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RESPONSE SUBMISSION

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Alternative Dispute Resolution
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Reform Commission

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1 Preamble

Jesuit Social Services has delivered the youth justice group conferencing program to all metropolitan Children's Courts in Melbourne since July 2003. We wish to make the following comments to inform the inquiry into alternative dispute resolution.

Jesuit Social Services supports the development of restorative justice in Victoria in the criminal justice system as a method of "standing in solidarity with those in need" and "expressing a faith that promotes social justice" for victims, offenders and their respective communities of support. In particular, Jesuit Social Services is expressly interested in ensuring that restorative justice is used to reach the more marginalized and helps them develop to their full potential and feel supported in their efforts to heal the impact of offending behaviour.

This submission is confined to suggesting ways in which the existing youth justice group conferencing scheme might be improved and expanded to be inclusive of young adult offenders and, eventually, adult offenders considered appropriate to benefit from such as scheme. We are confining our responses to the questions raised that focus on restorative justice in Victoria.

Question 3: Definition of restorative justice service provider and gaps and duplication in the existing criminal court jurisdiction.

The current youth justice group conferencing program was initiated in Victoria in 1995 from philanthropic sources with the support of the key stakeholders in the criminal division of the Children's Court of Victoria. Non-government agencies auspiced the pilot programs which were thoroughly evaluated by independent researchers including the University of Melbourne.

For the program to operate effectively the following organizations must co-operate and agree on the program design:

- Victoria Police
- Victoria Legal Aid
- Childrens Court of Victoria
- Department of Human Services (Youth Justice)
- The Service Providers who in this state are currently non-government agencies.

Only one location for the program received the unanimous support of all key stakeholders. This was at the pre-sentence stage for young offenders who would otherwise receive a community supervisory order. It was felt in Victoria that the police cautioning program and the non-supervisory court sentencing processes

were adequately diverting most minor young offenders away from the criminal justice system without the need for more intrusive interventions. The primary purpose for Victoria's use of restorative justice was to divert some young offenders away from supervisory orders without net-widening. Figures provided in the DHS evaluation by Effective Change indicate how many young people received a Good Behaviour Bond or less from the court after they completed a group conference.

Group Conferencing was included in the new Child, Youth and Family Act in April 2007. Currently, offenders on existing probation and youth supervisory orders can be referred to youth justice group conferencing when they are considered suitable by Department of Human services and approved by the Children's Court.

There are no legislative restrictions on the type or seriousness of the offence which can be referred to a group conference. Current DHS program guidelines restrict all sex offences, manslaughter and serious crimes of violence. The latter is not defined and subject to the discretion of the Magistrate after a suitability assessment is prepared for the court by DHS. At times, the Police make comments that serious crimes of violence are being referred to group conferencing and they should not be.

The evolution of the program in Victoria has resulted in a clear distinction between correctional and restorative interventions. Restorative justice interventions are being delivered by various non-government service providers and correctional interventions are all delivered by statutory services. Jesuit Social Services supports the maintenance of this important distinction. Our service is interested in extending the reach of restorative justice interventions so that more marginalised young offenders are offered the opportunity to participate and benefit from these interventions. At the same time we support the voluntary nature of the intervention even when the young person is also subject to existing custodial or community youth correctional orders. Jesuit Social Services has particular expertise and experience in working with more marginalised young people and wishes to ensure that restorative justice interventions reach this population and are not offered only to those with higher levels of community and family support.

Jesuit Social Services supports multiple entry points along the sentencing continuum for access to restorative justice programs, providing there are suitability assessment processes in place for offenders and victims (and their supporters) and the voluntary nature of the intervention is maintained. For example, Jesuit Social Services recently conducted a restorative justice meeting with a young person serving a custodial sentence. We would like more young people currently subject to, or likely to be subject to, supervisory orders in youth justice to be considered for a restorative justice intervention.

Whilst it is not a panacea for all the issues facing these young people, restorative

justice conferencing does have a greater capacity to improve the existing response of the Victorian youth justice system and ensure it remains Australia's most highly targeted youth justice system.

Jesuit Social Services advocated with the Government for the application of the youth justice group conferencing model, with appropriate adaptations, to be offered at multiple entry points, to the young adult population aged 18-25 years. This was accepted by the Victoria Government and a pilot project is soon to commence at the Neighborhood Justice Centre in Collingwood.

Our submission called for the pilot project to be operated at more than one court and we have expressed our concerns that one court may not be able to supply sufficient referrals to the pilot program. It was our submission also, that the restriction to young adults up to age 25 years was only a temporary step towards a model for all adult defendants to be considered for such a scheme providing the suitability assessment stage and voluntary nature of the program is maintained. This program at the Neighborhood Justice Centre will be delivered by Anglicare Victoria.

Question 4: Data Collection

Jesuit Social Services believes that we need a comprehensive approach to data collection with both qualitative and quantitative research methods used combined with action research methods that test new approaches to enhancing reachability of the program and access to new populations.

A comprehensive approach requires information be collected on

- Who receives the service and/or is denied the service at pre-assessment and assessment suitability stages. (The characteristics of the families and young people who receive a service or refuse to accept or are denied the service)
- What they receive in the preparation, conference and post conference stages of the process
- The outputs and outcomes of the intervention.

Currently, it is not known which people refuse or are denied a restorative justice service other than anecdotal information, nor the reasons for this. One possibility (however this is not known) is that they may be fearful of meeting their victims - even though this is assessed by the convenors and only happens if it is beneficial to both parties in the Victorian model. It is not a mandatory element of the Victorian approach.

Victoria has very good program intervention information which is collected by the service providers except for the post conference stage, where the Department

of Human Services does not acknowledge that the service has a role 'post court' in the implementation of the group conference outcome plan. The services are not funded for this role which Jesuit Social Services believes is essential to the credibility and effectiveness of the process. (Refer to the official Youth Justice Group Conferencing –Information to Young People pamphlet released by Department of Human Services where the implementation of the outcome plan after court stage is not even mentioned.)

Victoria is measuring outputs and achieving very high rates of diversion from supervisory orders. Other outputs such as satisfaction levels are not routinely followed up except by the service providers themselves. The outcomes such as completion of outcome plans which include reducing risk factors to re-offending as well as reparation agreements depends primarily on the service providers themselves completing these tasks as agencies are not funded to do this work. It is assumed in program guidelines that implementation of the outcome plan would be transferred to the participants themselves.

Jesuit Social Services regards this strategy as unreliable and failing to take account of the marginal living conditions of most young people in this system. Jesuit Social Services supports group conference providers being funded to help young people and their support group to fully implement outcome plans. We also believe that the implementation of agreements is crucial to reducing risk factors to recidivism and to the maintenance of victim and community support for restorative justice interventions.

Question 22: Increasing the participation rates.

Voluntary schemes across the world all seem to experience much lower rates of participation. Mandatory schemes such as exist in all other states of Australia and New Zealand have no problems, but can experience the problems associated with overload, routinization and bureaucratization of the program.

Our experience over the past 5 years indicates that the commitment by the professionals in the criminal justice system primarily determine the use of the program. Certain magistrates routinely use the program. Certain lawyers make more effective use with some of their clients. Other courts fail to make use of the program. A physical presence by the convenors can enhance the profile of the program as well as developing close working relationships with the lawyers, courts and court advisory staff.

However, when convenors are busy doing conferences, it is difficult to service all the courts concurrently. This results in our being absent at times from courts.

Solutions that may work to enhance the existing program could include:

- Whenever a probation or youth supervision order is being considered by the court for a young person then a discussion could take place about the young person participating in a group conference prior to the Magistrate's giving a sentence.
- The Department of Human Services Court Advice Workers adopting a more proactive advisory function that requires them to consider this (group conferencing) option in all matters where a supervisory order is being considered by the Magistrate.
- Piloting new approaches at metropolitan courts where rates of referral have been particularly low.
- Giving the court the option of not requiring the young person to return to the court if the conference is successful, the agreement is accepted by everyone at the group conference and the requirements of the outcome plan relating to 'making amends to the victim' have been completed. This would provide more incentive for some families and young people to take up the option and complete the conference and outcome plan. A magistrate could indicate the proposed sentence for the young person which is contingent upon the successful completion of the conference and its agreements. The court would still receive a court report and the case can still be referred to court should the convenor think it is essential to return the matter to court.
- Commence a sex offences pilot program in conjunction with correctional therapeutic interventions.

Question 27 Incentives for Offenders to participate

Jesuit Social Services strongly supports the incentives (the voluntary nature of the program) built into the existing Children's Court legislation. We disagree with the remarks made by the Victorian Association of Restorative Justice in this regard that an offenders refusal to participate should be construed as an assertion that the offender is disinterested in the impact of their offending on the victim and the community and that the offender is unwilling to take responsibility for repairing the harm caused by that impact.

ATTACHMENT 1

COMMUNITY JUSTICE GROUP CONFERENCES AND VICTIM INVOLVEMENT (2003-2007)

NATURE OF VICTIM INVOLVEMENT	2003-2004 Conferences = 22	2004-2005 Conferences = 24	2005-2006 Conferences = 28	July 2006- December 2007 Conferences = 61	TOTAL = 135
VICTIMS ATTENDED	15 (68%)	6 (25%)	14 (50%)	35 (57%)	70 (52%)
VSA ATTENDED	10 (45%)	16 (66%)	18 (64%)	30 (49%)	74 (55%)
BOTH VICTIMS & VSA ATTEND	6 (27%)	2 (8%)	1 (3%)	9 (15%)	18 (13%)
NO VICTIMS OR VSA	1 (4%)	4 (16%)	NIL (0)	5 (8%)	10 (7%)

ATTACHMENT 3

EXAMPLES TAKEN FROM OUTCOME PLANS OF VOLUNTARY WORK AGREED TO BY THE YOUNG PERSON IN A GROUP CONFERENCE. JSS METROPOLITAN GROUP CONFERENCE PROGRAM

20 HOURS:

- Volunteer work over three Saturdays at a camp site for young people
- Three boys assisted over three Saturdays at a community car racing event
- Build a barbeque for a youth club
- Assisting the coach of an Under 12 soccer team
- Working in a community agency
- Working in an opportunity shop x 2 young people

18 HOURS:

- Assisting at the Coldstream Animal Trust walking animals

16 HOURS:

- Assisting the physical education teacher take classes of younger students at his previous secondary school.

12 HOURS:

- Making bird boxes for a primary school after doing criminal damage at the school.
- Working at a Salvation Army Opportunity shop

10 HOURS:

- Assisting the Salvation Army put together their Christmas hampers for distribution.
- Gardening and cleaning work at a neighborhood house.

8 HOURS:

- Cleaning up graffiti in a graffiti prevention program.
- Salvation Army Opportunity Shop x 3 young people
- Paint the interior of a Blue Light boxing gym x 2 young people
- To help out with gardening around the primary school over two weekends
- To undertake two four hour sessions at the Epping Dog Pound walking the dogs

6 HOURS:

- To referee a basketball game during lunchtimes at the primary school
- Working in a Salvation Army Shop x 2
- To paint two planter boxes at the primary school x 2 young people
- To paint the front fence of victims house with his father assisting.

ATTACHMENT 4

EXAMPLES TAKEN FROM OUTCOME PLANS OF 'STATEMENTS OF INTENT' BY YOUNG PEOPLE ABOUT HOW THEY INTEND TO PREVENT RE-OFFENDING IN THE FUTURE.

EMPLOYMENT:

- To look for part time work and finish his current TAFE course
- To keep working and complete his motor mechanic apprenticeship
- To maintain fulltime employment making trailers
- To continue casual work as a plasterer and to do an apprenticeship in it
- To complete the Handbrake Turn pre-apprenticeship course starting in August
- To attend appointment at JPET (Job Placement and Training)

EDUCATION:

- To complete Year 10 schooling
- To follow up on courses in painting or retail management
- To continue at school and achieve the goal of working in the catering business
- To continue to study hard with a view of going to university next year
- To stay in school, attend each day, work hard and do homework to complete VCE
- To continue with hospitality studies at Box Hill TAFE Monday to Friday

PROFESSIONAL REFERRALS:

- To participate in a Violence Prevention Program
- To attend counseling with his parents
- To continue anger management counseling at secondary school counselor
- To attend counseling at Reconnect with his mother
- To arrange an appointment to meet with his psychiatrist
- To participate in the YSAS drug withdrawal program
- To continue to attend appointments with Youth Justice and other counselors
- To undertake and complete the Juvenile Fire Awareness Intervention Program
- To have counseling in regard to personal issues and his misuse of alcohol

GENERAL:

- To continue his interest of Tae Kwon Do by attending lessons with his father
- To attend a 'Road Trauma Program'

- To learn to respect other people
- To continue to be aware that excessive drinking can lead to a lack of self control
- To listen to the advice of his father rather than ignoring it
- To stay away from his cousin (a co offender)
- To participate in a Youth Summit
- To become involved in a sport club with his uncle
- To cease inappropriate behaviour towards the local police
- To continue attendance at the church youth group
- To work towards gaining his mother's trust
- To continue to help his grandfather with car repairs and chores on the property

ATTACHMENT 5

GENERAL INFORMATION ABOUT THE JESUIT SOCIAL SERVICES COMMUNITY JUSTICE GROUP CONFERENCING PROGRAM

Jesuit Social Services has conducted the Youth Justice Group Conferencing program in the Melbourne and Metropolitan area since July 2003.

In regards to the program:

- The program is serviced by eight Children's Courts
- Victims have attended 52% of group conferences since 2003
- The Victim Support agency has attended 55% of total conferences
- Of the young people who completed group conferences, 87% received a Good Behaviour Bond or less sentence upon their return to Court
- In terms of the outcome plans developed at the conferences, 87% were 'fully completed' by the young people and the remainder 'partially completed'
- In the 'How to make amends' section of outcome plans developed at conferences, verbal apologies were recorded in 65 of the conferences; young people agreed to write 250 apology letters; restitution payments were agreed to in 75 conferences and young people agreed to do some voluntary work in the community at 45 conferences.
- The numbers of people who have attended the conferences range from 6 people to 30 people. Most of the conferences have either 7, 8 or 9 people attending a conference
- The ages of young people at the time of their return to court; 15 years (20), 16 years (47), 17 years (51) and 18 years (21)
- For voluntary work agreed to at a conference the range of hours varies from 2 hours to 20 hours. The program has a limit of 20 hours maximum which a young person can agree to at a conference. An example of voluntary work hours agreed to in the JSS program by young people are; 20 hours (20), 18 (2), 12 (3), 8 (7) and 6 (5)
- Restitution payments agreed to at conferences have ranged from \$25 to \$1000