

## **Appendix 2 – Overview of juvenile diversionary schemes in Australian jurisdictions**

### **New South Wales**

Current system of juvenile diversionary programs came into force with the introduction of the *Young Offenders Act 1997* (NSW). The Act formalises a statutory hierarchy of warnings, cautions and youth justice conferences for diverting young people from the formal justice system. The Act also emphasises children's rights, drawing on principles in the Convention on the Rights of the Child (CROC).

Youth justice conferences are facilitated by conference convenors working for the Department of Juvenile Justice. Victims must be invited to the conference but it can be held without them. Only the young person and the victim have right of veto over the outcome plans of the conference.

Outcomes from youth justice conferences cannot be more severe than a court would impose for such an offence. Many outcome plans have to date provided innovative modes of reparation. For example, three Aboriginal boys attended a youth justice conference for a series of property offences. As part of the outcome plan, they spent several weeks painting a mural at a youth centre under the guidance of a teacher of Aboriginal art and were able to learn more about their culture.

Despite however, the progressive model of conferencing adopted in NSW, statistics suggest that Indigenous young people still do not get the benefit of diversion at the same rate as non-Indigenous young people. A review found that, whereas the overall rate of diversion (including cautioning and conferencing) was around 37 per cent, the rate for Indigenous youth specifically was lower, at just over 24 per cent.<sup>99</sup>

### **South Australia**

South Australia was the first State or Territory to establish a statutorily-based youth conference scheme. The *Young Offenders Act 1993* (SA) provides for informal cautions, formal cautions, family conferences and the Youth Court.

No offences are specifically excluded from the system by the legislation or the regulations. In the case of formal cautions and family conferences, but not informal cautions, an admission must be written and should be signed by the young person 'if possible', in the presence of a guardian. Referrals to family conferences are by consent of the young person and can only be made once he or she has been given an opportunity to obtain legal advice.

Family conferences are facilitated by Youth Justice Coordinators who are either magistrates or those appointed to the position on a contractual basis. Participants include the young person and support people, the victim and support people, a police representative and any other people whom the police informant considers it appropriate to invite. Decisions should be made by consensus if possible but only the agreement of the

<sup>99</sup> Hennessey, N. (1999) *Review of the gatekeeping role in the Young Offenders Act, 1997 (NSW)*, a report to the Youth Justice Advisory Council of New South Wales, Sydney.

young person and police representative is needed to validate them. The young person is entitled to be advised by a legal practitioner at the conference.

Since the legislation has been in operation some serious offences have been dealt with through conferencing, including robbery and sexual assault (where both victim and offender were under eighteen). Police hold the discretionary power to refer offenders to conferences. The Youth Court does not refer to family conferences.

### ***Victoria***

Victoria is the only Australian state not to have a legislatively based juvenile diversion scheme. There is no provision for police or court cautions under the *Children's and Young Persons' Act 1989* (Vic) but there is a long established practice of using them. Victim/offender conferences are only available as post-court diversion by way of a sentencing option.

However, since 1995 a Juvenile Justice Group Conferencing Program has been operating from Melbourne Children's Court. Young people who admit the offence and who would be likely to be sentenced to a supervisory order by the court are eligible. The Program is aimed at more serious matters and offenders who are considered at risk of progressing through the justice system. The case is adjourned while the conference is being convened.

Participants in a juvenile justice group conference include the young person and family, the police, relevant community members and legal representatives. The victim can attend in person or send a representative but the conference can proceed without them.

### ***Queensland***

The *Juvenile Justice Act 1992* (Qld) includes two diversionary options: police cautions and community conferences. Any officer can caution a young person for an offence provided the young person admits the offence and consents to being cautioned. Cautions can also be delivered by a respected person from the Aboriginal or Torres Strait Islander community. Importantly, the Act provides for a court to dismiss a charge against a young person if s/he pleads guilty and the court is satisfied the young person should have been cautioned. This provides a statutory check on the exercise of police discretion.

Since 1996, community conferences have been available on police referral as a pre-court diversion option or a court referral after a finding or admission of guilt. The conferencing program also accepts referrals for adult offenders under an administrative arrangement with the police.

Community conferences are facilitated by conference convenors recruited and trained by the Department of Families, Youth and Community Care. Convenors have the discretion not to convene a conference or to discontinue one if they believe the offence is unsuitable for community conferencing. Conference participants include the young person and their support persons, including a lawyer, if requested, the victim or a lawyer acting for him/her and a representative of the referring authority i.e. the police or the court.

### ***Tasmania***

In 1995 Tasmanian police introduced a victim/offender conferencing program based loosely on the Wagga Wagga model in NSW. In 1998, the *Youth Justice Act 1997* (Tas) came into operation. It establishes a scheme of pre-court diversions by way of informal

caution, formal caution and community conferencing. Diversions are only available where the young person admits the offence.

Before a formal caution is given or a referral is made to a community conference, the informant must determine whether the young person consents to diversion, obtain a signed admission and give the young person the opportunity to obtain legal advice. An authorised officer can request that an Aboriginal elder or representative administer a formal caution to a young person in the presence of the officer. An officer can also request that a caution be administered by a community representative from the young person's religious or ethnic group.

Once a young person has consented to diversion to a community conference, s/he must sign an undertaking to attend in the presence of a parent or guardian. The police officer then requests the Department of Health and Human Services (DHHS) to organise a community conference. Participants at conferences include the facilitator, the young person and family, support people for the young person, the victim and support people, and the informant or another police representative. If practicable, a conference should determine the outcome by consensus but if that is not possible the agreement of the young person, police officer and victim is sufficient.

A court can order a community conference instead of proceeding to sentence. Once the young person has fulfilled all undertakings given at the conference, the charge is dismissed. Formal cautions in practice can operate as victim/offender conferences. However, unlike the 'community conferences' organised by the DHHS, these are coordinated by the police (as they were before the introduction of the Act in 1998). Hence in Tasmania two models of conferencing co-exist.

The Act does not specifically exclude any offences from the pre-court diversion scheme. However, officers are unlikely to consider serious matters suitable for diversion, particularly those that cannot be dealt with by the Youth Justice Division of the Magistrate's Court.

### ***Australian Capital Territory***

There is no legislation governing juvenile diversion in the Australian Capital Territory (ACT). The *Children's Services Act 1986* (ACT) empowers courts to reprimand a young person found guilty of an offence (without conviction) but contains no reference to police cautioning.

Youth conferences are conducted by trained police facilitators and include the young person, a minimum of four supporters, the victim and supporters and any other relevant people, such as the police informant or an interpreter. Conferences can be held without victims present.

### ***Northern Territory***

In July 2000, as result of an agreement reached between the Commonwealth and the Northern Territory Governments, funding was provided to fund a program that aimed to divert young Indigenous people away from the criminal justice system. The funding also provide for an Aboriginal interpreter service.

A Juvenile Pre-Court Diversion Scheme was therefore established by the Northern Territory Police, which has been underpinned by relevant legislative change, including the amendment of relevant legislation increasing the age at which a young person is treated as an adult from 17 to 18 years.

For more serious offences, or where diversion fails, the use of courts remains appropriate. The scheme provides different levels of response to juvenile offenders, including:

- formal cautions
- verbal and written warnings
- family and/or victim conferencing
- substance and drug abuse programs
- community based programs
- prosecution

The scheme is flexible and is mindful of cultural considerations in the offence/response equation. The scheme also takes into consideration the needs of the victim (if any). Recognising the important role of parents/guardians have to play in the effective diversion of young people from the criminal justice system, the scheme encourages parents and guardians to take responsibility for the actions of their child.

#### ***Western Australia***

Western Australia has a number of diversionary approaches for young offenders or those young people at risk of offending.

The Aboriginal Family Supervision Program aims to provide support young offenders and their families. The program uses Aboriginal mentors to provide direct support and advice to the young person and their family. Mentors report on the young person's progress to the juvenile justice officer or the community corrections officer and keep the family and the young person informed as to what other strategies might help.<sup>100</sup>

Western Australia also has a juvenile conferencing program, similar to those operating in other States.

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<sup>100</sup> [www.justice.wa.gov.au/portal/server.pt/gateway](http://www.justice.wa.gov.au/portal/server.pt/gateway), downloaded 21 July 2005.