

Victims the priority in restorative justice Act

By Tony Foley

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HOW MANY times have we seen the front page of a newspaper with a harrowing photo of a victim of crime and their family expressing outrage at the inadequacy of the sentence meted out to an offender?

It seems the only way open to them to repair the harm they've suffered is to see the offender punished more and more severely.

Now something practical has been done to address their needs. Before it rose for the election period, the ACT Assembly passed the Crimes (Restorative Justice) Act to give victims a forum that focuses on their experiences.

The focus of the legislation is squarely on victims of crime and the repair of the harm caused to them by criminal offences.

A secondary purpose is to have a constructive impact upon the offender. The key vehicle to achieve these aims is a facilitated conference between the victim and the offender to discuss the offence, its impact and what can be done to repair the harm.

The conference is intended to augment the existing criminal justice process by addressing the currently unmet needs of victims and their families.

The Act has two phases, the first foreshadowed for the calendar year of 2005. In this phase the Act will only cover certain offences committed by juveniles. The second phase, expected to begin in 2006, will apply to offences committed by juveniles and adults.

Different 'triggers' to start the conference process will operate for 'serious' and 'less serious' offences. For serious offences the offender must plead guilty for the pathway to open; for less serious offences he or she will need only to accept responsibility.

The plea of guilty will always apply in domestic violence cases, where there are concerns that face-to-face conferences may do more harm than good for victims.

The effect of these provisions is that for a very large class of cases a process can commence if the offender "accepts responsibility for the offence". The Act explicitly separates the concept of accepting responsibility from a guilty plea.

Sometimes a conference will not be suitable. There may be considerations such as power imbalances or the safety of the victim that make it unwise. The consent of the victim and offender will need to be obtained and can be withdrawn by them. There are alternatives to a face-to-face meeting, such as the exchange of e-mail statements, pre-recorded videos, tele- or video-conferencing.

Why has the Assembly decided to take this radical step? Restorative justice is powerful medicine and should not be trifled with lightly. But the guarded response seems to be that it can work for victims. Research from randomised controlled trials in the ACT and Britain consistently show victims are less angry, less frightened and less focussed on wanting to do their offender harm if they have participated in a well- facilitated conference.

A conference has as its primary aim the reaching of an agreement. The agreement needs to include measures intended to repair the harm caused by the

offence. Such measures might include an apology by the offender, a plan to address the offending behaviour, a work plan to compensate the victim or financial reparations.

What is the incentive for offenders to participate in the process? Being held accountable for their actions, having these actions rather than themselves labelled as 'bad' and being offered the chance to be reintegrated into society are all tangible benefits.

The real aim of the legislation is to provide the victim with the means to restore his or her life, to regain confidence lost or emotional balance shaken. This might not much change the practice in the courtroom but it has the real potential to revolutionise the experience of victims.

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lecturer, and a member of the

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