

LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

NOTICE OF MOTION

Dr Marisa Paterson MLA: I give notice that I shall move - That this Assembly:

1. Notes that:

- a. Within the ACT Government, there are a number of programs and initiatives underway to work towards making Canberra a restorative city.
- b. A 'restorative city' is based on the principles of 'restorative practice'. According to the 2019-2020 ACT Restorative City Vision, restorative practice is "*all about recognising that relationships are central to our wellbeing, community and society. Restorative practices can be used as a shared approach to problem solving based on equal respect, accountability and support.*"
- c. Restorative justice is a process used across the world as a process of independent, facilitated contact, which supports constructive dialogue between a victim and a person who has harmed, arising from an offence or alleged offence.
- d. Restorative justice can work alongside the criminal justice system, or as an alternative pathway to the formal criminal justice system. It is often noted that Restorative Justice offers a process that is empowering for victim-survivors of crime.
- e. The most common forms of restorative justice programs operating in Australian criminal justice systems are victim-offender mediation, conferencing (for both adult and young offenders) and circle sentencing.
- f. The ACT was the second jurisdiction in Australia to introduce restorative justice for prosecutable offences in 1994, primarily for youth offenders (aged 10-17 years old).
- g. Restorative Justice is legislated in the ACT through the *Crimes (Restorative Justice) Act 2004 (the Act)*. The Restorative Justice Unit (RJU) is part of the Justice and Community Safety Directorate and administers the Restorative Justice Scheme (Scheme) in collaboration with other referrers, including Courts, Policing, Corrective Services and Victim Support.
- h. The Act allows for less serious offences to be referred as a diversion or in conjunction with criminal charges. It limits the referral of serious offences to only after criminal proceedings have commenced and once the offender pleads or is found guilty of the offence.
- i. The current *Restorative Justice Act (2004)* applies to a serious offence committed by a young offender or an adult offender if the offender—
 - i. is charged with the offence; and
 - ii. either— pleads guilty to the offence;

- iii. or is found guilty of the offence (whether or not the offender is convicted or sentenced for the offence).
- j. Since 2018 the RJU has accepted referrals for cases of sexual assault and family violence. In order to be eligible for restorative justice, a matter currently must be referred to the Unit at some point along the criminal justice system journey, including at the point of police caution, in court at the pre-sentence stage, or post sentence.
- k. The 2021 Charter of Rights for Victims of Crime requires justice agencies to advise victim survivors at multiple points in the criminal justice system about their rights and options around accessing a restorative process.
- l. The needs of all survivors are diverse and multi-faceted and change over time. Work by advocates and survivor-led initiatives demonstrates a widely held desire for a restorative justice option.
- m. In cases of sexual assault, it is critical to have a survivor centred and trauma-informed approach to restorative justice.
- n. National Plan to End Violence Against Women and Children (2022) recommends including restorative justice as an option for survivors of sexual abuse and family violence.
- o. The 2021 *Listen. Take Action to Prevent, Believe and Heal* report noted that existing protections, designed to ensure family violence and sexual assault matters did not escape the oversight of the courts, limited victims' choices in when and how they can access a restorative justice option. It recommended expanding restorative justice processes to address this.

2. Further notes that:

- a. In response to the 2021 *Listen. Take Action to Prevent, Believe and Heal* report the Government will research and pilot an expansion of restorative justice processes for sexual violence. The ACT Government is committed to supporting the expansion of victim-survivor options to have their needs met in the aftermath of sexual violence, and as a result will engage a researcher to investigate what this could look like and what is happening in other jurisdictions, making recommendations to government about the best ways to do this.
- b. The ACT Government has also partnered with the Australian Institute of Criminology to perform a process and outcomes evaluation of the ACT Restorative Justice Scheme's operation with respect to family violence and sexual assault, including quantitative and qualitative methods.
- c. The ACT Attorney-General is commissioning a review of the ACT Restorative Justice Scheme, with terms of reference currently under development, noting that 2024 marks 20 years since the passage of the *Crimes (Restorative Justice) Act 2004*.

3. Calls on the ACT Government to:
 - a. in the work set out above, consider possible reforms including:
 - I) Amending the qualifying criteria to access restorative justice in the ACT;
 - II) Options for expanding restorative justice services as an alternative pathway to the criminal justice system;
 - III) The potential for community based restorative justice services in the ACT;
 - IV) Options for developing survivor-led and survivor-oriented restorative justice practices for sexual violence;
 - V) opportunities for greater awareness and education around access to restorative justice, what it means, and victims' rights in the ACT, and
 - b) Provide an update to the Assembly on progress of this work by the last sitting day of 2023.

M. Paterson

Dr Marisa Paterson MLA
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