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24 April 2023

Committee Secretariat

Legal Affairs and Safety Committee  
Parliament House

George Street

BRISBANE QLD 4000

***By email to:*** lasc@parliament.qld.gov.au

Dear Committee Secretariat

# Inquiry into support provided to victims of crime – Question on Notice

At the public hearing on 17 April 2023, the Queensland Human Rights Commission was asked the following question on notice by the Member for Currumbin:

’If we’re moving forward to an adult restorative justice process and that leads to a situation in which the prosecution decides to drop a charge as a result of that process, the public will not be aware, and other victims of that crime won’t know why, because it is a secret process. How do we balance those rights in terms of having an open and transparent process that delivers justice compared to the immediate benefit restorative justice provides to the victim and the perpetrator?’

The Commission understands that adult restorative justice conferencing is governed by the *Dispute Resolution Centres Act 1990*, with each centre a part of the Department of Justice and Attorney-General. Youth restorative justice processes are provided for under the *Youth Justice Act 1992* and are conducted by the Department of Children, Youth Justice and Multicultural Affairs. The Commission recommends that questions regarding restorative justice processes are best directed to the relevant government department.

Restorative justice processes across Australia have been demonstrated, in appropriate matters, to better meet the needs and expectations of victims and reduce recidivism, upholding rights of victims, accused persons, and the community.[[1]](#footnote-1) Its purpose, and the need for voluntary participation, justify the limitation of rights an accused person has to a fair and public hearing and other rights in criminal proceedings. Provisions regarding confidentiality or privilege protect those same rights, as well as the right to privacy and reputation for both the accused and victims.

At the same time, there is public interest in the criminal justice system, including alternative pathways, being open and transparent for accountability and building public understanding and trust.

The ACT, which is a human rights jurisdiction, has considered these issues in implementing restorative justice as a supplementary response to the formal criminal process, expanding from youth offending to serious offences committed by adults over several years.[[2]](#footnote-2)

The Victorian Law Reform Commission’s (VRLC) report on *The Role of Victims of Crime in the Criminal Trial,* notes that one of the concerns about the use of restorative justice as a response to serious violent offending, particularly sexual and family violence, is ‘the possibility of offending not being publicly denounced, thereby undermining goals of both specific and general deterrence.’ The VRLC concluded:

Some of the above concerns can be alleviated if restorative justice is understood as having a supplementary role in cases of serious offending, not a diversionary role. Restorative justice can be used to divert offenders away from the formal criminal process, but this is typically a response to less serious offending …It is not about keeping serious matters out of court. Restorative justice conferencing should instead be understood as supplementing the formal court process in appropriate cases. This allows public accountability, denunciation, deterrence and punishment to occur in those cases where a prosecution can proceed.[[3]](#footnote-3)

Restorative justice will not be appropriate in all cases. Where it is used, there is public interest in there being legislative clarity about its purpose and use, and the publication of deidentified case studies, statistics and outcomes. This could be achieved by an agency with overarching responsibility for the delivery of restorative justice in the criminal justice system across the state.

Ultimately, the effectiveness, and human rights compatibility of the expanding use restorative justice processes depends on the specific circumstances, criteria and safeguards applied. Consultation with key stakeholders including victims of crime is clearly critical in developing any reform in this area.

Yours sincerely

**SCOTT MCDOUGALL**

**Queensland Human Rights Commissioner**

1. See for example, Jacqueline Larsen, *Restorative Justice in the Australian Criminal Justice System*, Research and Public Policy Series No 127, (Australian Institute of Criminology, 2014) 22-28. [↑](#footnote-ref-1)
2. See Crimes (Restorative Justice) Bill 2004 (ACT) and accompanying Explanatory Statement; Standing Committee on Legal Affairs (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee), Legislative Assembly for the Australian Capital Territory, *Scrutiny Report 55* (17 August 2004) 1 and Government response in *Scrutiny Report 56* (24 August 2004) 33. See also Crimes (Restorative Justice) Amendment Bill 2018 (ACT) and accompanying Explanatory Statement; Standing Committee on Legal Affairs (Legislative Scrutiny Role), Legislative Assembly for the Australian Capital Territory, *Scrutiny Report 21* (11 September 2018). [↑](#footnote-ref-2)
3. Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process (*Report, August 2016) [7.249] – [7.251]. [↑](#footnote-ref-3)