Does this dispute need a restorative approach?

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Introduction

- A restorative approach is something you can incorporate into your dispute resolution practice, not necessarily a stand alone process.
- A restorative approach may be founded in Restorative Justice, and the criminal offending context, but the principles of the approach can be applied to a wider context.
What is a restorative approach to dispute resolution?

The underlying principles of a restorative approach are:

• Voluntariness
• Goal of repairing harm
• No blame
• Process of meeting – includes past, impacts (harm or hurt), future plans
What is the magic in a restorative approach to dispute resolution?

• It enables the hurt done or the harm done to take centre stage and not be only one of the factors to be considered
Key Techniques

• Robust preliminary meetings, preparing parties and exploring harm done and what needs to happen to repair that harm
• Storytelling
• Past is revisited, explored and settled before the future can be discussed
• Dealing with the impacts and feelings so parties are ready to move to thinking about and planning for the future
Key Techniques continued ...

• Open questions around feelings
• Having the right people in the room – who has been a key player, who has been impacted? Who has got a stake in this going forward?
• Recognising when acknowledgement is required and coaching parties on this as needed
• Ensuring parties have support people
When to use a Restorative Approach

- Where ongoing relationships eg. workplace, co-parenting, family, community, neighbourhood disputes
- When there is obvious emotional hurt present for a party
- Where a traumatic event has occurred
- Where a party’s ‘identity’ is at stake eg. Workplace matters in which a party’s identity as a worker might be threatened, or parenting matters in which parties identity as a parent might be threatened
- Where there is an acceptance of harm caused (accountability)
When to use a Restorative Approach continued ....

• Where parties seem to be lacking logic or seem stuck in dispute
• Where parties outcomes include “feeling better” or “moving on” as opposed to vindication or revenge
• Where earlier processes have added to the hurt or not addressed the hurt (eg. Court processes)
• Where parties have skills and capacity to participate
• Where an outcome may not be able to be externally enforced - people need to own an outcome for it to be sustainable
Advantages of a restorative approach

For the parties

• Story telling that promotes recovery, healing and moving on
• Deals with the ‘stuck bits’ for parties that stand in the way of moving on or agreement, or that endanger outcomes being sustained
• Holistic approach that privileges parties’ feelings
• No judgement or blame for hurts that exist
• More likely to achieve sustainable outcomes if harm repaired and/or acknowledged
Advantages continued...

• No need for a finding of misconduct, poor performance or wrongdoing, e.g. relationship breakdown at work, may be trivial externally, but significant to parties

• Non legalistic/non adversarial

• Flexible so whoever needs to be involved can be

• Low key, timely, informal approach

• Increased productivity of colleagues and stronger relationships/happier workplace

• Cheap
How a restorative approach differs from traditional mediation

• Similar to a transformative mediation model
• Facilitator not mediator
• The harm and the feelings is the most important part
• Harm is not negotiable
• Harm can have occurred on both sides and parties need to take responsibility for harm caused
• Not necessarily settlement focussed although may be – the process itself may be just as important as the outcome
• Appropriate when mediation may not be, for eg. when a process needs to address a traumatic event
Case Examples of restorative approaches

• FDR or co-parenting dispute
• Workplace dispute
• Neighbourhood dispute