

**LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

**GOVERNMENT RESPONSE TO THE STANDING COMMITTEE ON
EDUCATION, TRAINING AND YOUNG PEOPLE – INQUIRY INTO
RESTORATIVE JUSTICE PRINCIPLES IN YOUTH SETTINGS –
INTERIM REPORT, JUNE 2006**

TABLING SPEECH

Presented by Andrew Barr MLA

September 2006

21 / 9 / 2006

Mr Speaker

Today I am tabling the Government's response to the Standing Committee on Education, Training and Young People – Inquiry into Restorative Justice Principles in Youth Settings – Interim Report, June 2006.

The committee has made nine recommendations in relation to the application of restorative justice and restorative practices in juvenile settings.

Implications for action around recommendations one through seven fall within the responsibilities of the Department of Education and Training and recommendations eight and nine fall within the responsibilities of the Department of Justice and Community Safety.

The Government's response indicates agreement with Recommendation 2, 4, 5, 7 and 10, agreement in principle with Recommendation 8 and notes Recommendations 1, 3, 6 and 9.

Mr Speaker, it is important that a clear distinction is made between “restorative justice” and “restorative practice”. On occasion these terms are used interchangeably throughout the report.

These terms apply to specific settings. That is, ‘restorative justice’ is used in the criminal justice setting and ‘restorative practices’ are used in school settings to create whole school cultural change in student management and student well being.

The use of restorative practices in ACT Government schools is increasing but it is also important to note that restorative practices are only part of a range of strategies that schools use in creating and maintaining safe school environments. Schools will continue to use the strategies and processes that prove to have the best outcomes in their individual communities.

The Government thanks the members of the Committee for their work on this important inquiry.

I would now like to table the Government's response.

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STANDING COMMITTEE ON EDUCATION, TRAINING
AND YOUNG PEOPLE
*INQUIRY INTO RESTORATIVE JUSTICE PRINCIPLES IN
YOUTH SETTINGS – INTERIM REPORT JUNE 2006***

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INTRODUCTION

On 22 February 2005, the Legislative Assembly for the Australian Capital Territory Standing Committee on Education, Training and Young People resolved to undertake an inquiry 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 and their families
- any other related matter.

The inquiry was conducted under the Standing Committee's responsibility to examine matters related to early childhood education and care, primary, secondary, post secondary and tertiary education, non-government education, arts and culture, sport and recreation.

The Committee's interim report was tabled in the ACT Legislative Assembly on 8 June 2006.

The Government has responded to each of the ten recommendations made by the Standing Committee. The recommendations fall within the portfolio responsibilities of the Department of Education and Training and the Department of Justice and Community Safety. The Government agrees with Recommendations 2, 4, 5, and 7, notes Recommendations 1, 3, 6 and 9 and agrees in principle with Recommendation 8.

The terms 'Restorative Justice' and 'Restorative Practice' are used interchangeably throughout the report. These terms relate to specific settings and the Government's response makes a clear distinction between the terms as demonstrated by the following definitions:

Restorative Justice is used in the criminal justice setting. It is about addressing the harm done to victims and communities as a result of criminal acts, while holding offenders accountable for their actions (Zehr 1990; Van Ness and Strong 1997).

Restorative Practices are used in school settings to create whole school cultural change in student management and student well being. Strong student welfare and pastoral care (including restorative practices), good pedagogy and quality curriculum, aim to repair harm and build positive relationships between students, teachers and parents.

Restorative practices have achieved a greater measure of success in some schools than in others. While the use of restorative practices in schools is increasing, schools will continue to use a range of strategies to create safe school environments that suit their individual communities.

Schools are supported in the development of appropriate policies and practices by the Department of Education and Training and through the National Safe Schools Framework. The Framework consists of a set of nationally agreed principles for a safe and supportive school environment and includes appropriate responses for issues such as bullying, violence and harassment. Schools have been required to conduct and report the outcomes of an evaluation of the effectiveness of their practices and programs

GOVERNMENT RESPONSE TO RECOMMENDATIONS

Recommendation 1

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.

Noted

Restorative justice and restorative practice processes are most effective when used to resolve undisputed harm. Where conflict is present and harm is disputed, alternative conflict resolution practices should be employed to mediate appropriate outcomes. Restorative justice and practice practitioners in legal and Government education settings currently receive expert training from organisations such as Real Justice, Circle Speak and ProActive Resolutions. The Government would have no jurisdiction over non-government organisations that may use restorative practice processes.

The Government does not consider schools to be “at the high conflict end of the spectrum”. When an incident of a criminal nature does occur in a school, it is referred to the police. Principals, as senior managers within the Department of Education and Training, are able to distinguish between incidents of a criminal nature that require reporting to police and where an alternative strategy, such as restorative practice, might be used.

In relation to paragraph 3.21, the Department of Education and Training has attempted to gain specific information so further investigation can take place. However, no evidence has been presented to indicate that Government schools have attempted to “mediate or resolve incidents that involved criminal offences”.

Recommendation 2

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**
- **those schools that are considering implementing restorative practice programs and the objectives they hope to achieve.**

Agreed

The Department already maintains records of schools that have implemented restorative practices. Records indicate that a small number introduced restorative practices in 2002. There are now 36 schools at various stages of implementation.

Restorative practice is just one of a range of strategies used by schools to create whole school cultural change in student management and student well being. Schools determine the effectiveness of these strategies in a number of ways including:

- number and type of incident reports

- staff, parent and student surveys
- anecdotal records
- suspension data

The Department of Education and Training intends to conduct an evaluation in the Calwell School Cluster and Chisholm Primary School, as these schools have developed a systematic approach over the past two years and have progressed further than other schools in developing a whole school approach. The Calwell School Cluster is made up of Calwell High, Calwell Primary, Isabella Plains Primary, Theodore Primary and Richardson Primary. The Department will conduct this evaluation within its existing resources and will include in the evaluation the issues raised by the Committee.

The Department will also develop a survey form to gather information from all schools on the issues raised by the Committee. This will take place in 2007 following the Calwell School Cluster/Chisholm Primary evaluation.

Recommendation 3

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.

Noted

With the assistance of external experts, the Department is developing survey tools for evaluating the impact of restorative practices in the Calwell School cluster/Chisholm Primary School restorative practice evaluation. As part of the evaluation, the tools used will be analysed to see if they provide all of the measures required to create an authentic study. The outcomes will be shared with schools to inform their work.

It is understood that the ACT is ahead of other jurisdictions in implementing evaluative measures around restorative practice in schools.

Recommendation 4

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

Agreed

The Department will bring to the attention of schools the range of mechanisms that could be used as a baseline prior to the implementation of restorative practices. These include student management records, suspension data, students reported/sent to office, use of time-out facilities, stress/sick leave, bullying/student safety/wellbeing surveys and staff and student attendance. The Department will recommend that schools establish baseline data before the implementation of restorative practices to facilitate evaluation of the practice.

It needs to be noted, however, that schools do not implement restorative practice in isolation from a range of other factors. Attributing a changed and positive outcome in school culture and environment to restorative practice alone would have questionable validity.

Recommendation 5

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.

Agreed

The school review process may present opportunities to extract information on changed school culture over the long term that could be attributed to restorative practices. However, the validity of the resulting data may be questionable as there are a range of intersecting factors that build whole school culture, for example positive student/teacher relationships, quality pedagogical practice and community support.

The use of restorative practices varies across schools. Schools are selecting a range of ways to implement the practice. For example some may only use formal conferencing as a method of re-entry of students after suspension while others use the whole range of practices which includes circle time, using the relational questions to solve minor playground disputes, formal conferencing and the training and involvement of parents.

Recommendation 6

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.

Noted

The Department of Education and Training has made a commitment to mobility in order to provide staff with a broad range of experiences and build capacity within the system. Mobility arrangements were originally agreed in the teachers' Enterprise Bargaining Agreement in 1999/2000 and cannot be changed, unless by agreement with the Australian Education Union.

Recommendation 7

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.

Agreed

The Department of Education and Training will contact the University of Canberra and the Australian Catholic University to facilitate discussion on the use of restorative practices in schools and the possibility of providing presentations to teaching staff.

Recommendation 8

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.

Agreed in Principle.

The demographics of those who have become known to the program will be reported upon. The demographics of those who did not consent to be referred to the program are problematic. Their refusal to consent may have occurred at the point of referral, which would not have allowed the Restorative Justice Unit the opportunity to collect the data.

Section 75 of the Act sets out the following indicators against which restorative justice will be evaluated.

- Victim satisfaction and opportunities for meaningful participation by victims
- Rehabilitation of offenders who have taken part in restorative justice, including any reduction in recidivism
- Community satisfaction
- Reintegration of victims and offenders into the community
- Respect for the rights of everyone involved in restorative justice, and the rights of others
- Recognition of fairness of process and outcome by victims and offenders

Recommendation 9

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.**

Noted

- a) The eligibility criteria for offenders (s19 of the Act) are objective. They relate to the age of young people who have committed offences, their consent to participate and their acceptance of responsibility for the offence. The interests of young people who decline to participate in the scheme, or are found unsuitable to participate, were considered when the Act was drafted. Consequential amendments to the *Crimes Act 1900* protect offenders from being penalised for not participating in restorative justice. Those amendments oblige a Court, in sentencing, not to take into account the fact that an offender chose not to participate, or ceased participation, in restorative justice. Further, if an offender does accept responsibility for an offence in order to participate in restorative justice, a court, in determining the sentence to be imposed on a person, shall have regard to that fact, whether or not a restorative justice process was undertaken.

The implications for young people who are referred and either withdraw their consent or are found unsuitable would be difficult to identify. Criminal justice agencies take into account a range of factors when making decisions about the prosecution of offences. It is unlikely that sufficient information would be available about these decisions, as they relate to the restorative justice scheme, to enable a valid analysis to be conducted.

- b) The cost effectiveness of the scheme will be identified against the review indicators that are set out in the Act. There is a measure of recidivism in the review, however, the scheme is relatively new and the recidivist indicator will be a better measure of cost effectiveness in the second phase review. To specifically analyse the scheme's cost effectiveness would, amongst other things, require the establishment of a randomised controlled referral system that would enable comparisons to be made with a cohort that did not participate in restorative justice. As the Standing Committee has noted, the Reintegrative Shaming Experiment project (RISE), offers an independent evaluation of the effectiveness of diversionary conferencing for victims and offenders. RISE randomly assigned cases to a conference or a court hearing. Its aim was to compare the effectiveness of each procedure for certain kinds of offences, and assess the effectiveness of conference and court processes. Data from the RISE project continues to be analysed and the ACT is well placed to benefit from this analysis.

In accordance with the Standing Committee's recommendation, the review will consider whether the Act is consistent with human rights legislation.

Recommendation 10

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

Agreed