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SUBMISSION TO THE STANDING COMMITTEE ON EDUCATION, TRAINING AND YOUNG PEOPLE

Inquiry of the Standing Committee on Education, Training and Young People into Restorative Justice in Youth Settings.

1. INTRODUCTION

1.1 In December 2005, a summary of issues relevant to victims of crime was forwarded for the Committee's consideration on this Inquiry. The representations at today's hearings are supplementary to those comments.

1.2 This submission reflects the statutory functions of the Victims of Crime Coordinator under the *Victims of Crime Act 1994* to promote reforms to meet the needs of victims of crime. Issues relevant to the Inquiry (and as previously submitted to the Issues Paper on Restorative Justice, 2003) include:

- Caution that restorative justice interventions be approached with careful consideration. Restorative justice is not a panacea for the impact and consequences of crime against victims.
- Careful consideration of what types of restorative intervention for what types of incidents, persons and situations might or might not be appropriate.
- The importance of school and other youth settings having a clear understanding of those incidents that should be reported to police (and might therefore be considered within the restorative justice framework of the criminal law), and those incidents which may not constitute a criminal offence.
- Understanding how much care and attention needs to take occur in planning a restorative intervention and in managing outcomes and agreements. Aspects of restorative interventions may appear to require a 'common sense' approach. This, however, a very strong

obligation for training, guidance and supervision if restorative justice interventions are to be developed in school and youth settings.

2. OVERARCHING COMMENT

2.1 The concept and processes of restorative justice (or restorative interventions) hold out much promise for victims of crime. In particular it offers - in comparison with the traditional criminal justice process - the potential for:

- A greater level of participation,
- More involvement in and influence over decision-making,
- Greater access to information, and
- Having questions answered.

2.2 These possibilities in themselves carry consequential benefits for a degree of satisfaction, restoration, and repair for the harm caused. However, from a victim of crime point of view there are some apparently contradictory points that need to be carefully considered. These are that:

- The damage or harm caused by the offending behaviour cannot in many circumstances be erased or repaired. It is always there to a greater or lesser degree.
- There is great variance in the degree of accommodation from a victim towards an offender, variance in degree of impact, and variance in the degree of individual functionality in the face of challenging processes.
- Damage and harm from offending behaviour is done to individuals in the first instance, but secondly to family, friends, neighbours and others.
- The process of how an offence is responded to is vitally important to victims of crime. However, the outcome matters too.
- In most instances there is a clearly identified victim and identified offender. However, at times this may not be clear.
- There is a big question over the notion of "restoration" especially with regard to offences such as sexual offending or where there is an on-going social or personal relationship. Interpersonal relations, especially amongst young people, present a hugely complex dynamic, and incidents alleged are usually not a one off.
- To a proportion of crime victims the notion of a apology is of deep importance, and to others it is either explicitly rejected or problematic.
- A proportion of crime victims do want an interactive dialogue with 'their' offender in order to receive some reasonable explanation as to "why me?" or other questions such as "what were her last words?" Other crime victims want no part of what they perceive as "justification" and want only to "have a say" or "give a piece of my mind".

2.3 My Office sees many victims of a great range of crimes and with a huge diversity of individual, social and familial characteristics. While there would be a proportion that would welcome a direct engagement with the offender, there would be a proportion that would not and a further proportion that, on different criteria, one would be cautious in approving suitability.

2.4 I would therefore **recommend** that a high and central criteria for restorative interventions be that individual and community safety is prioritised, that interventions do no further harm was done through the set of to any individual, and that there be certain suitability criteria for the offence, and for the victim and offender.

3. WHOLE-OF-GOVERNMENT & COMMUNITY FRAMEWORKS

3.1 The Inquiry will be aware that the *Crimes (Restorative Justice) Act 2004* provides a framework for providing restorative interventions to young offenders and their victims at a number of stages in the criminal process. These include measures that divert young people from court, and including court and post-court options.

3.2 The Discussion Paper on *Review of the Children and Young People Act 1999* (2006) canvasses views on provisions in that legislation extending family group conferencing and other restorative interventions.

3.3 I would **recommend** that these legislative frameworks guide strategic direction for developments in educational and youth settings.

4. SCOPE OF BEHAVIOURS TO BE CONSIDERED WITHIN EDUCATION AND YOUTH SETTINGS

4.1 Over the ten years that I have held the position of Victims of Crime Coordinator, I have had matters brought to my attention that are of concern to this Inquiry.

4.2 On occasion, schools and colleges have attempted to 'mediate' or to resolve by other means incidents that, in any other setting, would be regarded as criminal offences. These cases have involved allegations of sexual assault, sexual harassment and other sexually harmful behaviour, and incidents of serious physical assault and harassment. Some of these latter incidents have involved groups of young people. The majority of instances resulted, in my view, in ineffective interventions that were harmful to victims. Young victims have left school or felt that they had no option but to change schools. The education of these young people was severely disrupted leading to lower achievement, 'acting out' behaviour, and ultimately to changed vocational and career paths. In addition, further psychological (and in some cases physical) damage was done and significant disruption to the young person's family and social relationships occurred.

4.3 Schools, especially colleges, maintain a delicate balance within their immediate environment in managing student behaviour, and behaviour between students and teachers. However, a clear differentiation must be made between what should be reported to police as possible criminal conduct and what is within the scope of community-based resolution. Indeed, the ACT Supreme Court, in a case a few years ago, commented disapprovingly on an education authority assuming resolution powers on a matter involving the abuse of a child by a member of staff..

5. UNDERSTANDING NATURE OF HARM

5.1 Coming to grips with a scope of behaviours that might accommodate a restorative approach necessarily means understanding what types of harm might be capable of redress and what not.

5.2 Asking a victim of racially or sexually harassing behaviour or bullying, for example, to articulate, in front of an alleged perpetrator, the harm the behaviour is causing might do more damage than good. Harm can be multi-dimensional and, in the experience of my Office, young people in particular find it difficult to articulate what the impact the behaviours is having. In addition, the harm can be felt in very concrete ways by parents and, in less direct ways, by other members of a young victim's family and friendship networks.

5.3 In some situations brought to the attention of my Office – both school based ones and those that have taken place connected to school or college but outside its premises – there have been very serious issues about harassment, retribution and intimidation of victims and witnesses. This can be particular to situations involving multiple offenders (or gangs) but are not restricted to them. For example, I am aware of instances where young women who have alleged sexual assault have been virtually driven from school by name-calling, breaches to their privacy and 'whispering campaigns'. In essence there is a significant issue about victim/witness protection. In some jurisdictions, for example in the UK, specific legislative developments have sought to provide better protection for victims who report to authorities and who are in danger of retribution.

5.4 In my view, restorative intervention need to carefully consider, plan for and provide for processes that protect and support individuals. Such processes include:

- the protection of privacy and confidentiality,
- the form and format for gaining informed consent (for what type of restorative intervention, that is age appropriate and the circumstances in which parental or legal advice may be required), and
- specific supports before, during and after interventions.

5.5 As stated above, restorative interventions should never be seen to be a panacea. If a process is to state that it aims to "repair the harm done to victims" then it needs to be clear about how this is to be done. Simply to expect cathartic expressions of pain, anger or distress to be 'healing' in themselves is naive at best and seriously damaging at worst.

6. SCOPE OF RESTORATIVE PROCESS

6.1 Linked to the question of scope of behaviours and harm amenable to restorative interventions is the question of the scope of the approaches envisaged. Central to this is the need for a clear understanding about what is involved in instituting different types of restorative intervention.

6.2 The justice-based restorative justice approach current in the ACT envisages a number of different means to achieve the aims of the scheme. These include indirect means such as an exchange of letters or 'shuttle mediation', to direct means such as video conferencing or 'face-to-face conferencing'. Central to the approach is a two step process for the assessment of eligibility and suitability to participate both for the victim and for the offender. The assessment process in itself contains restorative elements in the information exchange about and between the parties. However, this is carefully conducted through the facilitators with significant protections on consent and privacy.

6.3 One could envisage a situation in a school where a principal may, within a short timeframe, seek to bring two students together to discuss an incident or dispute. While there can be benefits in a quick resolution, it is suggested that certain safeguards need to be articulated being:

- clear identification of the issue in dispute (as agreed by parties),
- clear identification of the roles played by parties in the dispute (which may or may not entail an 'admission of responsibility'), and
- clear information (preferably written) as to the process (and rules for dialogue) to be adopted.

6.4 Consideration should also be given about the formality or otherwise of **agreements** and then of how undertakings are fulfilled. Whilst many evaluations of restorative approaches show that victims feel satisfied with the process, this quickly evaporates on follow-up surveys if agreements are not fulfilled. A danger is that the aim of community capacity building may in fact be undermined as victims and their families come to see that the emotion and the apology is meaningless without actions being taken to back up a change.

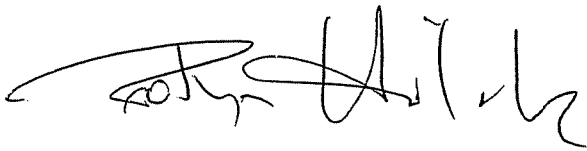
6.5 Educational and other youth facilities will need **legal advice** as to their responsibilities in initiating a process with or without parental consent, and the legal implications for juvenile and adult parties to participation. The legal advice would need to form the basis of **procedural guidance** to educational and youth providers. It is also strongly advised that **training** is delivered to those who may be called upon or expected to facilitate restorative interventions. The training will need to consider the extent to which (if at all) restorative providers are to be subject to existing **accreditation** schemes such as that for mediation. There may be benefit in suggesting that **supervisory/support arrangements** be put in place so that principals and others may discuss the particulars of a case with an experienced central person such as from the Restorative Justice Unit.

6.6 Restorative interventions must also require detailed outlines of what may be required of those **support services** that need to be engaged with for both victims and offenders (and their respective family and inter-personal networks).

7. CONCLUDING COMMENT

7.1 Restorative approaches to inter-personal and community disputes hold a powerful attraction to people who wish to invest in social relationships and to build the capacity of communities to resolve problems. The experience of this Office in working alongside the AFP in diversionary conferencing, with the Departmental Restorative Justice Unit, and in the Ngambra Circle Sentencing Court is that these are approaches that need to carefully consider and plan for a complex range of situations and persons to which restorative interventions may or may not apply.

7.2 In any event, it needs to be clearly understood that these are not resource neutral measures - especially if proper regard for the harms done to and interests of victims is considered central. If done poorly, restorative interventions can cause further harm to victims and their families, and actually cause damage the social fabric of the community.

A handwritten signature in black ink, appearing to read 'Robyn Holder', with a stylized flourish at the end.

Robyn Holder
VICTIMS OF CRIME COORDINATOR