12 May 2015

The Hon Justice McClellan AM  
Chair  
Royal Commission into Institutional Responses to Child Sexual Abuse  
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Dear Justice McClellan

Submission from the CIJ –  
Innovative justice responses to sexual offending: pathways for victims and offenders

I write to congratulate you on the important work of the Commission, as well as to alert you to some recent work conducted by the Centre for Innovative Justice (CIJ) at RMIT University which, if you are not already familiar with, may inform the Commission’s ongoing deliberations.

Upon its establishment two years ago, the CIJ was asked by the Commonwealth Attorney-General’s Department to conduct four distinct projects concerning innovative justice. The second of these projects concerned innovative responses to sexual offending and the CIJ’s specific aim for this project was to develop a restorative justice conferencing model that would provide a roadmap for others to use.

This meant developing a clear process that was easy to follow. It also meant weighing up difficult issues, taking a victim-centred approach while balancing the community’s expectations of public denunciation, as well as the imperative to protect the rights of the accused. Ultimately, the model that we recommended is flexible, but retains significant checks and balances. It can be used as an alternative or addition to prosecution and can apply at any stage in the criminal justice process. This includes at the post-charge stage, but only when prosecution is not deemed viable. It is also not confined to any category of victim, offender or offence, as we considered that this would limit the options for victims.

Equally, we did not want to limit incentives for offenders to participate, recommending that admissions should be immune from use outside a conference, except where it becomes apparent that a person is at immediate risk. Jurisdictions should give further consideration to whether an offender’s participation should be recorded for the purposes of public safety schemes.

Basic eligibility and suitability criteria are suggested to assess whether a victim is adequately prepared and an offender’s participation genuine. Legislative support and structural oversight are also recommended, as is engagement of specialist personnel and an expert Assessment Panel. Pathways into and out of conferencing are laid out and gatekeepers, such as judges,
nominated to ensure that a conference is not pursued when prosecution would be more appropriate, or when a case is simply deemed too difficult. Links to appropriate sexual offender treatment programs are also addressed, as is the need for a coordinated, properly resourced system. Phased implementation is recommended so that jurisdictions can develop the required understanding and expertise.

Clearly, restorative justice conferencing will not be appropriate in every case. Many victims will not want to confront their offender or may consider prosecution to be their primary need. However, it is precisely the personal nature of a restorative justice encounter that can offer the redress that other victims seek. Answers to specific questions, an agreement about future contact or disclosure to family – outcomes such as this are intensely personal, with restorative conferencing far more likely to deliver them.

Many worry, of course, that extending restorative justice practices to sexual assault may undermine hard-won recognition of this crime or re-victimise participants. These are legitimate concerns which the CJ addresses in its Report. As the Commission will be well aware, however, we can no longer claim that the conventional system is working. While the CJ’s restorative justice conferencing model is designed for use in the context of individual, rather than institutional, offending therefore, I hope that the Commission may find it a useful blueprint to consider for application in broader settings.

Yours sincerely

Rob Hulls
Director