

CORRECTED VERSION

LAW REFORM COMMITTEE

Inquiry into alternative dispute resolution

Melbourne — 29 November 2007

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Witnesses

Mr M. Rumble, Director, and

Ms L. Simmons, Program Coordinator, Brayton Youth and Family Services, Salvation Army.

The CHAIR — I welcome Mark Rumble and Laura Simmons. Thank you for coming along today. We received the material that you sent. As you know, Hansard will be recording every single word that all of us say. That transcript will be sent to you. You can make any minor changes, but you cannot redo everything. There are basically some details that you can tweak. The proceedings of this Committee are protected by the Parliamentary Committees Act. That basically means that both of you are afforded parliamentary privilege. You can say things that are critical of people and they cannot take legal action against you while you are here, but if you say the same things while you are outside the confines of this hearing then you obviously will not be afforded that protection. That is important for you to know. We will give you some time to talk through your presentation, and then we will have a conversation around what you said and what we need to know in respect of the terms of reference.

Overheads shown.

Mr RUMBLE — I am the Director of Brayton Youth and Family Services, a large Salvation Army program in Shepparton working predominantly with homeless young people — adolescents. We cover the entire Hume region. It is a fairly large region. You can probably identify most of the towns. It gives you an indication of the region that we cover. We are based in the Greater Shepparton PSA. That is our home base and where Brayton is situated. The restorative justice program, the group conferencing program which Laura facilitates, is based there also. She travels throughout the region.

Mr FOLEY — You cover all of those police service areas?

Mr RUMBLE — Yes. It is a fair distance.

Mr FOLEY — An upper house member.

The CHAIR — It is peanuts compared what we do in an upper house region!

Mr RUMBLE — To give you a little bit of background, in September 2003 the youth justice group conferencing program was officially launched in Victoria. DHS, together with Jesuit Social Services, Anglicare Victoria and the Salvation Army — Brayton Youth and Family Services — were given the task of implementing the youth justice pilot at that time. It was in many ways a response that was going to confront many of the crimes committed by minors who appear in the traditional Children's Court. It was a very challenging task for us to take on, and very much an innovative process.

The Brayton Youth Justice Group Conferencing Program was initially funded to convene 20 conferences per annum in the city of Greater Shepparton and Echuca. You will not see Echuca on that map, but if you have a look at the city of Greater Shepparton and go about an hour west of Shepparton about an hour and that is Echuca. Echuca is in the Loddon–Mallee region. Over the 12-month period, because of the lack of referrals from the Shepparton courts and Echuca, we expanded our program to address the courts in Benalla and Seymour.

We started at a time when the whole process was unique to the courts and unique to magistrates. I guess we were trying to train the magistrates, the police and others in this process. It was not just about implementing the program, it was also about training and educating as well. In 2006 and 2007 our program expanded to include the entire Hume region. You can see that in 2006 and 2007 we had five referrals from the Wodonga court and we had 17 from Seymour. Ironically we only had one from Shepparton in that time, which is really interesting. It means that Shepparton has got a little bit of work to do still.

You will notice that the majority of referrals come from Seymour and Wodonga. Shepparton to Seymour is a 3-hour return trip in the car. Shepparton to Wodonga is a 4-hour return trip. In preparation for one conference Laura, our convenor, can actually do three trips. There is an enormous amount of time spent on the road doing that.

The CHAIR — I take back what I said. It is like an upper house region.

Mr RUMBLE — There is actually a lot of beautiful country between Shepparton and Wodonga, so it gives you a lot of thinking time.

The CHAIR — It does not make it any faster though.

Mr RUMBLE — No, it does not. I am sure Laura does not use any of the time on her mobile phone discussing cases during the journey. On that note I would like to introduce Laura Simmons. Laura has been

involved with the group conferencing program for just over 12 months, and she has proved to be a most competent convenor. Our presentation will be in the form of an actual conference case study which I think you will find incredibly helpful. Hopefully, it will also give you some valuable insight not only into the process but it will also provoke a number of questions for you to ask us. I will just hand you over Laura.

Ms SIMMONS — Thank you all for the opportunity to speak today. As Mark said this is a case study of two clients who were referred youth justice group conferencing program from the Seymour Children's Court. At the time of the commission of their offences they were 17 years old but had subsequently turned 18 by the time they were processed through the courts and referred to the program. As you can see, young person 1 lives with his mother and stepfather in Clonbinane, and young person 2 lives with his girlfriend and his girlfriend's mother in Kilmore.

Ms SIMMONS — The young people presented with these charges. Young person 1 had:

Assault police - both indictable and summary —

Obstruct police; assault in company, and resist police.

Young person 2 had a much more extensive list of charges:

Use indecent language in a public place; refuse/fail to state name and/or address; resist police; assault police - both indictable and summary —

assault in company; behave in offensive manner in a public place;

and

escape from lawful custody.

The police summaries also indicated that both young people were abusive and/or insulting, physically aggressive, uncooperative and intoxicated during their police interviews. From the summaries and charges my initial thoughts as a convenor were those of apprehension and concern due to the serious nature of their offences.

I will move now to the presenting issues. Both young people presented with a diagnosed learning difficulty. They both indicated that they were diagnosed with ADHD and on medication. Clearly this diagnosis had impacted on their ability to maintain education, and that leads me to the next point. They had both exited mainstream education early and had significant deficits with regard to literacy and numeracy. They were both unemployed when they were referred to the program with minimal opportunities for employment.

Young person 1 said it was difficult for him to obtain employment due being isolated and unlicensed. Evidently he was not able to source any suitable employment prior to being referred to the program. Young person 2 stated he had made genuine attempts to gain employment in the Kilmore area but was unsuccessful. That was evidenced by the fact that he could list a number of companies to which he had applied in that area, and he was familiar with the companies.

The next three factors are around isolation. Both young people were significantly disadvantaged by isolation, lack of public transport and access to services that could assist them to gain ongoing employment, and also the limitation of relevant services. Both young people indicated they had previously attempted to access other community services. However, these services were apparently unable to assist the young people. It is worth noting at this point that both isolation and access to appropriate services are not specific to this case but are ongoing issues for the program in the Hume region and contribute to outcomes which are not so positive, I guess.

Next was the interview with the young people. In the initial stages of the interview both young people were difficult to engage. They both presented as withdrawn and uncooperative, and they had an unwillingness to accept full responsibility. Both young people indicated they thought the police should be apologising to them and they believed it was a two-sided issue. They appeared to have difficulty in understanding their role in the offending and the full impact of what they had done.

Upon the young people expressing their views about the nature of their offending I was able to explain to them both the court and conference process and to ensure they understood it was a voluntary program and they did not have to participate in it. At that point both young people were still reserved.

I noticed a significant shift in their attitude as they gained a better understanding of the conference process and the role of the convenor throughout the process. This then led to discussions about the issues at hand. This is when they started to gain a better understanding of the process and were able to move towards the future. At this point — —

The CHAIR — Laura, can I just stop you there. In the conversations you had with them you got an unwillingness to accept full responsibility about their understanding of the process. Can you just give us a bit of a word picture — —

Ms SIMMONS — An overview of what happens?

The CHAIR — What did you say to them that changed their — —

Ms SIMMONS — I am not sure how familiar you are with the referral process but when the young people are at court the Magistrate stands the matter down for a suitability assessment to be conducted. That is done by the youth justice court advice worker — from the Department of Human Services, obviously. They are assessed as being suitable or not suitable to participate in the program. At that point they are told it is voluntary, and they are told about the aims of the program and what they will have to do. At that point both young people agreed to participate in the program, and the Magistrate referred them to the program.

In my initial interview with them when they came to see me — and they were talking about these issues with the police and said that the police should be apologising and that it was a two-sided issue and that kind of thing — I explained to them that that was their opinion. However, they had been through the court process which had found them guilty of the offences and they had pleaded guilty to the offences, so in the eyes of the law they had already been found guilty of the offence and they needed to accept responsibility for that.

From that process they were able to understand that whilst their issues and their concerns were relevant the role of the convenor and the role of the group conference process was for them to have the opportunity to hear also from the victim about how they had been impacted upon by what had happened and for them to talk about their story as well.

I guess when they understood that they had actually been through that court process and had a bit more of an understanding of what had happened at court, and they understood that they had been found guilty of the offence, they were able to, I guess, move from that initial place of frustration — and no doubt they were still frustrated about the incident, but they were able to have a better understanding of what had happened. When I explained to them my role as a convenor and that I was able to assist and support them through this process, they moved into that better understanding of the process and what was happening.

The CHAIR — Do you think the fact that they were basically in a one-on-one relationship with you made them feel more valued?

Ms SIMMONS — I think it did, yes. I talk about that in setting future goals and a belief in the process.

The CHAIR — Okay.

Ms SIMMONS — The shift was probably at the point when I talked to them about my role, because as I said they were a bit withdrawn and uncooperative. When I was asking them questions about what had happened their responses were, 'I don't know; I can't remember' which is typical of young people. At that point I said to them, 'If you cannot talk to me about what has happened and express to me what is going on for you then there is no way I can assist you or support you through this process'.

As I said before, at that stage they were able to move beyond the conference and discuss their future goals, and this generated discussion about options that could be explored. We talked about those options, and again they related to gaining employment. It was obvious towards the conclusion of the interview that the young people realised there was an opportunity to be assisted and supported which increased their efforts to participate in the process.

I move on to interviews with other conference participants. This was a unique case because the informant was also the victim. In this case another police member attended the conference to act as the informant so that the victim could actually still maintain that role within the conference. Obviously there was enormous potential for this conference to become quite complex, but it was a credit to the police that they were able to maintain their role as informant and victim in the conference and were willing to achieve a positive outcome for the young people.

The solicitor: I was able to discuss possible options for the young people with the solicitor to ensure they were consistent with the Children's Court and the legislation without pre-empting any potential agreements that might be made in the conference.

The support person for the young people: young person 1 identified his brother's girlfriend's mother, and likewise young person 2 identified his girlfriend's mother, so it was interesting to note that both young people identified the same support person and that neither identified their parents or any other immediate family as supports. Interestingly young person 1, who, if I can take you back, is actually living with his mother and stepfather, indicated in the pre-conference interview that he did not want his mother to attend the conference as, in his words, 'She is a negative influence'. It was quite a complex case in that respect, with no family support.

With the JPET Program, which is the Job Placement Employment and Training Program, the rationale for referring to this program was that both young people had continually expressed a desire to gain full-time employment, and due to the issues of isolation the program coordinator was able to outreach to them when necessary. The JPET Program was the only service that was realistically available and appropriate to both young people and, even with my assistance, it was still a difficult process to get them engaged due to the JPET criteria. Had the young people attempted this process on their own, there is no doubt in my mind they would have given up.

I move to the conference now. The conference location was actually Wallan. I will take you back to this map just to highlight some of the issues that rural programs face. As I have mentioned, the young people were referred from Seymour Children's Court. One of them lived in Kilmore, one of them lived in Clonbinane and the conference was held in Wallan. Clonbinane is not on there, but it is a bit south of Kilmore.

Mr DONNELLAN — That is right.

Ms SIMMONS — A bit further towards Melbourne. It is in that same region. The JPET coordinator is based in Seymour, and the program coordinator of youth justice — myself — is based in Shepparton.

Mr FOLEY — You have got a long way to go! Where was the meeting? In Wallan?

Ms SIMMONS — In Wallan. We never hold the conferences. It is always a neutral venue — never at the courts or the police stations.

Mr FOLEY — Where was the conference in Wallan?

Ms SIMMONS — It was at the library in actual fact, yes. I will just move forward again. The reason for the conference being held in Wallan is that that is where the offences occurred, and we always ensure that the conference is held where the offence has actually occurred. Those in attendance were obviously the victim, the informant, the legal representative and the young people. It was interesting. When the young people entered the conference venue they were asked to sit where they felt comfortable, and one young person sat away in the corner from the table. Subsequently he was asked to sit at the table. It was an interesting point to note that that is how he was feeling when he entered.

The support person for the young people and the convenors: due to the nature of this conference being a joint conference and the seriousness of the offending, we were fortunate to be able to engage the services of an experienced convenor to assist in the conference process. Our program is extremely fortunate to have access to an experienced and trained convenor in our region.

The CHAIR — You have got 'convenor' there?

Ms SIMMONS — No, there were two. We were able to engage the services of another experienced and trained convenor in our region, which is quite rare for a small program like ours.

Mr FOLEY — What background do the convenors have in relation to — —

Ms SIMMONS — At this stage probably one of the issues that was raised in the submission is that there is no formalised training for convenors in the youth justice group conferencing program. We go through a training program with the Department of Human Services here in Melbourne. That was a week, I think, long — I did it over a year ago — so that is the formalised aspect of the training. My background is in criminal justice, so I have studied criminal justice at university. I think you need a minimum of a degree, is it?

Mr RUMBLE — Yes.

Ms SIMMONS — In a relevant field. That was also an ongoing issue about accreditation and training.

Mr RUMBLE — It is very loose, and it is an issue of concern potentially.

Ms SIMMONS — Almost done! Post-conference: there is the youth justice group conferencing program outcome plan and the court outcome. I will go to the outcome plan first. Prior to the conference both young people had a predisposition that the police were out to get them. However, upon hearing from the victim in the conference and the victim being able to explain to them the role of the police, the young people appear to have heard and understood what the police were relaying. This was evident in an apology from a young person, when he said, 'I am really sorry for what I have done. You were just doing your job'. Furthermore this is evidenced by the commitments both young people made. Firstly, they have obviously both apologised verbally to the victim.

The CHAIR — Sorry to stop you. This nuts-and-bolts stuff, it is quite important that we understand it. You said one of the young people went over to the corner, and you asked that person to come — —

Ms SIMMONS — Yes; we asked them to come back and sit around the table.

The CHAIR — So all those people were around the table?

Ms SIMMONS — Yes.

The CHAIR — And then the convenors chair it, as it were. How do they start? Not every single, but — —

Ms SIMMONS — Essentially there is an introduction and we go through the ground rules of the conference. One of the main changes has been in the legislation that came into effect in April. It is a confidential meeting now and anything said there has to remain there, and people can be charged if they breach that. That is one of the main things that was put in the legislation.

The CHAIR — So the two young men said, 'Yes, we will abide by that'? They gave an undertaking?

Ms SIMMONS — Yes, they did. Essentially, what we usually do is have the informants read out a summary of what happens, and then we will ask the young people to tell their stories. In a joint conference like this we will go back and forth from one young person to the other and get a bit of a picture of what was happening for them. Usually we get them to start prior to when the offence actually occurred — who they were with; what was going on; how they felt at the time; what it was like going to court and being interviewed by the police; and all those kind of things. Some of the critical questions I guess are: who do they think has been impacted by what they have done, and how do they think they have been impacted?

Then we go to the victims and ask the victims the same sorts of questions: how they first became aware of what had happened; how it has impacted them and their family and others. Obviously you start with the primary victims, then the secondary and support people for both the victim and the young person, if they are present. Then we ask the young people again, after hearing from everyone, if there is anything else they would like to say. In most cases at that point the young person apologises. In this particular conference they did not, and it was not until the end of the conference that they both apologised. But typically that is how it works.

Once we have got that out the way — we are sort of going from the past to the future — we talk about what can be done to repair some of the harm that has been caused. Again, we will go directly to the victim and ask them what they would like to see happen, and again around the table. Everyone can have input, and the young person needs to agree to the commitments that they make and be able to action them. If the young person thinks that something is too taxing on them, they can suggest something else. For instance, if they think 20 hours of volunteer work is too much, they might negotiate 10 hours. If everyone at the conference is happy with that, then that is what will go in the outcome plan. Does that answer your question?

The CHAIR — Absolutely, that is good.

Ms SIMMONS — No worries. Just going back, they agreed to contact the police member who was the victim two months after the conference. Just down to the last one, they made a commitment to cooperate with the police in the future.

The JPET Program agreement was also very significant in light of the initial feelings of hopelessness and frustration that both young people felt about being unable to gain employment. They are the outcome plans that we have in our conference. After the conference I write a report that goes back to the Court that includes the outcome plan for the Magistrate for consideration in sentencing. Both young people have gone back to court, they have both received a good behaviour bond for six months and were to comply with the outcome plan which I have just talked to you about.

An interesting sidenote but worth noting was that throughout this group conference, whilst both young people did participate and they did engage in the process, they still presented as downcast and despondent quite a lot of the time. But both young people did show initiative and they came to all their appointments and meetings and they did actually of their own volition phone myself and the JPET worker to see how things were progressing.

Finally, I have just been in contact with the young people, the JPET worker and the police this week. By all accounts they have actioned and completed their outcome plan. They both now have their forklift licences and are in full-time employment through the JPET Program. They have gone to see the police member who was the victim and have been in no further trouble with the law. That is post-conference by about three months, so it is three months down the track.

Mr DONNELLAN — If they were younger, say they were 13 or 14 and they had a difficult family environment, maybe with violence and so forth — you said it was yourself, Salvation Army, and I know you have been involved with the Children's Court for many years, and the Jesuits — would they be put on to mentoring programs in instances like that if they were quite young and they did not have a parent to look to? Would that be something that you include in that?

Ms SIMMONS — Definitely. It is on a case-by-case basis. I would not like to have any conferences where the young person did not have any support people there. Where that is the case we will endeavour to contact any family support, any friends of the family, that kind of thing. Where that is not possible, we will certainly refer them on to other services that may be able to assist them in whatever aspect they need.

Mr RUMBLE — Just on a sidenote to that, with the mentoring, prior to obtaining this program we actually developed, designed and implemented a juvenile justice mentoring program specifically targeting young offenders on release from detention and also young people who had been charged by the courts who had been referred to it. That program was very, very successful. It was actually used, I guess, to bolster the mentoring program that now is existing in the city here, but we were defunded after the three years and we never got the program back.

Mr DONNELLAN — Was that the XLR8 or was that a different one again?

Mr RUMBLE — No, a different one again. This was called the Brayton Mentoring Initiative and it was a very, very successful program. I guess it is worth noting that we do not have a mentoring program that we can refer to for these particular kids in Shepparton and even in Hume region at the moment, unfortunately.

Ms SIMMONS — I am just going to hand back to Mark now. He is going to talk about some of the other aspects of the post conference.

Mr RUMBLE — We just dot-pointed a few things. The conference that Laura outlined was a particularly good conference for a number of reasons. The young people saw value in the process, and that was, again, due to an enormous amount of work on Laura's part to engage them in the process and so on. There was a high level of cooperation from the police and a willingness to achieve a positive outcome, and again a high level of cooperation from the victim, who in this case was a police officer. But those two components are absolutely critical to any conference working. The police have to value the process. We have had times where the police have not valued it, and it has been a very difficult process when the police are thinking, 'This is just a load of rubbish, the kids need a kick in the tail', that type of thing. Thankfully that is lesser than the positive response we are getting from the police. Certainly the victim needs to be actively involved; that is a really critical one. If the victim is actively involved and can empathise with the young person, and if Laura has done her job well, and she usually does, then

they will be able to have a better understanding of the circumstances of the young man or the young woman, mostly young men unfortunately. The availability of really good legal representation — someone who is going to give a little bit more than your standard go to court, grab the first legal person you see who is on duty — someone who is quite passionate about the kids and someone who is prepared to — —

Ms SIMMONS — Can I just jump in there? I am not sure whether you know, but the reason we have put the police, victim and legal rep — particularly the police and legal rep — is that with the new legislation coming into force on 23 April this year it now says that the legal representative and the police must attend the conference and we cannot proceed unless they are there. That is why we need to have an even better relationship built with them in our areas.

Mr RUMBLE — That is right. Probably the most important one and what has come up as a significant issue, I think, across the board — this is not just for us — was the post-conference follow-up. Under the existing rules around the conferencing process once the conference is completed, once the outcome plan is done and it has gone back to court, technically speaking Laura's job finishes — the convenor's job is over. The dilemma that I think we have is if there is nothing there to make sure that the follow-up plan is completed. In Queensland they actually have a system in place under their rules that they have a specific role to make sure that the outcome plan is followed through. Ultimately what that does is it gives much greater victim satisfaction. Imagine a victim being involved in this process and then realising that the kids, who often live in a similar area, have not achieved the outcome of the agreed outcome plan. Pretty much there is nothing anybody can do about it. I think what we would strongly recommend, as part of our submission, is that there is something put in place — an additional amount of funding to try and assist either the convenor or a separate person to follow the outcome plan through to completion. I think that is going to assist the young people. They are going to feel a sense of completion that they have actually achieved what they said they would achieve. Certainly the victim will also feel like this has been a good thing, because both victim and the young person are involved in the development of the outcome plan.

Mr BROOKS — There is obviously a whole range of positive outcomes that you have described in that process. One area where we certainly have not found clear evidence either way is in the rates of recidivism. I note that in your written submission you talk about the need for further studies. I suppose I am looking for anecdotal advice that you might be willing to offer today.

Ms SIMMONS — Effective Change actually did an evaluation of the pilot program, so there were the three: Gippsland, metro and then Shepparton. However, they were only done at 6 and 12 month intervals and they were done with a probation group, a group conferencing group and one other group that just went through the court process; they found that after 12 months, 17 per cent of the group conferencing group had re-offended and, 40 per cent of the probationary group.

Mr BROOKS — Who did that?

Ms SIMMONS — Effective Change. Would you like us to email it to you — electronically?

The CHAIR — Could I just follow-up on that: are you collecting data on this? Because when you talk about percentages it is not necessarily only a qualitative study, it is also statistical; so what sort of data-gathering is going on in relation to that?

Ms SIMMONS — In our program we have, I guess, key performance indicators that we need to report quarterly and annually to the Department of Human Services Youth Justice Branch here in Melbourne. I think in the submission we indicated what they were. They are very limited in terms of gaining any understanding of recidivism.

The CHAIR — You said there is a need to expand it, yes.

Ms SIMMONS — In that respect I collect data for our program in the Hume region for a number of different reasons, but nothing that, I guess, would indicate recidivism at this stage.

Mr RUMBLE — I think that is definitely an issue and personally, we believe that the process is going to reduce recidivism. All of the evidence would indicate that the process does assist that.

At the moment the data that they are collecting and the infrastructure that is in place — and maybe it has got to do with it being a new program, I do not know — but there certainly does not seem to be any relevant data to indicate that and I think that is something that needs to happen.

The CHAIR — There is also recidivism which is one measure, but then the other thing that was in your story, Laura, of the two young men, was also that there was a life opportunity that was a consequence of what started off badly, might have a positive outcome in the end. And that needs to be documented and recorded as well.

Mr FOLEY — Takes them out of risk.

The CHAIR — Yes, because that is the critical part of the story.

Mr RUMBLE — Absolutely!

The CHAIR — Are there any other questions? I will let it go at that because we are well over time, so thank you both very much. That was really stimulating and informative, and really useful to all of us. Thanks a lot for your work and more strength to your arm.

Ms SIMMONS — I will leave you with our brochure from the Hume region and a generic brochure from the Department of Human Services about youth justice group conferencing, so it will give you a bit more information.

The CHAIR — Thanks. As I said before, you will get a copy of the transcript prepared by the Hansard reporters and no doubt Kerryn and Kate will be in touch with you at some point.

Committee adjourned.