

# CORRECTED VERSION

## LAW REFORM COMMITTEE

### **Inquiry into alternative dispute resolution**

Melbourne — 25 February 2008

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#### Witness

Mr N. McNamara, Chief Executive Officer, Crime Victims Support Association.

**The CHAIR** — Noel McNamara, thank you very much for coming to talk to us this afternoon, and thank you for the information that you have provided to the committee. There are a few formalities. First, I need to tell you that this hearing takes place under the Parliamentary Committees Act which means that whatever you say here is protected by parliamentary privilege, but if you say outside the confines of this hearing whatever it is that might be a problem, you will not be afforded that privilege. The second thing is that, as you can see, Hansard staff are recording our discussion, and you will be sent a transcript as soon after the meeting as we can get it to you. You can make minor changes but obviously not rethink the things you say here today.

We have about half an hour, and what we have found works is for you to talk to us about your work in relation to the terms of reference or whatever, and then we will jump in and ask you a few questions and go from there.

**Mr McNAMARA** — I will cut it reasonably short. Of course, the original, as you have probably seen from the Brosnan, is the size of *War and Peace*, so I have broken it down, and I will just refer to my notes and see what I come up with.

**The CHAIR** — Yes.

**Mr McNAMARA** — Thanks for having me. The Crime Victims Support Association's view of restorative justice is very much this, and we have tried it out with people coming down that we have taken into our meetings on homicide and sexual assault victims. It certainly will not work with those types of people because they just do not want to have a bar of it — we have tried it. Even if they are serving time, we cannot get anyone to agree, including myself, to meet with the actual perpetrator. That is the view of the association and our members, and we took people from the Brosnan Centre down there and by the time they had finished they believed the same thing applied.

Having said that, our approach to the restorative justice system is this: it makes an offender realise — and this is for not heavy violence but the crimes against society — how crime has affected their life; to find out information to help put crime behind them, like why the target offended against them, which seems to be a big thing for people — and I will go to explain that further with one of the cases that we work with; and to find out information to help the victims, of course, put the crime behind them, and try to get them to openly forgive the offender.

The one I am talking about was the effects on a woman who, with us, met with the offender. She had had her car taken. It was torched in a paddock out in the eastern suburbs, and all the problems she had with it — the baby's clothes, the pram, everything in it was totally wiped out plus the car. She was actually devastated, but she met with the perpetrator, and the perpetrator met with her. It was a bit tense but she explained it all and by the time that was over the guy was just about in tears over the damage he had done to her personal life. She wanted to know why she was targeted, why her car of all things — which was not the greatest car in the world — was picked out and taken away and this damage was done to it. Anyhow they finished up with him offering types of restitution, and he has got on with his life and so has she, and I think it did them both the world of good to meet together, and it was an extraordinary case, which shows some of the benefits that can come out of RJ.

**Mr FOLEY** — Who facilitated that, Noel? How did they all get together?

**Mr McNAMARA** — We got it through the Brosnan Centre, and I have met with a lot of these guys who I think get thrown into jail unnecessarily.

**Mr FOLEY** — This was after sentencing?

**Mr McNAMARA** — This was after sentencing, yes, which was when they were doing these trials on these things down at the Brosnan Centre, and we met with quite a lot of people who had been put into jail for various non-violent offences and they are not there long enough to learn anything except how to do wonders with your credit card if they ever get hold of it, and things like that. They are not there long enough to do any programs. They would be much better off back in the world working and trying to live a useful life. We have ways of testing them and making sure they do those things now, and if we can run along those sorts of lines with those sorts of people, I think society will be a lot better off; providing they meet our criteria.

**The CHAIR** — Just jumping in with Martin's question — the Victims Support Association is attached to, or works with, the Brosnan Centre?

**Mr McNAMARA** — That is right.

**The CHAIR** — And they then get referrals?

**Mr McNAMARA** — They do. They are very deeply into it.

**The CHAIR** — So do victims approach them?

**Mr McNAMARA** — No.

**The CHAIR** — What is the mechanics of it?

**Mr McNAMARA** — We have always had a bit of an affiliation with them. We are on the wrong side of the fence and we have had many arguments about these things, naturally, but then we have had many useful discussions as well. It all started off years ago when they had one of their justice days down there and they got me down there to talk about victims, and they got a couple of bleeding hearts to talk about the bleeding heart side of it. That is how it all started. This was about 10 years ago now, I suppose, and we have got along very well ever since.

**Mr FOLEY** — So Corrections kind of screen people to fit into the — —

**Mr McNAMARA** — Corrections, yes, they run a pretty good centre down there for people who have been in trouble, and when they come out they help them to find suitable housing and work and things like that. They put a lot of work into it and spend quite a lot of time. That is where my experience with that side of crime comes from.

**The CHAIR** — So Corrections refers the offender to the Brosnan Centre?

**Mr McNAMARA** — Yes.

**The CHAIR** — And how does the victim come into it?

**Mr McNAMARA** — I come in with the victim — not in all cases, but in a lot of cases I come in with the victim.

**The CHAIR** — What starts the process? How do you know who to contact; how do you get in touch with them?

**Mr McNAMARA** — I get onto Mark Griffiths, who is one of the guys that I brought down to our meetings, just to show them — because they were sort of under the impression that it could probably work with anyone. By the time he had had a meeting with us down at the North Melbourne town hall, with a lot of our victims, he went back and said, 'No, it is not going to work as well as we thought'. And so that is — —

**The CHAIR** — Sorry, just going back to the process — I am not sure I am clear on it: you know somebody who is a victim and is part of your group?

**Mr McNAMARA** — Most victims come to us — serious victims mainly, but we do get a few who have seen their videos go out the window and things like that, which happens to just about everyone. We put them through the victims assistance, but a lot of those who have been bashed or had their cars stolen or are on the verge of being part of us we take on board to help as best we can come to terms with what happened.

**The CHAIR** — And that is organised into a conference?

**Mr McNAMARA** — We have what we call group counselling. It is better for people down the track. Homicides and sexual assaults, after six or eight years, and they have got back into the real world and are living; they are not in the shock that they were in for the first four years, and they make good counsellors. All the victims we deal with need someone to listen to them and say, 'Look, I know how you feel'. And those people do know how they feel. It works very well. A lot of people who have been to counselling, and the government pays out a lot of money to, come to us, and when they come to us they never go back to counselling again; they stay with us. We do not make any time frame for when they have to leave, but it seems to work out that after about four years they come in, looking shocking the first time, and they gradually get on with other people, they meet other people in the same boat, make friends with them, and then when the trial and all of that is over, they move on. The only ones

who stay with us are the ones who have got cold cases that are not solved. They are with us until something happens one way or the other.

**The CHAIR** — Do you attend the conference sessions?

**Mr McNAMARA** — No, I have not done for some time. I just have not got the time.

**The CHAIR** — Can you talk to us about what happens in those sessions?

**Mr McNAMARA** — Yes. It is group conferencing with a representative. They have had magistrates there, they have had a judge there, with the restorative justice booklet; the victim, the victim's family, the offender and the offender's family in some cases — not in all cases; sometimes it is just victim and offender. The victim has to agree to the process, although we are trying to make provisions that if the victim does not want to go and wants to send someone else along, then I get one of our people along to stand in for them and accept an apology or whatever. We go along with that.

**The CHAIR** — You talked about that really huge transition when they first come in and you see them first, and then when their case has gone right through the process, that they no longer need to be part of the group.

**Mr McNAMARA** — That is right. In most cases of serious crimes, they will never get over them, but what we do is try to teach them to live with it, because that is what happens and that is what has to happen.

**The CHAIR** — How do you do that? What kinds of things?

**Mr McNAMARA** — It is just a matter of working with them over a few years so they get the feeling that they are not alone as being a victim. I am fully convinced that in my time the majority of Australians — even a small minority of Australians — in this country would find it hard to understand what it is like to be a victim of a serious crime. But as I say, all victims need is to be able to talk about their problems. They take in sleep problems, depression, turmoil in their life, family break-ups — all sorts of things happen. Holidays are never the same, especially in the first few years; we call those triggers. If you have lost someone, there is an empty chair at the table at Christmas time, at birthday times, at memorial times — it just goes on and on. But as the years go by, of course, the pain eases. That is probably a lot to do with why I have not been back to the people 8 or 10 years down the track, whether they have met with a perpetrator or not. I feel that in most cases they would not have; it would still be the same answer.

**The CHAIR** — But you support the victim meeting with the perpetrator if the crime or offence is within a certain standard?

**Mr McNAMARA** — That is right, yes, if it is of a certain — —

**The CHAIR** — What kinds of offences that people have committed do you think would be acceptable?

**Mr McNAMARA** — Car thefts, house break-ins — anything where there was no violence involved, although with some low-level violence it would work all right. I have seen a woman who was attacked by a bloke — not sexually, just for money. Since he has been out she often sees him around the district. She said that she would meet with him at any time.

**The CHAIR** — She said what?

**Mr McNAMARA** — She said she would meet with him if we want to arrange it, mainly for her own curiosity's sake about why he did it to her and why he picked her out. She still sees him around the district. She could have had an embargo put on him through the parole board, but she did not choose to do that; she chose to let him go back to his parents because he was young. Things seem to be going pretty well now.

**The CHAIR** — That was a direct consequence of having met him in a controlled environment?

**Mr McNAMARA** — No, she did not meet him.

**The CHAIR** — She did not meet him at all?

**Mr McNAMARA** — She has just asked about it. We have not arranged it as yet, but we probably will at a later date.

**The CHAIR** — I see. You would pick that up?

**Mr McNAMARA** — Yes.

**The CHAIR** — And then you would organise it?

**Mr McNAMARA** — Organise for her and the perpetrator to meet in front of the magistrate. But these sorts of things really need to be done around the time of the sentencing. Of course that is another thing. I will just run through a few of the things we have got.

**The CHAIR** — Sure.

**Mr McNAMARA** — The benefits, of course, are that it gives the victim a greater voice in the justice system, it allows victims to receive an explanation and more meaningful repatriation from offenders, it makes offenders accountable by allowing them to take responsibility for their actions, and it also builds up community confidence that offenders are making amends for their wrongdoings. Restorative justice is not a soft option, as many offenders find it extremely hard to face up, just as victims do. They find it very hard to front up. They will be very contrite about what has happened, but they just do not feel they can bring themselves to meet the victim. But if we say to them, 'Look, it is all right, we will be there, and you can bring a family member along', we usually talk them into it. It helps with their coming back into society with people. Some of the things we believe it is good for include getting offenders to remove graffiti around the place, and that is done a lot nowadays through corrections; repairing property that they have damaged; bringing a shoplifter face to face with a store manager and the effects it has had on the store manager; and — this is a very important one — getting offenders to write a letter of apology to the victim.

**Mr FOLEY** — In the experience of your organisation, does that happen pre-sentencing?

**Mr McNAMARA** — Yes, pre-sentencing, that is when it really has to happen. It really needs to be that. Rather than throwing them into a jail environment, which comes under the three to six-month categories, they need to get into group counselling.

**Mr FOLEY** — What is your organisation's view on this? We have heard some evidence of international experience where it is mandatory in some jurisdictions and not mandatory in others, and there is a kind of bait; if you go in early enough to deal with your victim — providing your victim wants to — essentially you get a sentence discount because you get in earlier and all that sort of stuff.

**Mr McNAMARA** — That is right.

**Mr FOLEY** — And it is graduated due to the notion of the offence. What is the Victims Association's view on that kind of arrangement?

**Mr McNAMARA** — For those sorts of non-violent crimes we do not have a problem with that at all. We will go along with those sorts of things. It is the violent ones that worry us greatly. One of the things that goes with it, of course, is that conferencing involving support for both parties and the wider community in direct mediation accepts the process focus on the family support structure for offenders. It is particularly useful for young offenders. We state in our thoughts on it to you that we believe it is only suitable for people up to 25 years of age really. If they are over 25 years of age — there could be special circumstances — usually they are well into a life of crime by then, anyhow.

**Mr DONNELLAN** — Just in relation to that, some studies suggest that males do not get their brain until they are about 26, and I am not being silly.

**Mr McNAMARA** — My wife's theory is 30.

**Mr DONNELLAN** — Yes. They actually say that the front end of a male's brain does not mature until they are 26, which may be about the age they actually think about what they are doing. I will throw that to you.

**Mr McNAMARA** — You are quite right there. I think that is probably why we took it on board. We had a lot of arguments about the age that we came up with, and I think 25 has merit as being about the right age.

**The CHAIR** — How do you promote to the community the work that your organisation does?

**Mr McNAMARA** — How do we promote it?

**The CHAIR** — Yes, how do people know about you?

**Mr McNAMARA** — Word of mouth, more or less. We do not believe the victim support services really do their job properly; they could be run a lot better. There are all new people down there at the moment, and they seem to be changing over a lot. They just have not got a clue, really. People wait on the phone, they do not get answers. They are nice people and all the rest of it, and some of them are very good, but most of them are that inexperienced that it does not really matter. People go to them and they usually finish up with us. It is usually through the police department that they come to us. We go down and talk to the homicide squad guys about how they should approach the families of victims from time to time. A representative from there comes along to our meetings and answers any queries that need to be answered in regard to what is happening in the crime world.

The reason we started with him was to chase up some of the cold cases, of course. Homicide cops move on after about four or five years and they are replaced by another crew who are flat out doing the work they have got, and they seem to forget about the cold cases. We would send reports down to, say, Charlie Bezzina or one of those police officers, that so-and-so had not seen a policeman since their husband got murdered six years ago, and he would tell someone in the crew, and no-one would go down there. Eventually we got on to homicide, and then they said, 'We'll give you a victim contact', and they gave us Lucio Ravis as the homicide liaison officer with us. Through word of mouth, victims tell other victims. The word gets around pretty quickly when you become a victim of crime, and you do not have to look very far nowadays to find other victims. They might find out about it before you realise and come and see you to offer their sympathy and help and things like that. We do not really advertise, and we do not approach victims; we do not think that is the right thing.

**The CHAIR** — But your sense is, from what you are saying, that most victims who need support would in one way or another through informal networks know about you?

**Mr McNAMARA** — Yes, that is right. They would come to us.

**The CHAIR** — We have received evidence from other people who have come to talk to us that one of the difficulties is in the post-conference or the post-meeting follow-up, and that once people have had their meeting with the perpetrator then it is not really followed through. Is that your experience from how your group works?

**Mr McNAMARA** — I have been involved in a lot, as I say, but in most of the ones I have seen it is over, and the victims get back on with their lives and the perpetrators get back on with their lives.

**The CHAIR** — But if the perpetrator has agreed to do something for the victim, there has been a plan and an agreement and that then has not been fulfilled, that can then damage the victim to some extent.

**Mr McNAMARA** — That is right.

**The CHAIR** — Do you follow that through to make sure it gets done?

**Mr McNAMARA** — Yes. Anything that I am involved with I will certainly follow through, because that is paramount. The system cannot work without the victim, and most certainly we would not want to see a victim re-victimised through stupidity.

**The CHAIR** — Why would that be stupidity?

**Mr McNAMARA** — If the perpetrator is going to get abusive in the conference or afterwards.

**Mr DONNELLAN** — With regard to the perpetrators, you were saying a lot of the time they do not want to meet with the person they have perpetrated the crime against.

**Mr McNAMARA** — Both do not want to meet, and the perpetrators, I think, are probably harder to get than the victims. The victim is hard to get, believe me.

**Mr DONNELLAN** — I have no doubt. I can understand why, with the victim. But the perpetrator — is that embarrassment, or the fact that they were drunk or on drugs at the time, or you do not know?

**Mr McNAMARA** — I think it is a bit of everything. It is embarrassment, mainly, and the fact of the damage they have done.

**Mr DONNELLAN** — And they have got caught.

**Mr McNAMARA** — Yes, they have got caught, and it is facing up to the real story of what the damage has been.

**Mr DONNELLAN** — Facing up to their responsibility.

**Mr McNAMARA** — That is right, and that is one of the reasons why most of them have got themselves into trouble in the first place.

**Mr DONNELLAN** — Because they have never faced up to their responsibilities.

**Mr McNAMARA** — It is because they do not want to face responsibility.

**Mr DONNELLAN** — Yes, that makes sense.

**The CHAIR** — Do you think that offenders should be rewarded if they participate in a restorative justice process?

**Mr McNAMARA** — How would you reward them?

**The CHAIR** — Their sentence might be less.

**Mr McNAMARA** — Of course they should get a lesser sentence if they are showing all signs of contrition, yes, for sure, and if they are really remorseful. Of course it is a very hard thing to do for some of them, but in a lot of cases you can see a lot of remorse. Some people see remorse differently to others, which I have found through going to courts and seeing the judges. I found a bloke very remorseful, and the judge got up there and said, 'I don't see any remorse whatsoever'.

**Mr FOLEY** — It is like beauty — it is in the eye of the beholder.

**Mr McNAMARA** — And very few times do I see any remorse, because most of ours are in the Supreme Court, the ones that I go to. That is the way it is.

**Mr FOLEY** — What if that sort of system got too bureaucratised, Noel, where word got out to play the game, look contrite, go down there and be nice to the victim? How would you as a victim support group see through, almost, who is fair dinkum and who is not, and how would that feed through the system?

**Mr McNAMARA** — You would only get one chance at it. If you break the condition, then the sentence applies — 'You owe us so many days; back you go. The good days are over'.

**Mr CLARK** — I apologise if you covered this point before I arrived, but you alluded a minute or two ago to issues with support for victims generally. Are there particular things that you think would need to be provided to support victims going into a restorative justice process to assist them to take part in it?

**Mr McNAMARA** — No, I think the Brosnan system, which is the only one I have ever worked with, works pretty well. I think they are experienced people and they are compassionate people. Their compassion no longer lies where it used to lie — with the criminals — as much as it used to, because I have introduced them to a few victims who were severely hurt. They now have a more balanced approach — most of them do, anyhow, with the exception of a couple, mainly Peter Norden. We will not go into that.

**Mr DONNELLAN** — He is only the boss!

**Mr McNAMARA** — I think they have got a pretty good approach to the type of people we are talking about, anyway. As I say, you could not have them with homicide or sexual offenders or anything like that, but on the lower scale of crimes you could. It could work quite successfully, I think, in bringing young people back into society, especially if you facilitate them and there are members of their family there to sit with them and try to help them through their troubled times.

**The CHAIR** — We are out of time now. Thank you very much, Noel. It is greatly appreciated.

**Mr McNAMARA** — It is a pleasure. Thank you for having me.

**The CHAIR** — You will receive a copy of the transcript.

**Mr McNAMARA** — Yes, I will sign it and send it back to you if it is all right.

**The CHAIR** — Would it be all right with you if Kerryn or Kate got in touch with you?

**Mr McNAMARA** — Any time. As a matter of fact, we are having another restorative justice thing on Wednesday over the road at the Dallas Brooks Hall — a little think tank.

**The CHAIR** — Good. Thank you very much.

**Witness withdrew.**