



National Justice CEOs Group

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National Guidelines or Principles for Restorative Justice Programs in Criminal Matters

Dear members of the National Justice CEOs Group

Thank you for the opportunity to comment on the Discussion Paper 'National Guidelines or Principles for Restorative Justice Programs & Processes for Criminal Matters' (March 2011).

We write as various family violence services and peak bodies in Victoria:

- **Federation of Community Legal Centres (Victoria)** is the peak body for 50 Victorian community legal centres (CLCs). CLCs are independent community organisations that provide free legal advice, information, assistance, representation and community legal education to more than 100,000 Victorians each year. CLC work against family violence includes the provision of duty lawyer services in Magistrates Courts for victims of family violence. The Federation also conducts strategic research, policy development and law reform activities.

- **Domestic Violence Victoria (DV Vic)** is the peak body for over 50 family/domestic violence services in Victoria that provide support to women and children to live free from violence. With the central tenet of DV Vic being the safety and best interests of women and children, DV Vic provides leadership to change and enhance systems that prevent and respond to family/domestic violence.
- **Domestic Violence Resource Centre Victoria (DVRCV)** is a statewide service that provides information, training and resources to improve service and policy responses to family violence to a wide range of sectors and professional groups; and also provides commentary and advice on policy initiatives and law reform.
- **Women with Disabilities Victoria** is Victoria's peak body for women with disabilities. Our membership and staff represent the diversity of women with disabilities. Women with Disabilities Victoria supports women with disabilities to achieve their rights through community education, peer support, research and systemic advocacy. Our priority areas are access to health care, parenting rights, and addressing the prevalence of violence against women with disabilities. Women with Disabilities Victoria speaks for the human rights of women with disabilities on many of Victoria's key violence prevention and violence response committees.
- **Women's Legal Service Victoria (WLSV)** is a statewide organisation providing free and confidential legal information, advice, referral and representation to women in Victoria. WLSV specialises in issues arising from relationship breakdown and violence against women. In addition to delivering services to women, WLSV develops and implements preventative family violence programs and influences the development of legal policy and law reform. WLSV also provides education, training and professional development on the law and related areas.
- **InTouch, the Multicultural Centre against Family Violence** provides statewide services, programs and responses to issues of family violence in CALD communities. By acknowledging the rights and diverse experiences of our clients, we develop and implement a number of culturally sensitive and holistic models for the provision of services to both victims and perpetrators of family violence. In tackling the issues of family violence we act on multiple levels – individual, relationship and community. Our organisation strives to create a world where all women and children will be safe and free from violence. Through active recruitment of bilingual and bicultural staff, InTouch is able to offer services to clients more than twenty five different languages and dialects.
- **No To Violence Male Family Violence Prevention Association Inc (NTV)** is the Victorian statewide peak body of organisations and individuals that work with men to end their violence and abuse against family members. NTV members come from a wide range of professional and community backgrounds and work in a range of settings including government, community-based settings and private practice. NTV is the only peak body in Australia that focuses on engaging men in gender-based violence across tertiary, secondary and primary prevention. NTV also operates two telephone counselling services for male users of family violence: the Men's Referral Service and the After Hours Service.

Our services have been working collaboratively for many years on family violence systems reform in Victoria. As members of the first Statewide Steering Committee to Reduce Family Violence established in 2002, we have worked in partnership with government and other non-government organisations, police and courts to develop an integrated response to family violence.

This work included developing the vision for family violence systems reform and implementation of a range of policy, practice and governance initiatives. We lobbied for funding, and for a review of family violence legal responses in Victoria. This led to the Victorian Law Reform Commission (VLRC) review of family violence laws, which we worked on as members of the VLRC Advisory Committee.

Our organisations and other NGOs later came together as the Victorian Family Violence Justice Reform Campaign to lobby for adoption of the recommendations made by the VLRC, many of which are now part of legislation and practice in Victoria. More recently, our work alongside government has involved advising and assisting with the development and roll-out of a common approach to family violence risk assessment and risk management across sectors and settings in Victoria.

Family violence and sexual assault offences

On the basis of our varied and extensive experience, we wish to respond specifically to Question 8 of the Discussion Paper, concerning whether there should be separate or additional guidelines relating to restorative justice programs and processes that address sexual assault and family violence offences.

We believe that it is premature and inappropriate to consider possible principles or guidelines for restorative justice programs and processes where the offences concerned are family violence and sexual assault. We note that our view is shared by the Final Report of the Australian Law Reform Commission/New South Wales Law Reform Commission Family Violence Inquiry.¹

As the Federation of Community Legal Centres notes in its separate letter to the National Justice CEOs Group, restorative justice programs in criminal matters are generally at an early stage in Victoria and Australia, with little in the way of rigorous evidence and evaluation of their efficacy. This is particularly the case for restorative justice programs where serious criminal matters are involved.²

Where an offender has committed sexual assault or family violence, the power disparities, traumatic impacts and further risks to the victim are generally too profound for restorative justice practice to meet its objective of repairing the harm done. For example, a basic principle of restorative justice requires the victim to freely give her informed consent. In family violence and sexual offences, even if the victim is not overtly intimidated by the offender into agreeing to a restorative justice process, she could be subtly coerced by family and friends in order to 'help the offender change'. This scenario is especially likely if the victim knows the offender.

As a second example, Associate Professor Julie Stubbs observes that while apologies from the offender can be a potential remedy in some restorative justice settings, in family violence situations they can be a common feature of the perpetrator's tactics of control.³ This tactic has the purpose of encouraging the victim to excuse the perpetrator's behaviour and to remain at risk of further incidents of violence. The victim of violence may feel under extreme pressure to be 'forgiving' and conform to a feminine gender stereotype.

Restorative justice in family violence situations also has the potential to collude with perpetrators' beliefs that an apology – even if heartfelt – is sufficient for them to change their behaviour. Unless the perpetrator has worked hard to change through active participation in a men's behaviour change program, the apology that he offers is likely to be self-centred and focused on maintaining the relationship and his control over the victim. It is generally only through a perpetrator's concerted effort to take responsibility for his behaviour, that he might come to offer an apology that focuses on the victim's needs and experiences.

Safety is therefore another important consideration in any potential use of restorative justice. Via raising

¹ Australian Law Reform Commission/New South Wales Law Reform Commission, *Family Violence – A National Legal Response: Final Report* (2010), 1092-4.

² Australian Law Reform Commission/New South Wales Law Reform Commission, *Family Violence – Improving Legal Frameworks: Consultation Paper* (2010), 549-559.

³ Julie Stubbs, *Restorative Justice, Domestic Violence and Family Violence*, Australian Domestic and Family Violence Clearinghouse (2004), 16.

expectations of forgiveness, the process has the potential to minimise the violence and its impact, and thereby re-victimise the woman. This then risks not only her emotional but also physical safety. Again, risks are particularly great when the offender is a family member or the victim otherwise knows the man who sexually assaulted her.⁴

Nevertheless, our organisations appreciate that there may be occasions where, for instance, a woman who has been sexually assaulted by a stranger might genuinely feel that a restorative justice process could assist her healing from the offence. Even then however, we believe that it is important to place this response in the context of a justice system that despite reforms in different Australian jurisdictions, only successfully prosecutes - usually after considerable delay - a small proportion of rape cases, with those in turn being a fraction of rapes actually perpetrated.⁵ In other words, a woman's choice to use restorative justice may be more a reflection of the quality of the other justice avenues currently available to her.

The question of whether restorative justice should ever be applied to family violence or sexual assault offences therefore requires extremely careful consideration, informed by the experiences of victims/survivors and specialist workers in those fields. As the Australian Law Reform Commission, the New South Wales Law Reform Commission, the Victorian Law Reform Commission, the Victorian Parliament Law Reform Committee, and the National Council to Reduce Violence Against Women and their Children have all recommended, before developing any models of restorative justice for family violence and sexual offences, in-depth research, trials and evaluations of long-term outcomes must also be undertaken.⁶

We are also not confident at this stage that standards of practice, together with levels of skills and knowledge of facilitators, are developed to a sufficient degree for restorative justice models to be applied to these types of offences. In order for this to occur, we would expect a sophisticated understanding and appreciation of: the overwhelmingly gendered dynamics of family violence and sexual assault; the spectrum of victim/survivor responses to traumatisation and their related needs; and the associated risk assessment and management strategies required by facilitators in order not to do further harm.

If at any stage consideration is given to implementing restorative justice schemes in these contexts, there will need to be specialist training and ongoing professional development, with mandated practice standards, in relation to the dynamics and impact of sexual assault and/or family violence; as well as regular monitoring and evaluation of such schemes.

We therefore stress to the National Justice CEOs Group that in any potential developments concerning restorative justice programs and processes to address sexual assault and family violence offences, there must be extensive consultation with and involvement of sector experts, existing forums and governance groups. This will be necessary to ensure that any proposed policy change is not at odds with current reform initiatives.

⁴ See eg Julie Stubbs, *Restorative Justice, Domestic Violence and Family Violence*, Australian Domestic and Family Violence Clearinghouse (2004), 15-16.

⁵ The *Women's Safety Australia* survey (Australian Bureau of Statistics 1996) found that 15% of women victims of sexual violence in the preceding 12 months reported the offence to police. The *Study of Reported Rapes in Victoria 2000-2003* (Melanie Heenan and Suellen Murray 2006) found that offenders were charged in only 15% of reported rapes examined. In 2008-09, about 61% of prosecuted Australian sexual offenders pleaded or were found guilty (Australian Bureau of Statistics, *Criminal Courts of Australia* Catalogue No 4513.0 (2008-2009), 24).

⁶ Australian Law Reform Commission/New South Wales Law Reform Commission, *Family Violence – Improving Legal Frameworks: Consultation Paper* (2010), 559; Australian Law Reform Commission/New South Wales Law Reform Commission, *Family Violence – A National Legal Response: Final Report* (2010), 1094; Victorian Law Reform Commission, *Review of Family Violence Laws: Report* (2006), 84; Law Reform Committee - Parliament of Victoria, *Inquiry into Alternative Dispute Resolution and Restorative Justice* (2009), 333, Recs 72-73; National Council to Reduce Violence Against Women and their Children, *Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009-2021* (2009), 107.

Sincerely



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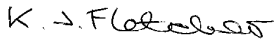
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