



**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

THURSDAY, 25 OCTOBER 2007

**Secretary to the committee:
Dr 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 that have been authorised for publication by the committee may be obtained from the committee office of the Legislative Assembly (Ph: 6205 0127).

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The committee met at 2.03 pm.

CREBBIN, Ms LINDA, Commissioner for Children and Young People and Commissioner for Disability and Community Services, ACT Human Rights Commission

DUNDAS, MS ROSLYN, Children and Young People Adviser, ACT Human Rights Commission

THE CHAIR: Welcome to you both to this inquiry into restorative justice and thank you very much for coming. I will just read the privileges statement card. The committee has authorised the recording, broadcasting and rebroadcasting of these proceedings in accordance with the rules contained in the resolution agreed by the Assembly on 7 March 2002 concerning the broadcasting of Assembly and committee proceedings.

Before the committee commences taking evidence, let me place on record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee in evidence given before it. Parliamentary privilege means special rights and immunities attach to parliament, its members and others necessary to the discharge of functions of the Assembly without obstruction and without fear of prosecution.

While the committee prefers to hear all evidence in public, if the committee accedes to such a request the committee will take evidence in camera and record that evidence. Should the committee take evidence in this manner, I remind the committee and those present that it is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly.

I should add that any decision regarding publication of in camera evidence or confidential submissions will not be taken by the committee without prior reference to the person whose evidence the committee may consider publishing. Do you understand that?

Ms Crebbin: Yes, thank you.

THE CHAIR: Do you have something you would like to say to begin with?

Ms Crebbin: I do not particularly have an opening statement in the strictly formal sense because I have to say I was not clear what particular aspects of the terms of reference you wanted me to address. So I have some general comments—general thoughts might be a better way to describe it. And I want to stress that those thoughts and comments are based on some minor personal experience of restorative justice principles and processes which come from my previous work with the Legal Aid Commission. I was a member of initially the steering committee and subsequently the reference group for the Restorative Justice Unit in the Department of Justice and Community Safety. But apart from that I have no particular academic background in the topic and, apart from one observation of a restorative justice conference within the Restorative Justice Unit, no personal experience of involvement in a restorative justice process.

The other thing that I want to stress is that I have also not conducted any consultations with children and young people in relation to this topic. The reason that I stress those things is that I think this is an area in which there is a lot of opinion or personal views based on things such as mine—minimal personal experience or opinions based on understanding of what seems like a good idea—without necessarily considerable informed personal experience or academic research.

One of the first things I want to say is that any recommendation that the committee makes for the wholesale adoption of restorative justice processes in schools should be focused very much on empirical research ensuring that processes that are adopted are based on research and on informed opinion. So certainly the opinions of people in situations similar to mine, who have some minor personal dealings with restorative justice processes, should be valued—they should not be disregarded—but I think some greater rigour should attach to any recommendations that the committee makes for the wholesale adoption of processes and principles within our education system.

The other important thing that flows from that is the importance of encouraging as much as practicable the participation of children and young people themselves in the planning of restorative justice processes used in schools. Our schools in the ACT are exceptionally good at encouraging participation of young people in their planning processes and in their decision making, and this is an area in which I think consultation should occur.

I do not necessarily suggest that that is something that the committee needs to do before it makes recommendations, but it might be part of your recommendation that young people and children—and by that I am referring to people under 18—have a clear path for participation in decision making about how restorative justice principles are adopted in their school, if that is what is to happen.

My understanding is that there is reasonably little research about the impact of the use of restorative justice processes in an education setting. I say that based on a conversation I had with Professor John Braithwaite in preparation for today's meeting. I do not think Professor Braithwaite has spoken to the committee. I do not know whether you are aware of him. We are really fortunate in the ACT that we have a lot of internationally recognised academic expertise in this area. Professor Braithwaite is the Director of the Centre for Restorative Justice at ANU, and he has both a national and international reputation in this area. He told me that his understanding was that there was a bit of research done by a leading US academic Paul McCold and he referred me to a study called Safer Safer Schools that comes out of Pennsylvania in the US. I have to say I was not able to track it down. I found plenty of other work and a website for Dr McCold, but not that particular research project.

The other is a very recent publication by Brenda Morrison. Is that something you have come across—her recent book, *Restoring safe school communities*?

THE CHAIR: Yes.

Dr Lilburn: Dr Morrison made a submission.

THE CHAIR: That is right. We also have this big book—

Dr Lilburn: *The Handbook of Restorative Justice.*

THE CHAIR: The handbook, yes, which Sandra and I have been sort of alternately trying to plough through, which is full of a large number of essays about it.

Ms Crebbin: Yes, the theoretical work. I guess that comes about because the criminal justice system is in many respects much easier to access and study than things that happen in schools. But Professor Braithwaite's view—and this seems to be the case from what I have seen myself—was that restorative justice principles were probably used more consistently and more thoroughly in school settings internationally than they were in criminal justice settings internationally. So perhaps it is a little surprising, notwithstanding the access issues, that there is not a great deal of research. Brenda Morrison's work is based on ACT data but does not necessarily have that evaluation of outcomes that you would ideally like.

I also came across a reference to a study published by the Youth Justice Board for England and Wales in 2004 that specifically related to a restorative justice project that they had run for school settings for school districts in England and Wales. Again I could not access that report because the link on the internet did not seem to be working, but it was a study based on four years experience and might be something that is worth referring to.

I have referred a couple of times to restorative justice processes, and the other point that I want to make is that, if the committee is minded to make a recommendation that there be an adoption of restorative justice principles and processes in schools so that there was, if you like, something imposed on schools across the ACT, I think it is very important that policies that are developed clarify the difference between restorative justice principles and the process.

I think there is often confusion in people's minds that restorative justice principles mean a particular process which is diversionary conferencing, which of course they do not. There are different ways in which those principles can be put into place. Where schools have made a conscious decision to adopt a restorative justice program I think they have individually put a lot of research into setting it up appropriately. Understanding what it is they are doing and why they are doing it, what philosophy is going to underpin what they do, precisely because they are having to set it up on their own without that help.

I guess I have a little concern that if schools are going to be required to adopt principles, they will not necessarily go through that same process of doing all of the homework themselves and making sure that they understand and have embraced the philosophy in the first instance. So the policies need to provide them with considerable guidance so that there is a clear and consistent understanding of what restorative justice means and how those principles should be applied.

I see that as important because—and I base this on my observation of what happens in the criminal justice setting—it can be a very powerful tool. It can be a very powerful emotional and psychological tool. In the conference that I observed this tough old lawyer found herself having to reach for the tissue box and I am told that that is quite

a common experience. I was not a participant—I was just up the back watching it—but listening to the grandparents of the young offenders talking about the impact this had had on them was really quite moving. So I think we need to recognise that it can be a very powerful emotional tool and for that reason we need to be cautious to ensure that processes that are introduced are designed to recognise that and to avoid the risks that can arise from its being used inappropriately or in inappropriate cases.

The other thing that needs to be carefully worked out is clear guidance on how to identify those cases that should be referred to police and those that are okay to keep in-house. In many matters they will be obvious, but there are always grey areas, and I think particularly in primary school and lower high school settings there are more grey areas. The age of criminal responsibility is 10 to 14 here. There is a rebuttable presumption that a child does not know and understand what they are doing sufficiently for the purposes of criminal justice charges. I think we need to ensure that those grey cases where teachers or schools might be struggling with is this something that should go to the police, or do we really want to get police involved with this? Can we handle it in-house? There needs to be clear guidance to enable teachers to make those decisions because it is important that correct decisions are made.

Some clear thought needs to be put into how to avoid the risk of processes slipping into shaming practices or becoming events which stigmatise and marginalise students and become more about punishment and retribution than restoration and repair—so again a clear spelling out of what the principles are should assist to avoid that. I spoke to Professor Braithwaite about that because it was something that I am concerned about and he seemed to be unconcerned about it in the sense that he said that his observation was that schools in which restorative justice principles were well entrenched had a clear understanding of the distinction between repair and retribution so he felt that was something that I was unnecessarily nervous or anxious about. But I think it is nevertheless something that it is important to keep in mind.

For someone who was not going to make an opening statement I am doing okay, aren't I?

THE CHAIR: Yes, you are doing very well.

Ms Crebbin: Two other matters, and I think your terms of reference pick this up nicely because it is such a potentially powerful emotional process. There needs to be good thought given to the support that can be available for all participants in any processes and for family. It seems to be frequently the case that acting out at school can be the symptom of difficulties at home. In that case, having easily accessible links into support services for families that require them or for children and young people that require something beyond the school setting is quite important if we are going to make the most of the benefits that can flow from the use of these principles.

One other issue that I have pondered over a little bit is the tendency in some places to use children themselves as monitors or mediators, and I do not know whether that is a good thing or whether it is wise. Being a good mediator, being a good monitor, is a skill that many children and young people possess; many do not. Many adults do not possess such a skill and are never going to learn. You need to have a certain level of emotional intelligence, be non-judgemental, have empathy. So, if children are going

to be used as mediators or monitors within the processes themselves, I think again there needs to be some thought given to ensuring that teachers who are selecting children and young people are doing so with an understanding of the sorts of skills that are required. They are not necessarily skills that can be learnt and it is something more than just being trained about it. There is an inherent personality type, if you like, that really is required if a child is going to be used in that role. I think that is what I obviously wanted to get out.

MR GENTLEMAN: Good. I wonder, chair, if I may just touch on something you said in there—

THE CHAIR: Yes.

MR GENTLEMAN: that I do not think we have heard out of our inquiry, and that was what you said about the risk of use in inappropriate cases of RJ.

Ms Crebbin: I am surprised you have not talked about that.

MR GENTLEMAN: Well, it does not come back to my memory and I am just wondering what sort of cases would you see where it would be inappropriate to use RJ in a school setting.

Ms Crebbin: Yes. In a school setting in cases which clearly should be dealt with in the criminal justice system, that is an inappropriate use.

MR GENTLEMAN: Yes.

Ms Crebbin: In the criminal justice setting there is a two-stage process. There is an eligibility process, so certain types of cases and certain consents are required before a particular case is regarded as eligible to be considered for conferencing, and there is then a suitability assessment. The suitability assessment is quite a sophisticated assessment tool. You look at the type of offence, talk to the victim and see whether or not the victim is open to restoration and repair at that particular time. Is the young person who is the offender, if you like, really genuinely accepting and acknowledging some fault that has caused the need for the process? If they are not genuinely acknowledging that, is that an appropriate process to use in that case?

Again, this might be an example where my nervousness about it or my picking up on this comes as a result of my thinking about restorative justice in a criminal justice context. Perhaps these things are not so significant in a school-based setting; perhaps the cases are of a different nature. But it does seem to me that you need to ensure that it is genuinely going to help heal whoever the victims are without harming them and do no harm at the same time to the child or young person who is in the role of offender.

THE CHAIR: We have had recent reports of incidences of bullying and some violence and some forms of harassment in some of our schools. Would you see a role for restorative justice principles and processes in some of those and not in others, and do you think that we have a different environment now in schools, a different kind of conflict perhaps happening and a different form of harassment and violence

happening with the advent of cyberspace, mobile phones and things like that now that we have this different kind of environment? Where do you see restorative justice fitting into that continuum of behaviour?

Ms Crebbin: I think it almost goes without saying that restorative justice processes would be appropriate for some instances of bullying and harassment and not for others, and probably *prima facie* not suitable for incidents of violence. It depends on what level we are talking about, I guess. Kids have for years in primary school playgrounds bumped into each other, hit each other and smacked each other—and I do not mean to suggest in saying this that I condone that or trivialise it in any way. If we are talking about violence in that degree, if there is such a thing as normal playground push and shove, restorative processes could well be fine. But the sort of violence we have seen reported in our media is violence of a level that is fairly clearly a matter for the criminal justice system rather than schools and restorative processes.

Within the criminal justice system they may choose to use the restorative justice process for them. Our system here, which I think is a wonderful system, is geared up for that, so it does not mean that referring a matter to the criminal justice system is going to exclude those people from being able to make use of restorative justice processes. It means that somebody other than the school is controlling that process and I think that is appropriate for cases of violence of the sort we have seen reported on. I do not think that these are things that should be the responsibility of our educators to deal with.

Ms Dundas: If I may, my understanding is that a number of those reports were across school incidences where the students were not all in the same educational institutions—

THE CHAIR: Some of them were.

Ms Dundas: so the ability for one school to take responsibility for the whole process is quite complex.

THE CHAIR: Yes, some of them were definitely across schools.

Ms Crebbin: As to the different context, Roslyn will be able to address this better than I can. I can observe from my previous work with the Legal Aid Commission that there is a noticeable increase in the use of mobile telephones in particular but also emails as a weapon of harassment across all sectors of the community. It is a very silly tool to use because it provides wonderful evidence, but there is no doubt that the mobile phone in particular and text messages are significantly used as a weapon of harassment across all age groups from my observation and in all areas of the community.

THE CHAIR: What is your experience in the education setting?

Ms Dundas: Whilst there is a trail of evidence, actually getting to the point of determining a level of responsibility so that the situation could be dealt with under restorative principles becomes another issue because there is a belief that what is being undertaken is anonymous because you are not doing it face to face or you are

not even doing it back to back as bullying used to be, so I believe it puts extra pressure on the people who are trying to reconcile the differences to reach that level so that it becomes practicable.

Again it is also very hard to bring into the school setting when things might be happening over the internet through *My Space* pages or *Face Book* where messages are being sent from a computer at home but between two students at the same school, so it is a school relationship that is being damaged but it is happening certainly outside of school hours. So it does add a level of complication to the issues that you are trying to look at about how these principles can be used to ensure that these problems do not escalate and look for some kind of positive outcome of that. It is hard to bring it back into the school setting.

One of the things that we have found is that, whilst schools might be quite effectively applying restorative justice principles in their school settings for particular cases, it is not a mode of thinking or a way of dealing with problems that is spreading out beyond that particular scenario. We have seen a report from the Youth InterACT Conference that took place earlier this year as run by the ACT government. The young people participating in that knew very little of restorative justice in terms of the criminal justice setting, but appeared not to be making the link that what they might be doing in their school setting to manage problems is something that could be used in other factors of their life and outside of the school setting. So I guess there is a breakdown in understanding there.

Ms Crebbin: Do you think that that might be because very often we do focus too much on the process, so people tend to compartmentalise what it is they are doing as a process that you follow with a particular name in a particular place, which is your school, without understanding that there is a framework of principles that underpin it that are about problem solving and conflict solving more broadly. Do you think that that might be something that happens?

Ms Dundas: As you said earlier, the difference between the principles of the process and the process does not appear to be made very clear in the school settings to be drawn out and how that is tackled. I think this should be something that the committee is interested in in terms of the evidence you have already heard and the terms of reference—about how that can be unpicked and those different models can actually be delivered in such a way that young people can use those skills in day-to-day undertakings. It will be a challenge, especially because of the diversity of programs across schools. But the principles underneath it are all very similar. It is about how those principles can be communicated: “We are just not having this particular conference because there has been a particular issue that has arisen that needs to be dealt with; we are using these principles because they will ensure the best outcome.”

Ms Crebbin: And this is the way that you go about resolving problems and conflicts that come around in your life at home or with your mates or in your workplace after you leave school—that broader understanding.

THE CHAIR: That brings me to another question that we have got. How much of the school’s responsibility is it to be managing these behaviours when it is seen in the context of the whole society—like you are talking about parents and about other

schools being involved and the peer groups, of course, that may not necessarily be peers in the same school. It is a broader question, so how much responsibility has the school actually got for managing this behaviour?

MR GENTLEMAN: And then therefore how much resources should they put into it?

THE CHAIR: Yes, that is right, so amongst all the other things that a school has got to do on a weekly basis how much resources should they be expected to be putting in to this sort of thing versus—

Ms Crebbin: I do not know whether what I am about to say answers your question but I guess I take this approach: there will always be behaviour management issues that schools have to address. What we are talking about now is one way in which some of those behaviours could be managed by a school. I think we are talking about: do we adopt this particular set of principles as one of the ways to manage student behaviour? If we do, then presumably you resource it properly. I do not know that we can have a discussion about whether schools should be responsible generally for teaching what are life skills to assist young people more broadly to resolve conflict and problems. We could talk about that, but I was really addressing an issue in my mind about: is this something that schools should do generally in order to manage the behaviour of students or manage conflict that arises in their particular school? I think you were suggesting that it is impossible to have a conversation about whether schools should be responsible generally for resolving problems that cut across school and community.

MR GENTLEMAN: My feeling from what we have heard in the committee from schools in particular is that certainly the victims of a situation feel better and are better able to deal with other problems if they have been through an RJ process in comparison to some of the other, I suppose, punitive approaches to these sorts of things.

Ms Crebbin: And the research that has been done in relation to criminal justice outcomes shows that. It shows fairly consistently that victims feel that they have been heard and that they have received a better outcome than they would have had in the criminal justice setting. I am not familiar enough with that research to say whether these are people who can authoritatively speak about what might have happened for them in the criminal justice setting if the restorative justice setting had not been used for them as an alternative, unless they have been involved in earlier proceedings, and some of them might well have been. But that seems to be quite a consistent outcome in research that is done about the use of restorative justice principles—that participants all around find it a more beneficial personal experience. And that is what it is meant to do: it is meant to heal and repair. And if something is healing you would expect that it felt better and that you had received a better outcome as a result.

THE CHAIR: There are also issues around if we were to make a recommendation about that. One is the resourcing, and you said it must be resourced properly; otherwise there is not much point making the recommendation. The other point is that you were saying that there is no getting away from the fact that a school is not an isolated unit, so the parents and everyone need to be brought on board along with the teachers and the students. However, there is also quite a strong—maybe not so much

in the ACT, but a certain amount of—resistance to anything that smacks of being soft on errant behaviour, be it crime, bullying or whatever.

Have you got any comments about the perception of the parents or the school community or the community itself around that school, or in general what they might think of this committee if it was to make that recommendation—not that I am particularly fussed about what they think about this committee because the recommendations need to then go to the Assembly and the Assembly has got to make a decision; we are just making recommendations. But I just think it is useful to explore that feeling in the community of wanting punishment for crime often.

Ms Crebbin: Yes. I find it difficult to respond to that because I have seen the outcomes in criminal justice settings. If we start from a base that says criminal behaviour should be dealt with in the criminal justice system and what we are dealing with in schools is therefore not criminal behaviour, it is difficult to see the logic behind a feeling that you are being soft on crime—

THE CHAIR: Or soft on errant behaviour of any kind.

Ms Crebbin: or soft on errant behaviour. I come back to the comment I made earlier about reaching for the tissues in observing these conferences. I am not a sook; I am a tough person. But these are powerful emotional things and I find it hard to think that anyone who had observed or participated in a restorative justice process would see it as a soft option. There are, if they work properly, clear outcomes, agreements, that are about not just what has happened but what will happen in the future in similar circumstances.

There is usually a commitment to doing certain things as part of the restoration process or the repair process or maybe a commitment to not doing certain things in the future, and it seems to me that that is actually a tougher thing. It is more of a holding to account for what has happened and what may come in the future than keeping someone in after school, giving them extra homework or any of the other range of other options that might be available. So I do not conceive of it as a soft option at all because of what I know about what it feels like and the outcomes of conferences. There are clear outcomes and there are clear consequences and there is clear accountability.

MR GENTLEMAN: Do you think it might be a better way of engaging parents? You sort of touched on a couple of the punitive issues there, like homework and detention—those sorts of things. As a parent, I suppose, when you hear that your child has been kept back at school, you think, “Well, they have done something wrong.” However, if the parents were more engaged in a restorative practice, brought in and some sort of conferencing took place, do you think it might then engage them more?

Ms Crebbin: It could do, but this might be one of the areas as well where questions of appropriateness have to be looked at more carefully. You want to avoid a situation where the consequences of what happens at home later on are more severe or where children whose parents cannot or will not for some reason or are unable to be engaged for some reason, are somehow treated differently because their parents are not participating. Certainly, it makes sense that this is a good way to engage parents. My

experience has been about having to take one of my children to school on the weekend, having to have weekend school: it was very effective and engaging for both of us. What do you all think about that?

Ms Dundas: It is also an interesting discussion. It harks back to your question earlier, Mary, about what is in the realm of school and what is in the realm of a whole of development of the young person and how schools play a role in the development of a family and whether or not that is essential, effective or even the right thing to do. As has already been pointed out, you are not quite sure how that is going to carry through into the home situation. You have already talked in your interim report about the need for training and consistency and development, but looking at what is happening in the school sector you do not have any control of that once the school bell goes.

So parents, whilst they might appreciate being part of the situation, might not have the right skills to be able to continue the implementation of that program at home and so it might have a damaging effect, but it also might have a positive effect. It is going to be dependent on a whole range of factors that would need to be considered and looked at in that appropriateness test that we have discussed. But schools are already looking at other ways of engaging families in a more holistic sense—the breakfast and fathers programs or snag a dad, just thinking of the ones that are popping into mind.

THE CHAIR: Gardening programs, I think, some of the schools have too.

Ms Dundas: Yes, where the schools might throw a barbecue and you bring in a significant male in your life to help run the barbecue and then they connect and can talk about a range of different issues and the father, or the significant male, gets to see the young person in their school environment and engage that way, which is a whole-of-school engagement in a positive sense without it being about one specific incident. If you are trying to engage parents, why are you trying to engage parents? Is it over the particular matter because it needs to be dealt with outside of school, or are you trying to engage parents because it is just good to engage parents in their child's learning? When you can answer that question, you can look at the more appropriate question of whether or not the restorative justice process should be expanded to include them in that instance.

THE CHAIR: Do you have any questions you want to ask?

MR GENTLEMAN: Probably not. I think we answered everything we needed to.

Ms Dundas: We have possibly given you more questions than you have asked.

MR GENTLEMAN: Yes; that is the issue.

THE CHAIR: Thank you very much for coming this afternoon. That is terrific. We will get the transcript in the next week, so just have a look over that and let us know if there is anything seriously awry.

Ms Crebbin: All right. Thank you.

THE CHAIR: I do not think there will be any questions on notice, but if we do have

some we will certainly send those to you and ask you to get them back to us.

Meeting adjourned from 2.46 to 3.03 pm.

HINCHEY, MR JOHN, Manager, Restorative Justice Unit, Department of Justice and Community Safety

THE CHAIR: The committee has authorised the recording, broadcasting and rebroadcasting of these proceedings in accordance with the rules contained in the resolution agreed by the Assembly on 7 March 2002 concerning the broadcasting of Assembly and committee proceedings.

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Mr Hinchey: I did.

THE CHAIR: Thank you very much for coming in. Would you like to make some opening remarks?

Mr Hinchey: I think the last time I was before the committee was in December 2005; is that possibly correct?

THE CHAIR: Yes. I am sorry you reminded me how long we have been doing this.

Mr Hinchey: Or it might have been 2006. At that stage I think we had been operational for less than a year, although we had only received our first proper referral I think in April of that year, so—

THE CHAIR: It was early days.

Mr Hinchey: Yes. I think at that stage we were planning to introduce phase 2 of restorative justice and that was always the initial plan—to move from phase 1 into phase 2 after 12 or 18 months of operation. We have yet to commence phase 2. There are a number of reasons for that. The department thought it prudent to complete the review of phase 1, which is laid out in the Crimes (Restorative Justice) Act.

That review was completed and tabled in the Legislative Assembly in September, or this time last year, and that, we thought, would give some indication as to how the scheme had progressed and what results we were getting from that scheme. The

review was very positive and we are now, hopefully, working towards commencing phase 2 sooner rather than later. The scheme is still operating in phase 1, which means that we are still seeing young people, young offenders, referred. Certain offence types are excluded from what we do, and that includes sexual assault, domestic violence and indictable only offences.

The results of the review are on the internet and I have brought along a copy. I can certainly provide members of the committee with further copies of that. To date we have run over 200 conferences and we have received 360-odd referrals. Not every referral goes to conference; there are eligibility and suitability criteria, of course, that you are aware of. But we have had over 600 victims and nearly 500 offenders referred to restorative justice.

The results of the review indicated that we were getting very high satisfaction rates from participants. We conduct surveys of a good sample of our participants, and we run through those surveys ourselves. ACT Policing also volunteer to do those surveys for us. So we are getting very high satisfaction rates—in the 90 per cent—for all participants of restorative justice, which is edifying, and at last look at what we were doing those rates are still up around about that mark. We were getting about a 98 per cent compliance rate with agreements. We are still getting a compliance rate at about 95 per cent with the agreements we are forming with victims and offenders. So what we thought we were achieving in the first phase review I can say that we are still achieving about that level of satisfaction and result with everything. We have still got a small unit. ACT Policing still provide two convenors for us and we have two non-AFP convenors, so from our point of view things are going well.

MR GENTLEMAN: So phase 2 now—how far away?

Mr Hinchey: We are putting to government a brief about what phase 2 might entail for resources. We have found that the initial estimate of what the business would be for the unit was a little underestimated when the scheme was constructed and what we thought at that time we would be experiencing in phase 2 as far as workload goes we are experiencing that level of work now.

The courts are referring about 20 per cent of all eligible offences to us. The children's court magistrate is a strong supporter of restorative justice and will refer matters whenever possible. The AFP are also strong supporters; they are referring about 20 per cent of offences that go through their books as well. It is going to be difficult to estimate. All I can say is that the department is putting forward a budget proposal for phase 2 and decisions would need to be made about that. In conjunction with that, of course phase 2 includes domestic violence and sexual assault offences, which in itself has risks associated with it that are not the same for other offences.

We have been working with the community sector, non-profit organisations and non-government organisations to develop guidelines which we can write under the act, and those discussions are going well. Those guidelines are quite lengthy and complicated. There is an operational protocol that supports those guidelines. At this stage we are going well. We are addressing the concerns of the community, we have yet to get the sign off, we have yet to have another final meeting where we can draw it all together, but our preliminary meetings are going very productively, so we can hope.

MR GENTLEMAN: You would expect, I guess, that, when you start to look at those other matters in phase 2, conferencing sessions and that may take longer because of the nature of—

Mr Hinchey: They will—those offences will take two or three times as long as other offences.

THE CHAIR: At the moment what is the average that they are taking now?

Mr Hinchey: Each referral takes us about 12 to 15 hours on average. That includes all those offences that we do not find eligible or the offenders we do not find eligible and we do not run a conference. So if a matter came to us and we did not find it suitable it would take about 3½ hours, but if we ran a conference and we had difficulty getting the young person to comply with their agreement it would take 20 hours to do. But on average our referrals are taking between 12 and 15 hours each.

This financial year to date, which is only since July of course, we have had 55 referrals, so we estimate that domestic violence, according to the draft guidelines and what we have said that we will do, will take twice if not three times as long depending on the seriousness of the offence. The more serious the offence the longer it takes for us to repair people, and of course the number of offenders.

MR GENTLEMAN: I do like your comment, though, about the longer it takes to repair people—so there is a result, a good result, at the end rather than—

Mr Hinchey: The more serious harm that has been done the more people have to ready themselves to meet the other party, whether that be victim or offender. It is difficult to estimate the workload on that basis. The number of domestic violence and sexual assault cases that may be referred to us would be relatively low compared to other offences. Property offences make up 80 per cent of what we are currently receiving, and offences against the person would be 10 to 15 per cent, and they take longer because they are the offences that harm others more so than any other.

THE CHAIR: Do the guidelines allow for some non-face-to-face—

Mr Hinchey: Yes; that is provided for in the act already. I could give you a percentage of what we currently do with face-to-face—indirect conferences is what we call them.

THE CHAIR: But there is a percentage—

Mr Hinchey: We have had, say, 157 conferences for face to face and we have run another 54 indirectly.

THE CHAIR: So it is a fair percentage.

Mr Hinchey: It is a decent percentage. Of course running them indirectly is not necessarily going to improve the safety of people after a conference, particularly if they are in a relationship where they have an ongoing sort of contact with one another,

so we have to be careful with that as well. But certainly that capacity is there, and we use it a fair bit.

MR GENTLEMAN: Do you think the level of repair is the same?

Mr Hinchey: With indirect?

MR GENTLEMAN: Yes.

Mr Hinchey: I do not think it is effective. We try to run our conferences wherever possible face to face. Communication is a lot more than just an exchange of information where you cannot see the person or engage with them.

MR GENTLEMAN: It is that emotional contact.

Mr Hinchey: It is. You get a lot more flowing communication and people like to see the person, their body posture and body language. It is important. We all know that. It is part of communication. So, yes, wherever possible we try and get people to meet face to face.

THE CHAIR: You are saying you have a fairly high success rate at the moment, 95 per cent satisfaction, and that conferencing will probably take longer with phase 2. I should not ask you a hypothetical so I will just make a comment. People who have come before us have made the comment that it is a very time-consuming process; they feel that it is very lengthy, although it has good outcomes at the end. So I am just assuming that your satisfaction level might drop a little bit if people are finding it a very lengthy process.

Mr Hinchey: Sure, and we find that now. If we run a conference with 20 people or more the victims invariably say it was a long process because it takes three hours just for the conference. Just because they are adult offenders will not necessarily mean that their offences are more serious and will take longer. There is a small set of offences that will take a considerable amount of time—domestic violence and sexual assault—but they will represent a small percentage—

THE CHAIR: Number of the adult ones.

Mr Hinchey: of the adult system. It is easy for the resources to be identified and for people to say, “Look, that’s a very resource-intensive process for one or two people to come together,” if it is taking 15 hours. But, if you look at the criminal justice system, it takes at least that long to get a case to second mention stage, so if we get offences referred by the AFP they do not go to the DPP. The time that is spent at the DPP is not acknowledged. It gets to court, there is the adjournment and then there is the monitoring of the sentence by corrective services and youth justice. If you added up all the time that each case would take and you compared it to what time it takes for this process I think you would be able to rebut the argument that this is more labour intensive.

MR GENTLEMAN: Of course you then have the punitive product at the end and the costs of putting that in place.

Mr Hinchey: Yes, and the compliance rate with that. I have not gone to youth justice or adult corrections, but having worked at adult corrections I would put our compliance rate up there with a mandated sentence, and I think that has as much to do with the fact that the people that form the outcome for a restorative justice agreement have some say in what that outcome will be; they have got some ownership of it and they have got people there that they need to maintain relationships with, so it is in their interest to do what they say they will do.

Perhaps that is another reason why there is a higher compliance rate, but I do not buy the resource argument. The resources will come in the numbers in phase 2; that is where the resource implication is, because juvenile offending would represent at the most 15 per cent of all offending, so if you have five or six times the number of offences that can be potentially referred, who is going to manage that workload? In the construction stage of this scheme it was estimated that the workload would double in phase 2, but I think it will be more than that.

Balancing that are some perceptions in the community that restorative justice is a soft option—that it is only really best suited to young people who need to be made more aware of the consequences of their actions; that adults should not be allowed that sort of facility; they should be made to face court. People still see the court as being a far more punitive and just process, as in justice, than this. So we might find that agencies and people within those agencies do not refer adults to restorative justice as frequently as they are currently doing with juveniles. But, even if they did not, and if they gave 25 per cent or half, there would be more than a doubling of workload for us.

MR GENTLEMAN: I guess that to try and make some change there—how the community feel about whether restorative justice is working—we need to be able to tell them what is occurring.

Mr Hinchey: Yes.

MR GENTLEMAN: I suppose a community education program—not your responsibility.

Mr Hinchey: Yes. We take it in bite-sized pieces. We tell police on a regular basis through their recruit classes what we do and what the best outcomes are and we give our reports back to the people that send us cases and say, “Well, this is the outcome.” We go to any sort of function and talk about restorative justice and try and sell it that way. We have released reports. But I think the best way to do it is for people to become aware of it through someone that they know who might participate in it. That is another good way of spreading the word.

THE CHAIR: There was some discussion around Indigenous young people after the outcomes from the review. We went along to Nagambri—were you there that day when we went along?

Mr Hinchey: I went out to the cultural centre and talked to some people out there and gave a short presentation.

THE CHAIR: There was some suggestion by Justice Madden that they may be extending the circle sentencing to juveniles; that is for adults at the moment. Do you see that as a good development or maybe you do not want to make a comment about it?

Mr Hinchey: I think it would be a great development and I do not think anyone would think that it would not be a good development, but I am sure there is a lot of work to be done before that occurs. Of course, that is not my field.

THE CHAIR: No; I know. It is just that I seem to recall from the review that the Indigenous young people did not have as good outcomes.

Mr Hinchey: No. About 12 per cent of young people who are referred to us are Indigenous. They have a higher rate of declining to participate than non-Indigenous, but they do participate. They also have a higher rate of noncompliance with their agreements than non-Indigenous. There would be lots of different reasons why that would be the case, all of which you would have heard in different spheres of work with Aboriginal and Torres Strait Islander peoples. We are working continually to improve that and also not to set up expectations with victims that Indigenous youth are going to be able to repair the harm to the extent that victims might expect. So we try to take into account that the capacity to repair that harm at that certain level, depending on where the harm is, might be diminished for Indigenous youth, depending on their background.

It is a challenge working with Indigenous youth with restorative justice. It is a system that has its roots in Indigenous cultures, but I think the community perceive the Nagambri circle court as the restorative justice process that is suitable for Aboriginal and Torres Strait Islander people and the Restorative Justice Unit as dealing with non-Indigenous. That is not the case. Having said that, we are getting results. We are getting young Aboriginal people complying with their agreements, undertaking courses, doing volunteer work, working at the PCYC—so we do get results, but there is a difference between Aboriginal and Torres Strait Islander participation and non-Aboriginal and Torres Strait Islander participation.

MR GENTLEMAN: Have any studies been done to try and understand why there is a difference?

Mr Hinchey: The RISE project had a similar difference in participation and outcomes. I do not think any particular study would tell you anything different from what other studies are telling us about the integration of Aboriginal and Torres Islander people into mainstream culture. They are the challenges that society faces in every sphere of our lives, I think, whether that be employment or housing. I do not think restorative justice is any different to those challenges. I am certainly still grappling with how to get some better results there and trying to engage with the Aboriginal community about what this is, and that is something that needs continual ongoing work. That is why I attend these functions.

As far as the circle court goes, yes, I think it would be a great idea for young Aboriginal people to have access to a circle court where the elders are seen to be given the authority by the court to speak within a justice setting. I think that would be

quite powerful. I know, having experienced adult circle court settings and hearings, that it is quite emotive for Aboriginal and Torres Strait Islander offenders to participate, so I think it would be good, as long as the young person has some respect still for their elders. It comes down to that with every young person, whether they are Aboriginal or non-Aboriginal: you have got to have respect. That is part of our suitability process.

MR GENTLEMAN: Can I just touch on the gender issue? You often see different power relations with genders in family, of course. Have your discussions with any agencies or organisations regarding the use of restorative justice in family violence offences sort of covered that matter at all? Has it progressed any further?

Mr Hinchey: Are you talking about power imbalances within family settings?

MR GENTLEMAN: Yes.

Mr Hinchey: That is one of the main issues that we are trying to address in the guidelines that we are constructing to manage domestic violence offences, whether those offences are offences between adults or offences committed by young people within family settings, because our view of domestic violence is that it is power based. Yes, it is gendered harm, but unless we address the power imbalances inherent in those offences we will not find a process suitable to run. How do we do that? It is very difficult with domestic violence to uncover the power and control issues that are part of those offence types, but we have got a process that we think will go a long way to doing that, and that involves rigorous suitability assessments, offenders having some homework, writing out statements of responsibility, agreeing to safety plans, us carefully screening their support networks as to who we get to participate in the process as well and relying on information from community agencies that have worked with these people over some time, because we are seeing them at their best, like the courts. So we want to share a lot of information and we need others to give us a lot of information and we will be taking advice from those agencies as to whether this is safe. Where there is no chance to proceed, we will not be proceeding. I do not know whether I answered your question.

MR GENTLEMAN: Are you finding more people become involved and relate the gender power imbalance, or are you finding it is simply the same level?

Mr Hinchey: We are not doing any domestic violence cases now; are you aware of that?

MR GENTLEMAN: Yes.

Mr Hinchey: But, if you wanted to know the gender breakdown of the types of people that we are seeing, I could get that information.

MR GENTLEMAN: Yes, that would be good.

Mr Hinchey: But for offenders I can tell you that about a third—well, 25 per cent—of our offenders are female. That is a fairly high percentage, given the historical—

MR GENTLEMAN: Power balance.

Mr Hinchey: I am not sure what you mean by power balance when you talk about referrals.

MR GENTLEMAN: From what I have seen you tend to think more that males will be the main offenders.

Mr Hinchey: Traditionally, yes. But we know that in the last 10 years the rate of female offending has increased substantially and that is being expressed with us as well. So 25 per cent of our referred young offenders are female. That is a fairly high percentage, given the historical minority of female offending compared to male, and that is growing.

MR GENTLEMAN: Any indication why?

Mr Hinchey: I think it is a societal thing—the role of women and young females in general and the role of young males, the way they relate to one another, the breakdown or the change in gender perceptions as to what is suitable and acceptable for one gender as opposed to another. I think that is changing as a society and we are seeing a small part of history in our own lives, but we have only been here a short period of time, relatively—in this country at least—and the gender roles have changed dramatically, so I think that is what we are seeing.

THE CHAIR: When Linda was here she talked about how she perceived that some things could be appropriate for restorative justice within the school setting and some things may not be and the importance of our being able to recognise that. You are coming into this new phase and you are talking about these guidelines. Will you have additional ways of assessing the adults over and above the young people, or are they more or less very similar to—

Mr Hinchey: Very similar. We are writing the guidelines specifically to address gender-based harms because we think they are different to other forms of offending.

THE CHAIR: So there will be that first assessment as to whether this is suitable to go ahead for restorative justice?

Mr Hinchey: Yes.

THE CHAIR: Then over and above that there will be another lot of assessment for particular—

Mr Hinchey: Yes. Our process will apply to all offences, but when it comes to gendered harms we want to do a lot more intensive work with those offenders, to determine their suitability, because we think that domestic violence and most sexual assault are used by people as a method of power and control, so they are conscious decisions made by those offenders. So are other types of offending, but there is a lot more manipulation involved with those types of offences, and denial and distorted beliefs, that we need to be comfortable about before we run a process, and that is why those guidelines are being written.

THE CHAIR: You would be aware that there have been some recent reports of harassment, violence and other types of behaviour within schools that have been of concern. This committee has been charged to look into the background of those kinds of things and how useful what we are doing could be in responding to that. I think Linda sort of alluded to—if not blatantly said—that she would be concerned that some of those may not be appropriate and they should be referred to the criminal system, where they may in fact still be referred to restorative justice.

Mr Hinchey: Yes.

THE CHAIR: But she also said it is sometimes difficult with the level of violence in schools as to what is so-called appropriate for restorative justice process and what becomes criminal: where do you draw the line? I am wondering whether with your assessment processes or anything that you are doing we could call on the Restorative Justice Unit to be involved in any way in helping to (a) come up with guidelines and/or (b) be of assistance directly when people are making those kinds of assessments. I do not know; I am just thinking about that, because you have a lot of experience.

Mr Hinchey: We do run processes at schools for incidents that occur at schools where the school has alerted police to the behaviour that is then described as criminal. It is difficult for schools to make a judgement because there would be a lot of behaviour at school that you would class as criminal if you looked at it very objectively, as black and white: if someone gets assaulted at school, that is a criminal act. But, again, in the past police were not called to schools very often. It was dealt with in-house. The schools had their own justice system. That has changed somewhat as well; it has now become more of a behavioural management model of control with students. I think it is a matter of common sense as to when the schools make decisions about what constitutes a crime and what constitutes unacceptable behaviour. I think we have to leave those decisions to the people that are best placed, and they are the people that run that community, each school community.

THE CHAIR: Yes. At the time they are the ones at the front line is what you are saying.

Mr Hinchey: That is right, and they know the dynamics, they know the people involved, they know the harm and they know probably the best way to deal with it. Of course, matters that cannot be dealt with within the school structure of what is a behavioural model will invariably go to the police, and so they should. Whether our unit would run a process any differently from a school—I do not think that is the difference. I think the main difference is that the authority to run or to manage that event is being symbolically taken or given from the school into the criminal justice system, and the participants of that offence might participate in a different way if the Restorative Justice Unit ran that process. As you know, each school has got a different way of running restorative justice, and that is probably another battle that you will have, trying to pull together the different approaches that people have.

THE CHAIR: Do you want to make a comment about that?

Mr Hinchey: I do not know enough about the school system to say that one model is better than another. All I will say is that as long as the perpetrator accepts responsibility for their actions, without justifying it, you have got the start of a decent process and the rest can flow from that. But, certainly, we would be happy to work with schools; we are currently working with schools on cases and we conducted one today at a school. I think schools welcome our involvement and we welcome their participation. I do not know whether there is much more I can say.

MR GENTLEMAN: There is a mandatory position now where schools will call police for an offence, though.

Mr Hinchey: Yes. I think that is wise. That removes some responsibility from principals as to what to keep in-house and what not to. At least they are flying the flag; they are letting others know that this event occurred. You would not want it to become burdensome for the school bureaucracy to do that, because there can be 700 kids in a school and something would happen every day, surely.

MR GENTLEMAN: I remember it well.

THE CHAIR: If you put 700 young people together.

Mr Hinchey: Little bits and pieces—surely there would be something going on each day, so it would be difficult to run in a community like that and then at the end of the day have to write down a report on everything that occurred so that others can run their finger over. But you cannot cover up more serious offences either. That is unhealthy for everyone, and I think that is what we are trying to get to.

THE CHAIR: Okay. Did you have any more questions, Mr Gentleman?

MR GENTLEMAN: No, I think it has been very comprehensive.

THE CHAIR: It is been terrific to see you again, John.

Mr Hinchey: It was good to come.

THE CHAIR: Is there anything else you would like to say? We are happy to receive any reports you want to table now and leave with us. That would be really good.

MR GENTLEMAN: These are all internet based anyway, aren't they?

Mr Hinchey: They are.

THE CHAIR: Or just give the secretary the link.

Mr Hinchey: For ease of reference I will just leave that review.

THE CHAIR: We have got that.

Mr Hinchey: Okay, you do not need that. I will just leave our September status report, which was kindly put together by our champion office manager.

THE CHAIR: Thank you very much; that is new information—and it is in pretty colours too, which is what I like.

Mr Hinchey: Yes. I am not sure what else I would say. All I know is that we are gearing up for phase 2. We are going to ask government to make a certain decision about that. I think invariably there will be additional resources required, albeit that the government did give us resources in the first place to run phases 1 and 2. I think that was underestimated dramatically and we would want to do it properly if we are going to do it at all.

THE CHAIR: Yes, and you can only learn from your experience, which you have now had.

Mr Hinchey: Yes. It is difficult to know before you start something brand new what the take-up rate is going to be and what support, because it was a very new concept for the ACT—well, in the model that was given. Certainly, the AFP have been running restorative justice since 1994, so it was not new in that sense, but in the wider criminal justice system it was difficult to determine.

THE CHAIR: Thank you very much, John. We will get a transcript to you within a week and you will be able to look over that and see if there are any problems. I do not think we will have any questions on notice, but if we do we will get them to you as quickly as possible.

Mr Hinchey: That is fine. Thanks very much for the opportunity. Good luck with your inquiry.

THE CHAIR: Thank you. We hope to finish it sooner rather than later, and obviously we will give you a copy.

The committee adjourned at 3.43 pm.