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LAW REFORM COMMITTEE

Inquiry into alternative dispute resolution

Collingwood — 4 March 2008

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Mr D. Fanning, Magistrate, Neighbourhood Justice Centre.

The CHAIR — Thank you very much for agreeing to meet with us this afternoon. There are just a couple of things I need to say before we begin, which I am sure you are well across. Our proceedings this afternoon are covered by the Parliamentary Committees Act, which means that anything that you say is subject to parliamentary privilege.

Mr FANNING — Indeed.

The CHAIR — Hansard, as you can see, is taking down what we discuss in this session and you will be sent a transcript of that and you can make some minor changes to it, but after you have had a look at it please hand it back. Thank you very much for agreeing to our tour of the premises.

Mr FANNING — That is all right. I hope you enjoyed the opportunity to look around our fine NJC, which had its anniversary today, as I am sure you have been told.

The CHAIR — I was just about to congratulate you on that; that is terrific. We also understand, and we did not know until very recently, that there was also going to be a launch of the two-year young adult restorative justice group conferencing pilot for 18 to 25-year-olds.

Mr FANNING — Yes, that is highly apt, given your committee.

The CHAIR — Exactly. It is amazing how these things all come together. What we would normally have done is just throw it open to you to talk about your work here in relation to the terms of reference, but perhaps it would be a good place to start if you talked to us a bit about this project.

Mr FANNING — It is a government initiative. That is it was not — and of course it never is, or rarely is — the initiative of the court. It was a government initiative, which I was certainly very happy to embrace, being part of the Neighbourhood Justice Centre. It is difficult to describe it out of context because the Neighbourhood Justice Centre, as you are no doubt aware, was established under statute. It has been operating for a year, it has a particular flavour and approach of endeavouring to deal with the underlying causes of crime as well as providing assistance to victims, and as well as that, I suppose, to enhance and increase the confidence of the community in the administration of justice.

To put it into context, a lot of the administration of justice has been centralised, particularly the Magistrates' Court. If you are old enough, or as old as I am, you would be aware that there were Magistrates' Courts dotted around the suburbs and the country. A lot of those in the country still remain, but most of those in the suburbs of Melbourne have been removed and rationalised and consolidated into large complexes.

One of the reasons for establishing the Neighbourhood Justice Centre was to bring back some of that local justice to the communities which the courts actually serve, or where the crime or where the civil matters or where the crimes of family violence originate from, firstly, to allow people greater access, and secondly, to increase their familiarity with the process of law and the administration of justice. That is, I suppose the significant context of the Neighbourhood Justice Centre, and as part of that it dovetails in quite well I think with the restorative justice approach, which I have to say is extremely difficult to try to explain to people, to establish the rationale for and the basis for. It is not an easy concept at all.

It is much easier to be able to explain what problem-solving is and therapeutic jurisprudence is rather than endeavouring to explain what restorative justice is. I think that that is one of the challenges if you are to move into — and I certainly think it is a positive thing — restorative justice to be able to explain it easily, simply and in a comprehensive way to members of the community. Traditionally the classic style of restorative justice is group conferencing, and you do not need me to explain to you what that is. You are more than familiar with it. People have some — —

The CHAIR — But we want you to for the record.

Mr FANNING — All right, I will come back to it in a moment. People invariably have a general understanding of what that means. I am really going to restrict myself to that component of restorative justice — that is, bring the victim, if they are willing, or a representative of the victim, and some groups have representatives and can endeavour to represent the victim, but it is in my experience far preferable if the victim is prepared and willing to be present, and obviously they cannot be coerced or dragooned into coming; it must be something that

they feel comfortable with and are willing to do, to be present with a facilitator and the offender and to talk through in particular the consequences of the offence upon the victim and for the victim to be able to express directly to the offender as to what effect that offence has had upon them.

I did a lot of prosecuting and a lot of defending when I was at the Bar, and certainly from my experience victims in particular feel very disenfranchised from the process. Sometimes offenders do too because they are at the back of the court or behind counsel and they are not involved in the process. At least they are actually front and centre in terms of the considerations that are going on in court, but for the victim they are more disenfranchised and more removed from the actual process that goes on in court. They have often spoken to me about wanting to actually speak to the offender to tell them what it is like. That goes back 20 years, and from time to time — —

They regularly said to me that that is what they would like and would want to do to, to make the point as to how they have been affected. Judges and magistrates tell offenders what the effect is, but it is never the same, and victims in my experience never feel it is the same, because it is not the same as them actually eyeballing the offender and telling them. It is also very confronting for offenders to have the victim sitting there and eyeballing them about it. That is often the last thing that they want to do: 'Just give me the fine or give me the sentence or put me on the community-based order'. But to actually have to face the victim and to be confronted with their pain, anguish and distress as to the effect that it has had upon them is quite confronting, and generally, not always but generally, rehabilitative, because of the offences — and whilst it can be a wide range of offences, we would start off at the lower end of offences to build up both community confidence and credibility in the system of restorative justice to, I suppose, get some traction, some interest, some credibility in the process before moving it on, if it was to be moved on to more serious offences.

The project here is to start off with offenders at the lower end — that is, as you are aware, the group conferencing restorative justice process that occurs in the Children's Court. That is really being extended to the age group 18 to 25. It will be a small group because the numbers are not great, and the cohort that we will be amenable to and that will be available for restorative justice would be perhaps, I would anticipate, about 20 over the course of the pilot over the year.

The CHAIR — Could you to talk to us about how you think from this vantage point it might be different working with the 18 to 25-year-olds as distinct from the children you have been working with hitherto?

Mr FANNING — I was not working with children hitherto. My comments related to defending and prosecuting adults. I am saying that it has operated in the Children's Court — and I did appear in the Children's Court from time to time, regularly, as well, but what has operated in the Children's Court is, as I say, being extended out to the adults. What I have said to you over the last 10 minutes is not based upon my experience in the Children's Court, it is all my experience in the adult jurisdictions.

The CHAIR — Are you able to provide comment on how it might be different for the system then?

Mr FANNING — The system was very orientated towards it in a Children's Court because they have a more rehabilitative approach, I suppose, historically and currently. Rehabilitation is the primary focus of the Children's Court. It is not the only focus, but it is far more weighted towards rehabilitation of the young, impressionable offender than the adult court. The adult court does not have that emphasis. So it is a change from that suite of different approaches that exists in the Children's Court to moving one of those components to the adult jurisdiction, where historically — in the adult jurisdiction — it has been primarily about coming in, getting the punishment and off you go.

One of the approaches that I have adopted here, to put it into some context again, is with reviews of community-based orders — that is, a person is placed on a community-based order; the magistrate has imposed the community-based order; off they go; it works or it does not work; and the magistrate might see it again if there is a breach of that order but otherwise might never see that person again. I cannot tell you the precise number of figures, but a fair number of those community-based orders and intensive corrections orders fail. One of the things I am doing here is having people come back regularly on a review to face the court to be accountable to me about how they are progressing on the order. That certainly, in the year going ahead, has proved very successful in terms of people keeping on and maintaining their requirements under the order.

The CHAIR — What will happen in between, once the order is made and prior to them coming back to you to give a report — —

Mr FANNING — They work in with the Office of Corrections under supervision and do all the things that they are required to do. I get a report from the Office of Corrections at the end of the review period, which is generally about 10 weeks, and that gives an assessment, I suppose, or a couple of pages on how they are progressing on the intensive corrections order or community-based order, and then I basically talk to them about it. For the most part it has gone very well; not always, but as I say, mostly well. Some of the impediments to them actually doing the order are ironed out at that stage as well.

Mr CLARK — Do you have carrots and sticks that you use to encourage them in the right direction? If you get a report that they have failed to show up 3 days out of 10, do you say, 'You keep up like that, and we will cancel the order and I will do something else instead. You will get a bit behind the bars', or whatever?

Mr FANNING — Absolutely; I am clear and unequivocal about the consequences for non-compliance, as I am clear and unequivocal about supporting what they have done well. So it is trying to balance that all the time, but I do not shirk away from being very open and straightforward about the consequences for not complying.

Mr CLARK — And you have got enough tools in your toolkit to be able to exercise the control you want to over that?

Mr FANNING — Yes. There is no requirement under the Act to have those reviews, but I make it a condition of the order, and that seems to work. It would probably be preferable if it was actually in the Act, but it is efficient and it is working, and 90 per cent of people turn up for the reviews. It has been fairly remarkable the number of people who do show. Even those who have not been compliant still manage to at least come to the review, which is a start.

Mr BROOKS — So the pilot that was — —

Mr FANNING — Sorry, yes, I did get off the track. The point of that line of discussion, or monologue, was to say that it fits in well with the other processes that perhaps exist in the Neighbourhood Justice Centre — that is, it is not a stand-alone project, I guess, or approach, the restorative justice approach. If it is going to work anywhere, I think it would work well here. The staff, the people who assist me — the counsellors and the other people — are alive to it. We will be able to recommend those people who think it is going to work and also will assist in the process.

Mr BROOKS — What are the basic features of the hearings?

Mr FANNING — I thought you might have been given some briefing on that, but that is not the case? I thought you would have been provided with background.

Ms RISELEY — We have very limited information.

Mr FANNING — There are a few components, and I will get you some material, but the principal ones which I will be dealing with are those referrals directly from me of persons who fit into that cohort — that is, the 18 to 25-year-old group who do not commit the most serious of offences that I deal with, but down the bottom end where there is no likelihood of them being imprisoned for that offence, but that immediately cuts out a fair number of people, and where an approach like that looks to work, if I could put it in plain English.

I speak to the person to see if we really have got somebody who is going to engage in the process, are they really going to engage in the process in a meaningful way or are they just going through it as a soft option, and do they have, as I say, a genuine commitment? There will be some assessment by persons who are associated with the project, and they have been employed at the moment to do that assessment prior to me making the referral. That, combined with my own views, will then mean that it will be adjourned off for the purposes of that conference or more than one conference occurring. Then it will come back to me at a later stage with a report as to how those conferences are going.

The CHAIR — You talked before about the importance, admittedly on a voluntary basis, of the victim?

Mr FANNING — Yes.

The CHAIR — As part of that assessment process will the fact that a victim is prepared to be involved in conference, that would be a factor in determining whether the offender — —

Mr FANNING — Yes.

The CHAIR — Is that an absolute or — —

Mr FANNING — No, it is not an absolute. It is highly preferable if they are. There are victims groups who are prepared to represent the victim, and that happens in the Children's Court and I am happy for it to happen here, but it is very much a second-rung option rather than having the actual victim there. I would not preclude an offender who was willing, able and committed to the process and assessed as suitable from not going through the process because the victim, for whatever reason, is unwilling. Sometimes they cannot be contacted either. That frequently happens. The police and courts lost contact with them, so they cannot be contacted. They might be willing to, but they have gone.

The CHAIR — You talked before about restorative justice. I know this is a limited pilot, but nonetheless it would be associated with soft options, and one of the things you would be looking at is whether the offender sees it as being a soft option. What kind of things does the offender step through prior to them being accepted as part of the pilot?

Mr FANNING — I cannot tell you the detail as to that. You would be better to ask Anglicare, who are actually managing the process.

The CHAIR — Yes, we are.

Mr FANNING — Firstly, it is their willingness to meet. If there is not a real and genuine willingness to meet, some people, frankly, will adjourn matters off. If there is an opportunity to adjourn something off, they will adjourn it off — anything to avoid actually facing the court. That is not being overly cynical, but it is the reality of what motivates some people. We all sometimes avoid difficult things, so if we can adjourn off, then it will be adjourned off, so there has to be some real and genuine commitment to it for a start for that to occur. Also what they will be stepped through is the fact that they will have to be prepared to be willing to be open and accept and not shirk away from hearing from and responding to what the victim has to say. That is another component or rung.

The CHAIR — The other thing — and this will probably be done by Anglicare as well, from what you said earlier — is how this will be measured and evaluated progressively through the two-year period. Is that something you will be closely involved with?

Mr FANNING — I will have a strong interest in it. I will not be directly involved in the evaluation. I cannot remember who has been recruited to do the evaluation; I think it is Victoria University, but I am not absolutely sure about that. But certainly as part of the project, as you would expect and hope, there is an evaluation component.

The CHAIR — But you will be taking into account when they come back to you after having completed the order or whatever — —

Mr FANNING — It is a deferred sentence pending — —

The CHAIR — What are the things you would take into account in assessing?

Mr FANNING — I would expect to get a report from Anglicare to set out what happened, not all the minutiae as to what went on but certainly reasonably detailed — and I would expect it to be at least a page or two as to what occurred, what the perceptions and views of the different people were to the approach and in particular, obviously, the offender and the victim, as to how they perceived it.

Mr CLARK — If the offender gives undertakings as part of this process, and I assume that can be part of it, for example, to fix the — —

Mr FANNING — Restitution?

Mr CLARK — Restitution; to paint the fence that they graffitied or whatever, I presume a part of the report you will get is whether or not they actually delivered on those undertakings?

Mr FANNING — My word.

Mr CLARK — We have had our other evidence that suggests whether the offender actually honours their undertaking is not necessarily part of all the round-table processes that take place. But I gather, the way you are setting it up, you will be looking to see if they have delivered on their commitments, and if they fail to, then that will be reflected in the sentence that you impose at the deferred sentencing stage?

Mr FANNING — Part of what I do now is possibly a little different from what is done in other courts, and that is that if people say they are going to give restitution, then I will adjourn it to enable that to happen. Otherwise you make the restitution order and it might be paid or might not be paid or it is said that it is going to be paid, but as I say, how do I know that is actually going to happen? If you want the benefit of having paid the restitution, then I will adjourn the matter, you come back to court, show me the receipt and then I will take it into account.

Mr CLARK — Sounds sensible.

Mr FANNING — I think it is pretty straightforward, really. There is one component, it takes more time. It is another case that is part heard, it is another case that needs allocation of court time, so it is not as, you might say, efficient because it does not deal with a case in a short amount of time and in it has got two hearings rather than one hearing. That is the downside to it and that is the balance all the time of having this approach rather than a strictly efficient approach that gets through X number of cases in a day.

Mr CLARK — Presumably, if the undertakings have been complied with, the second hearing is quite short, a 5 or 10-minute process?

Mr FANNING — That is right, but you get a lot of those and you fill in your day pretty quickly. That is exactly right, it does not take a lot of time, but you add 30 of those, and then you have got another couple of hours.

The CHAIR — But nonetheless, without putting words into your mouth, given that, that there is less efficiency in your terms, there are also a lot of benefits?

Mr FANNING — I think there are great benefits for everybody, most of all the community and the victim. It is an inarguable case, I think, but there is still the efficiency that you have to contend with at the time, because there is a strong drive to get throughput of cases.

The CHAIR — Kerryn and I have just come back from New Zealand a week ago, where we talked to a number of people — people in the judiciary as well — about restorative justice, and the findings that they reported to us indicate that there are very demonstrable benefits for victims and for offenders but only a modest, but statistically valid, improvement in recidivism rates. Do you have a comment on that?

Mr FANNING — No, I do not have any — I have impressions, I have hopes of it but no evidentiary basis to say that it improves the recidivism rate. I think it makes perfect sense that it would, but we are in a vacuum in this country, or in this state, to be able to say, because of the absence of it other than in very small groups in the Children's Court.

Mr BROOKS — My question has sort of been half answered by that, but also you spoke before about the broad issue of restorative justice building credibility, I think were the words used.

Mr FANNING — Yes.

Mr BROOKS — I just wanted to see if you could expand on that and talk about how you see restorative justice building credibility.

Mr FANNING — I think there is an understandable apprehension in the community by people that it looks like another soft option, or a soft option at least, that offenders are not being called to account and are being given the opportunity just to talk about their offence and are not really punished. I think that is the fundamental theme that runs through some people's thinking. Therefore restorative justice needs a few champions, I suppose. It needs to be argued, needs to be tested and needs to be piloted rather than laying it out and saying it is a wonderful thing and we will roll it out everywhere. I think there are good strategic reasons for having pilots prior to extending it out any further or extending it widely across the board. Also it would only require a few badly managed cases, I suppose, for it to lose credibility because of that perception by some in the community that it is, as I say, a soft option. Does that answer the question, Colin?

Mr BROOKS — Yes.

Mr CLARK — One of the key requirements of it being a pilot will be that you are measuring what you are achieving so those lessons can be drawn upon in conclusions as to whether to take it further. Have you set up a suite of measures as to how this pilot is going to be assessed and reported on?

Mr FANNING — I understand it has, but I do not have any direct involvement in that at all. But I understand that that is absolutely part of it. As I say, I was struggling to remember who was doing it, and I think it is Victoria University, but all that can be provided to you. I am certainly happy for that.

The CHAIR — We have received evidence that both the judiciary and the legal profession in general have not got a very good understanding of what has been happening in the juvenile area.

Mr FANNING — Yes, that is right.

The CHAIR — And around restorative justice more broadly. Do you agree with that assessment, and how do you think that can be improved?

Mr FANNING — Yes, I agree with it completely, for the reasons that I really was saying to you earlier. But perhaps in addition to that, the Children's Court is a fairly discrete area. It has a limited number of practitioners who regularly appear in it, so it is not part of the mainstream of the criminal law either at the Bar or among solicitors. So I am not surprised at that at all. I think that is definitely right. It takes me back to what I was saying at the beginning: that it does require some explanation, and it is not an easy explanation to talk about. One of the best ways I think is by way of examples. That seems to resonate with people. If you give people examples of how it is actually operated, then the light comes on as to how it actually operates.

The CHAIR — Do you think governments could play a constructive role in the amplification of some of those positive examples?

Mr FANNING — Definitely. It is not very theoretical, but it has got a strong theory base to it that does not resonate easily, and as I say, what does resonate are the examples of people. The other way of dealing with it is if you have spoken particularly to victims who have been through it and who have viewed it positively, they are often very good at articulating in a straightforward way as to why it has been so successful and why they have such a positive view of it. Often those can be very sceptical people and of course the best advocates because they are in a sense converts to it.

The CHAIR — One of the issues that the committee is most concerned with is the access to justice of marginal, disadvantaged, vulnerable groups in the community, and you clearly have a lot of experience, in an area like Yarra, dealing with people coming from contexts like that.

Mr FANNING — Yes, they mostly are.

The CHAIR — How do you think that restorative justice approach is more or less beneficial to groups like that?

Mr FANNING — I do not think it is any more or less beneficial to them than it is for people in Doncaster or Eltham or anywhere else really. I do not think that people who are disadvantaged and might have even language difficulties or difficulties because of their ethnic background, firstly, should be precluded from it, and secondly, are not able to embrace it. In my albeit limited experience in the Children's Court I have not seen that that has been a problem. It is more difficult setting it up because sometimes you have language barriers, and you need to have persons of the same ethnic origin running the conference or to at least have access to people to support them in doing it. There are these complexities, and there are certainly complexities where you have got difficulties when the victim and the offender perhaps have a different ethnic background. That certainly is a challenge in running a restorative justice approach.

The CHAIR — The argument is sometimes put that the traditional adversarial court system is less alienating to Anglo-Saxon middle-class educated people, and conversely the argument is sometimes put that a group conferencing process might be more accessible to Indigenous Australians, for example, or people coming from, for want of a better term, traditional communities — that is, overseas communities, who are recent arrivals in Australia; that sitting around a table and working something through in a more informal way might provide better

access to them around justice than that adversarial judicial system that we have come to know in the Westminster Anglo-Saxon system.

Mr FANNING — I am not sure. I understand the argument but I am not sure if the premise is right.

The CHAIR — It is interesting because there are a number of people in the literature who have sensed that very clearly, and it is very refreshing, actually, that someone has got a bit of a different view and is not accepting that.

Mr FANNING — I am just sceptical about it.

The CHAIR — Can we press you to think about why you are sceptical, or how you are sceptical about it?

Mr FANNING — Because I have found as many other people who you would think would be comfortable in the environment just as uncomfortable in the court as disadvantaged people; and some disadvantaged people, because they have been exposed to the court and the legal system for half their lives, do not feel all that alienated from it in a way because they have been to court on a number of occasions — albeit it might not have been a very good experience, but they have some understanding and familiarity with what everybody is doing there and how it all works. And then there are some other people who do not go to court regularly or have not had a great deal of exposure to court.

If you are looking at it from an Aboriginal perspective, some Aboriginal persons have been exposed to court for long periods of time on a regular basis; it has been an alienating experience, and that is absolutely right. So the restorative justice approach could work, and has I think in the Koori Courts worked well, but I think the jury is still out on how well it is working, particularly with those who have difficulties engaging in services, and that is still the major issue.

The CHAIR — My understanding is that the Koori Court is broadly described as therapeutic justice?

Mr FANNING — Yes, it is.

The CHAIR — And restorative justice is a process that is a bit different to that. Can you explain that a bit.

Mr FANNING — The therapeutic approach is really having a judge-led or judicial officer/magistrate-led approach to problem-solving. The centre of it in a sense, or the person who is directing the traffic, is the judicial officer, in managing what interventions are taking place. It certainly inevitably means that there is going to be more than one hearing. So the person will come before the court and there might be one adjournment, there might be a series of adjournments, whilst there are interventions that occur in regard to assisting that person and endeavouring to redress the underlying causes of the crime, or that person's criminal activity.

That is a classic judicial therapeutic approach, and that might be over a short time or it might be over a longer time, and it might involve housing, it might involve drug and alcohol, mental health — a whole range of interventions that might occur during the course of the time that the person is actually before the court. It is of course based on the presumption that the person has pleaded guilty to the offence and then the interventions start — although there are some variations to that. But to keep it simple, it is upon the person pleading guilty; that is where the therapeutic approach starts and it can go beyond sentencing. I gave an example of that earlier in terms of the reviews of those on community-based orders. That is a therapeutic approach. The restorative justice approach really is that the magistrate or the judge is not involved in that process at all, but he or she hands it over to a convener who works with the offender and the victim and conducts those conferences, and really it is after all that is over, that restorative justice approach has concluded, that it then comes back before the judicial officer. That is fundamentally the way.

The CHAIR — And do you think that the Koori Court and the Drug Court could benefit from extensions using restorative justice processes more?

Mr FANNING — I see no reason why they could not.

The CHAIR — Do they now use those processes much, as far as you know?

Mr FANNING — The Drug Court does not at all, as I understand how it operates; the Koori Court I think does in some informal ways — that is, it is vaguely part of its program. I just wanted to say too that they are not

absolutely mutually exclusive. There is obviously a crossover between a restorative justice approach and the therapeutic approach.

Mr CLARK — I was interested in asking about the Neighbourhood Justice Centre more generally, if I may. I am not sure whether you are the appropriate person to answer this but in terms of the centre as a whole what benchmarks or measures of achievement of the centre have been established?

Mr FANNING — Again, there is an evaluation that has been conducted by a consortium of the Brotherhood of St Laurence, the University of Melbourne and KPMG. I can send to you the ingredients or the components of the evaluation that is being established. Part of it is recidivism rates, although that is a very difficult one because of the longitudinal study that really is required to establish that it has reduced recidivism. But there are a number of other different components to it.

One of them is a greater compliance rate in relation to community-based orders — that is certainly one of them; a greater community confidence in the criminal justice system, or the justice system generally — because as you are probably aware, it is multijurisdictional here; it is not just the Children's Court but also the Victorian Civil and Administrative Tribunal, the Victims of Crime Tribunal and all of the other things that go along with those areas — although I do not do planning, because I would never do anything else if I did planning. But I do residential tenancies, small claims, and guardianship and administration. They are the components of VCAT that I deal with. There are a number of others, but none of them comes into my head at the moment. There are certainly a number of different criteria that are assessed on judgements as to whether or not it is a success.

Mr CLARK — If I could ask a very open-ended question, given all that has been achieved so far and all that you can see as potential of the centre on the one hand, and on the other hand the costs of running what seems to be a very intensive centre, do you have a view to date as to whether or not it is a model that is succeeding and worth looking at replicating elsewhere, do you think the jury is still out on that or do you have a contrary view?

Mr FANNING — I am probably biased, of course, but you can take that into account. I think it is very worthwhile. I would not say I had a sceptical view at all, because I was very committed to it and very excited by it and thought it had the right approach. I did not even need to be convinced, but I wanted to be convinced. I have been quite overwhelmed, quite frankly, as to how well it has worked. The number of people who come before me in the court are both amenable to and ought to have those services and ought to have that intervention and seeing the significant impact of that upon their lives and the reduction, particularly in the criminal area, of their committing offences.

Has it all been plain sailing? There have been some disasters and some failures, but for the vast majority it has been very successful and very worthwhile. Yes, I think there is enormous opportunity for it to be replicated elsewhere, even though this is an area of higher social disadvantage, there are similar other areas. No doubt there are components in other, more affluent areas where this approach could be adopted.

Mr CLARK — We were told on our tour that the client services section was basically willing to help all comers, even if they were not actually connected with the court and if they came through the door looking for help. Does that mean the Neighbourhood Justice Centre will end up being the first point of call for all people in the area who are looking for social services of the sort that the client services area provides? Do you think that is going to happen? If so, will the client services section be able to cope with the level of requests for its services?

Mr FANNING — It is an important question. It has not reached that point at the moment, but it will be a telling day when there is a competition between what the court wants and what people coming off the street, if you like, want. We have not reached that time, but it is getting very close to it.

Part of the ingredients of the Neighbourhood Justice Centre was to have it more broadly than just a court — I am sure you have been told that — and part of that was to have people to be able to get access to services off the street or not associated with the court. I do not have any problem with that; I think it is a very good idea, but, yes, as it is not far off, if it has not happened already, where there is a tension there between what the court demands or what the court requires because of the number of persons before the court and what people are seeking from elsewhere, we will see.

I will say this: there has not been the demand off the street that we thought there would be. We thought there would be a greater demand from people coming off the street seeking services. There has not been anything like the

demand that we anticipated. That is what I am told now. There are a whole lot of reasons for that. People might be apprehensive because it is a court, and a court is a court is a court, no matter what you call it. They are linked into other services. They do not know what it is anyway, so why would you go in there? All those reasons might have affected the lower-than-expected numbers of people coming off the street, as you say, seeking a service. There have been some, but there have been nothing like the numbers that we might have anticipated.

Mr BROOKS — We have had some different evidence given to us about the range of offences that might or might not be suitable for the use of restorative justice conferencing, in particular sexual offences or family violence matters. There is a range of different views. I am interested in your views on how we might consider that?

Mr FANNING — As I said, I suggest a conservative approach to start, but there is not any fundamental philosophical reason as to why it could not be extended beyond that. That does not mean that it is the whole solution or the whole sentence even in a murder case, if you take the most serious offence. It is possible to have a restorative justice approach in a murder offence. It does not mean that the offender might not be committed to a lengthy term of imprisonment, but it does mean that, as part of the sentence, it be taken into account that the person was engaged in the restorative justice approach. If you take it from that, what I am saying is that really anything is amenable to it, depending upon the victim's willingness and the offender.

While it is not overblown to being the whole solution to the sentencing, it is an important component to it. Obviously in those more serious offences it is not going to be the complete answer to the sentencing of the individual, but it can be a very important component. Certainly from what I have read from overseas and even some other states, where it has been used in more serious offences it has worked equally well as in minor offences and sometimes even more so.

Mr CLARK — Particularly with those more serious offences how would you overcome the risk that the defendant, either of their own accord or as advised by their counsel, would just go through the process, say yes to everything the magistrate says, sit in the restorative justice session, express contrition, 'You might find it painful but you will get your two-year discount on your sentence, so it is worth the effort'? You are not getting genuine remorse; you are getting someone going through a process because of that pay-off, and then, of course, the community may well say the courts are being soft on crime.

Mr FANNING — Yes. That is why, going back to what I said earlier, it has to be a very credible process and it has to be sold, if you call it that, incrementally; otherwise it does run the risk of being lacking in credibility and being not only not used but in fact abandoned altogether, so it has to be carefully managed and carefully worked through. Part of what I think is reliant upon credible facilitators — that they have established credibility, established credibility with the court and that they are going to be honest and clear with the judicial officer and not say, 'Because the person attended, then that is good enough', and, as you say, they get their two years discount or whatever it might be at the time. So you are reliant, one, upon — and importantly upon; and it does put a lot of pressure on them, and I know some of them actually do not like that — —

I think it is a reasonable expectation that the court can have the person who is convening and running the conferences giving real feedback about how the sessions went — not all the minutiae and all the details, but that there was genuine and real involvement and not just token willingness to be there. Part of that is the feedback from the victim, because the victim knows more than anybody as to whether or not there is a genuine remorse and a genuine contrition on the part of the offender. Part of the reporting back is the feedback about how the victim perceived and viewed the process.

The CHAIR — We are out of time, David. Thank you very much for your generous sharing of your expertise with us.

Mr FANNING — That is okay.

The CHAIR — As I said earlier, you will receive a copy of the transcript of this session.

Committee adjourned.