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ADR in the criminal justice system

Diversionary program reforms in the Northern Territory

Tom Stodulka

This article presents some of the dramatic changes which have taken place in the Northern Territory in the juvenile justice arena in the last two years. It is not always a happy picture, but there are aspects which restore faith in the community's ability to bring about change for the good of society.

We need to go back to 1997 when mandatory sentencing was introduced by amendments to the *Sentencing Act 1995* (NT) and the *Juvenile Justices Act 1983* (NT).

Under this regime, first offender adults (that is, offenders over 16 years of age) were sentenced to 14 days' imprisonment for a first property offence. Second offences attracted 90 days and third offences 12 months.

In June 1999, amendments to the original system were passed that gave the courts a limited discretion not to incarcerate in exceptional circumstances, such as where the offence was trivial, the offender co-operated with police, was of good character and had attempted restitution.

For juvenile offenders (that is, offenders of 15 and 16 years of age), the original 1997 mandatory sentencing regime kicked in for a second property offence with a minimum sentence of 28 days' imprisonment.

As with adults, amendments to the mandatory sentencing regime were introduced for juveniles in June 1999. These amendments for juveniles were the beginning of a radical reform process and came about because of increasing community disquiet about the apparent

harshness of the original mandatory sentencing regime.

Juveniles who could have been sentenced to 28 days for second property offences could, in light of the June 1999 reforms, be diverted to youth programs or to victim offender conferences. The new system introduced a post-conviction court ordered diversion program and was managed by the NT Department of Correctional Services.

Eleven individual programs (which included victim-offender conferencing) initially received ministerial approval. The other 10 programs were community, church and leadership based. Now more than 30 programs have received ministerial approval.

Originally, victim-offender programs alone were considered inappropriate for many Aboriginal communities. In fact, it is in the Aboriginal communities where these programs were eventually to be most successful.

The reforms were to have Territory-wide application; that is, they were not introduced on a trial basis in an urban and remote community but would apply to the whole Territory from their inception. For the victim-offender conferencing training, the services of



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► Transformative Justice Australia (TJA) were called upon and 50 conference facilitators received training in Darwin and Alice Springs.

This was not the first time that the victim-offender conferencing was tried in the Territory. There had been a successful 12 month trial in Alice Springs in 1995 when a number of police received training and conducted several conferences. Again, the training was conducted by the TJA. Many people now wish that the 1995 trial had been allowed to continue and had been extended across the Territory.

The death in custody of a 15 year old from Groote Island in February 2000 sparked a national debate which has since been thrown into the international spotlight. The political drama involved a Senate inquiry, a Coalition backbench revolt and eventually a Federal Government commitment of \$20 million over four years to the Northern Territory for a pre-charge diversionary regime for juveniles from the ages of 10 to 17 inclusive.

This pre-charge diversionary regime, in addition to the continuation of the original court ordered diversionary program, has been the basis for the development of a quite unique model of juvenile pre-court diversion.

The program concept — that is, diversion to appropriate community programs, combined with an enhanced utilisation of cautions and warnings — has now been formalised and has been in place for about a year.

The earlier court ordered diversion regime introduced in 1999 continues to operate for second offence property offenders but has been extended to 17 year olds; that is, under the court ordered scheme, 15 to 17 year olds are covered. An increasing use of these diversions is being made, involving diversion to victim-offender conferencing and youth programs.

The Commonwealth's April 2000 funding commitment achieves, I believe, only a part of the huge cultural shift needed towards the working of a restorative system of justice.

When I speak of cultural shift, I am not only referring to the cultural shift necessary from within the police force, but equally from within the whole criminal justice community.

I am enormously encouraged when I see the judiciary publicly promoting the benefits of restorative justice.

The significant hostility displayed by many sections of the legal community to mandatory sentencing has unfortunately meant it has taken considerable time for some of them to embrace or even gain a clearer understanding of what restorative justice actually means and how it can help victims and offenders alike.

It has been quite difficult for some to embrace positive reforms introduced by the same Government that also introduced mandatory sentencing.

At an Australian Institute of Judicial Administration conference held in Darwin in July 2000, the NT Chief Justice Brian Martin looked at the history of restorative justice, particularly in the context of Aboriginal culture and the place of customary law:

It appears that in some Aboriginal communities at least it has been working effectively for a long time. It may even have predated the Mennonite Church from where the modern restorative justice impetus originated. We should sit up and take notice.

The Chief Justice was also able to represent clearly the relationship the victim has with the offender:

The victim may come to see the offender as a human being rather than a vague impersonal threat, [and] the victim has an opportunity to receive an apology and exercise the privilege of forgiveness.

While the jury is still out as to which is the better model (that is, the Northern Territory model run by police or the NSW model where conferencing is run by juvenile justice employed facilitators), I think it is reasonable to acknowledge that both have a lot to offer. Both systems are employed in Australia and overseas. As more research becomes available and the demand for alternatives to our traditional western criminal justice system increases, legislatures will adopt that system which has greater relevance to their own community's needs.

With the reputation that the Territory currently enjoys around Australia on the human rights front in view of its mandatory sentencing policies, it is hardly surprising ►



► that the police model is receiving negative press. To date, my research has indicated that this negativity is not justified across the board.

This does not mean that there will not be occasional cases where the system falls down. In fact, the new scheme received some criticism at a conference in Sydney in October last 2000, where the question was asked: 'What checks and balances would exist to ensure Aboriginal youth are not pressured into pleading guilty in order to be referred to a program?'

The more traditional system where young boys are placed on good behaviour bonds is, however, not an ideal situation either. Without a strong rehabilitative component, it takes no time for these offenders to re-offend and get caught up in the mire of re-offending and more court appearances, eventually leading to jail. Sadly, in the Territory (and elsewhere), many people speak of going to jail as a rite of passage where you can prove your manhood.

While restorative justice will not provide a panacea, the recent NT reforms provide an opportunity for those aged between 10 and 17 to be diverted away from the court process.

In the last six months, hundreds of NT police have undergone training in the new restorative arrangements. Two juvenile justice diversionary units have been established in Darwin and Alice Springs.

Use of the courts will be appropriate only when offences committed are of a very serious nature or other options have been tried and failed to prevent re-offending. The principles of the scheme are to treat young people fairly, reduce youth crime, support and involve victims, encourage parental responsibility, foster closer police and community interaction, and foster positive social change.

More than 80 youth programs have already become available and hundreds of juveniles have been diverted to the four levels of options from warnings to conferencing. Of all those apprehended and offered diversion, only 1 per cent have declined diversion.

On the issue of police accountability, at a conference in Darwin Mr Coates, the Director of the NT Legal Aid Commission and member of the Criminal Lawyers

Association, said of his experience of NT police in remote communities:

They had the respect and support of the people they served. Their life on those small communities was an open book, there was real transparency. They couldn't afford to cut corners or do the wrong thing because it would be thrown back at them at a later stage ... This was real accountability from the grassroots up.

He continued, saying:

This spirit has largely flowed through to the rest of the force because so many of your senior officers got their grounding in the bush and it has contributed to making this the best police force in Australia.

In response to the negative comments that police should not be given greater powers, I would firstly like to say that more than 500 diversions have already taken place. The court system remains to provide the ultimate checks and balances, and the community and the Commonwealth provide additional controls. The restorative justice concept revolves around participation. That means for the best results to be achieved, the family or support unit, a wider representation of government agencies and community groups must all play their part.

Throughout Australia we are seeing a greater recognition that working in partnerships is essential if we want to make better use of dwindling resources. Partnership models may appear resource intensive and idealistic, but surely we have little choice if we are serious about giving young offenders and the community itself a chance.

Many in the southern media criticised the NT reforms. I cannot impress upon such critics sufficiently that before they condemn the NT reforms, they should actually participate in a community visit and see first hand what some very dedicated and experienced people are trying to achieve.

Kathleen Daley and Hennessey Hayes have written in the February 2001 edition of the Australian Institute of Criminology's trends and issues paper on restorative justice. Their comments are highlights from analyses from around Australia and overseas:

Conferences receive high marks by members of the four conference groups (police, coordinators, victims, and offenders) on measures of procedural justice, including

being treated fairly and with respect, and having a voice in the process. Among others, conferences reduce victims' anger and fear. For victims who attended conferences, there is an increasing positive orientation toward the offender over time and, despite the fact that similar proportions of victims felt negative toward offenders, one year later the majority said that the conference was worthwhile, that they were satisfied with how their case was handled and that they had fully recovered from the incident.

The following report appeared in the *Northern Territory News*, Darwin, on 11 May 2001.

Emotions run high: thieves, victim meet

The victim, offenders and police faced each other at the Darwin Tennis Centre yesterday and all agreed the Pre-Court Diversion scheme was anything but a 'let-off'. Peter, 14 and Tom, 17 (not real names) were caught in April after breaking into Bagot Tennis Centre and stealing alcohol.

But rather than facing the courts months after their offence, they faced the victim two weeks later. It had a lasting impact.

Peter said: 'It's better than going to court, because I don't get a criminal record.'

Tom said: 'We had to say why we did it and how we got in. I was very relieved to get it over and done with.'

Their victim, tennis club owner-manager Pat Coburn said it had given him a chance to tell how the crime had affected him. Mr Coburn said: 'I've never been through the court process but I felt like the boys might have had to endure more by going through the scheme.'

Officer in charge of the scheme Superintendent Graham Waite said the emotional impact of the scheme was a major part of its success: 'Victim-offender conferencing is an excellent opportunity for victims to tell juveniles about the harm caused and ... for the juvenile to understand the impact of behaviour on others.' ●

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