

Building a consent-based framework for coronial conferencing

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Bereaved family and community

Criminal
prosecution
agencies

Hospital
administrators

Coronial
officers

Care taking
professionals

Police
investigators

Witnesses/
'good
Samaritans'

Professional
membership
organisations

Ambulance
officers

Hospital staff

Attending
police officers



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The ACT's Restorative Justice Scheme

In 1995, Australian Federal Police began a diversionary conferencing scheme reported on as the 'Re-integrative Shaming Experiments' (RISE).

In 2004, Crimes (Restorative Justice) Act

- Phase I enacted 2004
- Phase II enacted 2016
- Phase III enacted 2018

Referrals are limited to offences that are within the criminal justice system.



The ACT's Commitment to becoming a Restorative City

In 2016, ACT commits to work towards Canberra as a restorative city

In 2019 restorative practice is proposed as the cornerstone of reform of ACT's coronial system

In late 2020 and 2021 the Justice Reform Branch developed a prototype process for conferencing coronial matters

In 2024 the Human Rights Commission auspiced the Coronial Restorative Reform Process

In 2018 The Coronial Reform Group made a submission to the ACT Law reform Advisory council's Inquiry into restorative practices

In 2020 a request was made for a restorative conference in relation to a coronial matter

2023-2024 Restorative Cities sought a review into the Restorative Justice Scheme. *Findings expected in late 2024.*



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Issues

- Safety for participants from litigation?
- Admissibility of disclosures?
- Agency of participants in the face of legal advice?
- What can a conference offer after all these protections are considered?



Resolution

- Define the scope carefully
- Manage the potential for disclosures
- Build trust through transparency
- Gain consent in stages
- Prepare participants so they know what they have to offer each other, and they can make choices about the information they share.
- Design the conference according to the goals of the participants.
- Build support among the communities that have influence over participants.



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Consent in stages

When the bereaved family or community members have agreed to the facilitator's exploration of the viability of a conference, **consent to explore and consider** will be sought.

This consent acknowledges that the family have received information about the limits to achieving a conference; the steps ahead to determine the viability and scope of a conference; the confidentiality of the participants; and their right to seek legal advice.

Consent is not binding; participation remains voluntary.

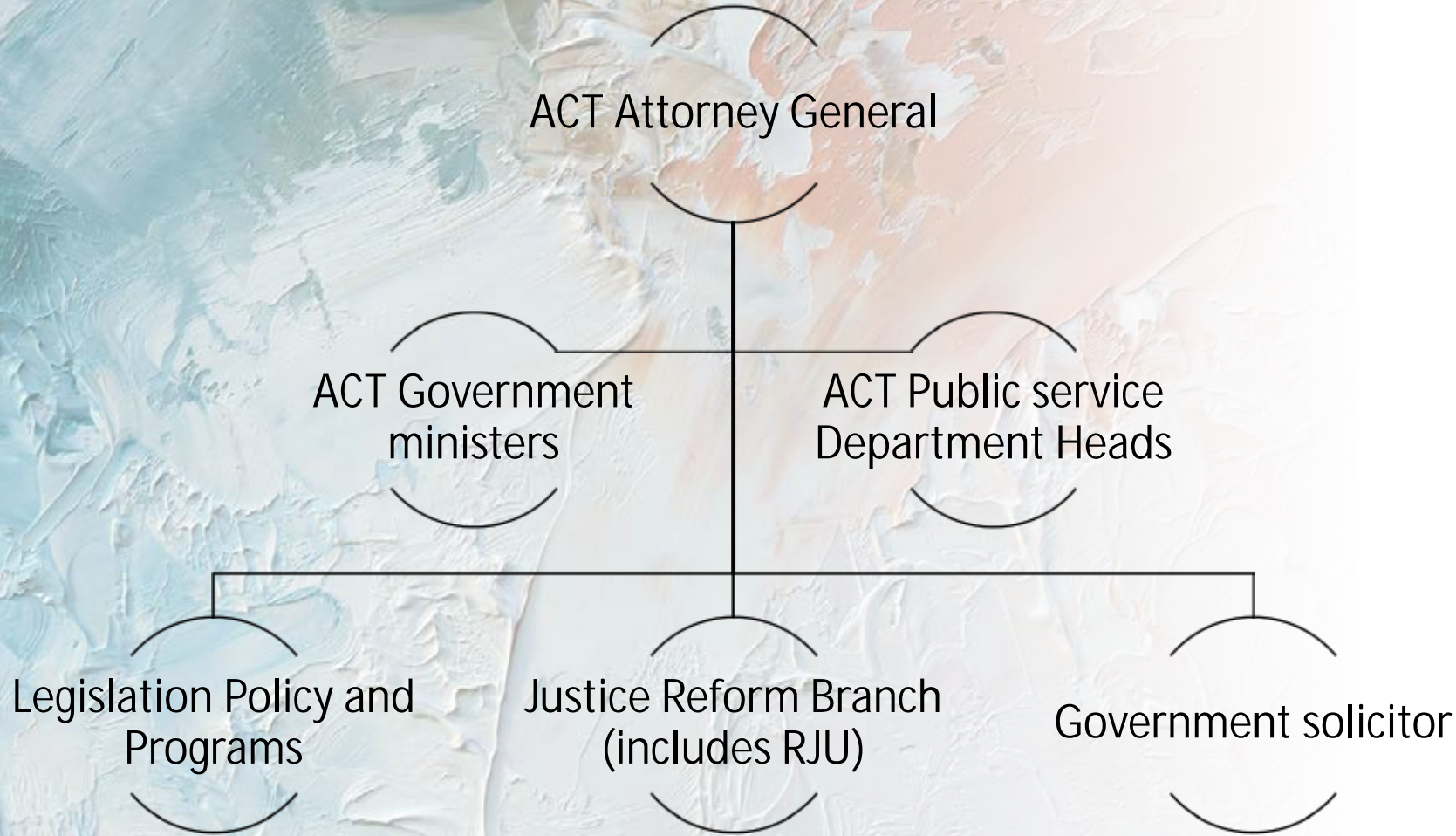
Invitations to third parties are made and information is shared. **Consent to explore and consider** acknowledges their interest in discussing their participation with the convenor; their right to obtain legal advice; the voluntary nature of their participation.

Consent is not binding; participation remains voluntary.

The convenor builds a conference plan sensitive to the needs and interests of participants. Once all participants confirm they have considered the conference plan, **consent to participate in conference is sought**. Consent articulates the confidentiality of information disclosed; the limitations to privacy; the non-legal nature of the conference & the nature of agreements reached. It will also articulate the conference setting that participation is voluntary, and the conference will not be recorded.



An environment that supports participation



Coronial Conferencing pilot

Authorising environment

Unmet needs of the bereaved family

Agencies that strive to prevent further harm

Individuals connected to the system response are unavailable

Increased community awareness in restorative practice

Building practice of restorative engagement in redress processes

Restorative Engagement for the coronial conferencing pilot

people in authority cannot deeply understand what happened, and the impact of what happened, without engaging directly with those-who-have-been-harmed

Moore & Vernon 2024



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New directions in the ACT

Practice is growing across Australia in restorative engagement through the redress schemes that have been operating since 2015.

This matter of a death at work offers opportunities for agencies linked to the response for this young man's death to contribute to his family's recovery and contribute to system reform.

Interest in the ACT is building in broadening the community's access to restorative practices and engagement.

This pilot represents one instance within a growing community sentiment that supports justice outcomes through truth-telling and collective agreement-making that:

- *responds* with authority to harm,
- *prevents* further harm, &/or
- *promotes* healing and well-being

Moore & Vernon (2024).



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