



Commitment
to Parallel Justice

November 2007

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INTRODUCTION

Our Vision: Victims of crime and trauma are in control of restoring their lives.

The New Zealand Council of Victim Support Groups (Inc) (**Victim Support**) is recognised as New Zealand's leading support agency for victims. We provide 24-hour, seven-day-a-week integrated, independent and professional assistance to victims of crime and crisis.

One of our primary functions is advocating for and promoting an understanding of victims' rights in this country.

Our goal is that Parallel Justice becomes a reality, not just a concept. In this document we outline progress made towards improving rights for victims, and we outline priorities for ensuring that New Zealand's response to victims lives up to its national and international obligations.

We accompany our priorities with recommendations to policy makers on how these can be achieved.

EXECUTIVE SUMMARY OF RECOMMENDATIONS

Victim Support calls for a system of Parallel Justice. This is a system that gives the victim a separate path to justice alongside the criminal justice system. It distinguishes the needs of the victim from society's treatment of the offender. It means that the victim's rights should not depend on apprehension and conviction of the offender.

Victim Support recommends:

- that the Government take a stance on victims' rights by becoming principal sponsor of the Draft UN Convention on Justice and Support for Victims of Crime and Abuse of Power
- that the following five priority areas are implemented:

1. Victims have greater standing in the criminal justice system

That victims have greater standing in the criminal justice system through strengthening the application of the Victims' Rights Act 2002 and giving victims of young offenders rights to participate in Youth Court.

2. State-funded reparation

That victims of serious crime receive timely reparation from the state and that the state then recovers this from the offender.

3. Expanded state-funded support

That state-funded support be available to both primary and secondary crime victims for counselling and treatment, lost earnings and childcare costs if required to take time off work to attend court, and lost earnings associated with physical and mental trauma.

4. Improvements to restorative justice

That there is a revision of restorative justice to ensure an equal balance between offenders and victims at all stages.

5. Expanded Victim Assistance Schemes

That victims receive funding for travel, accommodation and childcare when attending restorative justice and family group conferences.

Legislators and service developers often overlook the potential for crime to have profound long-term financial, physical, behavioural and emotional consequences on victims, and for the criminal justice system itself to cause revictimisation. Inadequate legislation and services for victims has costs to the victim, society and the state.

Victim Support believes that government policies on all aspects of victimisation, including victims' services, involvement in the criminal justice system, and reparation should be consistent with repairing the harm caused by victimisation and preventing the harm caused by revictimisation.

VICTIM SUPPORT NEW ZEALAND

The first **Victim Support** office was started by police officer Kevin Joblin in Gisborne in 1986. By 1990, **Victim Support** had become a national service and today it has 77 offices throughout the country with 130 paid staff and 1,650 volunteer support workers.

Victim Support has two main aims:

- To provide information, support and assistance to victims, witnesses, their families and friends;
- To promote victims' rights through raising public awareness and recognition of the effects of crime.

Our Service

Victim Support's services include:

- 24-hour emotional support, personal advocacy and information to all victims of crime and crisis
- Support through the judicial process
 - Court support
 - Family group conferences
 - Restorative justice
 - Preparation of Victim Impact Statements
 - Parole Board submissions
- Advocacy
 - Personalised advocacy for victims
 - Submissions on Government legislation, policy and discussion documents
 - Consultation with Government and community bodies on victims' issues
- Victim assistance funding schemes
 - Court and parole hearing travel
 - Counselling for secondary homicide victims including family, close friends and witnesses
 - Discretionary grant for families of homicide victims
 - Emergency grants

Our position on Parallel Justice

Victim Support endorses a system of Parallel Justice, which gives victims a separate path to justice alongside the criminal justice system. This concept has been strongly promoted by the National Centre for Victims of Crime in the United States.¹ It distinguishes the needs of the victim from society's treatment of the offender. It means that the victim's rights should not depend on apprehension and conviction of the offender.

It is important to note that while **Victim Support** promotes victims' rights, it does not in any way seek to reduce the rights of offenders.

¹ S. Herman. *Is restorative justice possible without a parallel justice system for victims?* In Howard Zehr and Barb Toews, Eds., *Critical Issues in Restorative Justice*, Monsey, New York: Criminal Justice Press, 2004: 75.

The key elements of Parallel Justice for victims are:

- Paramountcy of the victim's safety at all stages.
- Immediate support, compensation for loss, and practical assistance.
- The opportunity to explain the incident, the effect it had on them, and the resources they need to restore their lives.
- Access to case managers to coordinate the necessary resources and support, including government assistance, support of community networks and counselling.
- Validation that a crime has occurred regardless of whether the offender is apprehended, thus making the event real for the victim.

THE CONTEXT: THE IMPACT OF VICTIMISATION

Victimisation compounds the already marginalised position that many victims have in society. It has far-reaching financial, physical, behavioural and emotional consequences for both primary and secondary victims. These consequences are compounded by the potential for revictimisation.

Who are New Zealand's crime victims?

Approximately two out of every five New Zealanders experience some form of victimisation each year, with 6% of New Zealanders experiencing half of all the offences.² Indeed, being a victim of crime is a powerful predictor of future victimisation. Furthermore, New Zealand's most vulnerable are over-represented as victims: sole parents, students, people aged 15-24, those unemployed or on a benefit, people renting properties, living in the most deprived areas, Māori and Pacific peoples, and people whose marital status was single, de facto, divorced or separated.

Selected Violent and Non-Violent Crime in New Zealand, 2006

TYPE OF CRIME	NUMBER OF RECORDED VICTIMISATIONS	RATE PER 10,000 POULATION
Violent Crimes		
Serious Assault	17,729	42.8
Grievous Assaults	4,116	9.9
Robbery	2,801	6.8
Sexual Attacks	2,476	6.0
Homicide	98	0.2
Kidnapping / Abduction	263	0.6
Non-Violent Crimes		
Burglary	61,672	149.0
Theft	122,169	295.1

New Zealand Police (2007) New Zealand Crime Statistics 2006: A Summary of Recorded and Resolved Offence Statistics. Police National Headquarters: Wellington.

² P. Mayhew & J. Reilly. *New Zealand Crime & Safety Survey: 2006*. Wellington: Ministry of Justice, 2007.

Financial impact

The costs of crime for victims and their families include immediate and direct out-of-pocket expenses such as medical expenses. There are also ongoing costs. These include lost wages, travel and related costs to attend court trials, and support for ongoing mental and physical health issues. The financial burden to society includes not only the cost of healthcare and support services but also lost productivity.

Physical and behavioural impact

Many crime victims are left with serious physical injuries and significantly deteriorated physical health, as shown in New Zealand research.³ There may be a decrease in their work productivity and academic performance and an increase in substance abuse.⁴

Emotional impact

Nearly all victims are emotionally affected in some way⁵ and, for many, life will never be the same again. Common reactions include shattered beliefs about the world, fear, severe loss of confidence, anxiety, depression, and posttraumatic stress disorder (PTSD), which is a serious anxiety disorder that affects crime victims nearly three times more than it affects non-crime victims (25.8% vs. 9.4%).⁶

Revictimisation

The Draft UN Convention emphasises the need to protect the victim from subsequent disempowerment or revictimisation that can arise from insensitive treatment in the wake of the initial victimisation. There are many ways in which revictimisation can occur including disrespectful treatment from individuals who work with victims, intrusion by the media and the power imbalance that many victims experience in the criminal justice system - a system that is centred on the offender rather than the victim. Revictimisation prevents healing.

Secondary victims

Trauma research and practice now recognises that witnesses to serious crimes and family and friends of the primary victim are affected too. These individuals are secondary victims. Merely hearing about a loved one's serious victimisation can induce posttraumatic stress symptoms in those close to the victim. Indeed, in a large epidemiological study, the sudden unexpected death of a loved one was the most common single precipitating event among those who had experienced PTSD, accounting for 31.1% of cases.⁷

The whole picture: Cost of crime to the nation

The cost of crime in New Zealand is estimated at \$9.1 billion.⁸ Nearly 80% of this reflects victim impacts described above (health costs, property lost, intangibles, and lost output). While the private sector (victims, households, businesses and institutions) bears three quarters of this cost, failure to provide comprehensive support and resources to victims can increase the fiscal burden. This burden, which may include the costs of treatment, lost output and sickness benefits resulting from long-term mental or physical illness, may be reduced with access to adequate early support and services.

COMMITMENT TO PARALLEL JUSTICE

Victim Support endorses a system of Parallel Justice and puts forward the following recommendations to see this become a reality, not just a concept:

- that the Government takes a stance on victims' rights by becoming principal sponsor of the Draft UN Convention on Justice and Support for Victims of Crime and Abuse of Power. (visit our website www.victimsupport.org.nz for a copy of the draft convention)
- that the five priority areas are implemented (Priority Steps are detailed on page 9)

Background to the Draft UN Convention

New Zealand is a signatory to the Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the General Assembly 1985.⁹ While many of these standards have found their way into legislation in various countries, including New Zealand, the rights of victims are still not adequately recognised.

The Bangkok Declaration, unanimously adopted at the Eleventh UN Congress on Crime Prevention and Criminal Justice in 2005, included the reaffirmation by member states of their commitment to strengthening the legal and financial framework for providing support to victims, taking into account, inter alia, the Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power.

In response to the Bangkok Declaration, the World Society of Victimology and the International Victimology Institute Tilburg (INTERVICT) has developed the Draft Convention to ensure that countries implement the Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power and that its principles become legally binding. It is noted that while the UN Declaration and the Victims' Rights Act 2002 provide guiding principles, their provisions are not currently enforceable in law.

³ R.A. Flett, N. Kazantzis, N.R. Long, C. MacDonald, & M. Millar. *Traumatic events and physical health in a New Zealand community sample*. *Journal of Traumatic Stress* 15 (2002): 303.

⁴ R. Barry Ruback & Martie P. Thompson, *Social and Psychological Consequences of Violent Victimization*, (Thousand Oaks, CA: Sage Publications, 2001): 87.

⁵ P. Mayhew & J. Reilly .

⁶ H.S. Resnick, D.G. Kilpatrick, B.S. Dansky, B.E. Saunders, C.L. Best. *Prevalence of civilian trauma and posttraumatic stress disorder in a representative national sample of women*. *Journal of Consulting and Clinical Psychology*. 61 (1993): 984.

⁷ N. Breslau, R.C. Kessler, H.D. Chilcoat, L.R. Schultz, G.C. Davis, & P. Andreski. *Trauma and posttraumatic stress disorder in the community: the 1996 Detroit Area Survey of Trauma*. *Archives of General Psychiatry*, 55 (1998): 626.

⁸ T Roper & A Thompson. *Estimating the costs of crime in New Zealand in 2003/2004*. *New Zealand Treasury Working Paper 06/04*, July 2006

⁹ *Complemented by the Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (GA, 2005) and by the Guidelines for Child Victims and Witnesses (ECOSOC, 2005).*

Victims' rights in New Zealand

Victims' rights have gained momentum in New Zealand since New Zealand became a signatory to the UN Declaration in 1985. The 1999 Law and Order Referendum saw 92% of voters support a reform of the justice system. This placed greater emphasis on the needs of victims, and on providing restitution and compensation. It also called for maximum sentences and hard labour for all serious offences. The Referendum paved the way for the Victims' Rights Act 2002, which sets out principles for the treatment of crime victims. These include the right to information, access to support and welfare services, treatment which is courteous and compassionate, and full participation in the criminal justice system.

Victim services have expanded with the momentum gained around victims' rights. However, there are still many gaps in these services and they are often piecemeal and unsystematic. This limits the ability of victims to participate in the criminal justice system, to seek redress, and to receive support for the ongoing physical and emotional impacts of crime.



PRIORITY STEPS TO PARALLEL JUSTICE

1. Victims have Greater Standing in the Criminal Justice System

Recommendation: That victims have greater standing in the criminal justice system through strengthening the application of the Victims' Rights Act 2002 and giving victims of young offenders rights to participate in Youth Court.

Article 12 - Draft Convention

Implementation

(1) States Parties shall take appropriate measures to:

- (a) bring into force the laws, regulations and administrative provisions necessary for the implementation of this Convention;
- (b) establish and enhance such institutions and mechanisms as may be necessary for the achievement of the objectives of this Convention;
- (c) ensure the establishment and/or enhancement of appropriate procedures, which are victim-friendly and which must be adhered to.

1. Strengthening of the Victims' Rights Act 2002

Victim Support recommends strengthening the application of the Victims' Rights Act 2002 to ensure the rights contained within the Act, and the basic principles of justice contained in the draft UN Convention, are upheld.

Victim Support is aware of the values within the New Zealand Constitution and the Bill of Rights Act 1990, and how these establish the role of the victim within the New Zealand Judicial system. **Victim Support** does contend, however, that the legislated rights of the victim, as determined by the Victims' Rights Act 2002, are often inadequately applied and/or enforced.

Parts of the Victims' Rights Act 2002 clearly impose obligations on specific agencies, for example;

- Section 11 requires that information is given to victims, as soon as practicable, on available programmes, remedies and services (including **Victim Support**)
- Section 12 requires that information is given to victims, as soon as practicable, on the progress of the investigation, the charges laid, or the reasons for not laying charges
- Section 32 requires that victims of serious offences are advised of their right to register on the Victim Notification System

However, there is inconsistent application of the rights outlined above. Moreover, many victims are unaware of the course of redress should that agency fail to fulfil its legislated obligations.

Numerous surveys and reports reiterate this contention and indicate victim dissatisfaction with the criminal justice system. The Crime and Safety Survey 2006¹⁰ reported that 44% of victims felt they had not received adequate information about the progress of an investigation. A Law Commission review of the court system indicated that many victims were dissatisfied with their experience of the courts,¹¹ prompting the Commission to acknowledge the need to consider victims' views and improve information and court facilities for victims.¹² Audit New Zealand highlighted that only about one third of eligible victims have registered on the Victim Notification System since the Victims' Rights Act 2002 was introduced in 2002. It found inconsistent awareness and understanding of the obligation within the agency responsible for informing victims of their right to register.¹³ Each of these documented issues is a breach of the rights of the victim under the Victims' Rights Act 2002.

Victim Support believes that the application of the Victims' Rights Act 2002 must be urgently reinforced to ensure victims are accorded the rights they are due, thus preventing revictimisation by a system that fails to meet its obligations.

In addition, **Victim Support** calls for Principles Guiding Treatment of Victims (Sections 7 to 9 of the Victims' Rights Act 2002) to be enforceable. This would mean that a victim could expect - rather than hope - to be given access to welfare, health, counselling, medical and legal services; to be treated with courtesy and compassion; and to have their dignity and privacy respected.

2. Victims have rights in Youth Court

Victim Support recommends that the Children, Young Persons and their Families Act 1989 is amended to give victims of young offenders rights in accordance with victims of adult offenders.

Under current law, the victim cannot attend a Youth Court hearing unless he/she:

- makes an application to the judge to do so, or
- has been given entitlement to address the Court as the representative of the family group conference.

This contradicts the obligation in Section 17 of the Victims' Rights Act 2002 to "make all reasonable efforts to ensure information is ascertained from the victim" (via the Victim Impact Statement) for submission to the judicial officer. Furthermore, there is no obligation to impose a sentence of reparation as there is in the Sentencing Act 2002.

¹⁰ P. Mayhew & J. Reilly.

¹¹ New Zealand Law Commission, *Striking the Balance*, Wellington (2002), 44.

¹² *Id.* at 45.

¹³ Audit New Zealand, *Victim Notification System Review*, 2006, p7.

2. State-Funded Reparation

Recommendation: *That victims of serious crime receive timely reparation from the state and that the state then recovers this from the offender.*

Article 10 - Draft Convention

Restitution including reparation

(1) States Parties shall legislate to make offenders responsible for paying fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

Victim Support believes that rights accorded to victims should go beyond the Draft UN Convention and provide restitution to victims, with the onus on the state to pay both if offenders cannot.

Restitution and compensation are the two main forms of reparation. The goal of restitution is to restore the conditions that existed prior to a violation. This often involves the return of property, payment for harm or loss suffered, and reimbursement of costs. Currently in New Zealand, courts can order offenders to pay victims this type of restitution – or reparation as it is known as in this country. Compensation, on the other hand, involves payment for material or moral injury and is usually paid by states.

A number of overseas jurisdictions (see examples, page 14) offer an integrated reparation scheme involving both restitution and compensation from the state. These are commonly known as “compensation schemes”, although it should be noted that they do also cover what New Zealand calls reparation.

Victim Support proposes that the fairest and most efficient method of reparation would be for victims of serious crime to receive timely reparation from the state for expenses incurred, as part of an expanded compensation scheme. Currently, reparation in New Zealand depends on an offender being apprehended and it being ordered by the court. However, as detailed on page 14, state-funded reparation is a standard part of several overseas compensation schemes, and is available as soon as the crime has been verified by police. **Victim Support** proposes that the state would then recover the funds from the offender if apprehended. Such a system, as exists in New South Wales, the Northern Territory and California for example, prioritises the needs of the victim, while balancing the responsibility and involvement of both the state and the offender.

Through experience of administering financial support to victims and supporting them through the criminal justice process, it is **Victim Support**'s opinion that New Zealand's system of reparation is piecemeal, insufficient in scope, and is capable of producing more harm than good. While **Victim Support** endorses the principle of offenders paying reparation to victims, the current system under the Sentencing Act 2002 is failing to meet the needs of many victims and is, in fact, undermining the potential benefits of restitution. Reasons for this include:

- Some victims never receive the opportunity for reparation either because it was not awarded or the offender was not caught;
- The current system effectively means that victims are providing an interest-free loan to offenders. Many offenders cannot afford to pay their reparation orders to victims, forcing victims to wait several years for repayments, which are often sporadic or non-existent, to be made.

Many victims financially depend on reparation from the offender, while many of those who are better off financially still depend on it emotionally. Timely payment of reparation can be empowering and facilitate closure for the victim. Delays in payment of reparation have the opposite effect: the victim can feel further disempowered, revictimised and the trauma may be prolonged.



3. Expanded State-Funded Support

Recommendation: That state-funded support be available to both primary and secondary crime victims for counselling and treatment, lost earnings and childcare costs if required to take time off work to attend court, and lost earnings associated with physical and mental trauma.

Article 11 - Draft Convention

Compensation

- (1) When restitution is not fully available from the offender or other sources, States Parties shall endeavor to provide compensation to:
 - (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of intentional violent crime;
 - (b) The victims' family, in particular dependants of persons who have died as a result of such victimization.
- (2) Compensation shall be provided for:
 - (a) Treatment and rehabilitation for physical injuries;
 - (b) Pain and suffering and other psychological injuries caused to victims;
- (3) States should also consider compensation for loss of income, funeral expenses and loss of maintenance for dependants.

Victim Support believes it is the state's responsibility to ensure that victims of crime are reimbursed for compensable costs, including lost earnings, childcare and for counselling and medical treatment that relate to the crime. To be consistent with overseas models, any compensation scheme should be part of an integrated state-funded scheme that also includes reparation or restitution.

Many of the benefits for victims of New Zealand's pioneering compensation legislation have been lost since its 1963 introduction because it no longer recognises mental trauma as a personal injury. Yet both the UN Declaration and Convention emphasise that states should establish funds to provide compensation for both physical *and* mental injury sustained from criminal victimisation.

ACC now only compensates for mental trauma if it occurred as a result of sexual assault or physical injury. A sportsperson who suffers depression as a result of an injury that prevents their participation in their chosen employment can qualify for state-funded counselling. A victim who suffers mental trauma after being robbed at knifepoint does not.

This means three things:

- 1) Victims with mental trauma may be forced to return to work, even though their productivity may be compromised, to avoid lost earnings;
- 2) Due to the financial cost, they may not seek the counselling they need to make a full recovery. Indeed, those who need counselling the most, can often not afford it;
- 3) For victims to receive any compensation for the emotional impact of their victimisation, they must take civil action against the offender and thus risk revictimisation and prolonged trauma from involvement in the criminal justice system.

In reality, mental trauma following a victimisation is certainly not contingent on physical injury. Post-traumatic stress disorder (PTSD) affects 25.8% of crime victims¹⁴ and 21.1% of secondary victims following a loved one's sudden death or serious injury.¹⁵ PTSD lasts for more than a year in most victims, but often longer in those who do not receive psychological treatment.¹⁶ The optimal management of all other common reactions to trauma, such as depression, anxiety and substance abuse, is also professional psychological treatment.

It is rare for crime victim compensation schemes in other countries to *not* recognise mental harm as a form of personal injury. Most also recognise secondary victims (family, dependants and witnesses) as crime victims.

Victim Support already administers several assistance schemes that recognise mental harm and secondary victims, including:

- A victim emergency grant to a maximum of \$3000 for victims of serious crime, which may cover counselling costs. It is to be used only when there are no other means to fund this assistance and the victims will experience financial hardship using their own financial resources;
- The Counselling Scheme for Families of Homicide Victims, which initially offers 6 sessions of paid counselling (and can be extended based on the recommendation of the counsellor) for surviving family members and witnesses to a homicide.

ACC provides financial support for victims who receive injuries from crime and assistance including funeral grants and one-off survivors' grants to surviving family of victims who die from injury. While these schemes play a vital role in supporting victims, many crime victims have costs that exceed the limits or are not met by the existing schemes, or find they are simply not eligible. Many of the victims who miss out on assistance in New Zealand would be eligible for compensation in other countries. State-funded compensation to victims of serious crime exists in at least 36 countries.¹⁷

As shown in the table following, New South Wales, California and British Columbia compensate for actual costs incurred rather than providing lump sum payouts. These schemes focus on providing support services, especially counselling, to empower the victim.

Victim Support proposes that New Zealand's compensation scheme should be based on the wide-ranging needs of crime victims, rather than solely on physical injury, and that the focus also be on promoting recovery through support services and compensating actual costs.

¹⁴ H.S. Resnick *et al.*

¹⁵ Naomi Breslau, Glenn C. Davis, Patricia Andreski, & Edward Peterson. *Traumatic events and posttraumatic stress disorder in an urban population of young adults.* *Archives of General Psychiatry*, 48 (1991): 216.

¹⁶ D.C. Kessler, A. Sonnega, E. Bromet, M. Hughes, & C.B. Nelson. *Posttraumatic stress disorder in the national comorbidity survey.* *Archives of General Psychiatry* 54 (1995): 1048.

¹⁷ U.S. Department of Justice, *Directory of International Crime Victim Compensation Programs*, 2004-2005.

Comparison of crime victims' compensation schemes in five countries/states

Country/ State	Examples of benefits	Maximum	Recognises mental harm as injury	Recognises secondary victims	Recognises homicide victims' families	Counselling
New Zealand	In cases of death: funeral grant up to \$4975, lump sum (payments to partner \$5333, children & dependents \$2666). Lost wages & income, childcare	NZ\$100,000	No, unless resulting from physical injury or sexual abuse	Homicide victims' families only	Counselling & general benefits	Homicide only – Initial 6 sessions for family and witnesses with more if needed
New South Wales	Injuries (lump sum), actual medical & related expenses, actual loss of earnings, lost/damaged personal items	A\$50,000	Yes	Yes, witnesses & parents if injured (includes mental injury)	A\$50,000 lump sum total for immediate family members, less funeral expenses, 20 hours counselling	Initial 2 hours with more if needed
California	Actual medical & related expenses, lost wages & income, dependents' support, home security, relocation, crime scene cleanup, funeral expenses, childcare	US\$70,000	Yes	Yes, immediate family & witnesses (domestic violence only)	Included in general benefits	Initial 5 sessions with more if needed (reimbursement)
United Kingdom	Injuries (lump sum), lost wages, medical expenses, funeral expenses, travel expenses	Up to £250,000 per injury, up to a total of £500,000 for multiple injuries/compensable costs	Yes	Yes, witnesses & family members	Included in general benefits for single claimant in immediate family or £5500 each for multiple claimants)	No – mental injury claimants receive £1000 - £27,000
British Columbia	Actual medical & related costs, lost wages & income, childcare, travel expenses, home modifications, crime scene cleanup, funeral expenses	No global limit but limits on some individual compensable costs	Yes	Yes, witnesses & family members	Included in general benefits	48 hours for victims, 36 hours for immediate family members, 12 hours for witnesses

Sourced from: www.acc.co.nz; www.lawlink.nsw.gov.au; www.boc.ca.gov; www.cica.gov.uk; www.crcvc.ca/en

4. Improvements to Restorative Justice

Recommendation: That there is a revision of restorative justice to ensure an equal balance is maintained between offenders and victims at all stages.

Article 11 - Draft Convention

Restorative justice

(1) States Parties shall endeavor, where appropriate, to establish or enhance systems of restorative justice, that seek to represent victims' interests as a priority. States shall emphasize the need for acceptance by the offender of his or her responsibility for the offence and the acknowledgement of the adverse consequences of the offence for the victim.

Victim Support encourages the use of restorative justice processes and interventions as one way to ensure that victims' rights are upheld and to encourage offenders' accountability. However, although the victim-offender model of restorative justice is often referred to as being victim-centered, the process can still be very offender-centred. The remedies are limited to what the offender can provide and it fits within the court timeframe, without allowances for the victim's needs. According to the New Zealand court-referred restorative justice pilot evaluation,¹⁸ the proportion of pilot victims giving positive feedback was consistently lower than that of pilot offenders.

For restorative justice to become victim-centred, the following must occur:

- The desire to rehabilitate offenders and address their needs should always be balanced by consideration of the harm caused to the victim and their family or whanau;
- Victims' awareness of restorative justice opportunities should be raised;
- Restorative justice meetings need to be an available option throughout the criminal justice process, including post-sentencing. When the offender is eligible for parole, the victim becomes focused on the crime again and may be fearful of the offender's release. A restorative justice process can be helpful in the rehabilitation of the offender as well as lessening the fears and providing some closure for the victim. The victim's interests continue long after the criminal justice process ends;
- It should be mandatory for victim agencies to be notified of potential restorative justice meetings. Offenders are provided with advocacy throughout the entire process and so victims should be treated similarly. This would prevent victims not using the available options through lack of information;

- When a rehabilitation plan is developed at a conference for the offender, there should also be the opportunity of a support plan for the victim, which addresses their ongoing emotional, practical and financial needs;
- Case managers should coordinate the necessary resources and support for the victim;
- Any attempts to implement suitable programmes for victims of sexual crimes and family violence must be undertaken with great caution and involve consultation with community organisations working in the arena. (New Zealand currently lacks appropriate restorative justice programmes for these particularly vulnerable victims).

Unless changes are made in keeping with the Parallel Justice model, victims engaged in restorative justice still risk alienation and dissatisfaction with the criminal justice process.



5. Expanded Victim Assistance Schemes

Recommendation: That victims receive funding for travel, accommodation and childcare when attending restorative justice and family group conferences.

Article 5 - Draft Convention

Access to justice and fair treatment

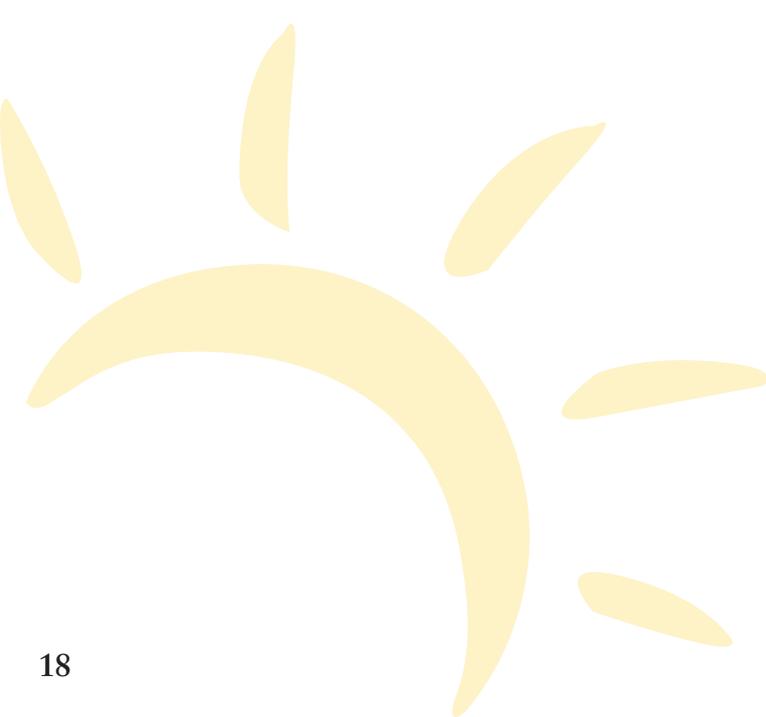
(3) States Parties shall reimburse victims and witnesses for their reasonable expenses related to the procedure incurred as a result of their legitimate participation in criminal proceedings.

Victim Support recommends that victim assistance schemes are expanded to fund victims for travel, accommodation and childcare when attending restorative justice and family group conferences.

New Zealand has gained international acclaim for its restorative justice programmes, which include family group conferences for youth offenders and court-referred restorative justice conferences for adult offenders. While restorative justice makes victims central participants in the response to the crime, they are not funded to participate.

Victim Support administers the Travel to Court and Parole Hearing Assistance Schemes, which provide a contribution to travel, accommodation and childcare assistance for victims of serious crimes and their families. However, this does not extend to victims whose cases are dealt with by restorative justice or family group conferences.

As outlined, a Parallel Justice model of restorative justice is the key to ensuring that New Zealand's criminal justice system provides a separate path to justice for victims. However, without funding to attend such processes, any efforts to promote restorative justice to victims remain futile and inconsistent.





THE NEW ZEALAND COUNCIL OF VICTIM SUPPORT GROUPS INC.
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