

## **Young Offenders Act 1997 (NSW)**

The following article is taken from information containing on the NSW Police Service web site located at URL=<http://www.police.gov.au/>. There is some excellent information available on this site.

### **1. Introduction to the Young Offenders Act 1997 (NSW)**

The *Young Offenders Act 1997 (NSW)* passed through Parliament in June 1997 and becomes effective on 6 April 1998. It is the result of 10 years of trials and reform of the Juvenile Justice System.

The *Young Offenders Act 1997 (NSW)* changes the way police and the justice system deal with young offenders. It actively seeks to steer young offenders away from the court by directing them to alternative forms of intervention. It provides a new more constructive pro for dealing with young people who break the law.

Currently, police have the option to give a warning on the run or a caution. Police can use them but do not have to explain why they did not. Under the Act, police must clearly justify each decision.

The Act aims to make young offenders take responsibility for their actions, acknowledge the rights of the victim, avoid the cost and time of a court appearance and most importantly - steer young offenders away from detention. They achieve this by holding a Youth Justice Conference. Conference schemes already exist in Canada, New Zealand and South Africa.

The *Young Offenders Act 1997 (NSW)* responds to a number of complex and sensitive issues identified by the Government. It aims to:

- make young offenders responsible for their actions and to encourage their families and communities to share this responsibility;
- strengthen the rights of the victim and repair some of the damage caused by crime;
- involve the victims and their families in the conference decision-making process;
- make the juvenile justice system more responsive to individual circumstances;
- reduce the time and costs involved in the court system;
- reduce the human costs of too many young people in detention;
- improve public confidence in the juvenile justice system.

## 2. How the new process works

Four options exist for police dealing with young offenders. The choice depends on the seriousness of the offence, the degree of violence involved, the harm caused to the victim, the attitude of the young person to the offence and whether the young person admits to the offence.

<b>OPTIONS</b>	<b>TYPE OF OFFENCE</b>	<b>OUTCOME</b>
<p><b>WARNINGS</b></p> <p><i>recorded without offender details</i></p>	<p>Minor summary offences with no violence or related issues, e.g. swearing in public.</p>	<p>A warning can be given on the spot</p> <p>Police record the giving of a warning but not the young persons name.</p>
<p><b>CAUTIONS</b></p> <p><i>formal, recorded</i></p>	<p>More serious offences, e.g. stealing or damage to property</p>	<p>A young person can only be cautioned if he or she admits the offence after being given the opportunity to receive legal advice and agrees to be cautioned.</p> <p>A police officer or respected community member gives the caution to the young person.</p> <p>A caution is a serious matter. It can be done at a police station or other suitable venue</p>
<p><b>CONFERENCE</b></p> <p><i>administered by DJJ</i></p>	<p>Any offence that warrants a caution or is more serious, e.g. stealing, damage to property, assault, and where a victim has suffered harm.</p> <p>Note: Previous cautions or conferences may affect whether an offender can be warned, cautioned or sent to a youth justice conference for future occurrences.</p>	<p>The decision to have a conference can be made by the DDP, court or NSW Police Specialist Youth Officer.</p> <p>A conference can only be held if the young person admits the offence after being given the opportunity to receive legal advice and agrees to attend a conference.</p> <p>The offender and victim must agree to an outcome plan, e.g. apology, repayment, repair of damage or community work</p> <p>The conference cannot impose a more severe outcome plan than a court would do.</p>
<p><b>COURT</b></p>	<p>A court must deal with murder, manslaughter, sexual offences, domestic violence, drug trafficking and any offences that result in the death of a person. This includes motor vehicle offences where the young person is old enough to hold a license or permit under the Motor Traffic Act 1909.</p>	<p>The court can impose such penalties as detention, intensive community supervision, community service orders or fines.</p> <p>The Director of Public Prosecutions can refer back to Police for a caution.</p> <p>The Children's Court can give a formal caution.</p>

### **3. Youth Conferencing**

Youth justice conferencing brings the offenders, their families and the victims together, face-to-face. Together, the offender and victim must agree on a suitable outcome that can range from an apology to reimbursement or community work.

Conference administrators employ conference conveners on a contractual basis when needed. Conveners are respected adults with sensitivity, common sense, and a demonstrated ability for dealing with young people. The Department of Juvenile Justice specially trains them for this role.

The Young Offenders Act 1997 provides a framework for how to run a youth justice conference. The conference process is flexible and open to the discretion of the convener. Here is a description of how a convener may choose to run a conference.

- STEP 1** The convener asks those present to introduce themselves and state why they are there.
- STEP 2** The young offender outlines what occurred as he/she sees it. If there are any important omissions the convener may interject.
- STEP 3** The convener asks the victim to talk about how the incident has affected him/her.
- STEP 4** The convener invites the offender's family or supporters to talk about their thoughts on what happened.
- STEP 5** The convener then asks the victim to relay what they believe to be a fair outcome. The young offender considers an outcome with his or her family or supporters.
- STEP 6** The conference resumes and everyone decides what should happen. This is called the outcome plan. Both offender and victim must agree to this plan.
- STEP 7** The convener asks for people to be nominated to advise him on the implementation of the plan.
- STEP 8** If the outcome plan is not completed, the conference can be reconvened to discuss the problems.

### **4. Who may be involved in a conference**

#### ***The Young Offender***

*Others involved could include:*

- An adult responsible for the young offender or a person of his or her choice
- A supervising officer if the offender is under probation or a community service order
- members of the offenders family and/or extended family
- A lay advocate to advise the conference on cultural matters (e.g. Aboriginal elder)
- Legal advisor of the offender
- An interpreter if necessary

***The Victim/s or:***

- A representative of the victim if he or she does not want to be present
- A support person

***Justice Representatives***

- Conference convener appointed by the conference administrator
- Investigating officer from the NSW Police Force
- Youth liaison officer from the NSW Police Force may also attend

**5. Benefits of the Conferencing Procedure**

This procedure has several benefits over "a day in court".

- the offender and victim must both agree on the outcome
- the offender must speak for him or herself
- the victim is given the opportunity to speak
- all participants are actively involved.

<b>POLICE</b>	<b>OFFENDER</b>	<b>COMMUNITY</b>
<p>This system involves no more time investment by officers than is currently the case. It simply offers other more effective options.</p> <p>This Act can actually result in less work (long term) as it deters young persons from re-offending. At most, it involves the same amount of work (court vs. conference).</p> <p>Act provides clearer guidelines for police in dealing with young offenders.</p> <p>It diverts first offenders away from the system, allowing Police to focus on recidivists.</p> <p>This is not a "soft option" but a means of using alternatives to achieve a better, more permanent result - a "smarter" option.</p> <p>Cautions are effective. The majority of young people who appear at Children's Court only do it once. Police cautions can have the same effect as a court-given caution.</p>	<p>Young people have rights and responsibilities. This Act helps to clarify these.</p> <p>Police have the option of using a warning or a caution. One mistake doesn't have to mean court.</p> <p>Conferencing can help young people get to grips with the reasons for their offending. It expands their options for dealing with them.</p> <p>Conferencing is fair. Offenders must confront their victims &amp; the mutually agreed penalty is legally enforceable (if it fails, they wind up in court).</p>	<p>This system makes young people more responsible than the current system, which many perceive as giving only a "slap on the wrist". It gets to the causes of the problem by requiring offenders to face the consequences of their crime (s).</p> <p>Under the Act, victims have a very real role to play, which they do not have in the traditional judicial system.</p> <p>Parents are recognized and included in any justice process that involves their children.</p> <p>Making young people aware of the impact of their actions can reduce the level of recidivism and thus the long-term financial and social cost of incarceration.</p> <p>Includes victims in the justice system by seeking active participation in the outcome plan.</p> <p>The process is designed to provide a high level of victim satisfaction.</p> <p>Very serious crimes still dealt with by the court</p>

## **6. Commonly Asked Questions**

**Q.** Who decides to hold a conference?

**A.** A nominated police Specialist Youth Officer.

**Q.** Who organises the conference?

**A.** The conference convener, in consultation with the conference administrator.

**Q.** Where and where is the conference held?

**A.** The conference is held as soon as possible after the offence at a location agreed to by all participants. It could be anywhere except a police station, court or a juvenile justice office.

**Q.** What happens if the young person does not admit guilt?

**A.** They will go to court.

**Q.** What happens if the victim does not attend?

**A.** The victim can send a representative and receive advice of the 'outcome plan'. However, if the victim does not attend the conference, he/she is not able to veto outcome plan. (The victim's representative is not able to veto an outcome plan.)

**Q.** Under what circumstances can the conference be adjourned?

**A.** The conference can be adjourned at any time with the consent of all participants.

**Q.** What if the offender does not agree with the outcome plan?

**A.** The police must decide what further action to take. The conference can be reconvened, or the matter sent to court.

**Q.** What is the time limit for the proceedings?

**A.** Average time is 1-4 hours, although the Act does allow for adjournments.