



29 March 2010

A Focus on Victims of Crime  
Ministry of Justice  
PO Box 180  
WELLINGTON

**Robson Hanan Trust – Submission on ‘A Focus on Victims of Crime’**

**1.0 Submission by:**

The Board of Trustees  
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### 3.0 About the Organisation

3.1 The Robson Hanan Trust (RH Trust) is a recently established charitable trust, named in acknowledgement of the two great justice reformers of the 20<sup>th</sup> Century, John Robson, former Secretary for Justice, and the Hon Ralph Hanan, former Minister of Justice.

3.2 Our mission is to promote just and effective responses to crime and related harms by informing and educating through critical analysis, research and public debate.

3.3 Our purpose is to:

- 3.3.1 Develop and promote criminal justice and public policies which are effective in the reduction of crime and related social harm;
- 3.3.2 Develop a comprehensive and effective public information and communications strategy to inform the public of policies and strategies which reduce crime and related social harm;
- 3.3.3 Promote, conduct or commission research which will advance the development of effective criminal justice policies and practises;
- 3.3.4 Implement and evaluate socially innovative practise which will contribute to the reduction of crime and related social harm;
- 3.3.5 Establish good models of practice for actively involving the public in the criminal justice and penal system by stimulating new relationships and activity at local level between civil society on the one hand and the criminal justice sector on the other;
- 3.3.6 Work generally towards a more socially just and inclusive nation and to develop and promote systems, policies, programmes and strategies that build social capital and connectedness with disadvantaged families and whanau

3.4 The Robson Hanan Trust was formed to provide a legal umbrella for the ‘Rethinking Crime and Punishment’ project and to strengthen and expand beyond the project into the area of public education, research, and policy and programme development. There are 19 members on the Board of Management. They are:

Hon Rt Revd Sir Paul Reeves	Hon Justice Sir Taihakurei (Eddie) Durie
Rt Revd Bishop John Bluck (ret)	Hon Russell Marshall
Revd Charles Waldegrave	Sharron Cole QSO
Professor Christopher Marshall	Professor Warren Brookbanks
Haami (Sam) Chapman	Revd Judge Stan Thorburn
Kim Workman QSO	Major Campbell Roberts
Glynn Carpenter	Greg Fleming
Phil McCarthy	Major Graham Rattray
Celia Lashlie	Michael Smith
Revd Dr Anthony Dancer	

#### **4.0 Support for Submission**

4.1 The Robson Hanan Trust has consulted widely through the networks available to it through Board membership.

#### **5.0 Underlying Principles - ‘A Focus on Victims of Crime’**

5.1 We congratulate the Ministry of Justice on setting out clearly, in its discussion document “A Focus on the Victims of Crime’ , the principles that will guide its advice to the Minister, and ultimately, the Justice and Electoral Committee.

5.2 In preparing our submission, we considered carefully the underlying principles and assumptions, and have the following comments to make.

### 5.3 Poutama Manaaki.

5.3.1 The discussion document states:

*“To be responsive to the needs of all victims of crime, including Māori, the proposals in this document are consistent with the concept and values embodied in Poutama Manaaki. Poutama Manaaki describes a process of making a positive transition from one point to another, and depicts a recovery and regaining strength through understanding and information. Our aim is for all victims of crime to be supported throughout their involvement in the criminal justice process. “Poutama Manaaki describes a process of making a positive transition from one point to another, and depicts a recovery and regaining strength through understanding and information. Our aim is for all victims of crime to be supported throughout their involvement in the criminal justice process.”*

5.3.2 It is subsequently made clear that you are concerned with, and open to, proposals for improvement across the entire criminal justice system, which will of course include opportunities for victims to interface with offenders post-sentence.

### 5.4 Adequacy of Report in Addressing Maori Concerns

5.4.1 The document acknowledges that you may not have adequately elicited the specific needs facing Maori, (p.7) and that could lead to issues for Maori being inadequately addressed. Indeed, some of your key recommendations have assumed that non-Maori and Maori will respond alike to your proposals for change. That is not our experience, and we will address those issues later in the report.

## 5.5 Benefits

The two major benefits you have identified are:

### 5.5.1 Reducing Cost and Impact of Crime

- a) “First, a greater focus on victims will assist in reducing the cost and impact of crime on individuals and on society in general. The more quickly victims recover from their experience of the criminal offending committed against them, the better their outcomes are likely to be.” (p.4)
- b) We have considered carefully the cost-benefit of the proposals that we make. A number of the recommendations do not in our view, take fully into account unintended consequences, and the cost of those.

### 5.5.2 Public confidence in the criminal justice system.

- a) “Second, improved responsiveness to victims will enhance the effectiveness of, and public confidence in, the criminal justice system. Such confidence is necessary for those victimised by crime and for the whole community. Minimising, or failing to recognise, the harm crime imposes on victims may cause victims to become disillusioned. “ (p.4)
- b) It is equally important that in the process of improving responsiveness, the Ministry does not find it necessary to lessen the basic rights currently available to offenders, including equitable access to the criminal justice system.

## 6.0 Comment on Underlying Principles

### 6.1 Issues of Equity and Fairness

6.1.1 It is with growing concern, that we have noted a disturbing development in attitudes toward offenders in recent years. In 2005, the Prisoners and Victims Claims Bill was prompted by public consternation and outrage toward a case where six prisoners were awarded relatively modest damages for shocking ill-treatment by the prison authorities (over a period of years in one case). It was a case in which the state effectively determined that the extent to which they supported victims of crime, would be determined by whether or not they were offenders, (even though the incidents may have been separate and different).

6.1.2 A more recent example, is the decision of the Legal Services Agency to deny legal aid to prisoners appearing before the Parole Board other than in very limited circumstances, and to use the savings to support victims who wish to attend Parole Board hearings.

6.1.3 Minister Simon Power, in a speech to the National Party Conference on 2 August 2009, had this to say;

*“I, for one, make no apology for any policy that elevates the status of victims relative to the offender - even if it happens to inconvenience those who have an institutional interest in the court process.”*

6.1.4 The Minister was rightly making the point that there was nothing objectionable about addressing the rights of the victims. However, it is quite another thing to claim, as some have;

a) That the ‘justice system’ has been preoccupied with offender’s rights, and had not paid sufficient attention to the rights of victims;

- b) That in order to 'restore the balance', it is essential not only to address victim's rights, but to reduce those rights available to offenders.

6.1.5 Minister Judith Collin's, in her opening address to the Sensible Sentencing Trust on 19<sup>th</sup> September 2009 focussed on promoting the idea that victims are "us", and offenders are "them":

*"In recent years, the pendulum of justice has swung too far in the direction of the criminals, and away from the victims of crime. But there are things we can do to place the needs of victims at the centre of the justice system."*

6.1.6 We cannot find any evidence in recent years, of any policy or piece of legislation that has promoted or expanded offenders' rights. Protection of the right to justice can be assessed against four key indicators:

- a) clear laws that incorporate human rights standards;
- b) an independent and impartial legal system;
- c) legal processes that ensure equality and fairness; and
- d) laws that are known and openly made.

6.1.7 Tribunals and Courts consider human rights when interpreting laws. Certain provisions, e.g. bail, parole, exist as part of the democratic judicial process, and have done so for more than a hundred years. Provisions such as the requirement to impose the "least restrictive sentence" are intended to protect offenders from excessive and inappropriate sentences. But the evidence is clear; parole and bail requirements have tightened, sentence lengths have increased by around 50%,

and it is estimated that around 85% of the increase in numbers imprisoned is not due to an increase in the crime rate. Rather, it is through sentencing more people to prison for longer, and making it more difficult for them to be released.

6.1.8 Those pre-occupied with the restriction of offenders rights, need to understand that the measures they advocate do nothing to reduce victimisation, and may well increase it. A recent research paper from the Officer of the Solicitor of Canada brought together the results of 50 studies of the deterrent effect of imprisonment, which together involved more than 300,000 prisoners. The study found that imprisonment instead of a community sentence, did not reduce re-offending after release. It also found that longer and harsher prison sentences did not reduce re-offending, and may have increased it.<sup>1</sup>

6.1.9 Minister Collins claim draws attention away from the reality. Up until the Victims Rights Act 2002, successive governments did very little for victims. The idea that every time you acknowledge the human rights of offenders, and observe due process in their treatment, you take something of value away from victims, is both morally flawed and fatuous.

6.2 A more recent variation on the theme, is the idea that those who choose to work with offenders, implicitly condone their criminal activity, or have an investment in the status quo. In the same speech, Minister Collins put it this way:

“We face opposition from people who put the rights of criminals before the safety of the police and public. There are people out there who would rather look out for the country’s burglars, thieves, rapists and killers than those who put their lives on the line to uphold the law”.

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<sup>1</sup> Gendreau P, Goggin Co and Cullen, FT, ‘The effects of prison sentences on recidivism’, User Report: Office of the Solicitor General, Canada, p.24, 1999.  
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6.3 Government must actively resist the idea that it should be either for offenders, or for victims. The RH Trust rejects any proposition that potentially divides social service activity into a hierarchy of needs. Some agencies deal with offenders, some with victims, and many work with both. To rate one activity above the other is unhelpful and counter productive.

6.4 For those working with victims, it is a small step from taking an anti-offender stance, to conveying those feelings to victims. The first calls for justice from victims may in fact be calls for vengeance or punishment. Such feelings are legitimate, but giving them immediate satisfaction may not further the healing process.

6.5 The United States Catholic Bishops warn against allowing concern for victims to be misused.

*“Some tactics can fuel hatred, not healing, for example, maximizing punishment for its own sake and advancing punitive policies that contradict the values we hold.....[We need to] acknowledge the emotional strain felt by victims, to understand that the search for wholeness can take a long time, and to encourage victims to redirect their anger from vengeance to true justice and healing.”<sup>2</sup>*

6.6 The classic mistake of conventional justice is to punish criminals as if they will never come back from prison to live among us. But with rare exceptions, they all come back. When they do, we depend on them not to cause more harm in the community. We are all interdependent in a shrinking world: criminals, victims, and the wider society. High rates of reconviction suggest that we are not doing what is needed to support that interdependence.

6.7 The doctrine that tougher punishment deters crime by making offenders fearful has been widely falsified for many kinds of offenders.<sup>3</sup> The restorative justice theory is that justice can prevent crime by making offenders feel more sympathy for their victims. If restorative

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<sup>2</sup> United States Catholic Bishops Conference ‘Responsibility, Rehabilitation and Restoration: a Catholic perspective on crime and criminal justice,’ 2000.

<sup>3</sup> Sherman, L “Defiance, Deterrence and Irrelevance: A Theory of the Criminal Sanction” in *Journal of Research in Crime & Delinquency* vol 30 (1993), pp445-73

justice can work to prevent crime and repair harm, it will do so by fostering remorse, not fear. The emotions of anger, shame, guilt and regret form a complex cocktail of feelings associated with crime and justice. If we are to make progress in achieving the crime prevention goals of justice, it will happen from better understanding of how we can mobilise those emotions more effectively.

## 7.0 Wrong Assumptions about Victims

7.1 In a recent speech, Victim Support CEO, Tony Paine, reminds us about who the victims were.

*“It is very easy to talk about victims and offenders as if they were two quite separate groups (both demographically and morally). Of course the world is not that black and white. NZCASS (Mayhew & Reilly 2007 p.46)<sup>4</sup> tells us that 50% of all victimizations are experienced by only 6% of New Zealanders and that the social and demographic indicators that identify those who are most likely to be victimized are identical to the markers for those likely to be offenders. The life stories and cultural contexts that weave victims and offenders together (often within the same person) make any artificial separation between offenders and victims just that: an artifice that oversimplifies our complex world.”<sup>5</sup>*

7.2 The discussion document makes the important point that six percent of victims experienced 51 percent of the victimisation, and 13 percent experienced 71 percent of the victimisation. There was a concentration of risk among the less economically and socially well placed. Risks were consistently high for: young people, sole parents, those who were

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<sup>4</sup> Mayhew P., and Reilly J. (2007) *The New Zealand Crime and Safety Survey 2006*. Ministry of Justice, Wellington, New Zealand.

<sup>5</sup> Paine, Tony, “Victim Support, Victims Rights: an agenda for prevention” - an address delivered at Addressing the underlying causes of offending; What is the evidence? - Thursday 26 and Friday 27 February 2009, Institute of Policy Studies, Victoria University

unemployed and/or on a benefit, those living in rented property, and those who lived in the most deprived areas of New Zealand.

## 8.0 Maori Victims of Crime

8.1 The discussion document provides an excellent summary, and the following quote is useful:

*“NZCASS also found that those participants who identified as Māori had a higher risk of victimisation across all offence types and this was especially so for Māori women. Overall, 47 percent of Māori were victims of crime, compared with 37 percent for those categorised as European. Māori were also more likely to be victimised multiple times (4.3 incidents per victim compared with 2.7 for European victims). The risk of victimisation for Māori was particularly high for serious offences, including sexual violence and violence by partners. For example, 8 percent of Māori women experienced sexual victimisation - which was twice as much as that experienced by all New Zealand women (4 percent). Eighteen percent of Māori women who had a partner were victimised at least once, compared with 5 percent of all Europeans.*

*A number of risk factors present in the Māori population contribute to this risk, such as having a young population and living in the most socially disordered or economically deprived areas. Like other disadvantaged populations, a majority of offences against Māori were not reported to the Police and a large proportion of Māori were unable to name any community service that was available for victims. “*

8.2 In 1998, the author of this report, together with Whetu and Tumanako Wereta, conducted a survey for the NZ Police on Maori offenders from the point of arrest to case disposition, i.e. the point at which the offender was either bailed to appear before the Court, or remanded in custody. We conducted a number of focus groups throughout New Zealand.

8.3 While it was not a focal point of the research, we found that:

- a) Maori victims in violent crime were less likely to be referred by the Police to Victim Support;
- b) Maori female victims of family violence were often not treated as victims by the Police;
- c) Many Maori victims would not go to Victim Support, if the office was located at a Police Station;
- d) Those Maori victims who did receive visits from Victim Support volunteers, reported that the volunteers, who were mostly female, European and sometimes elderly, were uncomfortable about engaging with them, and that the experience was mostly unsatisfactory.

8.4 That situation may have changed in the last 12 years, but it is unlikely. Anecdotal evidence suggests that Maori 'crime families' and those in a lower socio economic environment are reluctant to access victim support services, particularly if they are located in a government department. Given that around 50% of all victims are in this category it is essential that any further design of victim support services takes this into account.

8.5 The Ministry has acknowledged that

*“there has been little direct input from Māori communities into the development of government responses to better support the victims of crime over a number of years. A number of whānau, hapū, iwi and Māori organisations have been developing innovative practices to support Māori victims of crime. It will be really important to this review of victims’ rights that these ideas are brought to government. Consequently we are seeking your input directly into this process.”<sup>6</sup>*

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<sup>6</sup> Ministry of Justice, “ A Focus on Victims rights” – Maori Engagement Dec 2009 (Pamphlet)  
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## 9.0 The Role of Post Sentence Restorative Justice

- 9.1 One of the key objectives of this review was to reduce the cost and impact of crime on individuals and on society in general. The discussion document states that “the more quickly victims recover from their experience of the criminal offending committed against them, the better their outcomes are likely to be.”
- 9.2 On the issue of restorative justice, the discussion document has this to say: *“Please note the conferences can be held pre- or post-sentence. The majority are held pre-sentence and at the moment priority is being given to this point of the process.”*
- 9.3 No one has explained why priority is being given to pre-sentence restorative justice. Those parties who contributed to the development of the discussion document, were concerned at the difficulty experienced in persuading the Ministry of Justice to acknowledge the existence and value to victims of post-sentence restorative justice for victims. It is not known why there is such resistance, other than the current post sentence conferencing carried out by Prison Fellowship and other providers, is not currently funded by the Ministry.
- 9.4 At the opening of the National Restorative Justice Conference ‘Turning the Tide’ on Friday 26<sup>th</sup> March 2010 the Minister referred to restorative justice in this way.
- “Research in New Zealand shows when restorative justice is used in cases of serious adult offending there is a high level of satisfaction among victims and offenders, a small reduction in reconviction rates, and positive declines in Maori re-offending. International research backs these findings, particularly out of the United Kingdom.”
- 9.5 This comment was in stark contract to comments made by Sir David Carruthers, and Tony Paine, (CEO) on the value of post-sentence restorative justice, both at that Conference, and at the Taranaki Restorative Justice Conference on 27<sup>th</sup> March.

9.6 I do not know of any research in New Zealand on the effectiveness of post-sentence restorative justice. What does seem to be clear however, is that the impact post sentence, is greater on both victims and offenders, than pre-sentence restorative justice. Practitioners of both forms of restorative justice suspect that a cost-benefit analysis, and comparison of the benefits of both, would disclose that there is a greater level of victim satisfaction, and a greater reduction of offending (particularly for serious offending) than with pre-sentence conferencing.

9.7 We do not hold to the view that this Review should confine itself to one form of restorative justice, as indicated in the following ‘preliminary’ recommendation.

*“**Preliminary proposal 10 - Referrals for restorative justice** We seek your views on the proposal to make it a requirement that all eligible cases, where the offender has pleaded guilty and **before sentencing**, be referred for investigation of restorative justice, unless there are specific reasons not to.”*

9.8 We consider that if victims were surveyed about their preferences toward pre and post sentence restorative justice, there would be a preference for post-sentence conferencing, for the following reasons:

- a) The offender would be perceived as having less stake in participating in a victim offender conference, or being encouraged to do so by legal counsel, in the expectation that it would affect the judicial response on the issue of penalty.
- b) Many victims, particularly in serious cases involving violence, are not ready or willing to take part in a victim offender conference, pre-sentence. Many however, with the passage of time, seek that opportunity over time.

The purpose of post-sentence restorative justice conferences are to:

- a) Aid the victim of a crime to recover, heal, and find resolution from the effects of the crime suffered;

- b) Provide a safe environment for victims to meet offenders and to have the opportunity to express the impact of the offending on their lives;
- c) Provide the opportunity to address unresolved questions and issues arising from the offending;
- d) Enable restoration to occur for victims and their communities and to record plans that demonstrate the responsibility taken by offenders;
- e) Provide an opportunity for the offender to express forgiveness, (and should the victim so choose), be forgiven.

## **10.0 Reducing the Cost and Impact of Crime**

10.1 If we are concerned to reduce the cost and impact of crime on individuals and on society in general, then that may be achieved by either providing additional resourcing for post sentence restorative justice, or transferring resources toward an expression of restorative justice, that provides better results for victims, offenders, and wider society.

## **11.0 What Does the Evidence Say?**

11.1 A summary of recent relevant research is set out below.

### ***Restorative Justice: the views of victims and offenders***

11.2 Research published by the UK Ministry of Justice shows that 85% of victims and 80% of offenders were satisfied with their experience of a Restorative Justice conference – a meeting between the victim and offender with supporters of each present.<sup>7</sup> The Report showed that; 78% of victims who took part in RJ conferences said they would recommend it to other victims 90% of victims who took part in an RJ conference received an apology from the offender in their case; as compared with only 19% of victims in the control group Only 6

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<sup>7</sup> Shapland J, Atkinson A, Atkinson H, Chapman C, Dignan, Howes J, Johnstone J, Robinson G and Sorsby A, "Restorative Justice, the views of Victims and Offenders - a report for the Ministry of Justice" (Ministry of Justice Research Series 3/07) June 2007.

victims, and 6 offenders, out of 152 offenders and 216 victims interviewed, were dissatisfied with the RJ conference after taking part. Around 80% of offenders who took part in the RJ conference thought it would lessen their likelihood of re-offending. Victims who had been through a Restorative Justice conference were more likely to think the sentence the offender had received was fair, than victims in the control group who did not participate in RJ. This research compares with just 33% of victims who think the CJS meets their needs; and 41% of victims who think the CJS brings offenders to justice [British Crime Survey 04-05]. This English research tallies with research from around the world showing the extremely strong victim benefits from restorative justice; and that RJ can give offenders the insight and motivation to stop offending.<sup>8</sup>

### ***Restorative Justice – The Evidence***

11.3 A robust and rigorous report by a research team at Cambridge University, led by eminent American criminologist Larry Sherman, which independently reviews RJ schemes in the UK and internationally. The report concludes that after participating in an RJ process, in particular a face to face meeting with victims, that offenders are less likely to reoffend. The report also demonstrates the benefits of RJ to victims of crime, helping them to recover and lessening their desire for revenge.<sup>9</sup>

11.4 One surprise finding of the report is that whilst RJ has been typically employed for tackling youth offending in the UK, that it can work even better with adult offenders. In summary the report found that restorative justice substantially reduces repeat offending for some offenders, but not all; doubles (or more) the offences brought to justice as diversion from the criminal justice system; reduces crime victims' post-traumatic stress symptoms

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<sup>8</sup> This research report is the third from Professor Joanna Shapland at Sheffield University. Her reports were commissioned by the Home Office to provide an independent evaluation of the Home Office Crime Reduction Programme Restorative Justice research projects. The first two reports, looking at how the schemes were set up, and at the RJ process itself, were published by the Home Office in 2004 and 2006, and can be found at: <http://www.homeoffice.gov.uk/rds/pdfs04/rdsolr3204.pdf> (download available [here](#)) and <http://www.homeoffice.gov.uk/rds/pdfs06/r274.pdf> (download available [here](#))

<sup>9</sup> Sherman, Lawrence W and Strang, Heather, "Restorative Justice – the Evidence" Smith Institute 2007  
Mooney, Chris. 2005. *The Republican War on Science*. Cambridge, MA: Basic Books.  
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and related costs; reduces crime victims' desire for violent revenge against their offenders; reduces the costs of criminal justice, when used as diversion from the criminal justice system; reduces recidivism more than either adult prison or youth prison

### **Victim Support for Restorative Justice**

11.5 In the UK, as in New Zealand, there is growing support from victims who have experienced the power of restorative justice conferencing. In the UK, a victim's movement called "Why Me?" gives victims who have experienced restorative justice the opportunity to tell their stories, through print and broadcast media, as well as directly to politicians and policy makers. It also highlight the benefits of restorative justice through a range of creative means, including drama, film and art. On their website, <http://www.why-me.org/index.html> they describe their concerns in this way:

*"The absence of restorative justice in the criminal justice system highlights the lack of respect for the experience of victims and the lack of space for their voice to be heard. Confidence in the system is low. Many people, whether victims or not, feel marginalised, believing that the system is more about offenders than them. "Why me?" is working with all victims who support our aims to find out from them how the criminal justice system can be improved.*

*We are building links with existing victim organisations and work in partnership with them to raise awareness of the benefits of restorative justice and campaign for better treatment of victims."*

## **12.0 Comment on the Recommendations**

12.1 We have taken the time to set out the 'operating environment' before addressing the recommendations, in the belief that a full understanding of the culture and context within which crime and victimisation occurs, will lead us more directly to identifying the merits or otherwise, of the Ministry's recommendations. We do not intend to deal in detail with each recommendation, but rather address those that in our view, are of prime importance.

### 13.0 Proposal No 1 – Victims Services Centre

13.1 The Ministry of Justice has recommended that it establish a Victims’ Services Centre in the Ministry of Justice. The proposed functions of the Centre would include: being a central point of contact for victims providing and coordinating information resources for victims coordinating the contracting of services for victims facilitating a network of agencies providing services to victims.

13.2 If the Victims Centre is to be successful. It should draw on and support naturally occurring community processes through which informal support and controls traditionally take place.<sup>10</sup> Citizens, not professionals, are the primary agents of victim support.

13.3 Circles of support and community led mentoring are key elements of a community led process.<sup>11</sup> Efforts by groups such as Victim Support, Maori service providers, Prison Fellowship, Pillars, and other organizations to offer direct support and assistance to victims and their families and whanau is central to the restoration of victims into the community.<sup>12</sup> It is these community organisations, family and community members (and not over-worked criminal justice professionals) who will be counted on to do the real work of aiding and befriending the victim following a crime.<sup>13</sup>

13.4 The emerging view is that state does not have a role in the practical support of either offenders or victims. Criminal justice professionals cannot support victims to re-engage with the community regardless of their training. Victims can socialise themselves and

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<sup>10</sup> Farrall, S. (2004) “Social Capital and Offender Reintegration: Making Probation Desistance Focused”, in Maruna, S. and Immarigeon, R. (eds) *After Crime and Punishment: Pathways to Offender Reintegration* (pp. 57-82). Willan Publishing, Cullompton, Devon.

<sup>11</sup> Petrunik, M. G. (2002). Managing unacceptable risk: Sex offenders, community response, and social policy in the United States and Canada. *International Journal of Offender Therapy and Comparative Criminology*, 46(4), 483-511.

<sup>12</sup> Sullivan, E., M. Mino, K. Nelson, and J. Pope (2002). *Families as a Resource in Recovery From Drug Abuse: An Evaluation of La Bodega de la Familia*. New York, NY: Vera Institute of Justice.

<sup>13</sup> Bobbitt, M. and Nelson, M. (2004). *The Front Line: Building Programs that Recognize Families’ Role in Reentry*. New York: Vera Institute of Justice.

communities can socialise victims. The most the state can do is to facilitate and support the community in its efforts. <sup>14</sup> Victim support happens in the community, by the community, and for the community.

13.5 As the reach of criminal justice and social services expand , the impact is to weaken historically stronger community nets and inadvertently undercut the role and responsibility of citizens, neighbourhood institutions and community groups in socialization and informal support <sup>15 16</sup>

13.6 As Clear and Karp observe:

*“When agents of the state become the key problem solvers, they might be filling a void in community; but just as in interpersonal relationships, so in community functioning, once a function is being performed by one party it becomes unnecessary for another to take it on ... parents expect police or schools to control their children; neighbours expect police to prevent late night noise from people on their street; and citizens expect the courts to resolve disputes ... informal control systems may atrophy like dormant muscles, and citizens may come to see the formal system as existing to mediate all conflicts.” <sup>17</sup>*

### **The Role of Community and Whanau with Victims**

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<sup>14</sup> McNeill, F. (2006). A Desistance Paradigm for Offender Management. *Criminology and Criminal Justice*, 6, 39-62.

<sup>15</sup> Braithwaite G J. (1994) 'Thinking harder about democratizing social control', in C. Alder and Joy Wundersitz (eds) *Family Group Conferencing in Juvenile Justice: The Way Forward of Misplaced Optimism?*. Canberra, Australia: Australian Institute of Criminology.

<sup>16</sup> McKnight, J. (1995) *The Careless Society: Community and its Counterfeits*. New York, NY: Basic Books.

<sup>17</sup> Clear, T. and Karp, D, (1999) *The Community Justice Ideals- Preventing Crime and Achieving Justice*. New York, NY: Western Press. p.38.

- 13.7 Not all economically deprived communities have high rates of victimisation . The social health of communities is key. Neighbourhoods where people trust one another, where there is ‘give and take’ and people have social connections with each other, have lower rates of victimisation as well as less crime, better health and improved educational attainment.
- 13.8 Typically, victims of family violence and child abuse live in social and family groups that have either small, sparse, unsupportive networks or small dense networks that reinforce harmful childrearing and parenting practices.
- 13.9 One way of supporting victims is to work with the whole of the community – an approach not yet fully developed in New Zealand. This idea is based on the premise that no whanau, regardless of their circumstances, wants to see a victim suffer in situations where isolation, stress and lack of support are the norm.
- 13.10 The aim of an initiative of this kind is to change community norms around whanau, neighbourliness and volunteering. Its ultimate goal is to have a community which works together to support parents and whanau safe thereby preventing child abuse and family violence. It works in a deliberate way to build communities where children are valued and support is provided to parents as of right, “without them having to ask”.
- 13.11 This initiative promotes “neighbourly volunteerism” as a way of fostering an environment where people provide watchful care and help for children and their families in everyday activities and settings. In this way, it aims to make mutual assistance and involvement in community service a way of life for the majority of people.
- 13.12 Strong Communities focuses on the places where families naturally gather and works intentionally to build a community where the challenges of bringing up children are ameliorated by the presence of supportive, caring neighbourhoods. The number and diversity of volunteers involved, their reported satisfaction levels and commitment to the initiative’s continuation indicate it is already working as a powerful way of connecting

communities. You can read about 'Strong Communities at:  
<http://www.clemson.edu/strongcommunities/about.html>

13.13 The Trust takes the view, that if the Ministry is determined to support victims in their communities, the establishment of Victim Support Centres that are not part of the Police establishment, but rather part of the community infrastructure, will do a great deal of potential to encourage victims to address their victimisation in a way which is likely to reduce that kind of offending, by building on community strengths, rather than focussing on victims needs – which can lead to the development of victimists (professional victims).

#### **14.0 The Role of Families and Whanau**

14.1 The strengths of youths, families, and communities are the most commonly wasted resources in the justice system. It is only in recent times, that there has been official recognition that whanau continue to be a key cultural institution for Maori and are therefore a key (and potentially highly effective) site of intervention and/or development. The recent emphasis on whanau in social policy acknowledges that changes in the wellbeing of individual Maori can be brought about by focusing on the collective of whanau; something Maori have always known.

14.2 The extent to which the state responds positively or negatively to the concept of whanau or family, has a significant potential impact on our capacity to promote community based prisoner reintegration. One recent promising intervention is La Bodega de la Familia in New York City. Support is provided not only to the victim but also to the person's family - the people who will be supporting the individual when he or she returns from prison. Initial evaluation research has been very promising.<sup>18</sup> Travis writes: "We should recognize that a strong family can outlast any program and can work in ways that no one else can"<sup>19</sup> (p. 4).

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<sup>18</sup> Sullivan, E., M. Mino, K. Nelson, and J. Pope (2002), Families as a Resource in Recovery From Drug Abuse: An Evaluation of La Bodega de la Familia. New York, NY: Vera Institute of Justice.

<sup>19</sup> Travis, J. (2003) 'In Thinking about "What Works," What Works Best' Urban Institute Justice Policy Centre.

## 15.0 Maori Victims and their Whanau

15.1 The implications for Maori victims and their whanau are significant. Interventions often place whānau in passive roles. Where whānau are excluded from decision making processes or are not actively involved early in planning interventions, their participation is compromised often to the point where disengagement from the process is inevitable. There should be a good working relationship between whānau and providers. Whānau want to be actively involved in decisions that affect their lives. Whānau want choice about the type of service they receive, and want to receive high quality services.

15.2 Some whānau end up with several agencies and service providers in their everyday life to the point that it becomes a “normalised” experience. A cycle of intrusion, dependency or disengagement results.

15.3 Services like victim support are focused on crisis intervention. Building whānau capability to prevent crises and to manage a crisis when it does arise, should underpin whānau interventions. It is of limited long-term benefit to simply address a crisis without also strengthening whānau and decreasing the likelihood of crises in the future. Within a single whānau a series of crises may affect different whānau members but if a whānau-wide view is not taken, the relationship of one crisis to another may never be recognised and dealt with.

15.4 The establishment of Ministry managed Victim Centres presents an almost insurmountable challenge to Maori victims and their whanau, particularly those in which offending and victimisation occurs side by side. They do not currently report offences to the Police or CYF; neither will they access government managed victim services.

15.5 The whanau ora strategy provides a more appropriate response. The whānau ora fund will derive from those sectors that have current obligations to Māori consistent with the whānau ora objectives. Criteria for accessing the fund will also be consistent with the whānau ora objectives and the outcomes sought. A fund-holding agency will commission

services, support whānau development initiatives, and be responsible for overseeing the management of the fund.

15.6 If the whanau ora model is applied, then effective Maori providers, with the necessary skill and expertise, and the ability to work with whanau collectives could be resourced to provide adequate victim services, to which whanau would access without hesitation. Our Trust have discussed this issue at length, and can identify a number of Trusts with the capability to provide that kind of service.

## **16.0 Victim’s Reporting of Sexual and Violent Offences**

16.1 In the discussion document, you have this to say:

*“Of greater concern is that some sexual offences or offences committed by partners or people well known to the victim were considered “too private”. The Justice system frequently does not produce positive outcomes for adults who are the victims of sexual violence. We need alternative options to the Justice system for those who have been victims of crime. This includes more options of how they can hold offenders accountable.”*

16.2 If sexual violence in New Zealand is to be effectively addressed the need for to work with people who have not been before the courts as well as those that have is clear. New Zealand crime survey statistics show that only a very small percentage of the total population who report having been a victim of sexual violence report this to the Police. The overwhelming majority of sexually offending is never reported to the police and consequently never comes before the courts.

16.3 The RH Trust has explored this issue. One of the alternative options to the justice system, for victims of sexual violence or abuse, is to be able to exercise a “differential response” .

16.4 Hamish Dixon of Wellstop, has written of this alternative approach, which, if widely known, would ensure that many more victims could feel confident about taking remedial action.<sup>20</sup> In his paper, he concludes that:

- Community based treatment for appropriate non mandated men may be an effective option for some victims. This option is most likely to be useful where the offender is a family member or is well known to the victim. This option of having the offender undertake community based treatment does not prevent the victim from laying charges with the criminal justice system at a later stage if they choose.
- Community based treatment is not suitable for working with offenders who deny or take no responsibility for their actions. It is also not suitable for those whose level of risk of further offending is so high that they need to be treated in prison for the safety of the community.
- The provision of a community based treatment option supports a cultural shift in our community away from behaviours and attitudes which condone or trivialize sexual violence. A similar process has started to happen in the area of domestic violence, where it is now seen as appropriate to get “anger management” to help stop violence in the home. The existence of stopping violence groups in the community provides an additional mechanism to the

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<sup>20</sup> Dixon, Hamish “The Case for Providing Treatment for People who have Sexually Offended but who have not been Convicted by our Courts”

[http://www.rethinking.org.nz/images/newsletter%20PDF/Issue%2067/01Dixon%20Hamish\\_Non\\_mandated\\_men.pdf](http://www.rethinking.org.nz/images/newsletter%20PDF/Issue%2067/01Dixon%20Hamish_Non_mandated_men.pdf)

courts for issues of domestic violence to be addressed. In a similar way, having community based programmes funded to deal with inappropriate sexual violence would help alter the community climate in which sexual violence is occurring currently.

- Community based treatment is much less costly than using the Court and prison processes and can have better outcomes in appropriate situations.
- Community based treatment can respond more rapidly to the crisis which follows the offender behaviour. This reduces the likelihood of denial and can reduce stress on victims that results from offender denial.
- Community based treatment enables learning to be practiced in a normal environment. It is hard to practice relapse prevention in prison.
- Community based treatment enhances prevention by enabling working with extended family and changing attitudes in extended social networks.
- Research suggests that community based treatment outcomes are at least equal to prison programmes in reducing reoffending.
- Currently there is no funding stream for treatment of non mandated people who have sexually offended against adults. This needs to be established or the Pilot Programme will not be feasible.

## 17.0 Reporting by Rape Victims

17.1 Earlier this month, Baroness Vivien Stern released a report on rape prosecution<sup>21</sup>, and in talking about the needs of rape victims had this to say:

### **Positive obligations to victims must be recognised.**

*“The Victims’ Champion Sara Payne, in her report Redefining Justice: Addressing the individual needs of victims and witnesses, said: ‘We need to reconsider our definition of “justice” so it is not just for punishing a perpetrator and preventing further crimes.’ We are grateful for this insight, which has formed the basis of our approach to the treatment of victims of rape. We need to look at rape victims as people who have been harmed, whom society has a positive responsibility to help and to protect, aside from the operations of criminal law. Whether the rape is reported or not, whether the case goes forward or not, whether there is a conviction or not, victims still have a right to services that will help them to recover and rebuild their lives. Victims and those who work with them told us that the criminal process is important, but getting support and being believed is as important. Processes should be in place that are about ‘honouring the experience’. Victims need to know that the police and prosecution did their best, and victims need to be respected.*

*This is the approach that has underpinned our recommendations. We have recommended that the Sexual Assault Referral Centres, the victim-centred medical centres open to all who have suffered sexual assault, be put onto a firm basis as part of mainstream provision and expanded further in the future. We*

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<sup>21</sup> ‘The Stern Report’ - A report by Baroness Vivien Stern CBE of an independent review into how rape complaints are handled by public authorities in England and Wales. Government Equalities Office, March 2010.  
[http://www.equalities.gov.uk/PDF/Stern\\_Review\\_acc\\_FINAL.pdf](http://www.equalities.gov.uk/PDF/Stern_Review_acc_FINAL.pdf)

*have also recommended that every victim who so wishes should be supported by an Independent Sexual Violence Advisor. These advisors are currently available in some places under a pilot scheme. They help the victim to make sense of the police and prosecution processes. They help the police by keeping in touch with a victim throughout the investigation, and they help the prosecution by supporting the victim through the psychologically gruelling process of preparing to give evidence. They provide a link between the criminal case that is under way and the range of social agencies whose help may be needed. These advisors represent a cost effective investment that can bring substantial improvements to the way rape victims are treated. We would see this recommendation as central to improving the treatment of rape complainants by public authorities.”*

17.1.1 The RH Trust recommend that the Ministry study the above report, as it may offer alternative approaches to the treatment of rape victims.

## **18.0 Victim’s Code of Conduct**

### **18.1 In your discussion document you say;**

*“The Ministry of Justice administers the Act and, as the requirement to contribute to a Code of Practice would be provided for in legislation, it would be appropriate for the Ministry to be responsible for the policy work associated with defining the principles that would underpin the Code and for developing guidelines. As noted above, the Code would have to be aligned with the Victims Charter, be culturally responsive and outline how agencies should deal with sensitive cases such as sexual violence victims.”*

*“Research suggests that Māori victims may not believe that invoking their rights will be productive in the Police and Courts environment. As a result there may be similar misgivings about the Code. To that end we propose that the principles and framework of the Code require agencies to consider access to their services by hard-to-reach communities, and most particularly by Māori communities.”*

18.2 Whanau development priorities have been explored inside Maori cultural processes and outside of them, in the policy frameworks and practices of various Government agencies.

18.3 For the development of the Code to be successful for Maori, it must be built on resurrecting Māori autonomy and pride. Successful Māori policy and programme development in recent years has been dependent upon three factors:

- a) Māori control of the initiative, policy or programme;
- b) Sound Māori advocacy to secure buy-in by the group and by the general community; and
- c) Academic underpinning - Māori policy development has invariably been accompanied by legitimising literatures.<sup>22</sup>

## 19.0 **Victim's Complaint Process**

19.1 While the Ombudsman's Office may seem to be a logical place to lodge complaints, the Ombudsman's Office would be the first to acknowledge that , with the exception of complaint's from prisoners, those that lodge complaints with the Ombudsman are skewed significantly toward the higher socio-economic decile. At least 50% of the nation's victims will not complain to that source.

19.2 The Ministry might be better served by developing a system in which relevant government agencies are held accountable to the wider community, either through community representatives, or at regular community meetings.

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<sup>22</sup> Durie, E. (2007) The study of Maori offending in *Rethinking Crime and Punishment* Issue 29: Nov 2007 downloaded 5th Nov 2007 <http://www.rethinking.org.nz/images/newsletter%20PDF/Issue%2029/Hon-Taihakurei-Durie-Research-0>

## **20.0 Access to Social Services**

20.1 The Ministry proposes that the restorative justice process should support access for victims to other social services and programmes in the community.

20.2 We fail to see any merit in this proposal. Restorative justice providers cannot be expected to have a comprehensive grasp of a wide range of social services within a community. That expertise should lie within those persons running the Victim's Centre.

20.3 One of the shortcomings of employing public servants to run local Victim Centres is that they are likely to be short on local knowledge. Community organisations have that knowledge, and it would be reasonable to expect, (as part of a contractual arrangement) local service agencies to provide that support.

## **21.0 Conclusion**

21.1 The RH Trust is thankful for the opportunity to contribute to this consultation process, and is available to discuss its views at any time.



Kim Workman

Director

Robson Hanan Trust

30 March 2010

