

Submission by AUT RESTORATIVE JUSTICE CENTRE

To: Ministry of Justice, Wellington

Re: "Focus on Victims of Crime" consultation document

Dated: 18 March 2010

The submitter:

1. This submission is made by the Restorative Justice Centre ("the Centre") at AUT University, Auckland. The Centre is located within the University's Institute of Public Policy and is supported by a multidisciplinary Advisory Board with members from both within and outside the University.

The scope of this submission:

2. This submission is limited to matters in which restorative justice has some experience. Thus it is not proposed to comment on all matters in the consultation document "Focus on Victims of Crime" (*Focus*) provided by the Ministry of Justice ("MoJ").

Commendation:

3. The Centre welcomes the aim expressed at p 2 of *Focus* of enhancing victims' rights and role in criminal justice processes and improving the responses of government agencies to victims of crime. It commends MoJ for undertaking this review of the place of victims in the criminal justice system. It hopes that the outcome of the Government's initiative will be a much fairer and more satisfying system for victims, without sacrificing defendants' rights to a fair trial.

Overall position of the Centre:

4. It is submitted that the primary right of victims in respect of criminal justice matters must be to have their needs as victims recognised and met. The real focus therefore has to be on identifying victims' justice needs and considering how these might best be met. A simple acceptance of the existing system will change nothing. Ways to make the criminal justice system more victim-focussed must be considered. Any attempt to identify victims' "rights" without addressing needs and obligations is likely to be counter-productive.

Victims' needs as seen by *Focus*:

5. There is no section of the document setting out victims' needs. Where they appear at all, they are set out as victims' "concerns" and are largely related to justice processes – eg the need for information about processes (paras 22-23) or about their rights and how to exercise them (para 45). These process rights simply treat victims as part of the criminal justice system.

6. Only at para 105, under the heading of "Restorative justice", do Zehr's "especially neglected" justice needs of victims get mentioned. It is submitted they should be recognized as central to the whole issue of victims' rights.

The concept of “justice needs” of victims:

7. *Focus* is of course concerned with victims of crime, rather than other forms of wrongdoing – eg bullying in schools. There must therefore be a crime, or more generally an offence at law, that has been committed, and an offender or person responsible for that offence. *Focus* does not deal with means of meeting victims’ needs where there is no prosecution.

8. Even where a prosecution ensues, not all of a victim’s needs relate to the criminal justice process. Thus needs for counselling and medical attention may be real and pressing in a particular case, but are not “justice” needs, because they do not relate to the justice system.

9. The central justice needs of victims are submitted to be accountability, vindication, empowerment, information, truth-telling and future safety. Only the first and last of these are addressed (to some degree) by the current legal process, and then only when the offender is convicted. Thus in crimes that go largely unreported, such as sexual offences, there can be no feeling of accountability in the absence of alternative processes, and victims remain unsafe.

10. The remaining four central justice needs are those which Dr Howard Zehr, known to and used by MoJ as a consultant in restorative justice, has said are “especially neglected”. They are next mentioned separately. However they overlap with needs identified by other writers.

Vindication:

11. Victims of crime usually feel that they have been wronged, and are likely to feel anger and hurt about that. They may feel vindicated in part by the conviction of the offender – ie by his being held accountable through the courts – but the sense of vindication is considerably lessened where the offender has not admitted the offence. True vindication comes by having the offender acknowledge his responsibility for the offence and for the harm done to the victim. The power of an apology, truly felt, is an aspect of vindication. Payment of restitution or is another aspect. Acknowledging that the victim was not responsible for the offence, and that s/he is right to feel wronged and hurt, also serves to vindicate a victim.

12. Dr Julich notes that for victims of sexual abuse within families, the opportunity to tell their story in front of family members is very important. This is true for vindication as well as story telling – such victims need to be vindicated in the eyes of their family or relevant community, not just in their own minds.

13. Victims can obtain no sense of vindication where there is no prosecution or alternative process, and very little where the offence is not admitted. Even accountability is often not satisfying when it is not face-to-face but through a lawyer entering a Guilty plea on an offender’s behalf, and then seeking to minimise his/her responsibility for the harm done.

14. Restorative justice offers both an incentive to offenders to admit their wrongdoing, and an opportunity for this to occur in a face-to-face but safe situation, where the victim’s hurt and anger can be acknowledged and an apology made, with an offer to put things right in certain respects. This context is far more likely to provide a sense of vindication to a victim than the impersonal formalities of the court process that serve to separate and keep apart those most affected by the offending.

### Empowerment:

15. Zehr reports that victims often feel that “control has been taken away from them ... - control over their properties, their bodies, their emotions, their dreams.” He notes that involvement in their own cases as they go through the justice processes can be an important way to return a sense of empowerment to them. However, those processes are still largely beyond their control. And even after an offender has been convicted and sentenced, many victims are left grappling with the emotional aftermath of the offence in their lives.

16. Control over their own lives can be greatly assisted by giving victims the opportunity – if they want to take it up – to meet the offender, tell of the damage wrought in their lives by the offending, ask their questions of the offender, identify their needs arising from the offence, and have a say in what needs to be done to put right the wrong. This is a key part of a restorative conference process. It does not need to be part of the sentencing process, and may have to wait until the parties are ready to take this step.

17. The experience of restorative justice has been that most victims whose need for empowerment is respected in this way wish to see something constructive come out of their trauma, and are helped in putting that trauma behind them and “moving on” in their lives. Many speak of a sense of healing, that frees them from the grip this offending has had on their lives. Part of the “power” that they experience is the power to accept an apology (or not), to change things for the better (not just for themselves but for others, including potential victims), and where the matter is before the courts to help formulate a plan for the Court to consider.

### Information:

18. *Focus* rightly points to the need for information about the legal process. However, more urgent and valuable to victims is the sort of information that comes best from offenders. Because the court system is not inquisitorial, this information is not asked of offenders at court. Victims at restorative conferences will typically have several questions they want to ask of offenders. There is no compulsion to provide answers, but offenders usually do.

19. Some questions are asked to reassure the victim – eg, Why me? Were you targeting me (or my property)? What were you thinking about? Other questions might be part of the face-to-face accountability that is possible in a conference – eg, What have you done with my goods? Can you get them back? Still others might relate to preventing further offending – eg What are you doing about your drinking problem? How about enrolling in this literacy course?

20. Quite apart from the value to victims of this sort of information from the offender, there is a simple efficiency about having these questions put and if necessary discussed directly between victims and offenders in the presence of a neutral facilitator.

### Truth-telling:

21. As Zehr puts it, an important element in healing of transcending the experience of crime is an opportunity to tell the story of what happened. Often it is important to victims to tell their stories to those who caused the harm, and have them understand the impact of their actions. There is also an overlap here with empowerment, as seen in Kathleen Daly’s expression of a need for “voice and participation”.

22. The value of such personal stories is not just to the victims. It can help offenders to put a human face on offending that has previously been rationalised or minimised as “just property offending”, or “they can afford it”, or “I needed it”. This may partly explain the lower re-offending rates of those who take part in restorative processes, but for present purposes the real value of truth telling is to the victim.

23. Victim impact statements go some way to allowing victims to “tell their story”, but they have severe limitations. First, the story is told to the court, not to the offender who needs to hear it. Secondly, they are often prepared by a police officer and not even signed by the victim, so there is no guarantee they are what a victim would want to say. Thirdly, they are often not current at the time they are presented and may capture only the initial and naturally angry response of the victim. They need to cover the progress that the victim has made since the offence occurred.

24. The function of a victim impact statement, as the name suggests, is to inform a court of the impact of the offending on the victim. They do not give victims an opportunity to “have their say”. They are not designed as a therapeutic process, or to inform the court of the victim’s views on sentencing. These objectives are far better achieved in a restorative setting, where the truth can be told in a more personal way, and where views on an outcome can be more informed by information about both the offender and the offence, and can benefit from the encounter between victim and offender.

The benefits of a criminal justice system that is more responsive to victims:

25. In addition to the two benefits identified on page 4 of *Focus* - namely reducing the cost and impact of crime, and enhancing public confidence in the justice system – a third benefit would be that by providing a better sense of justice for victims, the system as a whole is made more just.

26. Much of the criticism of the present system is that it is “all about” defendants. There is now a public expectation that it will also provide some sense of justice to victims. This can be accommodated but not by limiting their role to being witnesses and providing victim impact statements. Restorative justice offers one way to involve victims in a meaningful way, on a consensual basis and where wrong-doing is admitted.

The broad issues identified by MoJ in *Focus*:

27. The three issues identified by the Ministry at page 4 of *Focus* are all limited to existing processes - the difficulty in dealing with multiple agencies to get information, lack of accountability for services to victims, and lack of responsiveness of existing processes to victims’ needs. They do not identify or deal with victims’ justice needs.

28. It is submitted that the broad issue facing victims is that their justice needs are not identified or met, except on a limited basis by the Victims’ Rights Act 2002. A better approach is that taken as a result of the Cartwright Enquiry of 1988, namely the creation of an enforceable code of rights based on the accepted needs of patients. Several needs are set out in that code, although expressed as rights – the need to be treated with respect, for dignity and independence, for effective communication, for support, and so on. These were enacted by delegated legislation in the Health and Disability Commissioner Code of Health and Disability Services Consumers’ Rights Regulations 1996.

29. The Centre therefore submits that the justice needs of victims should be recognised by law in an enforceable form and facilitated by more flexible criminal justice procedures that give a meaningful place to victims.

The Victims' Rights act 2002:

30. Somewhat surprisingly *Focus* fails to deal with the limitations in Part 2 of this legislation, dealing with “the treatment and rights of victims generally”, and in particular sections 7 to 10 thereof. (This problem with part 2 is not mentioned in part 1.3 or in para 62 of *Focus*.)

Sections 7, 8 and 9 of the Act set out some very important “principles guiding treatment of victims”. They in fact express or recognise some important needs of victims – the need to be treated with courtesy and compassion, and to have their dignity and privacy respected (s 7); access to services such as welfare, counselling and other defined needs (s 8); and the encouragement of officials to attend a meeting between victim and offender to resolve issues relating to the offence – essentially a restorative conference – in appropriate circumstances (s 9).

31. The basic problem is that s 10 largely undoes the benefit of sections 7 to 9 by stating that these guiding principles “do not confer on any person any legal right that is enforceable, for example, in a court of law”. Not being enforceable, such principles can be, and often are, largely ignored. This is a reflection of the wider problem that any breach of rights should create obligations, and to define rights without imposing or accepting obligations is to talk in a vacuum: it can be seen by victims as “empty talk”.

Victims of sexual and domestic violence:

32. Feedback is sought at p 8 of *Focus* about victims of domestic and sexual violence. The Centre considers that restorative justice has much to offer in these cases, but accepts – indeed, stresses – that special care and skill is needed in handling such matters.

33. Early trials of restorative justice excluded domestic and sexual violence cases because of concerns expressed in the mid 1990s about power imbalance, and the need to make a cautious start with adult conferences. Since then specialist restorative justice services for such cases have been established in Auckland (Project Restore, dealing with sexual abuse) and Rotorua (Mana Social Services, dealing with domestic violence). Both have had considerable success. Nelson Restorative Justice Services uses specialist panel members to deal with domestic violence cases. The point is that special expertise is recognised as necessary.

34. When considering power imbalances; the courts are not successful at removing power imbalances and that creates a barrier for victims – as a result there is an unwillingness to report sexual crimes and domestic violence. Therefore if alternative processes exist that can be victim-initiated and are more responsive to victims needs, and so allow matters to be dealt with which would otherwise remain unresolved, victims' justice needs are at least being met in some form.

35. The needs for truth telling, vindication, information and empowerment can all be advanced even without a prosecution occurring – as happens with diversionary conferences under the Children, Young Persons and their Families Act 1989. These justice needs should not depend on a prosecution being successful, if an offender is prepared to admit their wrongdoing and meet with the victim. Further, a victim is more likely to be made safe and to feel less isolated where sexual or domestic violence can be acknowledged to or in the presence of relevant family members, so that repetition is more difficult.

Focus does not adequately acknowledge the present place of restorative justice:

36. Although there is a specific section in *Focus* dealing with restorative justice, the descriptive part of the document fails to see restorative justice as an existing part of the criminal justice process – and therefore does not properly assess its value for victims.

37. This failing is most clearly seen at para 16 to 18 (“the sentencing process”), where four omissions are noteworthy.

- Para 16 says there are two purposes of sentencing relevant to victims, accountability and providing for victims’ interests. It does not seem to recognise the value to victims of personal accountability in a restorative setting, and it omits the second new purpose of sentencing in s 7 of the Sentencing Act, namely promoting in the offender a sense of responsibility for, and an acknowledgment of, the harm done to victim and community – a purpose which is reflected in restorative justice literature and is very important to victims.
- The relevant principles of sentencing in s 8 include taking into account the outcome of any restorative justice processes that have occurred, yet this is not mentioned.
- Para 17 mentions presumptions in favour of reparation and of fines, but not the presumption in s 11 in favour of informal outcomes (which include adjournments to allow restorative processes to occur and then discharges with or without conviction if outcome plans have been implemented).
- Para 18 describes the process in court and the various inputs into the sentencing process, including the Victim Impact Statement. It omits the fact that Judges receive (and must take into account) reports of restorative conferences that victims attend.

38. It is submitted that the outcome of the present consultation process should include a clear account of the place of restorative justice in the present process, its value to victims (as well as offenders), and how this value might be enhanced. New Zealand has developed some excellent principles of good practice derived from extensive practical experience with a legislative basis. This is recognized overseas and should be here as well.

The proposal for a Victims’ Services Centre:

39. We support the desire to reduce the fragmentation of delivery of services to victims.

However the proposed Victims’ Services Centre suffers the following deficiencies:

1. Being located within the MoJ, it cannot be independent of the very body most closely related to delivering justice services to victims. To be effective the new body needs to have some institutional independence, such as is conferred on the Health and Disability Commissioner or the Commissioner for the Environment – eg through a Commissioner for Victims.
2. The proposed services to be coordinated go well beyond the justice needs of victims and would involve the MoJ exercising a supervisory function in respect of other government departments and agencies.
3. It is ambiguous as to whether the Victims’ Services Centre will be located in Wellington (as a “central” point of contact for victims) or in courthouses throughout the country, or in some other places.
4. It states both that the Centre would not duplicate services provided by other agencies (para 35), and that it would provide specific information to victims of certain offences (eg burglary) or to certain population groups (eg Maori) (para 37) – which must involve duplicating services.

5. The proposal could lead to new administrative structures and costs without getting value for money. See eg the “oversight of others” aspect (para 36), the advisory role on best practice (para 41) and the offer to take over the role of contracting the provision of services (para 38) – ie control over standards and costs. Although the funds for victims generated by the proposed \$50 levy on each offender (para 39) are seen as a possible source of funding, it is submitted they would be better spent in funding an independent Commissioner for Victims.
6. The proposal for a Victims’ Services Centre is made without examining why Victim Advisors, now available in all Courts throughout New Zealand (and presumably costing some millions of dollars per annum) are not meeting victims’ justice needs, or whether those resources (both people and money) could be redeployed so as to better meet those needs. Instead Victim Advisors get only a passing mention, eg at para 42.

The proposal for a Code of Practice:

40. The Centre would support the development of Code setting out rights of victims to have their needs met. Sections 7 to 9 of the Victims’ Rights Act were a step in that direction, albeit one effectively undermined by the expressed lack of enforceability. However the proposed Code of Practice is problematic for several reasons, and is not supported in this form.

- It purports to create obligations not by Act of Parliament or by delegated legislation such as by regulations or Order in Council, but by a process of consultation between officials – ie by administrative act. This is unconstitutional.
- It relies on work by previous officials, with which it is required to be consistent, when that work (a) does not have the force of law, and (b) is not annexed to *Focus* for comment in the present context. Thus the proposed Code would have to be aligned with the Victims’ Charter (para 53), which is simply a “resource” developed by the MoJ in 2008 (page 1 footnote 1). The document “Poutama Manaaki” is in a similar category.
- It is not a Code of Rights for Victims, but a code of practice for officials in dealing with victims. The latter task could have value after the former task had been undertaken.

The proposal for a Victims’ complaints process:

41. As noted in *Focus*, the Victims’ Rights Act already sets out certain avenues for complaint. The present proposal is to make the suggested Victims’ Services Centre responsible for collecting and assessing complaints through a Victims’ Complaints Officer located at the proposed Victims’ Services Centre..

42. We have reservations about adding to the “complaints industry”, which can be a fairly non-productive use of limited funds, and about encouraging a “complaint mentality” by giving a “second victim” status to people who are already victims of crime. The desired objective of accountability would be much better served by codifying rights that reflect victims’ justice needs (including the four central needs neglected at present) and then making those rights enforceable – just as defendant’s rights are enforceable – eg through a Commissioner for Victims.

43. In addition:

- It will not be an “independent” complaints system, but only a “more independent” one – see para 66.

- The Complaints Officer will be able to ask any agency to apologise to the victim, and possibly to award costs against that agency. These remedies are presumably meant to give teeth to the Code of Practice but without independence they are unlikely to work.
- It is proposed that the Complaints Officer report annually to Parliament (para 71) but there is no proposal for the Victims' Services Centre itself to report to Parliament – presumably because it is not independent of the MoJ.

#### Improving victims' role in the criminal court:

44. We comment below on the proposals relating to restorative justice, but are pleased to see here (para 75) the acknowledgement that “many victims also want to talk about the offence with the offender”. The implications of this are not pursued in *Focus* but are to be found in the justice needs this submission has identified.

45. The proposal for greater communication between prosecutors and victims is problematic since, as is stressed at para 14, prosecutors do not represent the victim. A similar issue arose in the early days of the Youth Court, when the issue was whether prosecutors were bound by outcomes agreed to at a family group conference by a Youth Aid Officer (a member of the Police). It was held that the prosecutor was not so bound. The desirability of Youth Aid Officers playing their own part in family group conferences (where many of the victim's justice needs could be met) would be undermined if they were regarded as agents of the Officer in Charge of the case, or of the prosecuting officer in court. The officers in fact perform quite different roles. A prosecutor has to be free to represent the public interest.

46. The second and third proposals in para 76 (timing of information, and advice about name suppression) do not create any problems from a restorative justice perspective and would probably be helpful to victims.

47. *Focus* seeks comment on the view that victims' role in the criminal justice process cannot be expanded beyond their role as a witness, and that victims should not be forced to take roles they do not choose to play. We support the second view, and the response in *Focus* that their involvement must be entirely voluntary.

48. As to the first view, a distinction must be drawn between the trial process (ie deciding guilt where that is not admitted) and the sentencing process, which has always had inquisitorial aspects and involved other parties including victims. The existing independence of prosecutors and impartiality of the trial process can and should be maintained, but that does not stop important justice needs of victims being met through (a) an encouragement to admit offending, or (b) involvement of victims in processes such as restorative justice where that is consented to by both victim and offender. The resulting process has proved a far better way of meeting victims' needs, and is regarded by victims as much fairer than systems that exclude them. Offenders also benefit, as do sentencing courts which have the benefit of the additional information provided by the process.

#### The restorative justice section (4.4) of *Focus*:

49. We commend the insights expressed at para 105 and suggest that these are important justice needs of victims:

*Victims say that to experience justice they need to talk about the offence and its effects in a safe environment. They want to see the offender take responsibility and demonstrate accountability for his or her actions. Victims say they want to know what actually*



*happened, why it happened and, specifically, why it happened to them. Often the only person who can answer these questions is the offender.*

50. Easily recognisable here are the needs for truth-telling, information and vindication. Implicit in this paragraph is also the notion of empowerment. These needs are not confined to the restorative justice setting and deserve fuller recognition in *Focus*.

51. Section 4.4 correctly describes the process of restorative justice as it operates in the Courts. It does not however deal with the criticism sometimes made by victims that court-based restorative justice tends to be offender-focussed because the end point of the exercise is the sentencing of an offender. The Centre accepts that this criticism is valid in many cases, but points out that restorative justice can be made more victim-centred by providing for two outcome plans, one for the offender and one for the victim. Good plans will address the victim's needs in any event, to the extent that the offender or others involved in the conference can assist in meeting those needs. By requiring a plan for the victim the conference will be required to focus separately on the place of the victim and how their needs might be met.

52. A second way to make restorative justice more victim-centred is to enable it to be initiated by victims independently of a court prosecution. This would be possible with community-based conflict resolution centres of the type previously advocated for New Plymouth. The Centre can provide more advice on this aspect if requested. Such community centres could provide services both pre- and post-sentence, and whether or not any prosecution occurred at all. They could also play a role in public education about restorative justice, so that victims are able to access it.

Preliminary proposal 10 – referrals for restorative justice:

53. *Focus* seeks comment on the proposal that all eligible cases, where the offender has pleaded Guilty and before sentencing, be referred for investigation of restorative justice, unless there are specific reasons not to.

54. The Centre endorses the need for much greater use of restorative processes in order to meet victims' needs. It has already pointed out the failure of s 9 of the Victims' Rights Act to achieve that end, because of the lack of enforceability of the obligation to encourage victim-offender meetings. Certainly something further is needed. However there are limitations in what is proposed here.

- The term "eligible cases" is not defined, and is at risk of limiting the process to minor matters, or those that can be dealt with by the local provider group. International experience as well as the New Zealand pilot study has shown that the benefits of restorative justice are greater for more serious offending (eg offences of violence), because the harm caused, and the need for healing, are greater. Restorative justice in homicide cases and those involving accidental deaths can be especially helpful in meeting victims' needs. The former are less likely to occur before sentencing, as victims are unlikely to want to meet offenders so early (if ever). Provided the process is completely voluntary, we submit that it should be available in all cases.
- The requirement for a Guilty plea is a common part of restorative practice in court cases, as it ensures that the offender accepts responsibility for what has occurred. However restorative justice should be available before a plea is entered, provided the offender admits the offending. (This is a prerequisite to entering the police diversion scheme – a Guilty plea is not needed.) This would enable restorative processes to

occur earlier than at present, and thus reduce court processing loads; more importantly it provides a more meaningful timeframe for many victims. Finally, if diversionary conferences were available eg through conflict resolution centres, the courts need not be involved at all in many cases.

- The exception mooted, where there is “specific reason not to”, is likely to leave Judges or prosecutors (or officials) as “gatekeepers”, deciding which cases will go to restorative justice. That decision should be left to victims and offenders by making restorative justice available in any case where they both wish to follow that course, but not otherwise. The choice, and the power to make that choice, should be theirs alone. (A decision to take that course does not commit them to any particular outcome: they can still refuse to agree to any particular outcome.)

Preliminary proposal 11 – access to other programmes and services:

55. *Focus* seeks comment on the proposal that the restorative justice process should support access for victims to other social services and programmes in the community.

56. The Centre supports this proposal and offers these comments on how this proposal might be best implemented.

- One of the contributions that New Zealand has made to the international restorative justice movement is to show the value of community involvement in restorative conferences, so that they are more than “victim-offender” programmes. For example, best practice in family group conferences for young people involves the participation of relevant family and community people who may have some connection with the victim or offender and may be able to offer suggestions as to available resources for one or other party. This is also good practice in adult conferences, subject to the agreement of victim and offender. Good conference plans will typically have outcomes designed to assist the victim, the offender and the community. In the last category might be suggestions to remove certain hazards or dangers that were relevant in the instant case, or ways of improving relationships within the relevant community and so avoiding future conflict.
- Inviting one or two community representatives to take part in the conference will reduce or remove the problem identified in para 117 of *Focus* – that some providers may not be aware of relevant agencies.
- The suggestion we have already made at para 51 above for separate outcome plans for victims will also fit well with the intention that victims be connected with relevant agencies in their community. Part of the victim’s plan could be that s/he accesses those services. Alternatively a victim could be supported by such an agency at a conference.
- However we have a more basic suggestion, namely that part of the funding for restorative justice providers be used by them to build community networks so as to support the victim both before and after the conference. That is, providers should have a wider role than simply being conference facilitators. They need to have good community networks that can help support the parties outside of the conference.
- These objectives can easily be defeated by an unnecessary deference to “rights” of privacy, so that agencies are scared to share information with each other. What must be realised is that information can be used for the purpose for which it was gathered, and if those purposes are redefined so as to include collaborative action in support of victims then there should be no barrier to sensible information sharing with relevant

agencies, eg Victim Support, counselling networks, and so on. However this may take some positive encouragement.

#### Preliminary proposal 12 – restorative justice in other settings

57. Comment is sought on whether the proposed Victims' Services Centre should provide information and advice on restorative justice processes and how they may be implemented in environments outside the court process.

58. We oppose this suggestion, partly because of the defects already identified in the Victims' Services Centre concept, but also because the MoJ is not qualified to advise on restorative justice in other settings. Our Centre's Advisory Board has representatives from a range of sectors and disciplines. It is aware that restorative justice processes in schools, for example, involve very different considerations and expertise. An institution like the Restorative Justice Centre, removed from direct responsibility for any particular sector, is capable of providing advice in a range of settings, and does so. It is submitted that the experience and focus of MoJ is too narrow [is it that they are too narrow or are they conflicted as well??] to be able to perform that role.

59. There is a further danger in the suggestion, namely that it concentrates too much power in a government department for what should be a community-driven process. That balance already tilts too far in the direction of MoJ by virtue of concentration on restorative justice for sentencing purposes.

#### Preliminary proposals 13 to 23

60. These proposals deal with victim impact statements, referring additional victim information to the Court, and victim notification procedures. We have already commented on the limitations of Victim Impact Statements so far as they are relevant to restorative justice (paras 23-24 above), and have no further submissions to make on these topics. While they directly concern victims, restorative justice is not affected by them and there are others like Victim Support able to comment.

#### Preliminary proposal 24 – victims of child and youth offenders:

61. *Focus* seeks comment on the proposal that the Victims' Rights Act be amended so as it applies, where appropriate, to victims of child and youth offenders.

62. The basic point to be made here is that victims' needs are much the same whether the offender is an adult, a young person (14 – 16 inclusive) or a child (under 14 years). A meaningful Victim's Code that deals with their needs should apply to all types of offending. The Victims' Rights Act does not fulfil that function and applying it to children and young people's offending would give a false sense of progress in this field.

63. Further, specific harm may result from the proposal. For example police officers in charge of cases may suggest to victims that they need not attend the family group conference as they can supply a Victim Impact Statement instead. Amongst many front-line police officers (not Youth Aid officers), understanding of and support for restorative processes is not strong. Victims need information and support from an independent agency, such as Victim Support, not advice from an investigating police officer keen to write a Victim Impact Statement.

Signed for and on behalf of the Restorative Justice Centre, AUT University:

(Signed)

.....  
**Judge FWM McElrea**  
Chair, Restorative Justice Centre  
Advisory Board

A handwritten signature in blue ink, appearing to read 'David Wilson', with a long horizontal stroke extending to the right.

.....  
**David Wilson**  
Director, Institute of Public Policy