



Restorative Engagement Program

RESTORATIVE ENGAGEMENT PROGRAM FRAMEWORK

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Defence Force Ombudsman

1. Introduction

- 1.1. This document sets out the Framework for the implementation of Restorative Engagement conferences (conference), under the the Office of the Commonwealth Ombudsman's (the Office) Restorative Engagement Program (program). It includes an overview of the program, its purpose and aims. This Framework articulates the key elements of the conference process and the values and principles of restorative practice.
- 1.2. The Framework is the model of restorative engagement adapted to meet the objectives of the Office's reports of serious abuse function – which is to take appropriate action to respond to reports of serious abuse within the Australian Defence Force (ADF). This excludes reports of abuse made to and dealt with by the Defence Abuse Response Taskforce (the Taskforce).
- 1.3. The restorative engagement conference process has been designed for people who have made reports of serious abuse in Defence to the Office. It has been developed to provide a personalised and restorative focussed response to people who have experienced serious workplace abuse through a carefully facilitated meeting between reportees of abuse and senior representatives of Defence.
- 1.4. The program has been developed taking into account academic and practical learning, as well as experience gained in the area of restorative practice and the Taskforce Restorative Engagement Program.
- 1.5. The Office's reports of abuse function covers reports of serious abuse, defined to mean sexual abuse, serious physical abuse and serious bullying and harassment. It applies to people who were abused in the course of their employment and are, or were, members of the Defence Force or Defence APS employees or contractors to Defence engaged in activities connected to the overseas operations of the Defence Force. In assessing whether conduct constitutes serious abuse, the Office will consider whether the conduct:
 - involves a series of incidents which indicate a course of conduct
 - is inflicted by officials acting in concert with others
 - involves actual bodily harm being inflicted
 - appears to include premeditation or consciousness of wrongdoing, and
 - amounts to sexual harassment or discrimination on the basis of an attribute recognised by Australian law.
- 1.6. Where the Office is satisfied that there is a *reasonable likelihood* the person suffered serious abuse in connection with their employment in Defence, a facilitated conference may be offered as an outcome to acknowledge the impact of harm to the affected individual in a personalised response. The Office assesses a report of abuse against a threshold of *reasonable likelihood* where the Office (based on the information available) forms an opinion that the conduct complained of is reasonably likely to have occurred, and that the Office's jurisdiction has been enlivened.
- 1.7. The Office does not investigate or make determinative findings that abuse occurred. An assessment of *reasonable likelihood* by the Office is not a legal finding. The assessment relates to the personal impacts and implications of the report of abuse as experienced by

reportees. The conference process allows for personal accounts of abuse to be heard and acknowledged by Defence.

- 1.8. Participation of Defence representatives in conferences and any statement, admission or apology made by a Defence representative in a conference, or any action arising from a follow up action, is not an admission of any legal liability.
- 1.9. The ADF has been consulted in the development of this Framework. The Office and the ADF agree that the program must be guided by the values and principles outlined below.
- 1.10. Connectedness and acknowledgement are key aspects of restorative engagement, as many reportees state they still feel a strong link with Defence despite their experiences. Defence acknowledges the importance of its role in demonstrating an effective and enduring response to reportees through their participation in restorative engagement conferences.

2. Overview

- 2.1. The Office has established the program as a means of addressing directly the harm, needs and interests of people reporting serious abuse arising from their experience of abuse in Defence. Participation in the program provides an opportunity for reportees who have made reports of abuse to the Office to participate in an evidence based, safely led restorative conference that allows their personal account of abuse to be heard and acknowledged by Defence. A secondary objective of the program is to enable a broader level of insight into the impact of abuse and its implications for individuals and Defence. This insight is critical to building on cultural change strategies in Defence.
- 2.2. Restorative justice is a widely used term that describes processes that engage restorative principles in responding to the harm done to people and communities as a result of a crime or wrongdoing. There is no one way that restorative processes should be delivered. What is important is the adoption of any form which reflects restorative values which aim to achieve restorative outcomes. A distinguishing feature of restorative practice, as compared to other forms of mediation, is that restorative practice operates on the premise that the harm is undisputed. Meaning that in this setting, the report of abuse is generally accepted on the basis of the Office threshold of *reasonable likelihood*.

In a mediated conflict or dispute, parties are assumed to be on a level playing field, often with responsibilities that may need to be shared on all sides.... To participate in most restorative encounters, a wrong doer must admit to some level of responsibility for the offence, and an important component of such programs is to name and acknowledge the wrongdoing. The neutral language of mediation may be misleading and even offensive in many cases.¹

- 2.3. The Office reports of abuse function is underpinned by the principle of 'do no further harm'. When a reportee elects to participate in a conference, Defence participation is based on this principle and on the premise of 'undisputed harm'

¹ Zehr, H. (2002). *The Little Book of Restorative Justice*. PA, USA: Good Books.

3. Key features of the Restorative Engagement Program Framework

- 3.1. All parties taking part in the program must have a clear understanding of their role in the conference and a realistic appreciation of what it can provide. Any action taken under the Framework must have regard to the principle that no further harm is to be caused to participants, particularly reportees.
- 3.2. The Framework is underpinned by the principles and values of restorative practice. In matters where the program is being considered or undertaken, the following principles will be applied:
 - Engagement in the program is **voluntary**.
 - A conference will only be undertaken in **appropriate** cases.
 - The **confidentiality, privacy, safety and wellbeing** of people who have experienced abuse is of paramount importance throughout their participation in the program.
 - The **wellbeing, physical and psychological safety** of all participants, particularly reportees, is of paramount importance throughout participation in the conference process and will be safeguarded (to the extent possible) at all times.
 - **Informed consent** will be obtained from participants prior to their participation in a conference, and consent may be withdrawn at any time.
 - Although **responsibility for harm** lies with the alleged abuser, **Defence acknowledges the importance of its role in demonstrating an effective and enduring response** to people who have experienced abuse by addressing their concerns in a supportive manner.
- 3.3. The provision of conferences by the Office is based on the assumption that the conference itself is the outcome. The following outlines the key features and requirements of the Framework:
 - Any matter being referred to the program contains reports of abuse that meet the Office threshold of reasonable likelihood.
 - Reports of abuse which have been determined by the Office to meet the threshold of reasonable likelihood will not be disputed by the Defence representative in a conference.
 - A Facilitator appointed and specially trained by the Office will prepare participants for, and convene, conferences.
 - Senior leaders of Defence who have completed a Defence preparatory session (jointly delivered by the Office and Defence) will meet with reportees in the conference.
 - Reportees may elect to have a support person present, who the Office approves and prepares for participation in a conference.
 - Reportees will be supported by their dedicated Liaison officer throughout the restorative engagement process.
 - Reportees can elect to access counselling, before, during and/or after a conference.
 - Conferences will only be undertaken in appropriate cases, as assessed by the Office.

- Follow up actions (agreed to between a reportee and a Defence representative) will be recorded by the Facilitator and signed by the reportee and Defence representative.
- Defence will hold primary responsibility for the implementation of follow up actions.
- The Office will be responsible for the set up and delivery of the conference process, including logistical arrangements for participants, excluding Defence representatives.
- Program integrity strategies will be employed to monitor the delivery of conferences and to support Facilitators and Defence representatives in their involvement in the program.

4. Management of personal information

- 4.1. All contact with the Office is confidential and an individual's right to privacy is carefully protected. The Office policies, protocols and work processes have been designed to ensure confidentiality and privacy, and to take into account the rights and interests of people who have experienced abuse. Informed, written consent is obtained from reportees prior to the conference.
- 4.2. In implementing the conference process, the provision of personal information to Defence in relation to a reportee is restricted to *a need to know basis* and limited to the following circumstances,² or where a reportee otherwise consents:
- a Defence representative has been selected to participate in a conference and is provided with a *Briefing Pack* in relation to the reportee
 - where a reportee has requested to meet with a particular Defence representative
 - where consideration is being given to a follow up action prior to the conference occurring³
 - at the point a reportee signs the follow up action(s) form in the conference, and
 - in a periodic report to Defence in relation to completed conferences.⁴

5. Restorative Engagement Program Facilitators

- 5.1. Facilitators are engaged to conduct conference processes on behalf of the Office. Facilitators have been carefully selected and have demonstrated their ability to deliver facilitator services critical to achieving outcomes for reportees of abuse to the satisfaction of the Office, including that they:
- have a full understanding of the program principles and how to apply them in practice

² All documentation and information associated with the Defence participation in the program is to be handled on a strict *Sensitive: Personal and need to know basis*. All information must be kept secure and confidential and must not be disclosed to any person without the authorisation or direction of the Defence representative.

³This information is provided to Defence with the consent of the reportee for the sole purpose of Defence consideration, in advance of the conference, of whether the proposed follow up action(s) can be implemented.

⁴ Any information in relation to reportees, will be provided with the reportee's consent and their understanding that their name will be kept on a central register of 'completed restorative engagement conferences' by the DRU. The register will contain the reportees name with conference number and date only.

- possess and demonstrate the key skills required to facilitate conference processes under the program, and
- have a full understanding of the administrative processes and requirements associated with facilitating conference processes under the program.

6. Participation of Senior Defence representatives

- 6.1. Defence has endorsed suitable senior ADF members and Defence employees to participate in the program and will usually participate in conferences where recommended by the Office. It is noted that participation in a conference is voluntary for all participants and there may be occasions where Defence decline to provide a representative for a particular conference.
- 6.2. Practical and policy considerations for Defence participation in the program are supported by a protocol outlining the role of a Defence representative in a conference process and Defence internal Instructions and Directives. A briefing session and information pack for those Defence representatives endorsed to be involved in the program will be jointly delivered by the Office and Defence prior to the participation of individual representatives in conferences.
- 6.3. The Defence Response Unit (DRU), within Defence is the central contact point for the Office in arranging conferences.
- 6.4. The selection of a particular senior Defence representative to participate in the program is the responsibility of the Office in consultation with the DRU.
- 6.5. Reportees may request a particular Defence representative, and this will be considered by the Office. There will be no guarantee that a particular Defence representative will be available, nor can Defence stipulate a representative for a particular case.
- 6.6. In consultation with the Office, Defence has determined that generally, participation of individual representatives be contained to five conferences. The reason for this is to safeguard against vicarious trauma.
- 6.7. Participation by Defence representatives in the program will include representatives from across the ADF and Department of Defence, including; Service Warrant Officers (Warrant Officer of Air Force, Regimental Sergeant Major of Army, and Warrant Officer of Navy) and O5 level Officers upwards (Wing Commander, Lieutenant Colonel, and Commander), for two reasons:
 - the potentially large number of anticipated conferences to be conducted across Australia means that Defence participation cannot be limited to high level leadership alone; and
 - involvement in the program of a larger group of senior Defence representatives will enable a wider level of insight into the impact of abuse and the implications of this abuse for reportees, their families and the ADF. This insight is critical to informing ongoing cultural change across the organisation, particularly among Defence personnel who will most likely become senior leaders in the future.

7. Conference Process

7.1. The steps leading up to the actual conference are by their nature restorative. The careful and transparent messaging, choice and guidance about the conference provided to the reportee are inclusive of both restorative justice principles and the principles of trauma informed care.

7.2. There are five broad stages that form the restorative engagement conference *process*.

Stage 1: Assessment of a matter to determine that restorative engagement is an available response for a reportee.

Stage 2: Referral of a reportee to the restorative engagement team.

Stage 3: Assessment of the ongoing suitability and readiness of the matter for restorative engagement.

Stage 4: Facilitator prepares participants, convenes the conference.

Stage 5: Conclusion of conference process- including; wellbeing and debrief follow up with participants, administrative requirements, and receipt of written feedback. Provision of information on follow up action(s) to DRU and the reportee.

8. Suitability considerations

8.1. An assessment of the suitability and readiness of people who have experienced abuse for participation in a conference will be undertaken in all matters. This assessment is to ensure that the reportees interests in participation align with what the conference process can achieve for them and importantly, that it causes no further harm. There are several (subjective) factors that inform reportee suitability – these include:

- their motivations/interests for participating in a conference
- their expectations of the conference process
- their capacity to participate in a way that is safe for them
- their understanding that engagement in the program is voluntary
- their understanding of the role of all participants in the program
- their capacity and willingness to safely and constructively participate
- their understanding of the possible outcomes and benefits of participation
- their understanding of the limitations of what may be achieved through participation
- their written consent to participate
- the level of support available to a person who has experienced abuse before, during and following the conference process and who may be an appropriate person to support them through the process
- whether the support person and the Defence representative are suitable candidates for the particular conference, and
- the most suitable format for the particular matter.

9. Participation of support person

- 9.1. Support people play a critical role in conference processes and reportees are encouraged to nominate a support person to attend the conference with them. In exceptional circumstances, consideration will be given for more than one support person and other forms of support, such as therapy animals, to attend a conference.
- 9.2. The role of the support person is to support the reportee throughout their engagement in the conference process, with the intention that the participation of the support person will enhance the conference outcome. Support people will generally have a small speaking role in the conference. Their participation is not to raise issues outside the scope of the report of abuse, or to amplify the story of the reportee, but to support them in speaking to it.
- 9.3. Ideally, a support person:
 - has a pre-existing and on-going personal relationship with the reportee and is aware of the abuse including its impact (e.g. partner, family member or friend)
 - is able to participate in a way that promotes a safe and meaningful experience for the reportee, and
 - may be known to the reportee in a professional capacity (e.g. support worker/counsellor/lawyer).
- 9.4. In some cases reportees may identify social isolation and estrangement from family. In some matters, support people for conferences may extend to professionals and advocates that the reportee may currently be or has been engaged with. It is important to note that the participation of support people is to provide personal, emotional and physical support, it is not to advocate on behalf of the person or raise issues outside the scope of the report of abuse. All support people are screened for their suitability to participate in a conference.
- 9.5. In relation to this category of support people, the Office will ensure that there is a collective understanding among participants that:
 - their role is to provide personal support
 - they are not be permitted to act in a professional capacity nor advocate on behalf of the reportee during the conference process, and
 - the Office will pay the usual travel related expenses for support people to participate in the conference process, but not any professional fees for time associated with that support person's participation.

10. Conference preparation

- 10.1. Pre-conference preparation meetings between the Facilitator and participants will occur in each matter prior to a conference occurring. These meetings are central to ensuring the objectives of the reportee may be met and that the conference process is both psychologically and physically safe for all participants.
- 10.2. Facilitators will support the reportee to speak to their *story* to the extent they want and are able to. Reportees will not be compelled to talk in detail about the abuse itself, or any aspects of their experience if they are not comfortable or able to do so in a way that is safe

for them. The focus of the conference dialogue is about the impacts of the abuse at the time and the ongoing implications of this. Providing detailed accounts of abuse is not generally a major focus of the dialogue in the conference itself.

- 10.3. Pre-conference preparatory meetings with the reportee and their support person, where they chose to have one, form part of the ongoing suitability and readiness assessment and preparation for how the conference will unfold. Pre-conference meetings generally involve a focussed discussion on:
 - the context of the abuse
 - the impact of it at the time it occurred
 - the ongoing implications
 - identifying and confirming what aspects of their personal story of abuse the reportee may wish to discuss with the Defence representative during the conference
 - assisting the reportee to put their story into a cohesive narrative
 - how the interaction during the conference may unfold, to maximise the benefits for the reportee
 - their relationship with their support person
 - any practical needs required to support the reportee in the conference
 - any potential requests for follow up actions, and
 - explanation of and signing of Consent to Participate in a Restorative Engagement Conference Process form (consent form).
- 10.4. Having satisfied the suitability considerations, an ongoing assessment of the readiness of the reportee for participation in the conference is confirmed by the Facilitator at the pre-conference preparation meeting or on earlier advice from a Liaison officer.
- 10.5. Following the pre-conference meeting between the Facilitator and the reportee, the Facilitator then meets with the Defence representative. This meeting is to ensure that the Defence representative is comfortable in responding to the particular report of abuse, and there are no actual or perceived conflicts of interests. The meeting is also to prepare them for how the reportee will present, including a brief summary of their story, its impacts and the interests and motivations for participation for the reportee.
- 10.6. An explanation of the consent form is provided to all participants prior to them signing it. It is important to note that:
 - signing the consent form does not waive the right of the reportee to take action outside of the conference in relation to their report of abuse, and
 - that any statement, admission or apology made by a Defence representative in a conference, or any action arising from a follow up action, is not an admission of any legal liability.

11. Formats for delivery of the Restorative Engagement Program

- 11.1. The conference process will ordinarily be conducted in a face-to-face conference. However, in some cases, conferences can be delivered by an indirect exchange of information between the participants. That indirect exchange could be conducted by electronic or paper mail, telephone or other communication strategies, with the Facilitator as an intermediary.
- 11.2. The format selected for each conference will be the format which best meets:
 - the physical and psychological safety of participants
 - the implementation of the program principles, and
 - the desired outcomes of the participants.
- 11.3. Unlike other restorative justice and mediation programs, where one or more meetings of participants are possible, unless there are exceptional circumstances, the Office will only convene one conference.

12. Follow up Actions

- 12.1. Participation in a conference process, itself, is the intended outcome. However, where a Defence representative and a reportee agree in the conference for certain things or actions to occur following the conference, the Facilitator will make a record of this using the *Record of Follow up Action(s)* form and have the participants sign the record of agreement form. Follow up actions will generally include symbolic or other tangible actions that are connected to the reportee's service and experience of abuse.
- 12.2. Signing of a *Record of Follow up Action(s)* form by the Defence representative and reportee provides consent for the reportee's contact details, including address and telephone numbers to be provided to DRU to facilitate the delivery of requested actions. A copy of the record will be forwarded to the participants and DRU by the Office within 10 working days of the conference.
- 12.3. DRU has responsibility for the implementation of follow up actions in the event that a Defence representative is not able to personally provide the agreed action, and also in advising the reportee and the Office when a requested action cannot be fulfilled.

13. Program Integrity & review mechanisms

- 13.1. The program will be regularly reviewed to ensure the continual refinement and improvement of its processes and most importantly that the core principles and values of the program are upheld. The Office will implement a range of *program integrity strategies* to inform that the program is being implemented as intended. These strategies inform and assist the Office to support Facilitators and Defence representatives in performing their roles to ensure a safe and meaningful experience for participants. These strategies will also feed into the broader cultural change agenda for Defence.