

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