal justice system has not been realised because with the advent of managerialism within the public sector the government's role has changed from that of an 'enabler' to that of a 'standard setter'.

The introduction of managerialism resulted in a marked change in the relationship between the state and restorative justice practitioners. While the cooperative relationship between the government and community groups in the 1990s resulted in the development of new and innovative approaches, the post 2002 period is characterised by what Kim Workman describes as a process of co-option. By this he means a process of colonization of restorative justice practice by the public sector which enabled it to exercise greater control over the development of services. In turn this has created relationship difficulties as the government has sought better contractual performance at the expense of better outcomes for the community.

⁶ *The Future of Restorative Justice – Control, Co-option and Cooperation* Address to Restorative Justice Aotearoa conference 2008

The desire to exercise greater control is linked to the public sector's desire for value for money, public accountability for the use of public monies and evidence based programmes⁷. Although such criteria are important they have the effect of the tail wagging the dog and stifle the innovation and risk taking needed to find solutions to the 'wicked problems' government is trying to resolve. The triumvirate of evidence based solutions, value for money, and accountability constrain risk taking or innovation to that which is familiar and 'safe'.

This has resulted in the state driving development of services in specific locations without community consultation and implementing standardised services rather than tailored services that are specific to the needs of the community. This may compromise the effectiveness of the ability of the programme to deliver positive outcomes to the community. A good example of this is the FGC process. The Ministry of Social Development has recognised that its decision to manage and deliver this service itself – rather than use community based providers – has led to an overly bureaucratic bland process. This has meant that the FGC process – which was originally hailed as a world-leader – has had to be overhauled. Significantly, MSD is now looking to utilise community providers to deliver that service.

Government agencies are also notorious for their staff turnover rates. This means that agencies do not always have the expertise or knowledge required to develop services in a coherent or consistent way. It also compromises relationships with providers and requires providers to invest additional time in re-establishing relationships with the agency and new staff member(s).

Although RJA considers that the government does have an important role in the development and growth of social services a collaborative governance model⁸ might be more appropriate to determining how social services could be delivered more effectively to resolve complex social problems. A collaborative governance approach might influence the role government adopts in any given situation.

A collaborative governance model is also likely to address some of the unintended consequences of the government's commissioning and purchasing approach, particularly in the areas of contestability and funding.

Commissioning and purchasing processes

RJA welcomes efforts by the government to improve the efficiency and effectiveness of the approach it takes to commissioning and purchasing of services.

RJA has a strong interest in a number of cross-sector initiatives as restorative justice practices can be applied in so many different contexts and complement many other social services. We consider that greater attention could be given to better coordination of these services and collaboration between government agencies and between providers. At present competition for scarce government funding acts as a barrier to more innovative approaches to service delivery.

⁷ On the limitations of evidence –based responses to complex social issues see Paul Porteous "Blinded by vision: Lamenting leadership" in *Public Administration Today* July – September 2011. Porteous argues that the demand for evidence based policy solutions ignores the pace of change within our environment and the need to adapt quickly to new situations.

⁸ For an overview of collaborative governance and how it can be used to deal with difficult policy issues, see IGPS Working Paper 13/2 Elizabeth Eppel (2013) *Collaborative Governance: Framing New Zealand's Practice*. Eppel, E., Gill, D., Lips, M., & Ryan, B. (2008) *Better connected services for kiwis: A discussion document for manager and front line staff on better joining up the horizontal and vertical*. Wellington: IPS. Rodney Dormer (2013) *Whanau Ora: The collaborative turn* an unpublished paper.

As stated earlier a number of our providers do deliver multiple services. On the face of it, many of these services are complementary and should work alongside each other under an integrated approach. However, the experience to date is mixed. This appears to be because the services are contracted for separately with different agencies, with the funding and accountability for performance being managed through separate agencies. This appears to be the case even with the new MBIE contract model.

The opportunity for integrated contracts appears greater where different services are being purchased by the same agency. A few of our providers hold separate contracts with the Ministry of Justice for different but related services.

Contract and performance management of contracts might become difficult particularly where one agency may not wish to renew a contract with a provider. Such a decision may have a profound impact on the viability of other services. Government agencies are not necessarily aware of the impacts that decisions made at a National Office level regarding availability of ongoing funding might have for local communities.

Although RJA is not opposed to contestable funding arrangements as such, we consider that the current approach to procurement needs to be reviewed. We would in particular draw your attention to the following:

- Interpretation and application of the Government's mandatory procurement rules appears inconsistent and confusing. We are aware of situations where the Ministry has changed its procurement approach in relation to a particular service three times within a 12 month period.
- The length of term of contracts. Current contracts with our members is only 21 months. We consider that the term of contracts is in general too short and stifles innovation. (New and existing) Providers are less likely to be bold and be innovative if there is a risk that this may impact on performance and reduce the likelihood that they will secure new contracts in any future tender process. We would suggest that the optimum length of a contract be at least five years with the ability to extend that by another five if the provider is achieving targets.
- The amount of resourcing required to complete any RFP proposal. The current tendering process favours larger organisations.
- The lack of transparency in the evaluation process – assessments of how respondents meet criteria tend to be subjective
- A lack of expertise on evaluation panels. Members of the evaluation panels tend to be made up of government officials with limited understanding of community services or expertise in the delivery of services.
- Unintended bias within the RFP criteria might exclude or disadvantage new service providers whose lack of expertise in a particular field might mean other considerations are overlooked.

Funding of programmes/services⁹

⁹ Note that these comments relate just to funding of services in the Justice sector. Funding for the development of restorative justice practices in the education system is met within school budgets.

Although restorative justice practice providers currently receive most, if not all their funding from government, there are opportunities in the medium to long term for providers to potentially¹⁰ move to a social enterprise model. Even if this situation did eventuate, it is likely that some services would be funded by public funds. However, that scenario is some way off.

The main focus for RJA is to ensure that high quality services are available on a regular consistent basis throughout the country. In order to do that, providers need to have appropriate business structures and systems in place to ensure services are delivered efficiently and effectively. Part of that is investing in IT systems and recruiting and retaining skilled staff and investing in their professional development. In order to do this they need certainty of funding over a number of years and sufficient funding to meet their overheads. Currently funding is neither adequate nor certain.

Risk taking, innovation and accountability

The funding model is also problematic from the perspective that it makes it difficult for restorative justice providers to access other related services on behalf of their clients. Many clients of restorative justice practices, particularly in the justice sector may benefit from accessing other services such as drug and alcohol counselling or family violence programmes. However, funding to attend those services might not be available because the referral was not made by the court.

The Ministry of Justice has reviewed its funding several times since 2008 and acknowledges it has not got its funding model right and is working on a new approach in time for new contracts in 2015. It has not consulted with or engaged RJA in the development of this new model at this point in time.

RJA appreciates and recognises the challenges the Ministry faces with greater constraints on funding and the need to ensure the government receives value for money and the need for accountability in the use of public funds. However, at present the funding model does not incentivise providers to innovate or take risks to improve outcomes. In reality providers are averse to taking risks or taking bold approaches to service delivery because of the potential impact this might have on their bottom lines or prospects for further contracts.

Case study – questions 20 and 21

The Ministry of Justice issued an RFP in 2013 for adult pre-sentence restorative justice services in all courts throughout New Zealand. The Ministry made it clear in both the RFP and in community meetings it was interested in hearing from providers who were willing to collaborate to deliver services across multiple courts.

The Ministry received one proposal ostensibly on behalf of a group of providers based in Auckland. The proposal was to deliver a range of restorative justice services to the Waitakere, Auckland and North Shore District Courts. These courts are amongst the largest in New Zealand.

The Ministry was attracted to the proposal because it saw an opportunity to strengthen the quality of services and capability of providers in the region by drawing on experience and expertise from different providers for a greater good (previously individual groups operated in isolation). The proposal also gave the Ministry an opportunity to show case a joint venture approach to service delivery in one of the most important regions.

¹⁰ This is particularly in the case where services are provided on an “on demand” basis by individual employers or where training sessions are delivered.

However, insufficient attention had been given to agreeing how the provider groups would collaborate prior to the commencement of the contract. This resulted in ongoing disagreements about governance arrangements and the terms of memoranda of understanding between the groups. The stand-off affected the ability of providers to deliver services.

Concerns about the fact that it was unable to deliver the volume of services it expected early in the contract caused the 'lead' provider to act out of concern about the financial viability of the service. In an effort to increase service delivery it attempted to dictate how services would operate by taking unilateral decisions.

This action was premature and caused the relationship between providers to worsen because of what was perceived to be a bullying attitude. The Ministry brought in mediators in an attempt to resolve matters. This has seen marginal improvements to the relationships but it is unlikely that the relationships will survive past June 2015 when the contract expires. The Ministry has also not been able to deliver the quality of services it had hoped for.

This example shows the benefit of allowing providers more time to introduce major change and greater flexibility in measuring effectiveness and providing financial support.

Reliability of funding (q5, 6 and 8)

Restorative justice practices have delivered cost savings to the Justice sector in terms of a reduction in prison beds and more savings could be achieved through targeted investment. On the other hand providers are unable to make the investment decisions they need to allow them to run the service efficiently and effectively. This is because the funding does not reflect the amount of work involved in running the service and secondly because funding is unpredictable. This is likely to act as a disincentive for private for-profit organisations.

Part of the difficulty with the current fee for service arrangement is that the service in the courts is dependent on factors that are immediately outside the control of providers. The current funding structure is based on outputs so that providers receive the bulk of funding on delivering a conference.

A number of factors may influence whether a conference takes place such as: the views of the judiciary as to whether restorative justice is appropriate or even desirable¹¹, the willingness of the victim and offender to participate in the conference¹², the appropriateness of proceeding with a conference in situations where the offender is not remorseful or where it might not be safe for any party¹³, the ability of the provider to access contact details of the offender and/or victim and so on.

Providers currently spend a great deal of time promoting themselves and the service with stakeholder in an attempt to generate referrals from the court but only approximately 56% of referrals will result in a conference. Although this situation may change slightly with amendments to the Sentencing Act removing judicial discretion there is the prospect that providers may receive more referrals than they receive funding for. This puts providers in the unenviable position of

¹¹ Although restorative justice is available for all offences, the judiciary currently have wide discretion: some members do not support use of restorative justice practices in any case, others will only use it in certain cases and others are highly supportive.

¹² Restorative justice practice can only take place with the consent of both parties.

¹³ A facilitator has sole responsibility for determining whether a conference should proceed or not regardless of whether the parties both consent having regard to the Best Practice principles.

delivering services for no compensation or choosing between cases. Given the ethical dilemma of the latter it is likely providers will deliver services to all-comers.

Seeking alternative sources of funding from philanthropic organisations or funding bodies such as the Lotteries Commission or Lion Foundation to meet any shortfall is problematic as these bodies do not provide funding for services that they consider to be the responsibility of government.

Evaluation and performance measurement

More attention needs to be given to evaluating programmes and conducting research into the effectiveness of social service programmes *pp 56-7, q41-3*

Currently little attention is placed on the broader collective outcomes of restorative justice practices. This is significant as restorative justice practice is a relational approach to addressing conflict or responding to harm. It recognises for instance that criminal offending has an impact beyond the victim and offender and his or her immediate families and relationships need to be restored.

Some international research that looks at the impact of restorative justice practice on reducing post-traumatic stress but that research is limited and the findings not considered significant. However, it does show scope for further work. The research shows there is the potential to link restorative justice practice with other economic and social measures such as productivity and reduced health and social welfare costs associated with crime.

Most local and international research focuses on the effectiveness of practice in reducing re-offending or improving victim satisfaction (etc) rather than outcomes for the local community.

As we have seen already there are problems with the current Ministry approach to measuring “performance” by solely relying on output measures where the ability to deliver services is affected by factors outside the control of providers. In fact providers may be high performers in respect of the quality of its inputs but this is not recognised through the contract even though the quality of those inputs may be directly related to the quality of outcomes. For example having sufficient trained and accredited facilitators available to deliver services is likely to result in improved access to quality conferences and better outcomes for participants.

The effectiveness of the service cannot be ascribed just to the outcomes delivered but should be assessed using different measures, including a variety of inputs, outputs and outcomes. There needs to be sufficient flexibility to accommodate changes in circumstances. A single focus on outcomes might also dis-incentivise innovation as it can take time to bed down innovative ideas and achieve the outcomes government is seeking. In such cases greater attention may need to be given to the development of processes in the short term.

Case study

In the 12 month period following the February 2011 earthquake in Christchurch, the local restorative justice practice provider experienced a marked decrease in the volume of cases referred to it that proceeded to conference. This meant that the provider was only meeting less than 20% of contracted targets. The Ministry was aware from its own data that despite disruptions to the court hearings caused by damage to buildings the volume of cases going through the criminal courts had not decreased significantly.

A visit to Christchurch and meetings with the provider and other stakeholders identified a number of issues specific to Christchurch at the time that impacted on the ability of the provider to meet contracted volumes. Despite this, the Ministry recognised that the service was providing benefits for those who only used the service in part. The Ministry negotiated changes to the payment and performance parts of the contract with the provider, which introduced payments for specific inputs and new outputs in order to ensure that the service remained available and viable.

One of the benefits of using input measures is that it recognises the public good elements of having a quality service available.

Although it may be possible to develop a set of RBA performance measures which capture inputs and outputs (“how much did we do”) capturing any outcomes (“how well did we do” and “was anyone better off as a result”) is less straight forward.

Like other social services, attributing outcomes to a restorative justice process can be extremely difficult. Un/favourable outcomes may vary due to a range of circumstances beyond a providers’ immediate control, and may also fluctuate over time. Many of the outcomes associated with restorative justice practice are also highly subjective and relate only to the individual.

A small number of our members are familiar with RBA as a result of delivering services to other agencies, particularly Te Puni Kokiri and MSD. Two providers were also involved in the MBIE pilot. We are aware that there have been issues with the administration of that contract, specifically around the negotiation and implementation of variations to the agreement – this process tends to be cumbersome and time consuming.

Conclusion

RJA remains committed to working closely with the government over the development and expansion of restorative justice practices in an open and constructive way. RJA and its members consider themselves as working with the government to achieve the same outcomes and want to work collaboratively to that end.

Our submission has identified a number of issues that are pertinent to our service but do not believe these to be unsolvable if there is sufficient will on the part of government and community providers. A key to our success is to improve relationships at both an organisational and individual level. It would not be unreasonable to characterise current relationships between a range of service providers (not just our own) as one of mistrust and mutual suspicion.

There are opportunities for the government to improve its approach to the commissioning and purchasing of social services in perspective. In general it needs to be more flexible in its approach and invest more confidence in the ability of communities to achieve better outcomes.

Communities are seeking to have a greater voice and influence over matters that affect them and have the expertise required. Government has an important role not only in terms of enabling communities to take on this work and resourcing them, but in working alongside communities where required and supporting them. We also recognise that the Government plays an important role in directly providing social services and should continue to be a provider of these services.

RJA is interested in the Productivity Commission's work and we are prepared to make ourselves available to meet with you or any of your team should you wish to follow up on any of the comments in this paper or have further questions. I suggest that you contact Boris van Beusekom in the first instance. Boris can be contacted on 04 803 3497, mobile 027 509 9621, or email boris@rja.org.nz.

Mike Hinton
General Manager