

More of the Same... or New Ways Forward?

Victim Support Service's National Victims of Crime Conference September 2008



This summary of 'reflections' from the National Victims of Crime Conference held by Victim Support Service in September 2008 does not attempt to cover all the presentations by over 40 speakers, but rather it tries to look forward from some key lessons and reflections together in one place. The conference aimed to bring some ideas, recommendations and action steps into the open with a focus on its theme of "New Ways Forward" and "Pathways to Change".

It is fitting indeed to begin with the words of the opening speaker, Lowitja O'Donoghue AC, CBE, who did far more than welcome delegates to the conference on behalf of Aboriginal people by reminding us that "if social systems do not operate effectively to support victims of crime and gross injustice, it is very difficult, indeed, to rebuild strong, healthy and meaningful lives". This message established the tone for the conference which set about exploring many aspects of this statement – the social and other causes of crime; existing practices and processes in health, welfare and justice systems around Australia and elsewhere in the world; support and therapeutic interventions for victims of crime and abuse of power; crime policy development and the rights of victims; and ways to do things better.

The challenge issued by Lowitja to us all was to stop the "political chest beating about getting tough on law and order" and "work (together) with integrity and courage" in a united front to "find resolution for the victims of crime". We learned that we can only do this by leaving political agendas behind, have the genuine commitment to look at the existing evidence of what actually works to reduce victimisation, the sense to invest heavily in what works, and the vision to plan beyond the four year election cycle.

A Plan for What Works

Dr Irvin Waller summed up the future needs on Radio 891 (26 September) when he said "you need to have some sort of permanent agency at a very senior level in Government that brings together schools, housing, social services and police and says, we're going to have a plan to solve this problem - look at what the causes are. We're going to intervene with those and we're going to get serious about it and actually manage it in a modern sense", and have "leadership at the top level of Government that brings these agencies together so you don't have a social exclusion unit doing one thing and the police doing another. That you actually have people talking about a whole Government (approach) - real concrete operations guided by information and data".

Thus we need a plan – we have South Australia's Strategic Plan but no strategic long term plan for crime reduction and prevention. We need community leaders of influence in Parliament and the Administration of Government to champion this cause and become the 'permanent agency' to which Waller refers. Maybe a clear process and an influential change agent can have the same effect as an 'agency'?

Waller expressed strong commitment to the power of democracy through voters who are empowered to monitor Governments' achievements and accountability to the plan once it exists - but they need to be educated to understand the issues and be shown what works (the evidence). So we need to do this. He explained that progressive

Governments have asked voters and been surprised that “ordinary people understand crime much better than the media headlines of populist politicians. People know that it (crime) has a lot to do with parenting, more people going out to work, more single mothers below the poverty line, young men dropping out of school because they see no future. They want to see people held accountable, not necessarily through incarceration, also through reparation”.

“The public is not as dumb as some of these populist politicians think. If you actually look at public opinion polls that give a choice, what you see is that the public is about two to one in most of the Western world, two to one in favour of investing in programs that help young men to complete school, help young men to get jobs, rather than spending more money on courts and prisons.”

The lesson here for me is that the average person, including most victims, want far more than prison for perpetrators – they understand the causes of crime and want Governments to intervene.

We know from Dr Waller that spending more and more on police and putting people in gaol reaches a saturation point and becomes pointlessly wasteful as incarceration soon stops reducing crime any further - “One dollar for prevention equals seven dollars for mass incarceration”.

Waller showed that we need to reduce the risk factors, including:

- Reduce poverty and inadequate housing
- Provide consistent and caring parenting and reduce the opportunity for young people to witness intra-familial violence
- Increase social and cognitive abilities in at risk young people
- Reduce behavioural problems at primary school
- Improve school relevance and retention
- Reduce frequent unemployment and resulting limited income
- Reduce the culture of violence on television and in the community

So this lesson is an easy one – we must invest in strategies to address at least these risk factors as early as possible with our youth and younger children.

On Radio 5AA (24 September), Irvin Waller said that “people are realising that waiting until the crime occurs, trying to catch the person, trying to convict them, is not a sufficient solution. You need to do that for the more dangerous, the more persistent (offenders), but the idea that with some investment in programs for youth at risk, to try and change teenagers’ attitudes to women, to try and get the police to be more intelligent (meaning using more data systems and working with services), trying to improve the design of the things that we have around us so that they’re less likely to be stolen - all of that. There’s a huge amount of evidence to show that it works”.

We heard Premier Mike Rann formally opening the conference with encouraging and visionary words about South Australia being a leader in giving rights and support to crime victims dating back to the late 1970’s when Victim Support Service began, and the 80’s when the Declaration of Victims’ Rights was introduced - being an example for the rest of the world in addressing criminal victimisation, but, in the words of Birgitte Sorensen, crime victim and Chair of the Victim Support Service Board, “simply put, the Government needs a crime prevention strategy”.

Governments can only lead as long as they take a combined approach, being both tough on crime and tough on its causes. We learned that many jurisdictions are already walking this pathway.

Representation and Restorative Justice

Other key issues and strategies to improve victims' rights and the criminal justice system included giving victims' legal representation to take a greater participatory role in the justice process. This was highlighted by a number of speakers. In particular, Waller recommended that South Australia should adopt the approach of the International Criminal Court (ICC), which Australia has ratified, where the interests of the victims are considered throughout the whole process. That is, where a lawyer represents the victim and is paid for by the court. This approach has been in place in France for more than 40 years, where the legal system is inquisitorial rather than the adversarial system in Australia.

Martin Hinton QC, former Deputy Director of Public Prosecutions and now Solicitor-General in South Australia, reflected strongly that our adversarial system "forgets victims" when it should provide them with choice – choice to be involved in merely locking 'their' offender up or obtaining some recovery and acknowledgement for themselves, as well as opportunity for the offender to make reparation and obtain rehabilitative treatment. He stated that a more holistic approach is needed and suggested both parties might be better off with more creative sentencing options and/or restorative processes.

Dr Jo-Anne Wemmers brought new thoughts to the restorative justice discussions in this country, showing an interesting perspective on how to move the debate and implementation forward. Victim Support Service remains committed to the values and principles of restorative practices (I refer readers to the Position Paper "Restorative Justice" on our website www.victimsa.org) and I am enthused by the way the ICC operates as a model for us to pursue which strengthens victims' rights through representation or "standing" and can be integrated and added-on to the existing system with less adversarial combat and more truth. We can do a lot to improve the current system now, even while we advocate for the higher aim of legal representation.

I can do no better than summarise by using Jo-Anne's own words in concluding her paper:

"Over thirty years after the birth of the victims' movement and the discovery of the plight of the victim, victims are still essentially witnesses to a crime against the state with few rights. During this time, restorative justice has emerged as an approach that advocates victim participation and recognition of the harm committed against the victim. Despite the strong role that it gives victims, the restorative justice movement has not changed victims' role in the conventional criminal justice system. In part, this is because many advocates of restorative justice see it as an alternative to the conventional criminal justice system. While restorative justice has been successfully introduced as an alternative approach for minor offences in many jurisdictions, it is unrealistic to think that restorative justice could ever completely replace the conventional criminal justice system. More importantly, as we have seen, victims see themselves as part of the criminal justice system and wish to remain in the criminal justice framework."

"If we truly want to address the plight of victims then we must stop excluding victims and start including them in the criminal justice system. The introduction of victim impact statements in common law systems was an important first step in that regard. But it is not enough. How victims participate in the criminal justice process is also important. The emergence of restorative justice, and in particular restorative justice values, provides an opportunity for criminal justice authorities to treat victims as well as offenders with dignity and respect. After all, it was not recognizing the rights of the accused that pushed victims out of the criminal justice system. The State moved

criminal justice away from the victim to the security of society. Restorative justice values correspond with what victims want: recognition and validation from the criminal justice system as well as protection from the offender without burdening victims with too much responsibility. Decision-making power would remain in the hands of authorities. We need to begin to recognize that crime affects victims as well as society and that victims have a legitimate interest in the criminal justice process. We need to open up the criminal justice process to include victims.”

There were some examples of where restorative justice is being trialled in South Australia as part of the criminal justice system, including Aboriginal conferencing in Port Lincoln, as presented by Eric Kasearu and Terrence Wilson and victim offender conferencing, as presented by Dr Andrew Cannon. A key message here is to ensure that processes do not allow any imbalance of power between victim and offender to manifest itself.

However while Irvin Waller was somewhat supportive of restorative justice, he was critical that many people involved come from a defence counsel background representing the offender’s perspective and are trying to minimise the penalty for the offender. He was much more supportive of victims having standing in the criminal court.

Jo-Anne and Irvin clearly showed us that victims’ rights can co-exist with offenders’ rights as the rights of humans – they don’t have to compete or be set against each other as is often the case in a traditional adversarial courtroom. Presentations by Leigh Garrett, Andrew Paterson, and Kathy Daly all showed how dynamic this field of restorative practices is and what new pathways we may be able to travel. As criminal justice reformers, both offender and victim advocates are working together through restorative justice models to improve the current system – it is time for policy makers and the criminal justice system to catch up and get aboard as we try to accelerate along this existing but hopefully renewed pathway and new ones.

Relevance and Youth

We need a justice system which is accessible and valued by its users otherwise crime victims will not report (victims of sexual assault, for example, report at no more than 15%).

Maybe wider application and availability of restorative justice processes could improve victim satisfaction and therefore reporting, significantly? Delegates were reminded by Irvin Waller and Jennifer Duncan from Youth Affairs Council of SA that there must be relevance in the system for participation to occur. Jennifer gave clear evidence that our system is “irrelevant” to young people and that our youth are more statistically likely to become victims, rather than perpetrators, of crime.

Jennifer quoted figures from the SA Office of Crime Statistics and Research which showed in South Australia in 2006:

- males constituted 78% of the victims of homicide and related offences, and of these, 36% were aged 15-24 years;
- males accounted for 72% of all victims of robbery, with half of all male victims being aged between 15-24 years; and
- females represented 84% of all recorded victims of sexual assault, with 45% of these aged 10-19 years.

It is likely that South Australia is not all that different from other comparable communities in Australia and we can all learn from this sample set of numbers and do more to respond to this alienated category of victims. Jennifer suggested that:

“The way that the criminal justice system and its associated agencies respond to the needs of young people as victims of crime is paramount to engendering trust in the system and further encouraging young people to report crime. The information and support services provided by victim agencies are frequently directed to older victims. This can pose as a barrier to accessing available services which can help with support, counselling, financial compensation and the like.”

Responding to Trauma

In her interview from Harvard University, Dr Judith Herman highlighted several powerful messages about treatment for victims, which included:

- the importance of bridging the 'researcher' and 'clinician' divide. Researchers need to be more respectful of clinicians.
- her recent research into prostitution, which indicates that from a public awareness perspective, we are only at a point with prostitution where we were twenty years ago with gender based violence. Recognition of prostitutes/sex workers as victims of crime and trauma is still a major issue and we are not doing enough for them.
- her statement that "Trauma 101" should be a compulsory subject for a range of fields e.g. police, lawyers, doctors and counsellors.

Judith also expressed concern about the current focus on short-term treatment models, including Cognitive Behaviour Treatments, for trauma. She has concerns about their effectiveness if they are too short-term when working with complex trauma. "12 sessions is just not going to cut it".

David Kerr from Victim Support Service coined the phrase “creating and nurturing resilience” which captures the essence of some of Judith’s input and what support programmes and psychological interventions aim to do for crime victims. The main challenge David identified is to research, recognise and implement the best, most effective treatment paradigms for victims depending on their needs.

Services must be responsive and have the knowledge and expertise to be effective in identifying and ‘treating’ all the stages of psychological distress through which a victim might be going.

National Pathways & New ways Forward

It is exciting to at last have interest from the Commonwealth Government in victims of crime and we appreciated the presentation from Elizabeth Kelly and Carl Alderson about Minister Bob Debus’ agenda for the future to support and empower victims of Commonwealth offences and the historical context provided by Sam Garkawe and Michael O’Connell.

Commonwealth criminal law has expanded over recent years to include a range of offences with identifiable victims. These include offences directed against child sex tourism, online grooming, terrorism and people trafficking. I was encouraged when advised by Elizabeth that the Minister “will pursue a Charter of Victims’ Rights, protections for vulnerable and disadvantaged witnesses, and provision for the use of victim impact statements in sentencing federal offenders.”

Also on the National 'highway' Robyn Holder, Chair of Victim Support Australasia, mapped out her signposts for the future including many of the needs identified elsewhere in this paper and therefore during the conference. They include:

- The need for universality and consistency –“the government needs to step up” and services need to do what ever is possible to improve quality and consistency.
- The importance of addressing our problem with access and equity of responses – to victims who are young, who have a mental illness or intellectual disability, are not covered under Federal laws, who live in remote areas, are Aboriginal, are from another culture or language, or disadvantaged in other ways.
- We need to be self-aware, self-critical and willing to debate.
- We must have and use evidence from research and best-practice to guide us.
- It is vital to “get serious about Victims’ Rights” and to get a more legal focus on them.
- The Federal Government interest in victims is long overdue and welcomed in its context of consultation and cooperation with the jurisdictions and their expertise.

In Conclusion

We (i.e. the criminal justice system and particularly those of us who work with and for crime victims) have come a long way on a generally conservative and traditional and bumpy road, but we have a long way to go to gain equality and deserved recognition for victims of crime. There are some key messages and suggestions for the way ahead which have arisen from this National Conference - some of which are captured in this paper. I hope you find it succinct and useful. My first and last words at the conference sought to challenge us all to use the conference contributions from all over Australia and indeed other parts of the world, to learn and to take action towards the common goal of improving our system for crime’s victims. We can put up with more of the same, or forge new ways forward. If you do care then, please, take another step.

Michael Dawson
Chief Executive
Victim Support Service