



'Airy fairy': magistrate's comments about restorative justice spark concerns in Queensland

Youth advocates say they believe courts may be shunning effective diversionary programs

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15

Youth advocates say they are concerned [Queensland](#) courts are shunning effective diversionary programs – and don't understand the benefits – after a magistrate said he thought restorative justice was “airy fairy”.

The state's Youth Justice Act requires courts to consider sending young offenders who plead guilty to a restorative justice process; effectively a conference with victims and other relevant parties.

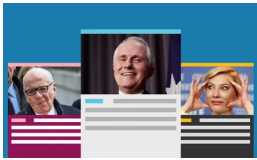
The children's court has now [overturned the decision of a magistrate](#) who criticised restorative justice, then later in the same hearing asked: “But what is it?”

The magistrate refused to consider the process when sentencing a young offender who was later described as “extraordinarily well suited” to it.

“I’m not in great favour of this restorative justice. It’s all airy fairy, if you ask me,” the magistrate told the court in Rockhampton last year.

“I’d rather that people be supervised and get to the root of the problem, because what’s happening here is, this young man’s running amok for some reason, and that needs to be addressed because he can’t afford to keep on running amok because he is going to be facing much more heavy penalties if he keeps doing it ... Things are going to get worse for him, and may get worse for the community.”

The magistrate then asked a representative from the department of youth justice, which had recommended the process, to explain it.



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“How do you judge effectiveness? Have you got results that people don’t reoffend?”

There is significant evidence that restorative justice and youth conferencing is effective. A 2016 study by Griffith Criminology Institute found youths who were conferenced were less likely to reoffend in the subsequent two years.

Amnesty International has warned that overcrowding in Queensland youth prisons is “creeping towards a human rights crisis”. Amnesty’s Indigenous rights campaigner, Belinda Lowe, said the case highlighted broader concerns that police and the courts had not been educated about alternatives to less-successful punitive measures like youth detention.

“Any possible step that can be taken to keep kids out of the justice system is better for them and for the community,” Lowe said. “When a child is put in the justice system, the likelihood of them offending increases.

“[Restorative justice] often works quite well because kids are put in front of the people who are affected by their behaviour and their bad decisions. They’re able to see the impact of their crime.

“With a lot of the kids who go through the justice system, there can be cognitive issues, or learning development issues, and a clinical court process is not always the best way to teach a child about the impact of what they’ve done.

“It is critical that police and judges and other people who are decision makers in the process are educated to consider these things, so they can make decisions when children are in a bit of trouble

or need a little extra support.”

Judge Ian Dearden reviewed the case and ruled this month that the children’s court magistrate had “fallen into error”. Dearden set aside the original sentence – 30 hours of community service the youth has already completed – and referred the child back to a restorative justice process.

“[The magistrate] expressed, fairly bluntly, a disinclination to utilise a sentencing option that the learned magistrate was obliged to consider,” Dearden said in a judgment posted this week.