

Victim Support Service Inc.

POSITION PAPER – RESTORATIVE JUSTICE

Background

Although the term restorative justice is contemporary, the principles and practices relating to it are ancient and based on the family or community dealing collectively with the wrongdoing of one of its members. Any form of conflict resolution has at its centre the victim and offender and relies on the values, ethics, and sense of right and wrong which relate to specific cultures.

In the cultures which have had the greatest influence on the current criminal justice process, victims gradually lost their central role in the pursuit of redress following a wrongdoing. The State through its statutory agencies like the police, prosecution and correctional services took responsibility for investigating crimes, prosecution and punishment and the responsibility for the victim became little more than assisting the authorities with evidence. Crime became a violation of the State and in order to protect the public the key features of the process became the establishment of guilt (or innocence), deterrence and punishment. Victims today are usually referred to the civil courts in order to pursue their grievances.

Fundamental Principles of Restorative Justice

These are often expressed in different ways, but the following clear themes are present:

- A shared responsibility for resolving crime and for one another.
- Crime is primarily an offence against human relationships and secondly a violation of a Law.
- The inclusion of victims as parties in their own right. In addition to the primary victim(s) of a crime there are usually secondary and tertiary victims (e.g. other family members, friends, criminal justice officials, community members etc.) who may be affected.
- An understanding that a State monopoly over the response to crime is inappropriate. There is a risk that the adversarial system can leave victims and offenders further alienated, more damaged, disrespected, disempowered, feeling less safe and less co-operative with society. A restorative justice model, on the other hand, will have a focus on problem solving, dialogue, restitution, repair of the injury and the possibilities for repentance and understanding. This is likely to contribute towards improved safety, more respectfulness, empowerment and co-operation with each other and society as a whole.
- Restorative justice is a model designed to make things as right as possible, which includes:
 - Attending to the needs created by the offence (e.g. safety and repairs)
 - Attending to damaged relationships.
 - Attending to the causes of the offence (e.g. addictions, social alienation)

- The use of informal community mechanisms (eg religious/faith community, neighbourhood dispute resolution, tenancy agreements, other contractual obligations, etc) in addition to the involvement of criminal justice professionals for all aspects of restorative justice including follow-up, accountability and evaluation.
- The benefits of responding to a crime at the earliest opportunity and with the maximum amount of voluntary co-operation and minimum coercion.

Restorative Justice in Practice

Initiatives which can be implemented and based on restorative justice principles could be located at all stages of the criminal justice system: the investigative, judicial and corrective. Whilst many of these are not 'pure' restorative justice because of the dominating responsibility of the formal statutory processes, many of the fundamental principles are evident:

- Problem solving policing involves close co-operation with communities in order to identify precipitating factors, which if eliminated, may stop or at least limit anti-social behaviour (e.g. Watch SA programs, involvement with ethnic minorities).
- Offender and victim meetings can, by agreement, occur at any stage in the criminal justice process and can be incorporated formally. It is particularly relevant where the victim and offender know each other or where there are outstanding issues which need to be resolved. It is often helpful for the victim, within a safe environment, to be given an opportunity to express their feelings and obtain information which only the offender may be able to provide.
- Family Conferencing was introduced in South Australia in the Young Offenders Act 1994 and operates by bringing together the victim(s), offender(s), their extended families and advocates, the police and an independent mediator. The process enhances the opportunity for the victim and defendant to determine mutually acceptable outcomes with the defendant (hopefully) taking responsibility to repair harm suffered by the victim.
- Police have the discretion to issue a formal or informal caution to a young offender who commits a minor offence. This can include a 'warning with penalty' where the offender is required to apologise and/or make reparation to the victim.
- Community Service may be a part of a family conference outcome, a police caution or a court order imposed post-conviction which requires offenders to perform unpaid work of benefit to the community as a punishment. It has benefits in terms of teaching offenders skills, a work ethic and (hopefully) a more responsible attitude and is cost effective when compared to imprisonment. Victims may benefit as members of a community by work performed by offenders.
- Offender programs operated by Correctional Services either as part of a community order or prison sentence are increasingly focussing on models of effective practice involving cognitive skills training. This involves teaching offenders to think about the consequences of their actions and positive decision making. At appropriate stages it can be relevant to introduce victims and offenders - properly managed this can be of benefit to all involved.

Benefits

VSS sees the potential benefits for victims in restorative justice practices. These include:

- Assisting both victims and offenders to determine mutually acceptable reparation for the victim or community
- More meaningful process of participation by victims - who are still quite marginalised in the normal courtroom
- Providing an opportunity for repair of psychological harm suffered by the victim - beginning with the acknowledgement that the crime has been committed against the victim
- Enhancing the opportunity for offenders to accept responsibility and be accountable for their offence(s)
- Reduction of victim-blaming and re-victimisation through the adversarial process
- Diverting offenders from further involvement in the criminal justice system and maximize the opportunity to break the victim-offender cycle
- Providing a lower cost alternative to the existing system
- Reduction of delays (and subsequent costs) to victims in finalizing outcomes
- Reducing punishment focus and introducing processes more able to bring the offender closer to seeing/understanding the actual impact of his/her crime on others

Statement

- VSS believes in the benefits of a restorative justice approach within the Criminal Justice System and the principles of restorative justice are consistent with our organisational objectives.
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- Whilst VSS is primarily concerned for and about victims of crime, we will contribute towards the rehabilitation of offenders in the interest of reducing the impact and frequency of victimisation.
- VSS recognises that practice based on restorative justice principles will, by definition, produce wide ranging outcomes and solutions which are suited to the circumstances of the individual case and therefore have the capacity to reflect the diverse indigenous and multi-cultural society in which we live.
- Many restorative justice initiatives which operate locally require leadership and a broad based commitment by a number of statutory and independent organisations. VSS will contribute to existing and new developments where these are consistent with our overall objectives and continue to encourage the development of Restorative Justice.

Concerns and Cautions

VSS commitment to restorative justice is not totally one-sided - we and other victim-oriented organizations do have concerns and cautions which need to be addressed in the pursuit of more balanced and participative justice.

Victimologists caution restorative justice advocates and practitioners to ensure that victims' needs are maintained at equal value to those of other parties and not subsumed by the creation of another offender-focused system¹. Victims could again become used in the pursuit of outcomes for offenders - a fault of the adversarial system.

Advocates for restorative justice need to ensure:

- There is no pressure for victims to participate
- Equality of response to needs of victims , offenders and the community
- Re-victimisation and victim-blaming are eliminated
- Physical and emotional safety for both victims and offender
- Appropriate preparation and debriefing for victim and offender are undertaken
- The timing of the restorative event is appropriate and negotiated
- Both parties have the right and opportunity to withdraw
- That processes are culturally appropriate
- The nature of the crime and characteristics of both victim and offender, are assessed as appropriate for the event.

Our Commitment

Having made an organisational commitment to Restorative Justice, Victim Support Service Inc. will participate in:

- Promoting changes to the criminal justice system which are consistent with restorative justice principles, including encouraging the judiciary to facilitate more restorative processes in court.
- Victim - offender mediation where appropriate to personalise the process by bringing the impact of the crime closer to the offender and making it more real.
- Family Conferences on behalf of, or in the company of, victims.
- Victim awareness training with offenders to try to influence attitudes to offending.
- Offenders Aid and Rehabilitation Services (OARS) Council at their invitation.
- Working with the Department for Correctional Services through:
 - responding to consultation about Restorative Justice policy initiatives
 - attending the Prisoner Assessment Committee if there is a real opportunity to contribute to relevant policy and offender rehabilitation
 - Providing Victim awareness training for offenders and staff when requested .
- The Centre for Restorative Justice and initiatives undertaken by the Centre.
- Advocating for the introduction of appropriately structured adult conferencing prior to sentencing.

VSS supports these principles and practices. We look forward to improvements within the existing criminal justice system as well as adding appropriate new processes which build on problem-solving and non-adversarial approaches to justice.

*Approved by Board: 15th October 2003
Reviewed March 2006*

¹ Sexual offending and Domestic Violence (DV) are of particular concern when considering restorative processes due to the very nature of these crime as having gender and power- based causality. Because of this the cautionary factors take on even more importance with cases of sexual offending and DV. Particular care should be taken when considering the applicability of restorative processes with such cases.