

Submission No. ADR/12  
Received 13/11/2007  
Law Reform Committee



VICTORIA POLICE

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Mr Johan Scheffer MLC  
Chair  
Victorian Parliament Law Reform Committee  
Parliament House  
Spring Street  
East Melbourne, Victoria 3002

Dear Mr Scheffer

**Call for Submission for Inquiry into Alternative Dispute Resolution**

I am writing in response to your letter dated 13 September 2007 inviting a submission from Victoria Police.

Victoria Police is supportive of the principles outlined in the Alternative Dispute Resolution (ADR) Discussion Paper. Victoria Police support restorative justice but note it should be applied consistently and be subject to evaluation. Victoria Police is aware of the Restorative Justice Pilot for young adults within the Neighbourhood Justice Centre. There may be a need to conduct a further pilot for adults to evaluate data on the category of offence, demographics of the offender, and history of re-offending, between proposed ADR and current practise, including victim satisfaction surveys.

Please find attached our submission to your inquiry.

If you require any further information on the matter, please contact Acting Senior Sergeant Geoff Maclean, Legal Policy (☎9247 6716).

Yours sincerely

Christine Nixon APM  
Chief Commissioner

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Victoria Police supports Alternative Dispute Resolution. There is a need to address offending behaviour and seek to minimise re-offending.

The three main principles are summarised as; case conferencing, restorative criminal justice and in civil proceedings. Victoria Police support case conferencing in the Dispute Resolution Process. Whilst Victoria Police is supportive of restorative justice it has to be controlled and subject to evaluation.

Victoria Police suggest that a pilot be conducted to evaluate data from pre sentencing to proposed alternative dispute resolution and victim surveys. Intelligence from the pilot would show the success or otherwise of Alternative Dispute Resolution and whether it suited particular offenders or offences.

Whilst the discussion paper was considered in its entirety, it was suggested that Victoria Police may be particularly interested in addressing questions 3, 4, 10, 12, 19-28, 30-34, 36-37, 40-42, and 65. Replies to these are detailed below.

**Question 3: Restorative justice program service provision**

*3(a) Do you agree with the Committee's identification of the services identified in section 3.3 as 'restorative justice' providers? If not, what attributes of a service or scheme do you believe make it a 'restorative justice' provider?*

*3(b) What are the restorative justice service gaps and/or duplications in the Victorian criminal court jurisdiction?*

- a) Yes
- b) It may be more broadly used in controlled circumstances.

**Question 4: Data collection for restorative justice programs**

*4(a) Is there a need to improve data collection in relation to the use and users of restorative justice practices?*

*4(b) What type of data would be useful? Why would this data be useful?*

*4(c) How should the data collected be reported?*

*4(d) Who should be responsible for the collection and reporting of data in relation to restorative justice use and users? Is there a role for government in this data collection and reporting? If so, why?*

- a) Yes
- b) Historical data for first offenders dealt with through the court systems broken down into charge categories. It would be important to know whether these people utilising traditional sentencing practices re-offended within two years. This could then be compared to a pilot of ADR utilising the same categories and time periods. It would be important to not only look at re offending figures but also the types of offences. This would also

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need to be compared to victims' satisfaction surveys. Victoria Police is unaware whether this type of data could be captured historically.

- c) All parties involved in criminal justice process.
- d) Department of Justice.

**Question 10: Increasing accessibility of dispute resolution mechanisms and ADR providers**

- 10(a) Can we do more to help Victorians to resolve disputes themselves?*
- 10(b) To what extent is referral loss from ADR service providers currently an issue? If this is a problem, how can it be overcome (for example, referral guidelines between service providers)? Do we need to collect greater data on referrals? If so, what sort of data should we be collecting?*
- 10(c) Should there be a central gateway (for example, phone line or website) for accessing information about dispute resolution and ADR services? If a central gateway for ADR disputes is desirable, who should operate this service and what services should it provide?*

No comment. Not within the scope or knowledge of Victoria Police.

**Question 12: Court referral to ADR**

- 12(a) Should there be greater referral of matters from courts to ADR? If so, how do we increase court referral to ADR? For example, should a program based on the Magistrates' Court intervention order pilot be rolled out more broadly?*
- 12(b) What type of disputes are most suitable for court referral to ADR? Should there be referral guidelines? If so, what should be included in the guidelines?*
- 12(c) Should courts refer matters to an in-house ADR process (for example, judicial mediation) or to an external provider?*
- 12(d) What are the barriers to greater referral of matters from courts to ADR? How can these be overcome?*

This question appears to be related to civil matters as the term dispute is used within the question.

**Question 19: Criminal case conferencing**

- 19(a) Should criminal case conferencing be introduced into the Victorian court system? If not, why not?*
- 19(b) If so, in which courts should criminal case conferencing programs be introduced?*
- 19(c) To which offences should it apply?*
- 19(d) At what stage(s) of the court process should it be used?*
- 19(e) Should participation in a criminal case conference be compulsory for the State/Commonwealth and an accused?*

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*19(f) If not, in which cases should it be used? Should guidelines be developed for referral to a case conference? If so, what should these guidelines contain?*

- a) Criminal Case Conferencing is already taking place in a number of forms. The contest mention system is case conferencing. Victoria Police has also established a number of pilot forms of case conferencing at various stages of the proceeding. At the Melbourne Magistrates' Court the Prosecutions Division has established the early intervention model which manages and mediates briefs of evidence when contests booked in. Heidelberg has also established an early intervention at the mention stage.
- b) See above.
- c) Victoria Police applies its case conferencing to all offences.
- d) As early as possible. Victoria Police believes that early intervention in cases is the key to minimising dwell times within cases.
- e) No, but incentives should be given to those that do. The reason we believe that restorative justice should not be compulsory is that by its very nature restorative justice can only work if all parties are willing participants. This is not a one cure fixes all solution but another string to the bow. The incentive would be sentence based.
- f) See above

**Question 20: Access to justice for victims**

*To what extent do restorative justice processes increase or decrease access to justice for victims?*

No comment

**Question 21: Net-widening**

*Is there a danger that restorative justice programs will net-widen, bringing more offenders into the criminal justice system? If so, how can this be overcome?*

No. Victoria Police exercises its common law discretion daily and makes hundreds of decisions whether to charge people. This decision is scrutinised many times before a matter goes to court.

**Question 22: Offender participation rates**

*Should efforts be made to increase the current offender participation rate in Victorian restorative justice programs? If so, how?*

The only way this can be done is proving to the criminal justice system that court based restorative justice works. This will need to be done by comparing pilot data to historical data.

**Question 23: Offences to which restorative justice processes apply**

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*23(a) Is there the potential to use restorative justice programs in relation to a greater range of offences? If so, which offences should restorative justice initiatives be used for?*

*23(b) Should there be restrictions on repeat offenders accessing restorative justice programs?*

- a) It is difficult to support this initiative without data.
- b) No. To put an outright ban on repeat offenders misses the whole idea. Perhaps if this type of approach was used earlier the repeat offender may not have committed some of those offences. It will depend entirely on the circumstances of the case and the person involved.

**Question 24: The age of the offender**

*Should the use of restorative justice programs in Victoria be extended to adults? If so, should any age restrictions apply to accessing restorative justice programs?*

A form of restorative justice is already open to offenders via the diversion system. It is not common but victims can become involved in this process. No age restrictions should be placed on restorative justice.

**Question 25: Referral to restorative justice programs**

*At which stage is it appropriate to refer offenders to restorative justice programs: pre-sentence, post-sentence, parole?*

It is appropriate to refer to restorative justice at all times.

**Question 26: Mandatory referral to restorative justice programs**

*26(a) Should there be mandatory referral to restorative justice programs? If so, in what circumstances?*

*26(b) What are the issues associated with mandatory referral to restorative justice programs? How can these be addressed?*

- a) No. See response to question 19(f).

**Question 27: Impact of participation or non-participation in restorative justice programs**

*Should there be any sanctions associated with refusal to participate in a restorative justice process (for example, treated as an aggravating factor in sentencing)?*

*Should there be any rewards for participation in restorative justice processes (for example, consideration in sentencing or granting parole)?*

- a) No. It defeats the purpose of the program. This is not a cover all cure but simply another way to positively deal with offenders.

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b) Yes but only success based.

**Question 28: Sharing information about what works in terms of restorative justice**

*28(a) Should there be national best practice standards for restorative justice programs? If so, what should these standards be and who should set these standards?*

*28(b) How can we better share information within Victoria, nationally and internationally about what works in terms of restorative justice? What sort of information should we be sharing? How could it be shared?*

No comment

**Question 30: Measuring the outcomes of civil ADR for individuals**

*30(a) How should we be measuring the outcomes of civil ADR for individuals?*

*30(b) What are the advantages and disadvantages of the various performance measures (for example, agreement rate, agreement quality, participant transformation, cost savings and time savings)?*

No comment.

**Question 33: The benefits for society of the use of ADR processes for civil disputes**

*What are the benefits for society of the use of ADR processes in relation to civil disputes? How can these benefits be measured?*

No comment

**Question 34: Measuring the outcomes of restorative justice processes**

*34(a) In your view, what are the outcomes of restorative justice processes?*

*34(b) How should we measure the outcomes of restorative justice processes? What indicators should be used?*

*34(c) How can we increase the pool of data available about the outcomes of restorative justice processes and the sharing of this information between programs and jurisdictions?*

*34(d) In your view, what are the elements of a best practice restorative justice program?*

See response to question 4.

**Question 36: Advantages and disadvantages of civil ADR processes for marginalised individuals and communities**

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*What advantages do civil ADR processes offer for marginalised individuals and communities? What are the disadvantages associated with ADR use for these groups?*

No comment

**Question 37: Barriers to marginalised communities accessing civil ADR services**

*37(a) What are the barriers to marginalised individuals and communities accessing civil ADR services?*

*37(b) How can these barriers be removed?*

No comment

**Question 40: Data collection on members of marginalised groups' access to restorative justice programs**

*40(a) To what extent are members of marginalised groups currently accessing restorative justice programs in Victoria?*

*40(b) How can we improve data collection in relation to access to ADR programs by members of marginalised groups?*

*40(c) What type of data would be useful? Why would this data be useful?*

*40(d) How should the data collected be reported?*

No comment.

**Question 41: Advantages and disadvantages of restorative justice processes for marginalised individuals and communities**

*41(a) What advantages do restorative justice processes offer for marginalised individuals and communities? What are the disadvantages associated with the use of restorative justice initiatives for these groups?*

*41(b) Is there a need for restorative justice programs to be utilised further in relation to marginalised communities and groups? For example, is there merit in the Koori Court having a restorative justice diversion component?*

No comment

**Question 42: Restorative justice responses to family violence**

*Are restorative justice responses to family violence matters appropriate? If so, in what circumstances? What safeguards, if any, would need to be in place?*

There has been much debate about whether or not restorative justice responses to family violence are appropriate. Victoria Police has been a key player in the whole of government reforms to family violence led by the Department of Planning and Community Development (DPCD), the basis of which is safety of the victims and accountability of the perpetrators. Also critical to the reforms in responding to family violence has been the strengthening of the

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justice system's response to family violence. In line with the strengthened response by the justice system, Victoria Police has introduced the Code of Practice for the Investigation of Family Violence and an accompanying risk assessment and management process to ensure consistency in the police response to family violence incidents and to achieve the key objectives of safety and accountability. Action taken by members in relation to family violence incidents over the last three years has increased as follows:

	03/04	06/07	% Change
Charges Laid in Family Violence Incidents	2627	7444	183%
Intervention Orders sought for Family Violence Incidents	3285	8836	169%

Victoria Police acknowledges that many victims do not want to seek redress through the justice system and may want the relationship to survive without violence. In these cases, Victoria Police encourages victims to seek support from specialist family violence service providers irrespective of action taken by police members. Alternatively, protection from future violence can still be sought through the civil justice process without police involvement. On the face of it, Victoria Police does not believe that restorative justice practices such as conferencing between parties meets the objectives of the government reform process due to the power imbalances created between the victim and perpetrator in family violence matters. ADR is more appropriate in circumstances where equal parties are seeking to solve a dispute with mutually beneficial outcomes such as commercial/contractual disputes, or where there is no personal relationship between the victim and the offender; or there is informed consent between both parties. This is often not the situation with family violence matters as there has often been a protracted history of domination, control and violence by the offending party against the victim and the victim's diminished self esteem prohibits her equal and fair engagement in a conferencing type process. In addition, where there is a potential of ongoing risk to children involved in these incidents, and the powerlessness of some women to adequately identify risks to their own safety and subsequently those of the children, then Victoria Police would suggest that a cautious approach to be adopted when considering restorative justice applications for family violence. Victoria Police is aware that specialist family violence service providers are working with some ADR agencies, primarily lawyers, to increase their awareness of the dynamics of family violence but at this stage, there is still no consistent state wide policy on the issue. On this basis, and that Victoria Police acknowledges that there is yet much research to be undertaken in relation to the application of restorative justice to family violence and until this research is undertaken and its outcomes accepted (as



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recommended by the VLRC), Victoria Police is reluctant to support the ADR/Restorative Justice process for family violence incidents.

**Question 65: Regulation of restorative justice**

*65(a) Is there a need for regulatory reform in relation to restorative justice conferencing programs? If so, what elements of the programs require regulation: the process, the participants, or both? How would such a model of regulation function?*

*65(b) What should any regulation of conference convenors cover? Should it include training and educational requirements, accreditation, and practice standards?*

*65(c) What should the regulatory standards for conference convenors be?*

*65(d) Should referral guidelines be established for judicial members and those they consult with in determining whether a case is suitable for referral to*

*restorative justice conferencing?*

*65(e) Who should be responsible for the regulation of conferencing programs and conference convenors? What role should the Government play in the regulation?*

No comment.