



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**STANDING COMMITTEE ON EDUCATION, TRAINING AND  
YOUNG PEOPLE**

**(Reference: Restorative justice)**

**Members:**

**MS M PORTER (The Chair)  
MR M GENTLEMAN (The Deputy Chair)  
MRS V DUNNE**

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**TUESDAY, 14 MARCH 2006**

**Secretary to the committee:  
Ms S Lilburn (Ph: 6205 0490)**

**By authority of the Legislative Assembly for the Australian Capital Territory**

Submissions, answers to questions on notice and other documents relevant to this inquiry which have been authorised for publication by the committee may be obtained from the committee office of the Legislative Assembly (Ph: 6205 0127).

**The committee met at 10.07 am.**

**HEATHER STRANG** was called.

**THE CHAIR:** Good morning. Thank you for coming in today. You should understand that these hearings are legal proceedings of the Legislative Assembly, protected by parliamentary privilege. That gives you certain protections but also certain responsibilities. It means that you are protected from certain legal action, such as being sued for defamation, for what you say at this public hearing. It also means that you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter.

Would you give your full name and position for the *Hansard* record? Would you like to make some opening remarks before we get into some questions?

**Dr Strang:** I am the Director of the Centre for Restorative Justice in the Research School of Social Sciences at the Australian National University. In that capacity I have been conducting research in the area of restorative justice since 1994. For much of that time the research was based in Canberra.

There was, in fact, a very large criminological experiment conducted on the effectiveness of restorative justice here in Canberra compared with normal court processing of mostly young offenders, although some adults as well. That study was known as the RISE, or reintegrative shaming experiments, and we collected data relating to that study between 1995 and 2000. We are still following up on the criminal histories of the offenders who came into that study. Indeed, I recently was successful in gaining an Australian Research Council grant to conduct a further wave of interviews with all the offenders and the victims who came into that study between 1995 and 2000.

There have been some very interesting results that have emerged from that study. I think in my original submission to the committee I referred to some of those results. Principally one could say that, from a victim point of view, restorative justice turned out to be substantially more satisfactory to victims of crime than the court process was. We had astonishingly high levels of satisfaction indicated when we went back to interview those victims. We interviewed both victims who had experienced restorative justice and victims whose cases had been randomly assigned to court.

We had some confidence because of the rigour of the research design that any difference that emerged between the victims who had had one experience or the other was not due to any pre-existing difference in the character of the victims, if you like. We could be fairly certain that their enhanced levels of satisfaction were due to the experience of restorative justice compared with the court experience.

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. I think you know that we 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.

Perhaps I will leave it there. I would, of course, be delighted to answer questions that you have on any of that.

**THE CHAIR:** I have a question about the other subgroups that may exist. You mentioned the indigenous ones and I would like you to talk a little bit more about that subgroup, but also to mention if there were other subgroups. For instance, was there any difference between male and female offenders within the violence and also the property offending? Could you talk about that?

**Dr Strang:** Taking the gender split first, we did not in fact find significant differences in Canberra, although we have done subsequently with the kind of replication that we did in the United Kingdom. Certainly in the case of violence, there really were not enough girls to be able to be sure whether there was a real difference or not. At that time at least, and I do not know whether it is still the case, girls were involved in violence at a ratio of about one to 10. That meant that in a relatively small study we just did not have the numbers for a statistically significant difference to emerge. So we did not have a difference there.

With property crime there was no significant difference between boys and girls in the Canberra study, but there has been a strong difference emerge in the study we did in the north of England, where girls were far more responsive to restorative justice than boys were. I do not know whether that would play out in Canberra if we had other cases.

The more striking finding related to the very disappointing way that restorative justice reacted with young Aboriginal people. There was not a gender difference there, although again when subdivided into males and females the numbers became diminishingly small and therefore difficult to interpret. But we certainly did find that Aboriginal young people did not respond to restorative justice in the same way that non-Aboriginal young people did. That was manifested in the 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.

That is partly because the courts in Canberra work very well. They are very benign; they are not punitive. They allow Aboriginal young people, all young people, to be put in touch with services that may help them with their reoffending behaviour, quite apart from other aspects of their lives. It was very plain that the way the police-run program of restorative justice operated was inimical to Aboriginal youth.

We have also done some analysis of the character of the restorative justice events as they were systematically observed by our research team, and some very important differences have emerged there between Aboriginal youths and white youths. It was plain that Aboriginal youths had fewer supporters. In particular, they almost never had a father or stepfather or older male guardian present. In general, they had fewer supporters along than white youths did. The conferences were much shorter in time. That was not surprising because there were fewer people present. As far as our observers could record, it was evident that the Aboriginal youths were far less engaged with the process than the white youths were.

One could speculate about why all that happened in this police-run program. It may perhaps be due to historically poor relations between Aboriginal youths and police. I hasten to add that certainly the police facilitators were extraordinarily competent. When

we went back to interview the offenders, we provided everybody with opportunities to say if they felt they had been discriminated against or untreated unfairly in any way and that did not emerge in relation to the young people we interviewed. Of course we did not interview all of them because we could not find all of them, but we interviewed around three-quarters of them. It may be that the quarter we could not find had more problematic relations with the police because they led more disorganised lives and they were more evident on the street, perhaps. That is purely speculation and I do not want to go any further than that. It may be that their families were not so disposed to cooperating in a process that was a police-run program.

As I say, there is every indication that the courts do a very good job. It was noticeable that a statistically significantly higher proportion of Aboriginal youths, for example, had legal counsel in court than white youths did. I think that is because there is a pretty good system in place for Aboriginal young people. It also was evident that Aboriginal young people were coming into the criminal justice system at significantly younger ages. The criminological literature is packed with findings relating to early entering the criminal justice system, predicting more persistent and more serious offending over the life course.

I am probably not telling you anything you do not already know, that many Aboriginal young people in Canberra, as elsewhere in Australia, have very serious problems, one manifestation of which is that they wind up getting into trouble with the police pretty early on. It is not all of them, obviously, but a proportion of them do. It seems that restorative justice, for whatever reason, certainly as that program operated, was not particularly helpful in getting them off that track.

**THE CHAIR:** Do you have access to other research on indigenous people in other places such as Canada or on the Maori population as to whether or not they have different experiences than we have experienced in this small study here?

**Dr Strang:** The problem is to do with the rigor of the evaluations. RISE is by far the most rigorous evaluation of restorative justice conducted anywhere in the world, whether with indigenous people or not. Certainly, in both Canada and New Zealand, restorative justice is widely used. There are many claims of its success. There are two possible reasons for that. One is that they are not very rigorous studies. An even more likely explanation is that indigenous people in both Canada and New Zealand have, as their own traditional methods of dispute and conflict resolution, methods which look pretty much like what we call restorative justice.

Indeed, restorative justice, as it has developed, especially here in the Antipodes, grows very much out of a traditional Maori practice. Everything we do in Australia emanated from New Zealand. The fact that this intervention resonates with traditional ways of resolving disputes probably makes it more understandable; people feel more comfortable with it. There really is not any tradition of that kind in Australian Aboriginal culture. I cannot really explain it. Those are two possible explanations why it seems to work better with indigenous people in Canada and New Zealand than in Australia.

**MR GENTLEMAN:** At page 8 of your submission, you have got the specific aims of the project. You said that one of them is to answer the empirical and theoretical questions raised about the effects of justice on human development across life cycles.

One question you raised after that is repeat offending; how, if at all, the long-term effects of restorative justice on the lawfulness of offenders vary by type of offence, prior offending history and other offending characteristics, as well as the stage in the criminal process in which restorative justice occurs. You have been collating and evaluating this for 13 years. Do you have an answer to that question?

**Dr Strang:** You are quoting there from the Australian Research Council proposal for which we have been successful in getting funding. That relates to a third wave of interviewing here in Canberra that we embarked on last July of all the victims and offenders who came in to the original RISE. It will be replicated with the victims and offenders who came in to British studies which were conducted between 2001 and 2004. The short answer is that it turns out that 13 years is not enough to answer those questions.

We have criminal history data for all of our Canberra people, going back to whenever they first came into the study. The pattern is remaining fairly constant. If you were interested in more detail on this, I would be glad to provide some. We have some graphical representation of criminal history progressions over time for different offenders, by offence type, ethnicity and so on. If you are interested, let me know and I will supply that subsequently.

In general, we found that, with young, violent offenders there was a tremendous benefit in the first year of post-treatment, as one calls it, whether by restorative justice or by court. The tremendous benefit of restorative justice in that first year really seemed to give them the wake-up call that we hoped would help young people faced with their victim, hearing their victim at first-hand, directly and in a way that they cannot avoid. There is no denying it when a victim tells you of the harm they have experienced. It is a very different thing from a lawyer or a magistrate telling you. We had these extraordinarily good results for restorative justice for violence in the first two years. That did not fall off.

We found with the court people, having done badly in those first two years, eventually there was a regression to the mean by both parties, as one would expect. Young people grow out of violent behaviour, in the main. It is a developmental story, by and large, for young men. By the time people have reached the age of 25 or 30, their fighting days are done. Whether they went to restorative justice or the court, by the time young people reached the age of 30, it was only the outliers who were still misbehaving.

With the property studies, the reverse tended to be the case; that is, the court people did very much better in those first two years. After that, there was a similar regression to the mean by both restorative justice and the court people. I cannot explain that, except to say that, in general terms, when you looked at the criminal histories of the people coming into the property and violence experiments, there was much more violence in the histories of the property offenders than there was in the histories of the violent offenders. There was every indication that many of the young people caught up in the violence experiment tended to be first offenders. Even those that were not did not have entrenched criminal histories. They might have had a shoplifting offence or something of that kind, but nothing very entrenched.

The young people in the property experiment tended to be deeper into the justice system.

They had lengthier offending histories of all kinds. I do not know; we are still unravelling this. It really is quite complicated to take it apart in these ways. It certainly needs to be said that the people in the property experiment had longer criminal histories than the people in the violence experiment, including more violence than the violence experiment people, if you follow my logic.

I cannot give you any simple explanation of these reoffending patterns. They are quite complicated. I can say that all of this material that has emerged from the RISE study can be used in constructive ways in continuing the restorative justice program that is currently running for young people here in Canberra.

One of my closest colleagues throughout the whole research program with RISE and who came with me to London is now working with John Hinchey in the restorative justice unit here in Canberra. She knows as much about this stuff as I do. She is very impressed by the quality of the conferences that are being conducted there. We are all very encouraged that restorative justice is available at more points in the justice system than was the case before our study.

The results need to be continued to be monitored. Their results were not predictable. They certainly were not predicted but it also was not predictable that things should play out as they did with that particular study.

It is very important that restorative justice eligibility remain fairly relaxed. The police tended to react to the findings by limiting eligibility for restorative justice to a much smaller class of people, and that was a great shame. Restorative justice is a sledgehammer to crack a nut if you are only dealing with people who are extremely remorseful already for what they did, if they are already very aware of the consequences of their actions and so on. Restorative justice is best used with people who do not understand the consequences of their actions and really are not particularly sorry. I would be very sorry if the eligibility criteria included any reference to feelings of remorse.

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.

**MR GENTLEMAN:** You brought up there the difference between property offenders and violent offenders. Did you find, with property offenders, any links to substance use or abuse?

**Dr Strang:** Yes, very much so.

**MR GENTLEMAN:** Did that seem a theme?

**Dr Strang:** It did. There was not a great deal of heroin use among those young people at that time. Certainly there was a great deal of marijuana and alcohol use. I am not saying that they were stealing to fund a very expensive drug habit, but certainly it went with the lifestyle for quite a high proportion of those young people.

I should also say that the police were not compelled to give us every case—far from it. It was necessary for the police to make a judgment that the person that they were dealing with could be dealt with either by court or by restorative justice. They gave the case to us, as it were, and we randomly assigned them one way or another.

We never got a lot of ostensibly eligible cases because a minority of them were cases that the police felt did not require anything more than a caution or that they thought they should receive restorative justice and they did not want to run the risk of them going to court. A far higher proportion were young people that the police made the judgment call that restorative justice was not serious enough and they needed to go to court. We never saw those kids. The young people that we ended up with in our experiment were not necessarily representative of all the young people in Canberra getting into trouble with the police.

**MRS DUNNE:** I go back to the point that Ms Porter raised about the effectiveness of restorative justice with indigenous groups. Correct me if I am wrong, but I heard from you that we adopted a system that came from New Zealand where restorative practices were anthropologically and sociologically appropriate. We have adapted them. We do not have that anthropological and sociological background. This is for indigenous people. We have a fairly mixed, multicultural society. Are there groups within that multicultural society that respond better to restorative practices because of their cultural background?

**Dr Strang:** I cannot really comment on that because we did not have enough cases to do that level of subgroup analysis. The Aboriginal youths were the only ones where there were sufficient numbers for us to look at those separately in a meaningful way. I could not really comment. We had quite a wide cross-section. We had Pacific Islanders. We had ethnic Chinese and Vietnamese. We had all kinds of Europeans. We had everybody come in, but they were all in ones and twos. We really could not make a call on that.

**MRS DUNNE:** Nothing that has become statistically significant.

**Dr Strang:** When I mention that cultural factor, please be aware that I am only speculating as to a possible explanation for this. Along with the fact that this is a police-funded program, I do not know whether that may have been a factor in a negative opinion that Aboriginal youths and, more importantly, their families may have had about restorative justice as it was run at that time. I do not know whether that is still the case here.

I know that in New South Wales and, I understand, in Canberra there are more difficulties in engaging Aboriginal families in this. More effort has to be made to explain all this much more closely and to make arrangements—a simple thing like facilitators in New South Wales country towns I know nearly always go around to the young person's house and pick them up, to take them to the event. They take their family members with them. The police were not prepared to do that. I do not say that they should have, but

they simply were not that engaged with the program that they were going to put themselves out in those ways. It may well be that that is required in order for Aboriginal families to get engaged with this.

The other thing is much more consultation with the people who matter in young people's lives and whether there are traditional authority figures. There may be in Dubbo, Yass or anywhere. It seems that that level of effort is required to really engage Aboriginal young people. Given the scale of the problem, it may well be a very good idea to put that really big effort in. It may have an extraordinarily high payoff.

**MRS DUNNE:** Perhaps part of the problem in Canberra is that Aboriginal people come from disparate nations.

**Dr Strang:** Yes, and from far away.

**MRS DUNNE:** Often they are disconnected from their more traditional support networks. I do not expect your research would show this, but is there anything in the literature that would indicate that there are some indigenous groups, either in Australia or elsewhere, which are more susceptible to success through restorative practices? What are the characteristics?

**Dr Strang:** I am very interested in the circle sentencing program that I believe is happening in the ACT and which replicates the work that was done in Nowra, I think. That program has the makings of a very successful program. Certainly there are a lot of assertions about it being successful. It is modelled on the Canadian idea of the magistrate, as a representative of the formal justice system, sitting together with people from a community who have traditional authority. There are lots of good stories coming out of that.

The tragedy from my point of view is that no-one is systematically evaluating it. As you could imagine, the problem of selection bias is a very real one in a system like that where you are simply creaming off the people who appear at first sight to be likely to be most responsive to that. Then you get a good result—and that is really good—but you do not know what would have happened to that person otherwise.

**MRS DUNNE:** You are not really touching the intractable ones.

**Dr Strang:** Yes. I would love to know that that was being properly evaluated. It is not. It has elements in it which probably are essential to the creation of a restorative justice intervention for young Aboriginal people which is most likely to have success; that is, true engagement of the people who mean something to them. That is the heart and soul of restorative justice. You have to have the people in the room whose opinions you care about. I do not think that we were ever able to do that very well with RISE with Aboriginals. For whatever reason, we just could not get those people along. Anything that gets those people along is going to enhance the likelihood of restorative justice being a successful intervention.

**THE CHAIR:** Going back to the property issue, you were saying that a lot of these young people, when they came to the program, already had a history. I am reading this into what you said. It sounded like it could be too late to get them to respond to the



restorative justice way of working. I refer to your comment about the work currently being done in some of the primary schools and high schools in the ACT, working with young people who are very young. Certainly in primary schools and in kindergarten you have children working in this way. We have heard that from the principal of Charnwood primary. What are your comments about how useful that may be in assisting?

**Dr Strang:** I am certainly not an expert on restorative justice in schools. I should say that.

**THE CHAIR:** I am talking about the concept of working with them when they are young.

**Dr Strang:** I am all for that, most certainly. There has, in fact, been a randomised control trial which is modelled on RISE—a very powerful research design—conducted in Indianapolis with children aged between 11 and 14, randomly assigned to restorative justice or to whatever was the normal alternative. That had very good results for restorative justice and really changed my mind about intervening in a very structured way with very young children. I had previously thought that they may be better left alone. We had some of those really young children, 10, 11 and 12—they were nearly all Aboriginal children—coming in to RISE. The program needs to be very much oriented to their needs and their circumstances because, if they are getting into trouble at that age, they have got lots of problems in their lives. They all need to be taken into account in structuring a program that would suit them.

I am not by any means saying that restorative justice is not suitable for Aboriginal people; I am certainly not saying that it is not suitable for very young children. It has great potential. It needs some careful structuring to do it right.

**MRS DUNNE:** I come back to a couple of other points. You touched on some of the young people in the RISE program and the fact that they had a history of substance abuse. How do you approach that? How do you deal with that? Is dealing with the substance abuse part of the outcome? Would you be using the restorative process to help those people deal with their substance abuse? Is it in some sense quarantined from the matter that brought them into the restorative process?

**Dr Strang:** When we started looking at this program that we evaluated, we had expected that that would very much be a matter for discussion because so frequently it was a contributing factor, it appeared, to the offence in one way or another. It rarely was addressed. That was a shame.

It was not even addressed with the drink-driving experiment that we conducted, where the focus of the restorative justice conferences, as the police ran them, was: you can drink as much as you like, but do not drive. It was perfectly plain that a lot of these people had serious drinking problems, and their driving was just one manifestation of that. There might have been five or six members of their family in the room, all of whom were suffering quite badly from this reprehensible drinking pattern but who were effectively disempowered by the facilitators more or less giving the offenders free rein to drink as much as they liked as long as they did not drive. That was a lost opportunity. In some ways, that unfortunate way of looking at substance abuse, when it is alcohol and therefore legal, also tended to play out sometimes in the youth conferences as well, even

when we had far more professional police facilitators dealing with young people.

Restorative justice is a holistic process. All of these things need to be on the table if people want them to be. The role of the program facilitator is to provide the opportunities for all of this material to be discussed. Yes, I certainly agree that it should be on the table.

**MRS DUNNE:** You say “if people want them to be”. If I were bowled up to the RISE program because of shoplifting but I had a substance abuse problem—I was smoking marijuana on the side—would I have any control over what matters were on the table? Is it collectively decided what is discussed and what is not? I might think that it has got nothing to do with the fact that I do cones. Somebody else might. Do I have the right of veto of the things that are talked about?

**Dr Strang:** No, you do not, because, when you have a restorative justice conference, everyone in the room has the opportunity to say whatever they think is relevant to the issue. If your mum said, “If you were not so interested in this dope, you might not find yourself in this trouble,” then you, as the offender, would have to accept that that is her right. She can say that. She is there in her capacity as your supporter and she feels that this is relevant. So it is relevant.

**THE CHAIR:** Do you have another question?

**MRS DUNNE:** I did, on cherry picking, but I have got what I want.

**MR GENTLEMAN:** I have got one that I will put on notice.

**Dr Strang:** Please do contact me.

**THE CHAIR:** We will get those questions to you as soon as possible, by the end of the week if it is possible.

**Dr Strang:** Could you do it by email?

**THE CHAIR:** Yes. We will also email you the transcript so that you can make corrections if something has been picked up wrongly by Hansard. Thank you very, very much for giving us your precious time today.

**Dr Strang:** May I leave you with a copy of my book which is all about Canberra. It is from the victim’s perspective. I know that is not central to your concerns, but there may be some material that will be useful to you.

**THE CHAIR:** Thank you very much.

**ROBYN HOLDER** was called.

**THE CHAIR:** Good morning. You should understand that these hearings are legal proceedings of the Assembly protected by parliamentary privilege. That gives you certain protections but also certain responsibilities. It means that you are protected from certain legal action, such as being sued for defamation, for what you say at this public hearing. It also means that you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter. Do you understand that?

**Ms Holder:** I do.

**THE CHAIR:** Thank you for coming. Could you give your full name and title for *Hansard*? Then, after you have made your introductory remarks, we can go into questions from the committee.

**Ms Holder:** I am Robyn Holder. I am the ACT Victims of Crime Coordinator. That is an independent statutory position under the Victims of Crime Act. My role primarily relates to promoting and protecting the interests of victims of crime in the administration of justice. In relation to this committee's terms of inquiry and focus, it is not directly to point but overlapping in that some of the issues and problems that you might be examining that might be subject to restorative interventions might not necessarily be matters that come into the justice system.

One of the key points I make to you in the written submission that I provide is that there needs to be a very clear understanding about what types of matters might be subject to what types of school or education-based restorative interventions and what might constitute criminal conduct and require law enforcement investigation and prosecution.

I say that because in the time that I have been Victims of Crime Coordinator I have had instances brought to my attention where schools and colleges have tried to resolve some matters that should properly have been investigated by police. I appreciate that there is a range of delicate balancing acts that those who run schools and other educational and youth facilities have to manage in working with young people and delivering educational and other services to young people. At the same time I would strongly assert that they also have a duty to protect people in their care, particularly older or young people, and, where they suspect that a criminal offence may have occurred, to have a clear sense of their obligation to report that to authorities.

That would be by way of an opening framework for my comments to the committee. I further add to that by way of context that my office has been very involved in the development of the Crimes (Restorative Justice) Act and the implementation of phase 1 of that legislation in the Children's Court. We have also been involved for many years, although less so in recent years, with the AFP's diversionary conferencing scheme; similarly with the Ngambra Circle Sentencing Court. These are all very direct roles that my office has in working with victims in restorative interventions.

That is where the experience comes from in terms of understanding that, for victims of crime, a restorative intervention is not a panacea to all ills. There is a range of different consequences to harmful behaviour, whether it is criminal or not, and certainly for the

instances that have been brought to our attention, often by the parents, those consequences to young people can be very severe. There is a huge impact on their educational achievement. Some young people have dropped out of school. Some young people have felt no other option but to change schools. Families have moved interstate.

This is all in relation to understanding what can be—I hope I am not telling you how to suck eggs—a very complex social environment for young people, particularly older young people. We are made aware of a lot of ways, I guess you could say, in which young victims and other witnesses, for instance, can be intimidated, harassed and further damaged if they are attempting to report matters to authorities and seeking interventions. So there can be very severe consequences.

I guess one of the other things that I wanted to say by way of context for the committee's deliberations is that the main focus of my written submission relates to how you might be considering restorative interventions in educational and youth settings. However, the committee's terms of reference are fairly broad, so I wanted to draw to your attention the fact that crime, as it takes place in our community, most likely impacts on young people. Young people are by far numerically and in terms of volume the greatest perpetrators of criminal incidents, be they criminal damage, car theft or physical assaults.

But similarly, and far less spoken of, young people are the victims. From my experience, there is very little by way of full acknowledgement of what that means and what that constitutes. You could be aware of the review of the Children and Young People Act, which as a legislative framework sets out the government's, indeed the community's, responsibilities to children and young people who are at risk. But in my experience that focuses on children and young people who are at risk within families, not children and young people who are at risk from each other or, indeed, from strangers.

There is this sense of where young people's offending and the consequences of that offending might be a concern. It is not for the victims of that offending behaviour. I say that even as I would say that when the ACT Victims Services Scheme was set up in 1999, one of the strongest, biggest gaps in service that was acknowledged at the beginning was in response to children and young people, in particular. I am really pleased that that service, which runs a partnership between ACT Health and VOCAL, has as a significant proportion of its client base children and young people. That is the real success of that scheme.

At the same time, the largest proportion of those children and young people appear for assistance at the DSS because of the damage caused by family violence, not necessarily because of other types of instances. In the experience of our office the young people—and many of us at the table are parents of young people—are not their own best advocates in terms of knowing whether they need to ask for help.

We have regular contact made with our office, primarily by parents, not necessarily the young people themselves, who are desperate to find help for their children. That can be in relation to the physical harm that they have experienced, and this is not the inquiry for it, but the extent of planning for young people who are injured by assaults, for example, for discharge from public hospital is very, very minimal. There is a lot of presumption around that people, in essence, make their own healing. How that translates to people who come to our office is that basically they are left on their own. Everything is provided

for young offenders and their families, and it may not appear so to those who have been appearing before you, but believe me, it is far and away more than is provided for young people who are victims and their families.

I wanted to provide that bit of a picture to you about your fairly broad terms of reference in relation to support services for young people. In relation to services and support for the young victims of offending behaviour or harmful behaviour that might not be criminal and their families, there is pretty much nothing, aside from quite narrow things that are narrowly constrained. That is irrespective of the very serious consequences that can happen.

This might seem like yet another cry of need, but in relation to even the longer-term health of the ACT community, you probably will have had submissions before you to show the extent to which young offenders also have had victimisation experiences earlier in their lives. In essence, intervening early with young people and children who have become victims of crime is an investment in the prevention of youth offending. It just does not happen to a substantial degree. That is by way of introductory comment. I am happy to answer questions on any of those comments.

**MRS DUNNE:** Ms Holder, I think that you are saying that there is a perception that the kids will get over it and we just do not think about it.

**Ms Holder:** I think that is right. I think that you rely a lot on the resilience of children and young people. I think that is right; do not get me wrong. I think that there is a strong research base, evidence base, to show that working with young people's resilience is very effective and that you can do damage by overintervening. That is absolutely true. What we see particularly is that parents really flounder. They do not know how much to help, particularly with older teenagers who are not good communicators. They do not know how much to help their young people. Anything that you say as a parent, the young person is going to fly off at. Is that in relation to the age of their development or is it in relation to their victimisation experience? Parents really flounder and we are constantly emphasising in relation to the entitlements that victims of crime do have that it is not just about counselling. It is about the practical supports that should be available for people. Does that answer your question?

**MRS DUNNE:** Yes.

**THE CHAIR:** I have a question that goes back to some earlier remarks you made about the types of matters that should or should not be dealt with within a restorative justice setting in a school setting. You said a number of things about that. One of the things you said was that perhaps some things were being dealt with internally that should be reported to the police, in your opinion.

**Ms Holder:** Yes.

**THE CHAIR:** You also said, as I heard it—maybe I heard it incorrectly—that sometimes the young people, having gone through a restorative justice process of a kind, whatever kind that may be, found it so disturbing and damaging to them as a victim that they actually dropped out of school, went to another school in one case, or in some cases went interstate to school. Did you actually say that or did I mishear you?

**Ms Holder:** The references I gave about the damaging impacts of how some schools have responded to some incidents was not in relation to the use of restorative interventions. It was in relation to schools attempting, by a range of different methods, to mediate or resolve what they saw as interyouth disputes, whereas when they came to us it was quite clear—we are not investigators; we do not have that function—that what they were talking about were allegations of criminal conduct; that is, sexual assault, physical assault and so forth. So the key concern is that, if schools and the other educational settings are to develop and more formally use restorative interventions as a method of managing the population in their school, they need very clear guidance as to what types of behaviours are amenable to that type of intervention and what are not.

**MRS DUNNE:** Something more than amenable, because you might find somebody who has committed some sort of criminal injury on someone who may, in a criminal justice system, go through a restorative process.

**Ms Holder:** That is correct.

**MRS DUNNE:** It is what is the appropriate setting for that intervention.

**Ms Holder:** The restorative intervention, exactly right.

**MRS DUNNE:** So that what you are actually saying is that there need to be guidelines or people need to exercise common sense, that in a sense if something is serious you do not cover it up by using the school-based restorative system when it should be aired in another way.

**Ms Holder:** That's exactly right, and I think that goes to what we could describe as the legal responsibility of people in schools and other youth settings to report to authorities if there are allegations of criminal conduct. As you say, currently now in the ACT with the restorative justice act, that may become subject to a restorative type intervention, but the concerns I have are who is making the decision, what is the framework and so forth. Of course, principals in any school—that's clearer than in community youth centres, but focusing on schools—will do all sorts of things in the classroom, in the corridor, in the playground, very quickly. That may or may not be satisfactory, and there is a lot of judgment that we vest in teachers and principals to exercise good judgment about what's going on.

I have a son in a public primary school in the ACT and I am aware of teachers making these judgments daily, and I am also aware, as a parent, of parents who express concerns about the consequences of those judgments—“this bullying is not being dealt with properly and now it has become a real issue” sort of thing.

**THE CHAIR:** What I hear you saying clearly is that schools need very clear guidance about the point at which they intervene and the manner in which they intervene—should it be referred out or dealt with internally—but you are not saying that, once referred out, all young people involved may not go through a restorative justice system. We have heard here from other people that violent crimes have appeared to respond quite positively towards our restorative justice intervention, but I'm not quite sure because the person we just listened to didn't talk about the victim's result—more of the other. We do

have information about the victims, so it would be interesting to carry on to read about that as well. That is the clear thing you are saying.

The other thing I think I can hear you saying is that it is very important that when schools are implementing restorative practice everyone is very aware of what they are doing at the time; that, when it is deemed to be appropriate under the guidelines, they are properly trained in it, so that it's not something that's applied willy-nilly and seen to be restorative justice but may not necessarily be—but some kind of evolution of that, or an idea of it. Is that what you're saying?

**Ms Holder:** Yes, that's right. I mentioned in the written submission that it really depends what you call a restorative intervention. Any type of discipline, well handled, in a workplace or anywhere, can be restorative; it depends how it is handled. There is a range of other types of methods that can be used that are restorative in terms of an exchange of verbal information, in what you could call a kind of shuttle diplomacy, if you like, or a shuttle mediation. There is the exchange of materials between the parties. For example, in a primary school that could be a picture from one to the other. You could imagine all manner of ways that that could be done. But people automatically zoom towards thinking about people in one room, and that's where to me the risks start to heighten.

For example, even in the criminal justice system people assume that simply by being able to provide the space for a person to express the harm done to them is beneficial. In our experience, it can be and it can also not be. If you're looking at young people, I would be very worried about the privacy of that information outside of that room, because, again, every single youth case that has been brought to our attention involves whispering campaigns, name calling and all manner of things that in effect drive that young person out of their school. So I just caution that there is an assumption that that expression of pain and harm is in itself cathartic and beneficial. It may be in that instance—this is my critique and comment back to the researchers who are doing this kind of work—but it is understanding what that means over time to victims.

What people say to me is that apologies are meaningless unless they are followed up. You can take people at face value when they say they are sorry about something, but in the end that's all it is—words—after a time. That gets down to then thinking about the outcome for victims; what does repairing the harm really mean when you think about all those practical consequences, like safety in the classroom, when you can hear people whispering about you up the back. What is it in relation to a parent having to transfer their child and the costs of new uniforms and transporting kids? What is it in relation to the disruption of those friendship networks? Again, most restorative interventions, even those in the ACT, which talk about the victim being central, if you look at where the resource is going, both in terms of time spent in preparation but more critically in follow-up and the supports offered, you can bet your bottom dollar that it is not going towards the victims and their families.

So, in relation to the committee's interest in what it is that builds support for families in that desirable vision of strengthening families, strengthening social networks and strengthening the capacity of communities to manage bad things that happen and still live together, you have to think what that concretely means in dealing with the practical consequences of victimisation on victims and their families.

**MR GENTLEMAN:** Just on that, you did say that some matters should proceed by prosecution rather than restorative practices in the educational setting. Do you have a view as to what matters should go directly to that route rather than through restorative justice?

**Ms Holder:** I would have to refer you to the Crimes Act on that. Clearly, that has the community standards about what is criminal conduct and what is not. If a youth worker or a teacher has information that they believe a crime may have occurred against a child or young person, they have to report it. It has to be investigated by the appropriate authorities. The Supreme Court, in a decision a couple of years ago—I can't remember the name of the matter—directly criticised the education authority for attempting resolution of a matter in a private manner that subsequently resulted in criminal charges arising. So there are a number of very specific consequences that need to be thought about.

To answer you directly, we have had actual allegations of sexual assault—not recently, I am pleased to say, and it is infrequent, but we have had that. Part of that might involve the school having a perception. We hear constantly about victim choice and victim empowerment. I would suggest that for a child or young person that decision really cannot be theirs necessarily, not in that setting; in other types of settings, perhaps, but not in that setting. Then the ACT has a legal responsibility, and that's it.

**THE CHAIR:** I have another question going back to the impact on a child, after the intervention, be it restorative justice or some other intervention that the school decides to implement, seen as a restorative nature rather than a punitive nature. You said that with some children there is then this whispering campaign and so on and so forth and the child still feels victimised by the ongoing effects of that, from having talked about how they feel within the conference or whatever other process they have gone through.

Have you any other kinds of information about what happens to a child where there is the punitive approach to the problem? Say the offender has been punished in some way; what effect does that have on the young person when the offender comes back to school after, say, they have been suspended? What is the ongoing effect on the victim then?

**Ms Holder:** I am thinking particularly of an incident in a high school where a young person was head-butted at a disco and was knocked unconscious. It wasn't an accident by any means. I think for the young victim it is an incredibly complex set of dynamics. The message that young person heard about the offender was that it was so out of character, that that young person had a promising career. The person was in the football team, certainly a high-achieving student, so not what you would ordinarily expect.

I think one of the responses of the school was about a term of suspension, which you could call punitive; I wouldn't necessarily. How the young victim experienced that was that it was their responsibility that that had happened, and somehow there was that sense that he was no longer the victim; the other person was the victim. To an extent, that's a really understandable dynamic for that young person. This is just about his milieu, his peers, and how they might have responded to him.

A very live feature of all aspects of interventions is that victims are always blamed for something to do with the process: they shouldn't have been there, they should have



turned the other way, they shouldn't have worn that short skirt, they shouldn't have reported it to the authorities, they shouldn't have told their parents. Victims will be blamed for something in the process. If not, they take on some of the blame themselves about exactly those things: I shouldn't have et cetera.

To go back to that question of how that young person felt about that punitive response of suspension, for that period of time that young person felt a degree of safety and they felt that it had been taken seriously. Does that make sense?

**THE CHAIR:** Yes. My question is more about when the head-butter comes back to school, in this particular instance. Maybe this head-butter person is a fairly gregarious, well-known person within the school setting and has a strong peer group of support. Even though the other person has been so-called severely disciplined for the head-butting, is there some ongoing experience that the victim in this case has, is still of such distress that they still feel that they are persona non grata at school so say, "I will now go to another school because this person has come back to school and I still have to face them."

**Ms Holder:** I think it's a very perceptive question because sometimes it feels as though our culture, and particularly our youth culture, values those who break the rules more than those who are victims of that rule breaking. So there is a kind of kudos for that young person, who was a popular member of the school. I would be misleading you if I said that I had a long association with that matter beyond that immediate intervention, but my information wasn't that he suffered in his social standing amongst his peers in that school for being a head-butter and being suspended. If that's your question—

**THE CHAIR:** Well, it's more the effect on the victim than what happens to him.

**Ms Holder:** Well, then you think about what is the converse then of that social value, that peer value of the rule breaker.

**THE CHAIR:** That's right. I understand what you are saying.

**Ms Holder:** Society has a complex perception of victims. We were prepared to be very accommodating to the bushfire victims for a period of time, and then, in response to a range of different influences, the community's empathy has become much more conditional. Certainly, we see that in relation to victims of crime. There is nothing unconditional about the community's response to supporting and empathising with victims of crime. That might seem a brutal statement, but that's after 10 years in this position.

**MRS DUNNE:** The points you make open up a lot of issues. In the instance of the head-butter, without dwelling on the specifics of the individuals I suspect that as a type the victim could be doubly or triply victimised by virtue of the fact that he made a complaint; he broke the rules, in a way, by dobbing in—

**Ms Holder:** Yes, although he was unconscious, so it was a bit difficult not to be—

**MRS DUNNE:** Yes, but there would be occasions when a child or young person would bring a complaint at school and, by virtue of doing that, victimises himself again.

**Ms Holder:** Absolutely, and certainly his mother, who is the one I had most contact with, was very aware of this, because he was saying to her, “Mum, just drop it,” and all she could think of was: there he was, lying in a pool of blood on the disco floor, with lots of teenagers bopping around, and he could have died, from swallowing his own blood or something. As a parent, you can’t help but think. A whole heap of different consequences can flow.

**THE CHAIR:** As you say, there is no perfect approach, no panacea, no magic bullet—we know that—so we need to find, obviously, in our society the best way forward, and there may be a variety of them, that we can utilise in a constructive, effective way for both the victim and the offender, because if we’re going to stop the offender reoffending and creating more victims, that would be very nice. Also, of course, we know that some of these young offenders will go on to be older offenders and continue on to be non-productive members of our society for a very long time. That is one side of it, but there is also the other side that you are very clearly explaining to us today—the ongoing effect, in your opinion, on these people who are on the receiving end.

So we need to take both of those into account and find the best ways forward. If the best way forward is using the all-out punitive approach—you’ve done the wrong thing so now you’re going to suffer—and the victim is happier, continues to be happy for ever and ever and the offender doesn’t come back and reoffend, that’s fine and we’ve solved the problem. But, on the other hand, if the restorative justice process, properly managed and with all the safeguards and things in place, brings us the effect that we are all looking for, then we have found something. But what we need to do is keep on investigating what are the best approaches. I am trying to distil whether you have a feeling of which of these two very stark approaches may—

**Ms Holder:** That’s one of the things I would strongly disagree with you about, with respect—that they are starkly different approaches.

**THE CHAIR:** I am talking the extremes. The very extreme of that side is capital punishment and the extreme of the other side is just patting a person on the head and saying, “Just say sorry to the person and everything is all right now.” There are those two extremes. In my mind, there can be two extremes.

**Ms Holder:** I was just going on to say that I think that the challenge and the trick is about having a framework that integrates the approaches to say that it’s not about having only this or that; it’s about having a framework that is based on an understanding of exactly what is your entry point. Really, the entry point is what will be dealt with in a kind of semiformal way, in a school setting, for example; what will be done in a completely informal way, without the intervention of any authorities—say, for example, in neighbourhood disputes. There is a range of different ways in which people, human beings, work out disagreements with each other in a range of different settings. They are countless, those things, so it really depends on understanding where exactly you want to locate there—completely informally in communities and families; the sort of semiformal in institutions over which government has some accountability and some responsibility; and then the completely formal where there is a clear delineation about criminal conduct, if you like.

One of the really radical things and really hopeful things about the ACT's Crimes (Restorative Justice) Act is that it integrates restorative interventions within the formal processes. It completely does away with "you either have this way or you have that pathway". Looking at the frameworks is the key thing. What are the criteria for entry? What decides whether it is something where the public interest lies, that it is in the public interest that the sexual abuse of children shall be brought out in public, basically, and dealt with in public, and where in that process things like the adjudication of the fact is dealt with, or the articulation of harms?

It really is about integrating the frameworks on the criteria and creating the pathways that understand that there are really significant differences between what it is that people are trying to achieve. One of the things that I am constantly saying, when people say that restorative justice is more satisfactory than the formal processes, is that they are comparing apples with oranges. In the formal process you often have a person who is not admitting to committing an offence. You have to go through a contested finding of the facts. In a restorative intervention, the person has already said, "Yes, I did something bad," so you're not comparing the same thing.

I say that, if I had the resources to work with victims, per capita, in the way devoted to restorative interventions, I would get you exactly the same levels of satisfaction, because it is all about information, being supported and having reasonable and concrete opportunities for participation, which are simply not there in the current processes. But saying that one way is better than another is dishonest, in my view, because you are absolutely not comparing the same processes, because there is no contest on the facts. One says, "Yes, I did wrong; let's deal with the harms," and the other says: "No, I haven't done anything wrong. You prove it. Then we'll deal with the harms, if you find out that I'm guilty or have done the wrong thing."

You can't institute a restorative intervention in a youth centre unless the said young person has said, "Yeah, I did the head-butting. Sorry about that." If you have got that young person in that youth centre saying, "No, I did not; you prove it," you still have to deal with the facts.

**THE CHAIR:** Thank you very much

**Ms Holder:** You're welcome. I hope that was useful.

**MR GENTLEMAN:** It was.

**THE CHAIR:** It was very useful. I believe so; I can't comment for my colleagues.

**MRS DUNNE:** I am agreeing.

**THE CHAIR:** We'll be sending you a transcript so that you can check it for accuracy in case Hansard has not picked something up properly that you have said. Also, if there are any questions on notice, we will get those to you by the end of the week and then we'll let you know how quickly we'd like you to turn them around, but we'll give you plenty of time to do that. Thank you very much for giving us your time today.

**The committee adjourned at 11.38 am.**