



Legislative Assembly for the ACT

STANDING COMMITTEE ON EDUCATION, TRAINING
AND YOUNG PEOPLE

Inquiry into Restorative Justice Principles in Youth Settings - Interim Report

JUNE 2006

Report 3

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Resolution of Appointment

On the 7 December 2004 the Legislative Assembly for the Australian Capital Territory resolved to establish the Standing Committee on Education, Training and Young People to examine matters related to early childhood education and care, primary, secondary, post secondary and tertiary education and vocational training, non-government education, youth and family services, technology, arts and culture, sport and recreation.

Terms of Reference

On 22 February 2005, the Committee resolved to inquire into and report on the practice of restorative justice principles in youth settings, with particular reference to:

- The development and implementation of programs in schools, youth services and youth justice settings;
- Allocation of Government resourcing and its impact on the development and implementation of restorative justice programs;
- Strategies for involving young people in the development of programs;
- Programs to support young people and their families; and
- Any other related matter.

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SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1

3.25 The Committee recommends that all ACT training programs provide clear indicators of the potential risks for participants, the legal and ethical obligations of practitioners, and alternative strategies and support systems available.

RECOMMENDATION 2

5.38 The Committee recommends that the Department of Education and Training undertake a survey of ACT Government schools to determine in detail:

- ▢ those schools that have implemented restorative practice programs;
- ▢ the length of time restorative practice programs have been in use;
- ▢ how these schools have determined the impact and value of restorative practice programs; and
- ▢ those schools that are considering implementing restorative practice programs and the objectives they hope to achieve.

RECOMMENDATION 3

5.49 The Committee recommends that the Department of Education and Training provide guidelines for schools on the best evaluative measures for the expected outcomes identified by practitioners and academics.

RECOMMENDATION 4

5.50 The Committee recommends that the Department of Education and Training provide support to schools to undertake base-line evaluations prior to implementing restorative justice programs.

RECOMMENDATION 5

5.51 The Committee recommends that the Department of Education and Training consult with schools already using restorative practices to identify existing evidence, such as academic outcomes and attendance data, which can provide a general index of school culture over the long-term.

RECOMMENDATION 6

6.29 The Committee recommends that the Department of Education and Training consider the implications of staff mobility policies for the sustainability of school-based restorative practice programs currently in place.

RECOMMENDATION 7

6.42 The Committee recommends that a dialogue between restorative practice trainers and educationalists providing pre-service training be facilitated so that opportunities for complementary curriculum development can be maximised.

RECOMMENDATION 8

7.13 The Committee recommends that the review of the first phase of the *Crimes (Restorative Justice) Act 2004* should include an analysis of the demographic profiles of all eligible participants in the program including those who withdraw their consent.

RECOMMENDATION 9

7.22 The Committee recommends that the Review of the Crimes (Restorative Justice) Act 2004 include:

- ▢ an assessment of the implications for offenders who are not eligible for the program;
- ▢ the cost effectiveness of the program in delivering better outcomes for offenders; and,
- ▢ the impact of the program on the human rights of offenders.

RECOMMENDATION 10

7.30 The Committee recommends that the Government respond within the usual time-frame to the recommendations set out in this Interim Report of the Inquiry into Restorative Justice Principles in Youth Settings.

1 INTRODUCTION

Conduct of the Inquiry

- 1.1 At its meeting on 22 February 2005, the Committee resolved to conduct an inquiry into the practice of restorative justice principles in youth settings.
- 1.2 Submission were invited from a wide range of stakeholders via letter, and public notice advertisements appeared in the in *The Canberra Times* on Saturday 12 March 2005 and in *The Chronicle* on Tuesday 15 March 2005. Stakeholders were advised that public hearings would be held at a later date. Details of the inquiry were also advertised on the Legislative Assembly website.
- 1.3 The Committee wrote to relevant ministers in all State and Territory jurisdictions requesting details of any practice of restorative principles in their regions.
- 1.4 To date, the Committee has received 17 submissions. A list of submissions received appears at Appendix A.
- 1.5 Public hearings have been held on 7 and 9 December 2005, 24 February 2006 and 14 March 2006. The Committee has heard from 31 witnesses. Details of the public hearings appear at Appendix B.
- 1.6 During the course of the inquiry the Committee travelled to South Australia to examine the Restorative Practices in Schools Trial being conducted in Adelaide, South Australia. The Committee also visited Queanbeyan South Public School in NSW and Charnwood Primary School in the ACT as examples of schools that have included restorative principles in their everyday practices.
- 1.7 Details of the Committee's visits appear at Appendix C.
- 1.8 The Committee has also conducted research into the state of knowledge and current application of restorative justice principles in national and international contexts.
- 1.9 The Committee is grateful for the contribution that has been made to the inquiry by those who have provided submissions and those who have appeared as witnesses.

Practising Restorative Justice Principles in the ACT

Current status

- 1.10 The Committee is aware that there has been significant innovation in the practice of restorative justice principles over recent years.
- 1.11 Following an extensive review of sentencing in the ACT¹, the *Crimes (Restorative Justice) Act 2004* was passed to allow 'criminal justice agencies to consider restorative justice before considering other action.'² The goal of the Act is to facilitate the restorative justice principle of 'repairing the harm' done to victims of criminal offences.
- 1.12 As well as this development in criminal justice settings, the Committee was also advised about the application of these principles in the area of child protection through the use of family conferencing models and in educational settings through the use of restorative practice models. More broadly, there is also an application of restorative justice principles in training of personnel working in areas of potential conflict or disagreement.³
- 1.13 Since 2003, the ACT has experienced a growth in the number of schools adopting restorative justice principles – most often referred to as restorative practices in these contexts - in their everyday activities. The goal in educational settings is to improve the capacity of students for respectful behaviour and their readiness for learning. The Committee was informed that approximately forty public and private schools in the ACT are currently using restorative principles in a range of ways.⁴
- 1.14 Training in restorative justice principles in these settings is being provided on a school-by-school basis by a number of expert consultants who have national and international reputations in this field. The Committee has heard from a number of these individuals during the inquiry.

¹ See ACT Department of Justice and Community Safety (2002) *Sentencing Review Issues Paper*, accessible at < <http://www.jcs.act.gov.au/eLibrary/contents.html> >

² Minister for Children, Youth and Family Support, *Submission no. 8*, June 2005, p. 4.

³ Australian Institute of Affective Practice, *Submission no. 7*, May 2005.

⁴ Circle Speak, *Submission no. 4*, May 2005, p. 8.

- 1.15 The ACT is also home to the Restorative Justice Centre at the Australian National University. This Centre conducted a trial, known as the Reintegrative Shaming Experiments (RISE) project, which was implemented in partnership with the Australian Federal Police. Beginning in 1995, the project 'involved the random assignment of admitted offenders either to prosecution through the courts in the usual way or to a restorative justice "conference"'.⁵ Outcomes from this trial for participants continue to be monitored and the model has been replicated in other parts of the world. The Committee heard from one of the lead researchers involved in the RISE project.
- 1.16 On the basis of the submissions received and the evidence heard, the Committee perceives that there are potential benefits for young people in the use of restorative justice principles in a range of settings. However, the Committee is also aware that confirmation of this potential from a policy-making perspective requires monitoring over a substantial period of time.
- 1.17 The Committee also notes that the Restorative Justice Unit in the Department of Justice and Community Safety will commence a review of the implementation of restorative justice principles in criminal justice settings in mid-2006.

Review requirements

- 1.18 There is a legislative requirement to commence a review of the operation of restorative justice practices in the criminal justice setting within eighteen months of enactment of the *Crimes (Restorative Justice) Act 2004*.⁶
- 1.19 In anticipation of this review, the Committee resolved to defer final reporting on the inquiry until the outcomes of the review are known. However, the Committee notes that the application of restorative principles in educational (and other youth) settings will not be included in the review to be undertaken by the Restorative Justice Unit.
- 1.20 The Committee is aware that implementation of restorative justice principles in educational settings is progressing quickly on an *ad-hoc* basis. The Committee is not aware of any proposals to review this implementation process at a systemic

⁵ Centre for Restorative Justice, ANU, *Submission no. 1* March 2005, p. 1.

⁶ See section 75.

level, yet any accommodation of these practices within Government policy and planning frameworks requires an evaluation.

- 1.21 The interim report outlines the evidence presented to the Committee during the inquiry and offers some recommendations to initiate a policy evaluation process.
- 1.22 At present, the evidence base that could sustain a policy and planning framework for service delivery in youth settings is largely anecdotal or the positive outcomes that are reported cannot be isolated from other possible factors generating improvements. While there is enthusiasm within the community of interest, the potential benefits remain unknown to the broader community and unquantified for policy makers.
- 1.23 The Committee is aware that the opportunity to establish and develop such an evidence base will not occur without the development of capacity within administering agencies.
- 1.24 The Committee perceives that there is a significant gap in the support provided to the community of interest in the ACT that impedes potential progress with these ideas and practices. There is a need for Government support for:
 - the identification and collection of appropriate evaluation data;
 - the development of a data-base of evidence;
 - the codification of good practice (particularly in settings providing government services to the public);
 - the dissemination of information and support for the development of a common language between practitioners;
 - the sharing of good practice models between different sectors (such as the public and private school systems);
 - the establishment of capacity for liaison between government agencies (particularly between the Restorative Justice Unit in the Department of Justice and Community Safety, the Department of Education and Training, the Office of Children, Youth and Family Support in the Department of Disability, Housing and Community Services), and
 - liaison between practitioners in public, private and community-based settings, including the Catholic Education Office, Australian National University researchers and training organisations.

Purpose of the interim report

- 1.25 At its meeting on 7 February 2006, the Committee resolved to produce an interim report so that recommendations about the need for coordination of the current level of activity could be made.⁷ The Committee is of the view that some level of Government commitment is required immediately to sustain the current level of restorative practice in educational settings in the ACT and to allow for the collection of evidence upon which policy determinations can be made.
- 1.26 The principle focus of this interim report is on the coordination needed to establish and sustain the collection of data for a viable evidence-base.
- 1.27 The interim report provides a brief overview of activity in the ACT context based on submissions, testimony at public hearings and research undertaken by the Committee. Chapter 2 provides some introductory background information. Chapter 3 briefly outlines practices in youth justice settings. Chapter 4 considers practices that are established in school settings. Chapter 5 explores some of the policy implications that emerge from current practices. Chapter 6 briefly notes practices emerging in child protection settings. Chapter 7 provides some input for the up-coming review of the Crimes (Restorative Justice) Act 2004.
- 1.28 The final report of the inquiry will be deferred until the review of the *Crimes (Restorative Justice) Act 2004* has been completed and tabled in the Legislative Assembly. The Committee also hopes that by this stage, more ACT data will be available for the Committees' ongoing work in this area. The Committee will continue to observe the implementation of restorative justice principles in other jurisdictions and will investigate the views of specific population groups within the community.

⁷ Standing Committee on Education, Training and Young People, Meeting no. 30, 7 January 2006.

2 BACKGROUND

Definitions and debates

- 2.1 Restorative justice is a developing field of knowledge and practice that responds to a genuine community concern that the behaviour management or discipline strategies used in many youth settings are limited in the outcomes they can deliver. It also builds on the belief that punitive solutions to difficult social behaviour can compound, rather than resolve, points of conflict.
- 2.2 By seeking means to repair the harm done as a consequence of an event that has caused offence, restorative justice principles promote concepts of inclusion and resolution for all affected individuals.
- 2.3 The ideas, practices and possibilities associated with restorative justice principles hold great potential for those who endorse them.
- 2.4 For Sherman and Strang, who began evaluating the ACT-based Reintegrative Shaming Experiments (RISE) project in 1995, the aim of these restorative justice trials is 'to learn whether a new kind of justice can change people's lives for the better, with long-term effects.'⁸
- 2.5 The ACT Government submission noted that 'restorative justice principles can be a valuable tool for creating a harmonious environment in places notorious for challenging behaviour.'⁹
- 2.6 The Committee has been offered a number of working definitions of restorative justice during the course of this inquiry, including:
- 2.7 **Restorative principles -**
-

⁸ Sherman, Lawrence & Heather Strang (2004) *Restorative Justice: What We Know and How We Know It*, accessible at www.sas.upenn.edu/jerrylee/rjWorkingPaper1.pdf p. 2.

⁹ Minister for Children, Youth and Family Support, *Submission no. 8*, June 2005, p. 1.

new values [which]... stress healing over punishment, reconciliation over anger, and reintegration over rejection.¹⁰

2.8 Restorative justice -

Restorative justice is a broad term that describes a range of interventions that seek to have offenders take responsibility for their crime, the impact it has had on others, to explore that harm and together with the people they have harmed and their significant others decide what needs to happen to repair the harm. Victim offender mediation, circles (peace making, sentencing, healing, pre-release etc) and conferencing are the better known restorative processes.¹¹

2.9 While noting the historical origins of restorative justice principles in diversionary conferencing and other post-conflict interventions, a number of submissions to the Committee identified the “victim/offender” binary as a limitation to understanding the full potential of these ideas to inspire and empower those involved.¹²

2.10 Restorative practices -

Restorative practices describes the broad range of practices that are restorative in nature. These range from the formal to the informal range of practices to deal with conflict and disruptions in schools and other settings involving young people. The same principles apply, except the focus shifts much more towards strengthening relationships and repairing harm at the lower level.¹³

¹⁰ Sherman, Lawrence W. & Heather Sran (2004) “Restorative Justice: What We Know and How We Know It” *op. cit.* p. 3.

¹¹ Circle Speak, *Submission no. 4*, May 2005, p. 4.

¹² *Submissions nos. 4, 6, 7 and 16.*

¹³ Circle Speak, *Submission no. 4*, May 2005, p. 4

Contexts and outcomes

- 2.11 A number of witnesses and submissions to the inquiry proposed, or advocated for, a broader definition of restorative justice as more appropriately reflecting the intent and potential of these principles to change institutional cultures.

In an education setting, restorative practice provides us with another strategy – a whole-school-approach strategy – to support children and young people in learning environments.¹⁴

The distinction that I would make between “restorative justice” and “restorative practice” is that the initiative that we emphasise is a preventative approach. That is about developing a culture within schools that is a positive and supportive environment for everyone within that school environment.¹⁵

- 2.12 Restorative justice principles are consistent with early intervention and prevention strategies by seeking to divert individuals or groups from known pathways of criminal or problematic social behaviour. They are also consistent with mediation practices and discursive solutions to conflict. Restorative justice principles promote inclusive processes and seek to deliver consensus where there may otherwise have been conflict and division.
- 2.13 From the evidence presented so far, the Committee finds a broad spectrum of views about what constitutes restorative justice practice and the potential role these principles should play in youth settings in the ACT. However, these differences consistently reflect the different contexts in which restorative justice principles are applied.
- 2.14 In youth justice settings, the aim is understood to be an improvement in outcomes for victims and offenders with the agreed objectives to:

¹⁴ Dr Bruniges, *Proof Transcript of Evidence*, 7 December 2005, p. 1.

¹⁵ Ms Melsom, *Proof Transcript of Evidence*, 7 December 2005, p. 2.

- Reduce recidivism rates in “offender” groups; and
- Reduce victim dissatisfaction with criminal justice processes.

2.15 In school and youth services settings, the aims are at this stage less clearly defined but involve non-punitive behaviour management approaches and life skills programs for young people. The Committee did not find clearly defined objectives in the implementation of restorative justice principles in these settings but understands that practitioners prioritise the:

- Enhancement of existing behaviour management practices; and
- Development of explicit facilitation practices that improves outcomes for all involved.

2.16 The next three chapters provide an overview of the aims and objectives of restorative justice principles being pursued in justice settings, child protection activities and schools.

3 JUSTICE SETTINGS

Improving outcomes for victims and offenders

- 3.1 The aims and objectives of restorative justice programs in criminal justice settings reflect the origin of the ideas and principles that underpin these practices and the context in which they emerged.
- 3.2 In Australia, the first restorative justice conference was facilitated by Terry O'Connell in 1991 and came to be known as the Wagga model. This model, also known as the community accountability model¹⁶, has been very influential internationally.
- 3.3 The Wagga model supports police facilitated conferencing and has been a major influence in the development of ACT practices. Other jurisdictions also use the New Zealand model of conferencing which does not involve facilitation by a police officer. According to Luke and Lind, the theoretical difference between these two models emerges from the centrality given to the concept of "reintegrative shaming" (as developed by John Braithwaite in this book *Crime, Shame and Reintegration*¹⁷) to the conferencing processes involved. The Wagga model locates this concept more centrally than the New Zealand model.¹⁸
- 3.4 Restorative justice conferencing can be seen as either a supplement or an alternative to the criminal justice process.¹⁹ Restorative justice conferences can form a part of, or an alternative to, a formal caution process or they can form the basis for a court diversion strategy. Most jurisdictions, with the exception of

¹⁶ Circle Speak, *Submission no. 4*, May 2005, p. 4.

¹⁷ Braithwaite, John (1989) *Crime, Shame and Reintegration*, Cambridge University Press, Cambridge.

¹⁸ Luke, Garth and Bronwyn Lind (2002) "Reducing Juvenile Crime: Conferencing versus Court", *Crime and Justice Bulletin no. 69*, NSW Bureau of Crime Statistics and Research, p. 2. Accessible at <<http://www.lawlink.nsw.gov.au/bocsar>>

¹⁹ Sherman, Lawrence & Heather Strang (2004) "Restorative Justice: What We Know and How We Know It" *op. cit.*, p. 4.

Victoria, have introduced legislation that formally authorises the restorative justice practices being used in justice settings.²⁰

- 3.5 Demonstrating the potential of restorative justice interventions to change outcomes in the criminal justice system has been the objective of a several ACT based research projects, including a number of randomised control trials. Including the ACT projects, there are 25 ongoing tests being conducted internationally - most in the early stages.²¹

ACT restorative justice projects

- 3.6 The ACT based RISE Project is the longest-running in the series of international trials and a three year follow-up of participants has already shown some complicated, sometime contradictory, results.
- 3.7 In short, the RISE programs indicate that:
- Reoffending was statistically significantly higher in the juvenile property experiment when compared with the control group dealt with in courts;
 - Reoffending was statistically significantly lower in the juvenile violence experiment when compared with the control group dealt with in courts; and
 - Reoffending was the same in the juvenile shoplifting experiment as the control group dealt with in courts.²²
- 3.8 The evaluation also indicates considerable benefits for “victims” with the evaluation indicating that:

²⁰ Daly, Kathleen and Hennessey Hayes (2001) “Restorative Justice and Conferencing in Australia,” *Australian Institute of Criminology Trends and Issues no. 186*: Canberra, p. 2. Accessible at <http://www.aic.gov.au/rjustice/aic.html>

²¹ See http://www.sas.upenn.edu/jerrylee/research/rj_jlc_rct.pdf

²² Dr Strang, *Submission no. 1*, March 2005.

- Victims in the RJ group were significantly more satisfied because they experienced a higher level of emotional restoration than those whose matter was dealt with in the courts.²³

3.9 Appearing before the Committee, Dr Strang noted:

With offenders the picture was less straightforward and we are still trying to unravel the results that have emerged relating to reoffending as the principal outcome measure of the success of restorative justice relative to normal court processing...[W]e got some extremely encouraging results relating to young violent offenders. That was offset by some very disappointing results relating to property offenders. There were some subgroup differences, too, especially around Aboriginal offenders criminal reoffending data, which was in fact much higher for those who went to restorative justice among the Aboriginal youth and those who went to court.²⁴

3.10 The Committee understands the long-term nature of the evaluations being conducted as a part of the RISE project and perceives that there are some contradictory results emerging from similar trials in the United Kingdom.²⁵

3.11 The Committee also understands that there are a number of possible reasons for the troubling variation in the experiences of indigenous youth but that these are not yet clear for the researchers. The Committee notes that there have been successes in other jurisdictions with indigenous courts as an alternative to traditional models.²⁶

3.12 In the ACT, the Ngambra Circle Sentencing Court project has applied such a model with success. The Ngambra court has been running for two years with no reoffending by the participants who have completed the process to date. The Committee intends to consult more extensively with ACT Aboriginal communities to seek some clarification about these experiences.

²³ *ibid.*

²⁴ Dr Strang, *Transcript of Evidence*, 14 March 2006, pp. 132-133.

²⁵ Sherman, Lawrence & Heather Strang (2004) "Restorative Justice: What We Know and How We Know It", *op. cit.*

²⁶ Marchetti, Elena & Kathleen Daly (2004) Indigenous Courts and Justice Practices in Australia," *Trends and Issues in Crime and Criminal Justice* no. 277, Australian Institute of Criminology, Canberra.

- 3.13 The Committee also notes that the Restorative Justice Unit is actively liaising with indigenous communities and looks forward to some indications of improvements in practice in the forth-coming review of the *Crimes (Restorative Justice) Act 2004*.
- 3.14 On the other side of the equation, the level of victim satisfaction afforded by restorative justice conferencing has been consistently high (as noted in the RISE project) and has generated considerable interest and commitment to the introduction of these processes into the justice system.

Crimes (Restorative Justice) Act 2005

- 3.15 The ACT Government's commitment to improving outcomes for victims of crime has been embedded in the *Crimes (Restorative Justice) Act 2005*, with the objectives being:
- to enhance the rights of victims of offences by providing restorative justice as a way of empowering victims to make decisions about how to repair the harm done by offences;
 - to set up a system of restorative justice that brings together victims, offenders and their personal supporters in a carefully managed, safe environment;
 - to ensure that the interests of victims of offences are given high priority in the administration of restorative justice under this Act;
 - to enable access to restorative justice at every stage of the criminal justice process without substituting for the criminal justice system or changing the normal process of criminal justice;
 - to enable agencies that have a role in the criminal justice system to refer offences for restorative justice.²⁷
- 3.16 A Review of the Act will be conducted in mid-2006 and, as had already been noted, the Committee has resolved to consider the outcomes of the Review before finalising the inquiry.

²⁷ *Crimes (Restorative Justice) Act 2005*, Part 2 s.6. accessible at <<http://www.legislation.act.gov.au/a/2004-65/default.asp>>

- 3.17 Chapter 7 of this interim report provides some indication of the issues that the Committee is interested in clarifying following the review.

Conferencing models in non-judicial settings – some concerns

- 3.18 Restorative justice conferencing has also been applied in other, non-judicial youth settings in Australia. The first community conference in a school setting was held in Queensland in 1994 to ‘repair the harm of a serious assault after a school dance.’²⁸
- 3.19 However, the need for caution in using restorative justice principles in non-judicial settings at the high-conflict end of the spectrum was a message heard from a number of witnesses and indicated in a number of submissions to the inquiry.²⁹
- 3.20 The ACT Victims of Crime Coordinator cautioned the Committee about the need for a
- clear understanding of those incidents that should be reported to police (and might therefore be considered within the restorative justice framework of the criminal law), and those incidents which may not constitute a criminal offence.³⁰
- 3.21 Ms Holder reported that in her experience there have been cases where schools or colleges have attempted to mediate or resolve incidents that involved criminal offences and would have in any other settings been dealt with accordingly.³¹
- 3.22 The Committee did not hear other evidence of this experience but agrees that the inappropriate application of restorative justice principles should be avoided. The Committee notes that, at a minimum, the use of these methods to resolve complex social incidents requires careful consideration of broader legal obligations, clear process guidelines and most probably the use of a professional facilitator.

²⁸ Cameron, Lisa & Margaret Thorsborne (undated) “Restorative Justice and School Discipline: Mutually Exclusive?” www.restorativepractices.org/library/schooldisc.html accessed 27 March 2006.

²⁹ *Transcript of Evidence*, 9 December 2006, pp. 59-69; 14 March 2006, pp. 140-149; Submission 17;

³⁰ Victims of Crime Coordinator, *Submission no. 17*, March 2006.

³¹ *ibid.*

- 3.23 Dr Nielsen put the issue slightly differently noting that the general application of restorative justice principles in educational settings;

is well supported already, because it is to do with conferencing skills, constructivist principles and working with kids. I think that the other end of the continuum is more contentious, and that is why we need a little bit more research as to clarifying the dangers highlighted in terms of the difficulty that is involved in going into high-conflict resolution situations and having those more therapeutic elements to the conflict resolution.³²

- 3.24 The Committee notes that there are a number of potential risks that could be avoided with clear guidelines and referral processes to legal, enforcement, health and therapeutic support services.

RECOMMENDATION 1

- 3.25 **The Committee recommends that all ACT training programs provide clear indicators of the potential risks for participants, the legal and ethical obligations of practitioners, and alternative strategies and support systems available.**

Restorative justice continuum – from restitution to prevention

- 3.26 Other contributors to the inquiry emphasised the broad spectrum of restorative justice practices extending beyond the resolution of conflict between “offenders” and “victims”. Mr Casey suggested that a focus on incidents where harm or conflict has occurred:

tends to produce a mindset that Restorative Justice is something to be applied when things go wrong: a process in which people are brought together around a particular instance of criminality or inappropriate behaviour.³³

³² Dr Nielsen, *Transcript of Evidence 9 December 2006*, p. 62.

³³ Australian Institute of Affective Practice, *Submission 7*, May 2005, p. 4.

- 3.27 While, the resolution of harm and conflict has been an important part of the restorative justice story, Mr Casey and others advocate for an understanding of the continuum of practice inspired by restorative justice principles. The objectives of these practices include:
- promotion of facilitation techniques that encourage trust, inclusion and self-reflection;
 - an enhancement of behaviour management techniques;
 - the provision of a catalyst for schools to review their behaviour management policies; and
 - the development of life skills that enhance awareness of personal behaviour.
- 3.28 These broader objectives are clearly reflected in the implementation occurring in child protection activities and school settings and are discussed in chapter 4 and 5.

4 CHILD PROTECTION

Family Group Conferencing

- 4.1 Family Group Conferencing refers to a range of activities that involve the families of children in the planning for their care and protection. The model originated in New Zealand with the intention of locating decision-making processes about state interventions into family life within the community most affected by these decisions.
- 4.2 At present in the ACT, family group conferencing is a prescribed activity set out in *Children and Young People Act 1999*. As a consequence, family group conferencing is a formal procedure initiated as required by the Chief Executive.
- 4.3 The Committee was advised by the Office of Children, Youth and Family Support that this family group conferencing

sits really at the edge of the care and protection system. Care and protection workers feed into it. It provides those staff with an opportunity to attend, facilitate and get an outcome that, without that intensive work on bringing people together, wouldn't otherwise occur.³⁴

- 4.4 However, this model is being reviewed – through the work of the Institute of Child Protection Studies at the Australian Catholic University – to ascertain whether a more flexible model of conferencing might expand the application of restorative principles in this area of work. The value of less formal processes undertaken earlier in the continuum of child protection is being assessed. The Office of Children, Youth and Family Support is interested the application of restorative justice principles in a range of family support settings which might include:

³⁴ Mr Wyles, *Transcript of Evidence*, 7 December 2006, p. 16.

family meetings, family group conferencing, family mediation and, perhaps for the indigenous community, circle sentencing which is culturally more appropriate to their needs.³⁵

- 4.5 Other jurisdictions use family group conferencing models in their child protection work as 'an effective way to involve families in planning, focus on family strengths, build positive relationships between workers and families, promote a child centred focus.'³⁶ In South Australia, Queensland and Tasmania the use of family group conferencing is mandated.
- 4.6 The Committee looks forward to hearing more about these potential developments building on restorative justice principles to expand the effectiveness of early intervention and prevention options in this difficult area of social work.

³⁵ Mr Wyles, *Transcript of Evidence*, 7 December 2006, pp. 15 – 16.

³⁶ Minister for Employment and Youth Affairs, *Submission no. 11*, June 2005.

5 SCHOOL SETTINGS

Managing behaviour and empowering students

- 5.1 In the school context, restorative justice principles provide an alternative theory for behaviour management that moves away from the punitive measures that were associated with corporal punishment and school expulsion or suspension practices.
- 5.2 According to Cameron and Thorsborne, the use of restorative justice principles fit with other reforms begun in the 1990s. From this time, educationalists began to consider student's motivations and responses to traditional forms of punishment, observing that:
- punishment makes one think only of oneself rather than the consequences of one's behaviour;
 - rapid escalation to punishment makes young people more angry than thoughtful;
 - if the goal of any intervention is to instil a sense of community and relational thinking, then isolating someone (as in suspension and exclusion) is exactly the worst way to achieve it.³⁷
- 5.3 Cameron and Thorsborne also note the historical analysis of the behaviour management practices in school by Roger Slee suggesting that suspensions and expulsions simply replaced corporal punishment without any shift in theoretical paradigm that rationalised school-based behaviour management in the first place.³⁸
- 5.4 Educationalists using restorative justice principles in school settings advocate these principles as the foundation for a new theoretical paradigm for behaviour management, observing that these principles:

³⁷ Cameron & Thorsborne (undated), www.restorativepractices.org/library/schooldisc.html)

³⁸ *ibid.* See Roger Slee (1995) *Changing Theories and Practices of Discipline*. London: The Falmer Press.

- provide a cultural change catalyst for schools to review their behaviour management aims and objectives; and
- are consistent with life skills development methods that enhance children's personal awareness of their behaviour, motivations and responses.

5.5 As Mr Casey explained to the Committee:

The restorative framework views inappropriate behaviour not so much in terms of rule breaches but rather in terms of the harm done and the effect on relationships.³⁹

5.6 The idea that restorative justice principles could enhance behaviour management practices reflects an alternative to traditional methods of discipline used with young people. This activity is often referred to as *restorative practice* to distinguish it from formal processes in the justice system.

Restorative practice

5.7 The broad value of restorative practice, as way to shift away from punitive behaviour management approaches, was affirmed by many of the witnesses and submissions to the inquiry.

5.8 The Youth Coalition of the ACT notes that:

Rather than focussing solely on dealing with individual incidences of harmful behaviours, the process of implementing restorative justice principles provides schools with a valuable opportunity to look holistically at how they are operating as a community, to revisit principles of democracy and justice and teach young people valuable life skills [in] schools. In particular, schools have an opportunity to create a community where young people are not subjected to bullying and harassment and instead supported by flexible delivery options, understanding and awareness of the issues they are facing and access to appropriate community services.⁴⁰

5.9 The ACT Council of P&C Associations also notes that:

children should be given an education that will promote their general culture and enable them on a basis of equal opportunity to develop their

³⁹ Australian Institute of Affective Practice, *Submission no. 7*, June 2005, p. 7.

⁴⁰ The Youth Coalition of the ACT, *Submission no. 6*, May 2005, pp.13-14.

abilities, their individual judgment and their sense of moral and social responsibility to become useful members of society. We believe that the practice of restorative justice contributes to those points.⁴¹

- 5.10 Several witnesses and submission articulated support for understanding the practice of restorative principles within a broad continuum. While restorative practice might be introduced ostensibly for the management of behaviour in school settings, many witnesses also stress an important component of implementation was to make the techniques and processes clear and meaningful for all involved.

Developing awareness and capacity

- 5.11 Mr O'Connell, who was involved with the development of the original Wagga conferencing model and more recently has been working in schools with teachers, children and parents, explained the development of his own practices over many years, when he observed that:

the idea of developing restorative conferences in schools would generate a lot of excitement, but it hit me that that really was not the issue—it was not about how you dealt with critical issues—the issue for me was how we develop an environment, a way of relating, that incorporates the elements of restorative practice and, as we call it, a way of being.⁴²

- 5.12 From this perspective, the aim of restorative practices extends to the development of personal skills and strategies that can be readily applied in a range of social settings.

- 5.13 For this reason, Mr O'Connor observes:

We need to concentrate on those things that promote and maintain wholesome behaviour, and at the heart of that are strong and wholesome relationships. This is really important. Restorative processes are only important if they help us repair and strengthen relationships. While ever restorative is construed as an application to be used when something goes wrong, or classified and measured in its application in terms of whether some kind of victim-offender process is reached, regardless of the best intentions, it's always going to be an add-on.⁴³

⁴¹ ACT Council of Parents and Citizens Associations, *Transcript of Evidence*, 24 Februaury 2006, p. 70.

⁴² Mr O'Connell, *Transcript of Evidence*, 24 February 2006, p. 104.

⁴³ Mr O'Connell, *Transcript of Evidence*, 24 Februaury 2006, p. 125.

- 5.14 As the use of restorative practices in school settings has been described to the Committee, the effectiveness of these practices is often measured by the capacity of all involved to understand and use the principles to respond to, or even avoid, conflict.

Measuring impacts and effects

- 5.15 Dr Brenda Morrison, an Australian National University researcher, undertook a detailed analysis of an implementation model in the ACT and published the results in 2002.
- 5.16 The program evaluated by Dr Morrison was the “Responsible Citizenship Program” which was trialed in one ACT public primary school. The Program’s acronym (RCP) reinforces the core principles of respect, consideration and participation used throughout the program and students learn concepts to support positive resolutions to situations of conflict.
- 5.17 In the case discussed by Dr Morrison, a curriculum was developed for Year 5 students who attended ten one-hour workshops provided by two independent facilitators. The concepts were introduced to students and application techniques were developed through the production of a video-play. In total thirty 10-11 year old students participated and outcomes were evaluated using qualitative and quantitative methods throughout the five-week program.
- 5.18 Dr Morrison’s evaluation highlights two measures in particular:
- Students’ feelings of safety within the school community; and
 - Students’ use of adaptive and maladaptive shame management strategies.⁴⁴
- 5.19 Measured on a scale from 1 to 4, the student’s feelings of safety increased from 2.9 to 3.8 over the period. Dr Morrison acknowledges the difficulty in excluding other variables for this measure. Of the later, responses to four hypothetical scenarios indicated a shift from 83 per cent to 87 per cent of students using adaptive shame management skills.⁴⁵

⁴⁴ Morrison, Brenda (2002), “Bullying and Victimization in Schools: A Restorative Justice Approach” *Trends and Issues in Crime and Criminal Justice* No. 219, Australian Institute of Criminology: Canberra, p. 4.

⁴⁵ *ibid*, p. 4.

- 5.20 Dr Morrison suggests that the most significant impact occurred with decrease from 33 to 20 per cent of student feeling 'rejected from others following wrongdoing.' According to Dr Morrison, 'the results are encouraging, as students' shame-management skills became less maladaptive.' Student behaviour was also comprehensively evaluated against the RCP principle and in all measure a significant increase was discernable. Dr Morrison concludes that the 'emphasis on behavioural education rather than control goes a long way to achieving behavioural compliance.'⁴⁶

Learning to sustain restorative practices

- 5.21 Mr Ross (the principal from Charnwood Primary School where restorative practices have been used for approximately three years) advised the Committee that teaching programs, consistent with restorative justice principles, are being used to support children's learning in the class room. Charnwood uses a program called "You Can Do It" which seeks to develop the academic, intellectual, interpersonal and emotional potential for all children. According to Mr Ross, this program reinforces the restorative values already practiced in the school.⁴⁷
- 5.22 In the Charnwood experience, the capacity of school students to understand and use restorative principles has meant that the restorative practice occurs at a more immediate level – often before disagreement can escalate. Teachers value the language and social skills learned by students in both playgrounds and classrooms. Here the aims and objectives of restorative justice principles have been measured by the capacity of the restorative framework to establish a common facilitation practice that nurtures openness and inclusion, trust and respect between all members of school.
- 5.23 While most submissions and witnesses to the inquiry which focused on school settings, noted the value of restorative practices in resolving conflict, they also emphasised the importance of these interactions as opportunities to build trust, understanding and communication skills between all participants including

⁴⁶ *ibid*, p. 5.

⁴⁷ Mr Ross, *Transcript of Evidence*, 9 December 2005, p. 6. More information about this program can be found at [<http://www.youcandoit.com.au/>]

facilitators. According to Mr O'Connell, the important component in this mix is an explicit process that everyone can understand and use.⁴⁸

- 5.24 In schools where restorative practices are in everyday use, the Committee was informed that the combination of both these components – reduced conflict and improve facilitation practices - has been empowering for all involved.
- 5.25 The Committee visited a number of schools using restorative practices in the ACT and other jurisdictions and was consistently impressed by the success stories told.

Restorative Practices to sustain learning

- 5.26 Queanbeyan South Public School, for instance, implemented restorative practices in 2003 following an eighteen month review. There were considerable discipline problems and in a six month period over half the teachers had been physically assaulted. Restorative practices are one of a number of measures that have been introduced to change poor outcomes. Staff report indicators such as a reduction in the number of detentions from 20 or 30 children to just one or two. Restorative practices have given members of the school community ways to de-escalate conflict situations.
- 5.27 Similar changes were reported at Charnwood Primary School. Mr Ross informed the Committee that:

In any situations where there is conflict between two human beings, we use our restorative practices to solve those problems...We aren't practising it as much as we were early on. The simple fact is that we are not doing as many of the conferences. We are doing a lot of low-level conferences to resolve issues before they blow up.⁴⁹

- 5.28 In the Charnwood example, awareness of restorative practices has improved effective facilitation capacity within the school community and has resulted in a decrease in the number of formal conferences required. Other indicators noted by the school include a reduction in the use of the "recovery room" (a recess and lunch-time space where difficulties can be resolved) and a dramatic reduction in the need for school suspensions.

⁴⁸ Mr O'Connell, *Transcript of Evidence*, 24 February 2006, p. 105.

⁴⁹ Mr Ross, *Transcript of Evidence*, 7 December 2005, p. 6.

- 5.29 Other anecdotal evidence about the effectiveness of restorative practices would seem to confirm value for the whole school. Ms Rockcliff from the ACT Council of P&C Associations advised the Committee that while preparing for their attendance:

One staff member said that in 85 per cent of cases the same student didn't reoffend for the same issues necessarily – they might do other things but it wouldn't be a repetition of exactly the same behaviour.⁵⁰

- 5.30 Case studies from restorative schools were also offered as verification of the effectiveness of these techniques for improving aspects of everyday practice within the school. For instance:

We had a conference the other day where a year 3 girl ran the conference for a relief teacher on the playground. Another child had come up and said, "I need a conference." The relief teacher said, "What's that?" A child who was nearby came up and said, "I'll show you." They got the two children who were involved and she ran the conference. At the end of the conference, they both had a resolution. She said to the two of them, "Let's go and play." The kids know the process well enough that children are able to run conferences.⁵¹

- 5.31 At another school, Ms Ballantyne recalled the story of one, recently graduated teacher who;

went to the restorative practices training, one-day training earlier in the year... —she came back after that day and said, "Wow!" The first thing she said to me was: "Wow! That is going to make it so much easier." We went through different strategies that had worked before, other social skilling programs and different things to do in the classroom. She came back and said, "Wow. It is going to make the process so much clearer for me as a classroom teacher." That was her initial reaction from that one day.

She says, "In the classroom now, it is so much easier. I am feeling more empowered" —that is the word she used—"to deal with things." She has a year 2/3 class. Some of her kids are picking up on that. She had come from university and had the theory-based stuff on student management. Having those practical strategies to deal with has been an empowering development for her.⁵²

⁵⁰ Ms Rockcliff, *Transcript of Evidence*, 24 February 2006, p. 81.

⁵¹ Mr Ross, *Transcript of Evidence*, 9 December 2005, p. 47

⁵² Ms Ballantyne, *Transcript of Evidence*, 9 December 2005, p. 38.

- 5.32 The Australian Education Union (AEU) confirmed the potential contribution of restorative practices to the wellbeing of teacher by helping them resolve student/student, student/teacher and teacher/teacher conflicts. Ms Ballantyne, representing the ACT Branch of the AEU, advised the Committee that:

The relationships in a school and the conflict that can arise are probably the biggest contributing factors to psychological stress and injury that our members might suffer in the workplace. Teachers are particularly vulnerable to that kind of attack on their wellbeing, if you like. It is a challenging environment.⁵³

- 5.33 Schools using restorative practice visited by the Committee note an improvement in teacher satisfaction levels and mention indicators such as a general change in culture as well as a decrease in staff turnover and sick days.
- 5.34 The AEU was also aware of the potential value that could be added to the core activities of teachers by using restorative justice principles.

Teachers are increasingly acknowledged as having an important role in the social skilling, if you like, of kids. It is more and more moving from what used to be called the hidden curriculum to being up front as a declared part of teaching practice to help kids in their relationships with each other, the communication skills and so on.

We are interested from that professional angle, too, in any practice which can help teachers in their teaching. We have really only heard good reports about this practice from our members. To the extent that people say it is working for them, we are interested in it and pleased to promote it.⁵⁴

From anecdote to evidence – planning for an evaluative process

- 5.35 The Committee observes some preliminary indicators and anecdotal evidence, including the advice of ACT Government personnel, of the success of restorative practices. However, the Committee can find no sustained evaluative framework that can confirm the aims and objectives outlined by witnesses and submissions to the inquiry.

⁵³ Ms Ballantyne, *Transcript of Evidence*, 9 December 2005, pp. 37 – 38.

⁵⁴ Ms Ballantyne, *Transcript of Evidence*, 9 December 2005, p. 38.

- 5.36 The Committee identifies a need to refine a common language and give greater definition to the aims and objectives of restorative justice practices so that a clear evidence-base can be developed. The Committee is of the opinion that clarity is needed to inform the development of appropriate evaluation methods. As one expert witness to the inquiry noted:

Schools need first of all to identify the context within which they want to integrate restorative justice principles before you determine what the best measures would be if you were to evaluate them.⁵⁵

- 5.37 The Committee is of the opinion that the ACT is well placed to develop and test an evaluative framework with a lively community of interest established throughout the education system, including 36 public schools.

RECOMMENDATION 2

- 5.38 **The Committee recommends that the Department of Education and Training undertake a survey of ACT Government schools to determine in detail:**
- ▬ **those schools that have implemented restorative practice programs;**
 - ▬ **the length of time restorative practice programs have been in use;**
 - ▬ **how these schools have determined the impact and value of restorative practice programs; and**
 - ▬ **those schools that are considering implementing restorative practice programs and the objectives they hope to achieve.**

⁵⁵ Dr Mikhailovich, *Transcript of Evidence*, 9 December 2005, p. 62

Controlling variables

- 5.39 A theme emerging from the inquiry has been the need for a formal review and documentation of the impact of restorative practices. The Committee notes that there are a number of difficulties associated with the collection of data, including:
- Diversity in the aims and objectives motivating implementation;
 - Uncertainty about the best indicators;
 - Vague indicators, difficult to measure;
 - Absence of benchmark data to provide meaningful comparisons;
 - Difficulty in controlling variables in complex social settings;
 - On-going developments in a new field of knowledge and expertise: and
 - Limited public awareness and commitment to the strategies.
- 5.40 The Department of Education and Training notes that measures such as student suspension, attendance, and parent and student satisfaction levels can provide indicators of success. However, they also note that other factors, such as specific teaching strategies or interventions from outside agencies, may have an equal influence over these indicators.⁵⁶
- 5.41 The Committee is also mindful of the complexity of the issues that can influence the outcomes of trials in social settings such as schools. For instance, in its submission, Menslink reminded the Committee that gender is an important factor in school-based behaviour and educational success. Restorative practices could not be seen as the only response needed to improve the conditions for learning for boys and young men.⁵⁷
- 5.42 However, there are several qualitative indicators that have been described during the inquiry that might provide a useful foundation for the development of an evidence base. These indicators include:
- Students' feelings of safety and wellbeing;
 - Teachers' feelings of safety and wellbeing;
 - Students' use of restorative strategies in a range of settings ;

⁵⁶ *ibid.*

⁵⁷ Menslink, *Submission no. 2*, May 2005, p. 2.

- Teachers' use of restorative strategies in a range of settings;
- Assessment of outcomes the range of restorative events;
- Use of restorative practices in whole of schools relationships, including student/student, student/teacher, teacher/teacher, teacher/parent; and
- Perceived flow on effects for teaching practice.

- 5.43 The Committee is also of the view that some centralised coordination is essential to ensure that those implementing restorative justice programs are able to identify the best, common indicators and ensure that there is sufficient rigour in the criteria required to establish a valid evidence-base.
- 5.44 The Committee understands that the Department is interested in progressing the goal of evaluation having sought to collaborate with the Australian National University in 2004. The unavailability of academic expertise at the time prevented this project from progressing, however.⁵⁸
- 5.45 The Committee suggests that the Department continue to pursue this goal in consultation with the schools currently implementing restorative practices. For instance, schools comprising the Calwell Cluster provide a defined community with a similar demographic background where a community of support and expertise in restorative practice has already developed.

Measures of educational benefit

- 5.46 For many of the educationalist heard during the inquiry, the potential impact of restorative practice in the school environment is also worth examining against a number of educational outputs. According to Mr Ross, there has been an academic dividend at Charnwood. The most recent school data, including ACTAP (ACT Assessment Program) and in-house testing, indicates:

Improvement across the board...Our statistics show us quite clearly that for our year 3s, who are now year 5—and making comparisons about whether they were children in the lower 20 per cent, middle 60 per cent or upper 20 per cent—we have had a 16 per cent move of those children out of the lower 20 per cent into the middle 60 per cent and a flow-on into the higher end, the upper 20 per cent. We see it as alleviating that conflict in the classroom

⁵⁸ Dr Brungines, *Supplementary Submission*, April 2006.

and improving relationships with teachers. We are now starting to see the results in an academic sense as well.⁵⁹

- 5.47 Similar experiences were reported at Queanbeyan South Public School with a view that improved behaviour overall had provided teachers with the capacity to actively develop their literacy programs. There are some indications of flow-on educational benefits with the school. While the school was previously filling a high number of the available places in the NSW Education Department's literacy support programs, at the time of the Committee's visit there were no students requiring this additional level of support.
- 5.48 The Committee is of the view that there are strong reasons to explore the connections between behaviour management and academic outcomes in the way suggested by the experience at Charnwood Primary School and Queanbeyan South Public School.

RECOMMENDATION 3

- 5.49 **The Committee recommends that the Department of Education and Training provide guidelines for schools on the best evaluative measures for the expected outcomes identified by practitioners and academics.**

RECOMMENDATION 4

- 5.50 **The Committee recommends that the Department of Education and Training provide support to schools to undertake base-line evaluations prior to implementing restorative justice programs.**

RECOMMENDATION 5

- 5.51 **The Committee recommends that the Department of Education and Training consult with schools already using restorative practices to identify existing evidence, such as academic outcomes and attendance data, which can provide a general index of school culture over the long-term.**

⁵⁹ Mr Ross, *Transcript of Evidence*, 9 December 2005, pp. 38 - 39.

6 POLICY IMPLICATIONS

Emerging issues

- 6.1 The Committee has heard from representatives of a number of different agencies and organisations about the implementation of restorative justice principles in the ACT.⁶⁰ These representatives discussed implementation in the following settings:
- ACT public schools;
 - The Catholic school system;
 - children and family support services; and
 - ACT youth justice settings, including Quamby Youth Detention Centre and Hindmarsh Education Centre.
- 6.2 The Committee also visited a number of schools in the ACT and interstate currently using restorative practices. These schools were:
- Charnwood Primary School, ACT;
 - Queanbeyan South Public School, NSW;
 - Salisbury High School, SA; and
 - Lonsdale Heights School, SA
- 6.3 A notable feature in the ACT is the establishment of a restorative justice cluster designed to support the effective transition of students between primary and high schools. The Calwell cluster includes Calwell High School which draws students for Caldwell, Theodore, Isabella Plains and Richardson primary schools. The cluster has only recently been established so the long-term effects of this arrangement are yet to be seen.⁶¹ During a visit to South Australia, the Committee was advised of the success of this model.

⁶⁰ See Appendix B: List of Witnesses.

⁶¹ Ms Melsom, *Transcript of Evidence*, 7 December 2005, p. 10.

- 6.4 Overall, the Committee was impressed with the extent to which restorative justice principles are being implemented in a range of youth settings and with the professionalism with which they are now being dealt with in the ACT and other jurisdictions. For the reason, the Committee is of the opinion that a consideration of emerging policy implications is warranted. The chapter focuses on some of the issues that arise in the ACT.

School based implementation – policy implications

- 6.5 Currently the Department of Education and Training adopts a support role to the activities of ACT public schools pursuing a restorative justice path. Restorative practice is understood to be ‘one strategy’ amongst others to deal with behaviour management issues and some support is provided to schools in the context of behaviour management support strategies.⁶² Schools have a significant degree of latitude in their student management and welfare programs and policies but are supported to develop “best practice” policy frameworks in consultation with the school community.⁶³
- 6.6 According to the ACT Government’s submission to the inquiry, restorative justice principles are:

consistent with the principles and approaches as outlined in ACT Department of Education and Training Safe Schools Policy Framework and the Student Management and Welfare in ACT Government Schools policy. A key underpinning principle of these guidelines is the need for schools to ensure positive respectful relationships between teachers and students, and students and students.’

Restorative Justice practices used in schools involve educational and prevention strategies which focus on values education, respect and tolerance for others, early intervention, behavioural ownership by students, restoring order, and allowing victims as well as perpetrators to decide on appropriate restitution considerations.

⁶² Dr Bruniges, *Transcript of Evidence*, 7 December 2005, p. 5.

⁶³ Minister for Children, Youth and Family Support, *Submission no. 8*, June 2005, p. 14.

Restorative practices in school settings range from the formal to the informal and are designed to effectively deal with inappropriate behaviour, conflict and disruptions to student learning.⁶⁴

6.7 As schools have implemented restorative justice principles, different approaches have evolved. These include:

- Restorative Conference - a process held after an incident where individuals who have been affected are invited to meet together. The conference is structured and a trained facilitator will use a restorative justice script. All present have the opportunity to voice their experience and give input into the consideration of what needs to be done to redress the harm done.
- Corridor Questioning - a less formal process for managing challenging behaviour and low-level conflict.
- Circle Time - a technique used in some classrooms to facilitate the development of social skills and encourage young people's empathy and support for one another. It provides an opportunity for collective problem-solving and sharing of feelings about particular behaviours.
- Restorative language – the informal use of affective questions and affective statements to facilitate communication.

6.8 According to Ms Peta Blood, a well-known restorative practice trainer in ACT schools, current training being offered in school implementing restorative practices includes:

- A One Day Introductory Forum;
- Circle Time and Classroom Management Practices; and
- Restorative Conferencing.
- Restorative conferencing training is usually provide to core staff and provides skills to deal with complex incidents and oversee restorative processes within the school more generally.⁶⁵

6.9 The Department of Education and Training calculates that there are currently 36 schools in the public system using restorative practices. Of these schools, 12 would

⁶⁴ *ibid.*, p. 5.

⁶⁵ Circle Speak, *Submission no. 4*, June 2005, pp. 4 – 5.

be considered to have a high number of students from disadvantaged social backgrounds.⁶⁶ For the Department, this indicates that approximately 50% of schools using restorative practices are schools with the greatest level of disadvantage in the community.⁶⁷

- 6.10 Circle Speak, an organisation providing training to individual schools in the ACT, estimates that there are at least 40 government and independent schools applying these principles in some way in everyday practice.⁶⁸ The Catholic Education Office identifies two schools currently undertaking a whole of school implementation of restorative practices while noting that many others in this system use aspects of this practice as a part of their behaviour management strategies.
- 6.11 At the system level, both the Department of Education and Training and the Catholic Education Office provide some support for schools to implement restorative practices.

The coordination of education services

- 6.12 The ACT Government submission noted that:

A whole school approach that is supported by the school community provides the most effective model for incorporating restorative justice principles and the implementation of specific strategies and approaches.⁶⁹

- 6.13 From the perspective of overseeing the delivery of education services in the Territory, the Department understands the issue in terms of 'developing a culture within schools that is a positive and supportive environment for everyone within that school environment.'⁷⁰ They also understand that effective implementation of restorative practices within a school setting is unlikely in less than a three to five year period.⁷¹

⁶⁶ Dr Brungies, *Supplementary Submission*, April 2006. That is, these schools are in the top 25% of schools with the highest proportion of disadvantaged students as measured by the Index of Relative Socio-Economic Disadvantage (IRSED).

⁶⁷ Dr Brungies, *Supplementary Submission*, April 2006.

⁶⁸ Circle Speak, *Submission no. 4*, p. 8.

⁶⁹ Minister for Children, Youth and Family Support, *Submission no. 8*, June 2005, p. 17.

⁷⁰ Ms Melsom, *Transcript of Evidence*, 7 December 2005, p. 2.

⁷¹ Ms Melsom, *Transcript of Evidence*, 7 December 2005, p. 3.

- 6.14 The key from the Department's point of view is flexibility, recognising that under a system of school based management, schools have flexibility in terms of how they determine funding allocations to meet the particular needs of their school community. The Department provides some limited, designated funding to coordinate processes – networking for teachers and schools engaging with restorative practices in the school, department liaison, as well as some professional development opportunities for schools. Schools are also able to apply for funds from the professional learning fund administered through the Department or under the National Safe Schools Framework grants program.
- 6.15 The Committee encourages the Department to continue supporting the implementation process currently underway in ACT schools and to undertake, as far as possible, a coordination role to:
- ensure a good flow of information and resources;
 - establish opportunities for practitioners to share knowledge and expertise;
 - undertake liaison between other government departments and agencies working with a restorative justice principles; and
 - identify, collect and evaluate relevant data.

Local initiatives and national frameworks

- 6.16 Since 2003, Student Support Services in the Department of Education and Training have actively supported schools implementing restorative practices.⁷² This support continues through the hosting of workshops and the training of student management consultants in conference facilitation techniques.⁷³ These initiatives are largely funded via the National Safe School Framework and Australian Government Quality Teacher Program.
- 6.17 Restorative justice principles are consistent with the objectives and approaches set out in the National Safe Schools Framework. Eight ACT schools have sought and received funding under this initiative with Charnwood and North Ainslie primary schools undertaking projects explicitly involving restorative practices. A national

⁷² Circle Speak, *Submission no. 4*, June 2005, p. 8.

⁷³ ACT Department of Education and Training, *National Safe School Framework – Restorative Practices website* - assessable at <<http://activated.det.act.gov.au/learning/qtp/National.htm>>

report on the projects funded through the NSSF initiative is due in the first half of 2006.

- 6.18 The Department is committed to the development of an effective policy framework that will allow schools to make informed choices about the tools or models that they use to achieve good outcomes for the school community. The Department endorses the National Safe Schools Framework (NSSF) because it provides a useful benchmark across jurisdictions. They are currently refining the ACT framework and considering what can be done
- across the system to specify principles of practice that all government schools should have a look at and make sure that they take those principles and put them into operation at the school level.⁷⁴
- 6.19 There are other policy frameworks identified by the Department as consistent with restorative justice principles. The 2004-2005 annual report notes the contribution of restorative practices towards a number of broader policy and strategic contexts including the ACT Women's Plan and the ACT Public Service Learning and Development Framework.⁷⁵ The Committee believes that this under-represents the actual contribution of restorative practices to the delivery of education services in the ACT.
- 6.20 The explicit inclusion of restorative principles and concepts into key education policy frameworks would support sustained, whole of school implementation by promoting a common language across a range of school activities. Frameworks informing safe schools policies, healthy school policies, anti-bullying strategies, behaviour management plans, and school action plans provide an obvious resources and sources of influence on the culture of schools.
- 6.21 The Committee has noted a recent evaluation of restorative practice pilot project in 23 Victorian schools suggesting a number of requirements for effective implementation. At the systems level, these included the explicit articulation of the

⁷⁴ Dr Bruniges, *Transcript of Evidence*, 7 December 2005, p.3.

⁷⁵ ACT Department of Education and Training *Annual Report 2004-2005*, pp. 16-17 & 35.

links between a range of complementary policy areas and advice on the best way to integrate restorative practices into existing outcome directed school practices.⁷⁶

- 6.22 Recognition of the importance of integrating restorative practice concepts into existing policy is evident in an implementation process being undertaken by two schools in the Catholic education system. Mr Marsh advised the Committee that:

two of our schools in particular that are moving towards whole-school development of restorative justice. One is a secondary college. It has been involved recently in reviewing its student management practices. The school has implemented a quality conduct policy, a safe school policy and revised its sexual harassment policy to align it with the quality conduct policy. All of those policies have been written with restorative justice practices included, particularly the quality conduct policy.⁷⁷

- 6.23 However, a whole of system approach has not yet been implemented in the Catholic education system either. Mr Marsh advises that:

there are quite a few schools that are training in restorative justice practices next year. It's like a lot of innovation that comes into school: a groundswell happens and it starts to kick off because people talk about the success of the program. So at the moment from a system point of view there is no restorative justice program or system project around this. It is very much happening at the grassroots level where people are discovering this themselves and implementing it through their own school budgets.⁷⁸

- 6.24 Witness and submissions confirm that there are significant time and resource factors at play for all schools currently exploring restorative options. The structural supports required for effective implementation are contingent upon adequate numbers of well trained staff, resources that will allow meaningful engagement by all parties involved and leadership within the school community.

⁷⁶ Stokes, Helen and Gary Shaw (2005) *Restorative Practices Pilot in Victorian Schools: Evaluation Report*, Youth Research Centre, University of Melbourne, p. 9.

⁷⁷ Mr Marsh, *Transcript of Evidence*, 9 December 2006, p. 51.

⁷⁸ *ibid.*, p. 56.

Staff mobility and teacher training in the public school sector

- 6.25 The Committee identifies teacher mobility policy and teacher training as policy areas requiring further consideration.
- 6.26 Current staff mobility policies require new teachers to move schools after three years and second placement staff to move schools after six years. Executive teachers are also required to move after six years.
- 6.27 Ms Blood, in her capacity as a restorative practice trainer, noted that the ACT was in a crucial implementation stage and while the movement of teachers around the system might benefit the new school by the introduction of new ideas and practice, she was concerned that it might be detrimental to the capacity of the ACT education system to sustain and evaluate the success of current practices.⁷⁹
- 6.28 The Committee notes that the Department and other witnesses all agree that the successful implementation of a restorative practice program at the whole of school level requires three to five years. The Committee believes that transfers of staff should be minimised where possible to avoid disruptions to this process.

RECOMMENDATION 6

- 6.29 **The Committee recommends that the Department of Education and Training consider the implications of staff mobility policies for the sustainability of school-based restorative practice programs currently in place.**
- 6.30 Staff training emerges as an on-going challenge for schools currently implementing these practices as supporting new staff and relief staff to develop knowledge and skills or the loss of key staff following transfers has an impact on the consistent use of restorative practices in a whole of school approach.

⁷⁹ Circle Speak, *Submission no. 4*, May 2005, p. 11.

- 6.31 There were two dimensions to the teacher training issue as emerged during the inquiry. The first is the provision of professional development training for new and on-going practitioners. The second is curriculum focus for pre-service or undergraduate teacher training.

Professional development training

- 6.32 At present, much of the teacher training conducted in the ACT is undertaken by Circle Speak on a school-by-school basis. According to Peta Blood,

Until the end of 2003 all practice and training that occurred in the ACT was with individual schools who bought training and professional development from organisations such as Circle Speak. In 2003, Student Support Services chose to sponsor restorative practices as a major cultural change initiative in the ACT. They were clear that this needed to be about sustainability and quality practice and if schools wanted to proceed this way, they would support the initiative. This partnership continues today – largely funded through that National Safe Schools Funding (NSSF) and the Australian Government Quality Teaching Program (AGQTP)⁸⁰

- 6.33 The Committee understands that most schools undertake an initial, one-day training workshop to orientate staff to the language and principles of restorative practice. This can then be followed up with a further two days training in techniques and processes. On-going professional development and networking is also considered appropriate for practitioners in this field.

- 6.34 Requirements and specific needs may vary also. Mr Marsh advises that:

The reality is that some teachers are very good at restorative justice conferencing and accept and practise those principles. Some teachers are not; they require training, positive experiences in restorative justice and ongoing monitoring and support.⁸¹

- 6.35 The Committee was advised that research from Queensland suggests that a minimum of two days professional development is required for new teacher practitioners.⁸² The evaluation of the pilot project in Victoria indicated that

⁸⁰ *ibid*, p. 8.

⁸¹ Mr Marsh, *Transcript of Evidence*, 9 December 2005, p. 50.

⁸² Dr Mikhailovich, *Transcript of Evidence*, 9 December 2005, p. 64.

the opportunity to work with other staff in the establishment sage provides a basis for teachers to develop knowledge, confidence and skills. Schools that allocated time for professional development, reported a more widespread uptake and commitment of the practice.⁸³

- 6.36 Apart from applying for funding for the cost of training, schools also access relief staff allocations so that teachers can attend professional development activities.⁸⁴

Pre-service teacher training

- 6.37 At present, undergraduate teaching courses in the ACT are delivered by the University of Canberra and are able to provide a limited exposure to restorative justice principles in the context of broader behaviour management practices.

- 6.38 Dr Nielsen from the University of Canberra noted that in training new teachers, we try to integrate practical techniques with the principles, the philosophy and the understanding behind them. That, of course, is always the hard part and that is perhaps where I would like more time than six months, or one semester, because the mechanical things are like a toolbox: you can quickly give them to students, but really understanding how to use those tools and the principles behind them is the difficult thing, but we do our best to try to combine those three elements.⁸⁵

- 6.39 Ms Ballantyne from the Australian Education Union noted that:

My personal experience is that the pre-service education of teachers is a bit short on specific techniques of this kind or other kinds of techniques on classroom behaviour management.⁸⁶

- 6.40 Dr Mikhailovich from the University of Canberra noted that given the requirements already placed on teacher training, prior to considering any revisions of curriculums for preservice teacher training, we would want to see a more robust evidence base for the inclusion of restorative justice training in schools and I think that there would need to be some justification in terms of this being driven by a need,

⁸³ Stokes, Helen and Gary Shaw (2005) *Restorative Practices Pilot in Victorian Schools: Evaluation Report*, Youth Research Centre, University of Melbourne, p. 47.

⁸⁴ Ms Zuffo, *Transcript of Evidence*, 9 December 2005, p. 46.

⁸⁵ Dr Nielsen, *Transcript of Evidence*, 9 December 2005, p. 66.

⁸⁶ Ms Ballantyne, *Transcript of Evidence*, 9 December 2005, p. 47.

either a top-down need from education policy directives within the department or from schools—principals, teachers and school communities—saying, “This is something that appears to be valuable, useful and working and we want to know more about it and we want to have a broader skill base amongst teachers and community practitioners to help facilitate this in the ACT community.”⁸⁷

- 6.41 The Committee appreciates that there are a number of issues to be resolved – including level of actual demand and evidence of the on-going effect of restorative practices - before changes to the pre-service teacher training curriculum could be considered. However, the Committee is of the view that a dialogue between trainers and educationalist and practitioners should be encouraged.

RECOMMENDATION 7

- 6.42 **The Committee recommends that a dialogue between restorative practice trainers and educationalists providing pre-service training be facilitated so that opportunities for complementary curriculum development can be maximised.**
- 6.43 The Committee appreciates the difficulty for education policy-makers that arises at this point during the implementation of restorative practices in ACT schools where practitioners’ enthusiasm is high but the evidence base is limited. The status of the current experience requires careful consideration to ensure current practices are sustained while the evidence base needed for policy commitment can be developed. The Committee encourages the stakeholders engaged in this process to continue to act in the good faith already shown.

Planning and coordination across different settings

- 6.44 During the inquiry, the Committee heard evidence from a number of different service areas about the way restorative justice principles are informing and changing practices. Chapter 3 discussed developments in justice settings and Chapters 4 and 5 have outlined issues arising in school contexts. Chapter 6 outlines the issues that have arisen in the child protection areas and Chapter 7

⁸⁷ Dr Mikhailovich, *Transcript of Evidence*, 9 December 2005, p. 60.

identifies some questions that have arisen for the application of restorative justice principles following the enactment of the *Crimes (Restorative Justice) Act 2004* and which the Committee hopes will be clarified as a part of the forthcoming review.

6.45 There is a broader issue of whole of government and community planning that is not being addressed under current arrangements. However, the Committee is aware that this is a limitation to those currently engaged in restorative justice activities and who would like to see the coordination of activities improved.

6.46 In the school context, Dr Davis from the School of Social Work at the Australian Catholic University suggested that;

whatever direction the ACT is going now, I would put more of my eggs in the basket of planning and implementation and then the ongoing monitoring and evaluation, rather than just setting up a myriad of programs.⁸⁸

6.47 The Committee agrees that there is a need in the ACT for more centralised planning and coordination that can facilitate training, provide information and develop resources as well as promote awareness of what restorative justice work is being done in the ACT. This level of coordination would also contribute to effective long-term evaluation by establishing standardised measures and promoting a common language between practitioners as has already been discussed in this interim report.

Role of the Restorative Justice Unit

6.48 The ACT Restorative Justice Unit, as the only agency established within ACT government tasked with the coordination of a restorative justice implementation process, confirmed that the application of restorative principles in other settings was an important consideration for the Unit and indicated that they intend to liaise more closely with the Department of Education and Training in the long term.⁸⁹ The Unit has only been operating since 2005 and the Committee would encourage the Unit to nurture relationships with other agencies in the future.

⁸⁸ Dr Davis, *Transcript of Evidence*, 9 December 2005, p. 71

⁸⁹ The Restorative Justice Unit was established to support the implementation of the *Crime (Restorative Justice) Act 2005*. The Unit accepts referrals from a number of agencies for restorative justice conferencing as an adjunct to the court system.

- 6.49 At present, it is understood that the relationship is relatively *ad hoc* and naturally focuses on matters that emerge in a criminal justice context. According to Mr Hinchey, the manager of the Restorative Justice Unit, the Unit has developed;
- relationships with individual schools in accordance with cases that are referred to us. There are a number of colleges in town where we have run conferences because the offences have occurred within school precincts and they have affected the community, that is, the school. In that sense, rather than at a strategic level, I think that our unit is well placed to develop relationships with individual schools so that individual schools can see the benefits of these processes and adopt them or not as they see fit. A lot of these schools have their own very successful management regimes in place.⁹⁰
- 6.50 The Committee was also advised that;
- The work of the unit to date, in addition to conducting conferences, has been to develop relevant information packages, develop guidelines, and attend training and provide training.⁹¹
- 6.51 The Committee is also mindful of the proximity of the Restorative Justice Centre based at the ANU and which has been influential in the implementation of restorative practices in the ACT.
- 6.52 The Committee sees an opportunity for considerable efficiencies from better interaction between agencies and organisations using restorative principles in their everyday activities. For instance, coordination of information could maximise the value of resources by allowing their development for a broader audience.
- 6.53 While the Committee does not wish to comment on the most appropriate location and configuration for such an agency, a South Australian agency offers a potential model.
- 6.54 During the course of the inquiry, the Committee met with representatives from the SA Centre for Restorative Justice (CRJ). The Centre is a division of Offenders Aid and Rehabilitation Services of SA (OARS SA) and was established in 1997 to

⁹⁰ Mr Hinchey, *Transcript of Evidence*, 7 December 2005, p. 34.

⁹¹ Mr Phillips, *Transcript of Evidence*, 7 December 2005, p. 21.

- Undertake action research and disseminate information about restorative justice;
- Develop innovative programs in response to community need;
- Provide training and professional development programs for people working in justice, policing, corrections, education, and business;
- Conduct evaluation and audit services.

- 6.55 Working in partnership with government departments and other organisations, the Centre acts as a coordinating agency for restorative justice activities in South Australia. Generic resources are developed and adapted for particular settings. For instance, a prominent feature of their activities of interest to the Committee is the delivery of training and support to schools.
- 6.56 The school training and support services are being delivered as a part of a trial project and an independent consultant is undertaking an evaluation. The Department of Education and Children's Services has provided funding for relief staff in school while teachers undergo training and each school is purchasing services at a reduced cost from the CRJ. In all schools, a community of interest approach is taken with information sessions provided for parents as well as training for teachers and students. CRJ provides a range of information resources and can provide personnel to co-facilitate conferences as required.
- 6.57 The Committee sees potential in the development of a similar coordinating, expert agency to ensure the development of sustainable practices in the ACT context.

7 2006 REVIEW

Review of the *Crimes (Restorative Justice) Act*

- 7.1 As has been noted, the *Crimes (Restorative Justice) Act 2004* is the most developed application in the ACT of restorative justice principles in a legislative and program delivery context.
- 7.2 The Committee notes that section 75 of the Act requires the Minister to
- begin a review (the first phase review) of the operation of restorative justice no later than 18 months after the day this section commences; and
 - present a report on the review to the Legislative Assembly within 3 months after the day the review is started.⁹²
- 7.3 The Committee is recommending that further consideration of the application of restorative justice principles in youth justice settings be deferred until this review has been completed. There are matters of interest about restorative justice practice that the Committee believes will not be clear until the review has been completed.
- 7.4 However, recognising the potential value of the Committee's deliberations to this evaluation, the Committee would raise the following points for consideration during the review of the Act to be undertaken by the restorative justice unit.
- 7.5 As noted at 3.14, the objectives of the Act focus on improving outcomes for the victims of crime. The Committee is also interested in the outcomes for young offenders and this chapter focuses on issues emerging from the inquiry from this perspective.

Emerging issues

- 7.6 The Act is being implemented in two phases. The first phase focused on young people. The second phase commenced at the beginning of 2006 and extends the

⁹² *Crimes (Restorative Justice) Act 2004*, s. 75.

scope of the referral process to include adults. The operation of the Act is being closely monitored to determine the effectiveness and potential of restorative justice conferences to improve outcomes for victims of crime and potentially have a 'constructive impact upon the person responsible for the harm done.'⁹³

- 7.7 The first phase implementation of the Act specifically focused on the application of restorative justice processes for less serious offence committed by a young offender, provided the offender
- accepts responsibility for the commission of the offence; and
 - was at least 10 years old when the offence was committed or was allegedly committed; and
 - is capable of agreeing to take part in restorative justice; and
 - agrees to take part in restorative justice.
- 7.8 The Committee notes that there are various obligations and protections for offenders in terms of meeting the criteria for inclusion into the program. In the first instance, the offender must accept responsibility for the harm done. Matters can be referred to the restorative justice unit at a number of stages and by a number of agencies. The Committee was informed that an amendment in November 2005 to the Act has allowed referrals at the post-sentencing stage as well.⁹⁴
- 7.9 At the hearing held on 7 December 2006, the Committee was informed that the restorative justice unit has received 100 referrals and, according to Mr Phillips,
- of the 100 victims that we have had to be involved, 68 people have consented to being involved. So quite a high number of people have consented. Almost all, 89 per cent, of offenders have consented to being involved.⁹⁵

⁹³ Minister for Children, Youth and Family Support, *Submission no. 8*, June 2005, p. 4.

⁹⁴ Mr Wyles, *Transcript of Evidence*, 7 December 2005, p. 12. (The amendment was passed on 24 November 2005).

⁹⁵ Mr Phillips, *Transcript of Evidence*, 7 December 2005, p. 23.

- 7.10 Of all the cases referred to the Unit, nine cases have involved indigenous people with five indigenous offenders and two indigenous victims being involved.⁹⁶
- 7.11 The Committee would expect the evaluation to include an analysis of the demographic profile of offenders and the outcomes that have followed for those who have been selected and for those who have not been selected for restorative justice conferencing in the first phase of implementation.
- 7.12 A component of the selection process includes the willingness of offenders and victims to participate.

RECOMMENDATION 8

- 7.13 **The Committee recommends that the review of the first phase of the *Crimes (Restorative Justice) Act 2004* should include an analysis of the demographic profiles of all eligible participants in the program including those who withdraw their consent.**
- 7.14 The objectives of the Act are overtly focused on improving outcomes for victims of crime. During the Inquiry, some concerns were raised about the implications of this focus for offenders and the potential loss of an opportunity to “restore” a young person to the community should they become ineligible because of lack of victim consent or some other determining factor. The Committee is aware of a number of issues for offenders that the Review should take into account, including:
- Other forms of conferencing in the justice system;
 - Cost effectiveness; and
 - Legal equality before the law.

Other opportunities of restorative justice conferencing

- 7.15 While the Act requires the consent of both victims and offenders, the Committee was reminded that lack of consent from a victim does not preclude the offender from being engaged in a restorative process as a part of a rehabilitative strategy. Mr Jory advised the Committee that the sentencing reference group, when determining the scope of the Act, agreed that formal conferencing should be

⁹⁶ Mr Hinchey, *Transcript of Evidence*, 7 December 2005, p. 24.

conditional on the consent of the victim. However, he also advised the Committee that the current justice system accommodates offender focused conferencing as a strategy 'to confront that offender with the impact of their offending.'⁹⁷

- 7.16 The Committee would value some indication in the Review about the nature and extent of rehabilitative conferencing in the ACT justice system and the potential of these mechanisms to meet the needs of offenders who are not eligible for offender/victim conferencing on the grounds of victim consent.

Cost effectiveness of conferencing

- 7.17 Another area of consideration that the Review could clarify is the potential cost effectiveness of restorative justice conferencing. While the Committee appreciates the (possibly immeasurable) value of the conferencing to participating victims, the Committee was also advised that the outcomes for offenders ought to be costed.
- 7.18 Dr Strang advised the Committee that, in terms of impact on offenders, the most value from restorative justice conferencing will be gained when those who do not already understand the consequences of their actions learn something about their impact on others. She notes:

Restorative justice needs to be used carefully; it needs to be monitored carefully; it is extremely powerful in ways that we had no understanding of when we began our research. It is important to keep it open and available to people that you do not necessarily feel very sympathetic towards. Sometimes there is a tendency to send people down this path because they are obviously good kids or they are adults who made a simple mistake and so on. That is a waste of resources, in my view. Those people should be dealt with by cautions or by some other very cost-effective mechanisms. Restorative justice is expensive to do well, and you want to be sure that you are mainly doing it with people who will benefit.⁹⁸

- 7.19 The Committee is aware of recent research undertaken in Queensland indicating that the use of police cautions may be a more cost effective way of deterring the majority of repeat offending amongst young people while more intensive efforts

⁹⁷ Mr Jory, *Transcript of Evidence*, 7 December 2005, p. 28.

⁹⁸ Dr Strang, *Transcript of Evidence*, 14 March 2006, p. 136.

should be directed towards alternative processes for high risk groups such as Indigenous young people.⁹⁹

Legal rights of offenders

- 7.20 The Committee notes that the Standing Committee on Legal Affairs Scrutiny Report 55 raised concerns about the application of the legislation in terms of equality before the law. This concern arises particularly in the context of the distinction between an offender's eligibility and an offender's suitability for restorative justice conferencing. The report suggests a potential problem with the application of the Act when viewed against requirements set out in the Human Rights Act 2004 for 'equal and effective protection against discrimination on any grounds'.¹⁰⁰
- 7.21 The Committee would anticipate that the Review would consider whether the Act is consistent with human rights legislation.

RECOMMENDATION 9

- 7.22 **The Committee recommends that the Review of the Crimes (Restorative Justice) Act 2004 include:**
- ▮ **an assessment of the implications for offenders who are not eligible for the program;**
 - ▮ **the cost effectiveness of the program in delivering better outcomes for offenders; and,**
 - ▮ **the impact of the program on the human rights of offenders.**

⁹⁹ Dennison, Susan, Anna Stewart and Emily Hurren (2006) "Police cautioning in Queensland: the impact on juvenile offending pathways, *Trends and Issues in Crime and Criminal Justice* - no. 306, Australian Institute of Criminology, Canberra.

¹⁰⁰ Standing Committee on Legal Affairs, *Scrutiny Report 55*, 17 August 2004, p. 8.

Nature of offences referred

- 7.23 The nature of offences that will be referred to the restorative justice unit was also of interest to the Committee. While it may not be evident for some time, in terms of the collection of data required, the Committee was interested to know whether a different range of offences proceed through the restorative justice process and whether these might not otherwise be progressed within traditional justice processes. That is, they are in an offence class that is less likely to be successfully progressed to prosecution.
- 7.24 The Committee believes that this is an important threshold consideration in terms of the potential benefit to offenders. The Committee is of the view that the experience of young “offenders” should be canvassed by the review. Potentially there are young people who may be exposed to various “versions” of the restorative justice or restorative practice process. For instance, it is possible that a young person who is detained at Quamby may have experience of formalised restorative justice conferencing processes and may experience restorative practices while attending the Hindmarsh Education Centre¹⁰¹.
- 7.25 A focused study, using action research methods, to assess young people’s perceptions of restorative justice processes may help assess the potential of these principles to improve outcomes for offenders or people who are responsible for a wrong-doing.
- 7.26 The Committee suggests that the review might also usefully consider the implications of the Act’s stated objectives to the broader application of restorative justice principles as they are practiced in various contexts in the ACT and as have been outlined in this interim report.
- 7.27 The Committee looks forward to the outcomes of the Review for the contribution it will make to progressing the objectives of this inquiry.

¹⁰¹ Ms McGregor advised the Committee that some staff at Quamby have been trained in restorative practices. *Transcript of Evidence*, 7 December 2005, p. 14.

Status of Inquiry

- 7.28 As noted, the Committee has resolved to defer producing a final report for the inquiry into restorative justice principles in youth settings until the Review is complete.
- 7.29 However, and notwithstanding the interim nature of the Committee's Report, the Committee seeks a response from Government to the recommendations contained herein.

RECOMMENDATION 10

- 7.30 **The Committee recommends that the Government respond within the usual time-frame to the recommendations set out in this Interim Report of the Inquiry into Restorative Justice Principles in Youth Settings.**

Mary Porter AM MLA

Chair

5 June 2006

APPENDIX A: List of Submissions

No 1	Dr Heather Strang, Director	Centre for Restorative Justice, Australian National University
No 2	Mr Richard Shanahan, Chief Executive Officer	Menslink
No 3	Ms Robyn Porter, President	Weston Creek Primary School Parent & Citizens Association
No 4	Ms Peta Blood, Director	Circle Speak
No 5	Ms Lorraine Higgins, Chief Executive Officer	Volunteering ACT
No 6		Youth Coalition of the ACT
No 7	Mr Matt Casey	Australian Institute of Affective Practice
No 8	Ms Katy Gallagher MLA Minster for Children, Youth and Family Support	ACT Government
No 9	Mr Neil Roberts MP Parliamentary Secretary to the Minister for Communities, Disability Services and Seniors	Queensland Government
No 10	Ms Anna Bligh MP Minister for Education	Queensland Government
No 11	Ms Jacinta Allan MP Minister for Employment and Youth Affairs	Victorian Government
No 12	Hon Stephanie Key MP Minister for Youth	South Australian Government
No 13	Hon Dr Jane Lomax-Smith MP Minister for Education and Children's Services	South Australian Government
No 14	Hon Sherryl Garbutt MP Minister for Children and Minister for Community Services	Government of Victoria
No. 15	Mr David Llewellyn MHA Deputy Premier	Government of Tasmania
No 16		ACT Council of P & C Associations
No 17	Ms Robyn Holder, Coordinator	ACT Victims of Crime

APPENDIX B: List of Witnesses

Public Hearing of 7 December 2005

Dr Michele Bruniges, Chief Executive, Department of Education and Training
Mr Craig Curry, Executive Director, Education, Department of Education and Training
Ms Kathy Melsom, Director, Student Services & Equity, Department of Education and Training
Ms Fiona MacGregor, Manager, Student Support, Department of Education and Training
Ms Lou Denley, Executive Officer, Office of Children, Youth and Family Support
Mr Paul Wyles, Director, Client and Adolescent Services, Office of Children, Youth and Family Support
Mr Neil Harwood, Director, Aboriginal & Torres Strait Islander Services, Office of Children, Youth and Family Support
Mr Matthew Kennedy, Manager, Quamby Youth Detention Centre
Brett Phillips, Deputy Chief Executive, Department of Justice & Community Safety
John Hinchey, Manager, Restorative Justice Unit, Department of Justice & Community Safety
Dr Nova Inkpen, Senior Convenor, Restorative Justice Unit, Department of Justice & Community Safety
Mr Derek Jory, Director, Justice Planning & Programs, Department of Justice & Community Safety

Public Hearing of 9 December 2005

Ms Robin Ballantyne, Assistant Secretary, Australian Education Union
Mr Peter Ross, Principal, Charnwood Primary School
Ms Annamaria Zuffo, Deputy Principal, Southern Cross Primary School
Mr Phil Marsh, Catholic Education Office
Professor Denis Goodrum, Head, School of Education, University of Canberra
Dr Katja Milhailovich, Head, Community Studies, University of Canberra
Dr Thomas Nielsen, Lecturer, University of Canberra
Dr Toni Nobel, School of Education, Australian Catholic University (Sydney Campus)
Ms Cathy Davis, School of Education, Australian Catholic University (Canberra Campus)

Public Hearing of 24 February 2006

Ms Susan Rockliff, Executive Officer, ACT Council of Parents and Citizens Associations
Ms Jane Gorrie, President, ACT Council of Parents and Citizens Associations
Ms Meredith Hunter, Executive Officer, Youth Coalition of the ACT

Ms Carrie Fowlie, Deputy Executive Officer, Youth Coalition of the ACT

Mr Richard Shanahan, Chief Executive Officer, Menslink

Mr Terry O'Connell AOM, Real Justice Australia

Ms Peta Blood, Director, Circle Speak

Mr Matthew Casey, Australian Institute of Affective Practice

Public Hearing of 14 March 2006-04-21

Dr Heather Strang, Director, Centre for Restorative Justice, Australian National
University

Ms Robyn Holder, Coordinator, ACT Victims of Crime

APPENDIX C: Inquiry Visits

Adelaide, South Australia: 1 & 2 September 2005

The Committee met with the following representatives:

John Schluter, Policy Advisor, Interagency, Attendance and Crime Prevention, SA
Department of Education and Children's Services
Janine Harvey, Assistant Director, Child and Student Wellbeing, SA Department of
Education and Children's Services
Greg Cox, Policy Advisor, Student Behaviour Management, SA Department of Education
and Children's Services
Leigh Garret, Chief Executive Officer, Centre for Restorative Justice
Debbie Laycock, Restorative Services Coordinator, Centre for Restorative Justice
Denise Lane, Principal, Lonsdale Heights School
Bill Hansberry, School Counsellor, Lonsdale Heights School
Yannoula Michael, Principal, Hackham West Primary School
Vicki Climatianos, School Counsellor, Hackham West Primary School
Helen Paphitis, Principal, Salisbury High School
Adrian Flynn, Deputy Principal Salisbury High School
Peter Ditty, Year 8 Year Level Manager, Salisbury High School
Terry Jarrad, Student counsellor, Salisbury High School
Helen Somerville, Year 9 Year Level Manager, Salisbury High School
Jessie, Salisbury High School Student
Lesley Oliver, Student Inclusion and Wellbeing Coordinator, South West Metro District

Visit to Queanbeyan South Public School, NSW: 9 September 2005

The Committee met with the following representatives:

Paul Kenworthy, Principal, Queanbeyan South Public School
Liz Hurley, Acting Assistant Principal, Queanbeyan South Public School
Sue Beacroft, Teacher, Queanbeyan South Public School

Visit to Charnwood Primary School: 13 September 2005

The Committee met the following representative:

Peter Ross, Principal, Charnwood Primary School