

Youth Justice

Your Guide to Cops and Court in NSW

4th Edition

Macquarie Legal Centre

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Youth Justice – Your Guide to Cops and Court in NSW is an ongoing project of Macquarie Legal Centre. This edition was produced in partnership with Shopfront Youth Legal Centre.

THE FEDERATION PRESS
2010

Published in Sydney by
The Federation Press
PO Box 45, Annandale NSW, 2038.
71 John St, Leichhardt, NSW, 2040.
Ph (02) 9552 2200. Fax (02) 9552 1681.
E-mail: info@federationpress.com.au
Website: <http://www.federationpress.com.au>

National Library of Australia
Cataloguing-in-Publication entry

Youth justice : your guide to cops and court in New South Wales / Macquarie Legal Centre.

4th ed
Includes index.
ISBN 978 186287 812 9 (pbk)

Juvenile justice, Administration of - New South Wales.
Juvenile delinquency - New South Wales.
Child welfare - New South Wales.
Youth - Legal status, laws, etc - New South Wales.
Children - Legal status, laws, etc - New South Wales.
Teenagers - Counselling of.

364.3609944

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Typeset by The Federation Press, Leichhardt, NSW.
Printed by Ligare Pty Ltd, Riverwood, NSW.

The Young Offenders Act: warnings, cautions and conferences

Warnings, cautions and conferences for under 18s

The *Young Offenders Act 1997* (YOA) provides an alternative process for dealing with juveniles who commit certain types of offences.

The Act applies to young people aged under 18 at the time of the offence and under 21 when being dealt with by police.

Warnings, cautions and conferences

Instead of going to the Children's Court, the *Young Offenders Act 1997* allows young people to be dealt with by:

- *Warning* – This is the least serious option and does not require the young person to admit guilt. Warnings are given by the police, are quick and informal, and don't go on the young person's criminal record.
- *Formal caution* – Cautions are more formal than warnings. Cautions usually happen at the police station, and usually a couple of weeks after the police decide to caution you.
- *Youth justice conference* – This is a more serious option. A conference is a meeting between you and other people such as your family, the police, and usually the victim of your crime. A neutral *convenor* runs the conference, not the police. You talk about the crime and its effects on everyone. Then you work out ways to make up for the harm you have caused (an *outcome plan*).

Which offences can be dealt with under the Young Offenders Act?

Warnings, cautions and conferences *cannot* be used for:

- sex offences
- offences leading to the death of any person
- breaches of apprehended violence orders
- stalking or intimidation
- indictable offences which are not in Table 1 or Table 2 of the *Criminal Procedure Act 1986* (see *Which court?* on page 266)
- drug offences, unless it involves the use or possession of a small quantity (eg up to 15 grams (or in special circumstances 30 grams) of cannabis; 0.25 grams of ecstasy; 1 gram of heroin, speed or cocaine)
- traffic offences, except for children who are too young to have a licence (see *Driving: rules and traffic offences* chapter).

All these offences must go to court.

Do you have a say in what happens?

If the police offer you a warning, caution or conference, you don't have to agree to it. You can choose to go to court instead.

Before you decide, there are some things to know about each of these options.

Legal advice

Before you do anything (including being interviewed by the police) you should try to get legal advice. You can get advice from the Legal Aid Hotline for under 18s or from another service such as the Aboriginal Legal Service (see *Getting legal advice and assistance* on page 4).

For more information see *What's better – a conference or court?* on page 242.

Warnings

When can you get a warning?

You are entitled to be given an on-the-spot warning if police think you have committed a non-violent *summary* (minor) offence (see *Which court?* on page 266 for information about summary and minor indictable offences).

You are not entitled to a warning if the circumstances of the offence involve violence or if the police believe a warning is not in the interests of justice.

Warnings are usually for first offences, but the police can still warn you if you have offended before.

You don't have to admit the offence to be warned. But if you strongly deny the offence, police probably won't just warn you.

Warnings are less likely if:

- police sense an attitude against them
- the offence was deliberate and planned
- the offence was done by an organised group.

Police can warn more than one person at a time, and police can warn you for more than one offence at a time. Police can use warnings with adults too (but these are not covered by the YOA).

When do police use warnings?

Police can use warnings for *summary* (minor) offences not involving violence, for example:

- offensive language or conduct in a public place
- obstructing traffic
- possessing alcohol in public
- trespassing (entering or remaining on inclosed lands)
- soliciting for prostitution
- climbing on or jumping off buildings
- possessing spray paint, or graffiti implements.

How and where do police give warnings?

A warning may be given at any place, including on the spot where you are found. Conditions, or extra punishments, must not be imposed on a warning. There are no rules about who is present during the warning. The police must take steps to ensure that you understand the purpose, nature and effect of the warning.

The police can also tell your parents or guardians that they have given you a warning, unless they think that this might affect your safety, welfare or wellbeing.

Records of warnings

The police must record certain details including your name, so they know about the warning if you get in trouble again. However you don't go to court and you don't get any penalty or criminal record.

Cautions

When can you get a Caution?

Entitlement to a Caution

You are entitled to a formal police caution if:

- the offence is eligible to be dealt with under the YOA
- you admit the offence in front of an appropriate adult
- you consent to receiving a caution, and
- you haven't already had three YOA cautions.

Presence of appropriate adult

An admission must be made in the presence of an appropriate adult. This means someone, other than the investigating police officer, who is:

- responsible for you (eg a parent or guardian)
- present with the consent of a parent or a person responsible for you
- if you are 14 years or older, an adult chosen by you (eg a parent, relative, community elder, youth worker, DoCS case worker, juvenile justice officer), or
- a lawyer chosen by you.

If you do not speak English well, you may also have an interpreter present.

Appropriateness of Caution

Police should use cautions when warnings are not appropriate (eg police have warned you several times before, or the offence is too serious for a warning).

Police may decide not to caution you if they believe a caution is not in the interests of justice. Issues taken into account by police in deciding whether a caution is appropriate include:

- the seriousness of the offence
- the degree of violence involved
- the harm caused to any victim
- the number and nature of any prior offences you have committed, and
- the number of times you have already been warned, cautioned or referred to a youth justice conference .

You are not prevented from being given a caution just because you have a history of offending (but you won't be able to get a caution if you have already had three cautions). You can be cautioned for more than one offence at a time.

If the investigating police officer believes a caution is not in the interests of justice, they must refer the matter to a *specialist youth officer* (a police officer who is trained to deal with young people and the YOA) to decide whether the matter should be dealt with by way of a youth justice conference.

If police do not refer you for a caution, and send you to court instead, you may be given a caution by the court or referred for a caution by the Director of Public Prosecutions.

The Cautioning process

Explanation

If the police decide to give you a caution, the investigating officer must explain to you:

- the nature of the allegations
- your entitlement to legal advice and where you can get that advice
- your entitlement to choose to go to court, and
- the purpose, nature and effect of the caution.

If possible, this explanation must take place in the presence of an appropriate adult.

Notice of Caution and cooling-off period

The police then give you a written *notice of caution* and ask you to come back to receive the caution another day.

A caution must be given 10 to 21 days after notice of the caution is given. This time serves as a *cooling-off* period, when you can access legal advice and/or change your mind. At any time before a caution is given, you can choose to have your matter dealt with by a court.

Who gives the caution?

The caution is usually given at the police station by a senior police officer, or sometimes by a respected member of the community such as an Aboriginal elder. You can also be cautioned somewhere other than a police station.

Who can be with you at the caution?

If you receive a caution you may be accompanied by one or more adults, such as:

- parents, guardians or members of your extended family
- another adult chosen by you (eg a youth worker)
- a respected member of your community
- an interpreter, if you need one

- if you are in care, a social worker or other health professional
- your juvenile justice officer, if you have one.

If the investigating police officer is not the one giving the caution, he or she may also be present.

What happens when you are cautioned?

The police must explain the caution to you, and must give you a written notice after the caution has taken place.

Police may ask you to talk about what happened when you committed the offence, how you think what you did has affected other people, and what you could do to make up for the harm. They may also read out a statement from the victim (if there is one) of your offence about how they feel about what you did.

No conditions may be attached to a caution, except that you may be required to give a written apology to any victim.

Record of caution

The caution is not a conviction so you do not get a criminal record.

However, police and courts keep full details (including your name) of the cautions they give. This will be on your *court alternatives history*. The police and the Children's Court can take the caution into account if you get into trouble again.

Decision not to proceed with caution or failure to attend

If you decide not to proceed with a caution, or fail to turn up for the caution, the police may commence criminal proceedings. This means giving you a court attendance notice requiring you to go to the Children's Court to be dealt with for the offence.

Caution given by court

If you are sent to court instead of being cautioned by the police, the court may give you a caution under the YOA, as long as it is an eligible offence and you admit the offence.

The court must notify the police and give reasons why the caution was given.

Youth justice conferences

What is a youth justice conference?

A *youth justice conference* is a meeting involving a young offender (you), your family, other people to support you, the victim of your crime (if there is one), people to support the victim, and the police.

The conference is run by a neutral convenor appointed by Juvenile Justice. Everyone, including you, talks about the crime and how it has affected people. Then you work out ways to make up for the harm you have caused.

Principles of conferencing scheme

The youth justice conferencing scheme is based on principles of *restorative justice* and allows for victim participation. The principles and purposes of the scheme are set out in the YOA and include:

- promoting acceptance of responsibility for criminal behaviour
- strengthening family support
- providing appropriate services to enable you to overcome the offending behaviour, and
- enhancing the victims' rights.

What is the point of a conference?

Conferences help you to understand how your crime has affected everyone: the victim, your family, yourself, and anyone else. Conferences help you to take some responsibility for what you did. A conference might also bring your family closer and support you with other aspects of your life.

The conference should also help the victim. At the conference you work out an *outcome plan*, a practical way that you can make things up to the victim.

When can you be referred to a conference?

Eligibility

Like a caution, a conference can be arranged only if:

- the offence is eligible to be dealt with under the YOA
- you have admitted the offence in the presence of an appropriate adult (see *Presence of an appropriate adult* on page 228), and
- you agree to go to a conference.

Who decides to refer you to a conference?

The decision to refer you to a conference rests with a *specialist youth officer (SYO)*, a police officer who is specially trained in dealing with young people and the YOA.

As with cautioning, there are a number of issues to be considered in deciding whether it is appropriate to refer you to a conference. Prior offences or interventions under the YOA do not stop you from being referred to a conference.

If the SYO decides a conference is appropriate, the matter is referred to a *conference administrator* at your local Juvenile Justice office. The administrator will appoint a *convenor* to organise the conference.

If the SYO decides a conference is inappropriate, the matter will be referred back to the investigating officer for commencement of court proceedings.

In some cases (not often), the administrator may refuse to accept the referral, for example, if he or she thinks a caution would be more appropriate, or that you are not guilty of the offence. If the administrator and the SYO can't agree on whether you should be cautioned or referred to a conference, then a lawyer from the Office of the Director of Public Prosecutions will decide whether you should be cautioned, referred to a conference, or sent to court.

Conference or caution?

Before referring you to a conference, the police must first consider giving you a caution instead, and must decide that a caution is not appropriate.

If there is a victim of your crime who has suffered some harm, the police are more likely to offer a conference than a caution.

Examples of offences that are referred to conferences

Common examples of crimes that go to conferences are:

- car stealing
- vandalism (malicious damage)
- break enter and steal
- assault
- shoplifting.

If the police do not refer you to a conference

If police decide not to refer you to a conference, they will usually commence court proceedings. If you admit the offence when you go to court, the court or the Director of Public Prosecutions (DPP) may refer you to a conference.

The conferencing process

Before the conference

Explanation and cooling-off period

As with cautioning, police must explain certain things to you, including your right to legal advice and where to get it. They must give you a written notice setting out information about the conferencing process and your rights.

The law says that, if possible, a conference must take place between 10 and 28 days of the case being referred from the police or the court. However, most conferences take much longer to organise and might be weeks or even months after the offence.

At any time before the conference, you may choose to have the matter dealt with by a court instead. Additionally, the police, court or DPP (whoever referred you to the conference) may change their mind during this period and decide that a conference is not appropriate. In this case they must provide written notice to you.

Preparation

Before the conference a great deal of preparation takes place. During this preparation time the convenor usually visits you and speaks to you, your family and the victim about the purposes and processes involved in a conference. The convenor also explains everyone's rights to them and gives some written information and a confirmation notice to everyone going to the conference.

If you have changed your mind and don't want to go to the conference, tell the convenor, so that he or she can tell the victim and everyone else. The convenor also informs the police or court.

At the conference

Where and when is the conference?

Conferences are usually held in your local area. Convenors try to hold conferences at venues that are comfortable and easy to get to for both you and the victim, like the local youth centre or hall. Your conference convenor tells you where and when your conference is.

Conferences are not allowed to be held at police stations, courthouses or any offices of Juvenile Justice.

Who is at the conference?

The convenor

The convenor is hired by the Department of Juvenile Justice to run your conference. The convenor usually lives in your local area and is often a person experienced in working with young people, such as a teacher or youth worker.

The convenor must run the conference within the guidelines of the YOA. This means, among other things, that they must be fair to you and to the victim.

The young offender (you)

If several young people committed the crime, they all go to the same conference, unless there is a good reason to run separate conferences.

Your family

Members of your family (including extended family, eg grandparent, aunty, cousin), can attend the conference. For example, at one conference there was the family the young person lived with (not his own family) as well as his own grandfather and grandmother.

The convenor asks you if you don't want a particular family member at the conference. The convenor also asks you who else you would like to attend the conference to support you.

An adult you choose (a support person)

You can choose an adult to go with you as a support person (as well as any of your family who are going). For example, you can bring a youth worker, teacher, neighbour or a friend who is over 18. If you want a support person who is under 18, talk to the convenor about this. For more information, see *Role of support people at conferences* on page 243.

A lawyer

As well as a support person, you can bring a lawyer with you. If you have no other support person, you can ask your lawyer to be your support person.

Legal Aid doesn't usually pay for lawyers to attend conferences, but some Community Legal Centres or the Aboriginal Legal Service might be able to provide a free lawyer.

The lawyer can advise you during the conference, but usually they can't represent you (speak for you) – you must speak for yourself. If there are special reasons why you need a lawyer to represent you, ask the convenor for permission.

Even if you don't have a lawyer at the conference, you can get telephone advice from a lawyer during the conference. Ask the convenor for a break so that you, your family or support person can ring the Legal Aid Hotline for under 18s or a lawyer of your choice.

The victim

The victim or victims can choose to attend or not to attend the conference. Sometimes the victim doesn't attend, but sends someone else to represent them. Just over half of the victims who are invited actually attend conferences in NSW, although whether the victim comes is often related to how much they have been affected by

the offence. If the victim of the crime is an organisation, a representative of that organisation can attend. So a school principal might attend if the crime was theft or vandalism of school property.

Support people for the victim

The victim can bring other people to support them. For more information, see *Role of support people at conferences* on page 243.

Police

Usually a police officer attends the conference. Sometimes it is a specialist youth officer or youth liaison officer (YLO). Sometimes it is the officer who dealt with you for the offence.

Other people the convenor can invite

The convenor can ask certain other people to attend the conference, including:

- your juvenile justice officer (JJO) if you have one from a previous offence
- your DoCS case worker if you have one (eg if you are in care)
- any social worker or counsellor who has been working with you
- an interpreter to help with communication, if anyone at the conference needs one
- anyone else your family wants to be there
- a respected member of your community.

The convenor should listen to your views about inviting these people, but it is the convenor's final decision.

Conflict over who attends

If there is disagreement between you and your family about who to invite, the convenor will try to find a solution that suits everyone and increases the chances of a successful conference and outcome plan.

You can ask that a certain person not attend the conference but, after taking into account your wishes, it is the convenor's decision whether or not to exclude someone. The convenor can, if necessary, exclude from the conference any person except the young offender and the victim.

Conference procedure

No one conference is the same as another, however many follow a similar format. Conferences take anything from about 45 minutes to a few hours (two hours is probably average).

Conferences are much less formal than court, and the convenor can run the conference in the way that works best for the participants. Often this includes having

breaks during the conference. Sometimes, the conference can adjourn (break) for a few days if the convenor thinks it is necessary.

A conference usually has five parts:

1. Introductions

The convenor begins by introducing themselves and explaining their role. The convenor also tries to familiarise everyone with the surroundings and explains the basic structure of the conference as well as some practical housekeeping points including location of toilets, smoke breaks, refreshments etc.

At this stage the convenor might ask everyone to introduce themselves, possibly in relation to the offence and in relation to you:

‘I’m Jane and I’m the person who stole the video and the CDs.’

‘I’m Mr Bill Kavanagh and I owned the shop where Jane stole these items from.’

And so on, until everyone has introduced themselves.

The convenor then talks about the purpose and process for the conference. This might go something like:

‘The reason we are here today is to make some decisions about what you all think Jane needs to do to make things better for Mr Kavanagh and everyone else, including Jane herself, and to take some responsibility for what she did.’

It’s important for the convenor to provide some simple guidelines about the way the conference should be conducted. All convenors have their own style, but they will generally discuss things like the importance of respecting the other side’s point of view; the need for everyone to be involved; and the confidential nature of the proceedings.

2. Participants’ stories

Everyone at the conference needs to agree about what actually happened. First, you (the young offender) will talk about what happened, and then the other participants discuss whether this is how they saw it. It is important to agree about what actually happened before going on to the next section.

Then the victim talks about the crime and how it has affected them, and then the other people present talk about how the crime has affected them.

The police officer sometimes reads out the police fact sheet which describes the crime. If there is any disagreement about what you actually did, they might help sort it out.

After this, depending on how everything is going, it is often a good time to have a break. The idea of the break is to give you some time to take in what people have said and to think about this before the next step.

Next, the convenor asks you (the young offender) to describe who you think has been affected by the crime, and how. *This includes the effects on you as well.*

3. *Developing an outcome plan*

The convenor can ask the victim for their suggestions for the outcome plan – what they think you should do to make up for the harm they have experienced (see *Outcome plans* below).

You should listen carefully to what the victim and other people suggest for the outcome plan. At this stage you can ask for a break to get legal advice. If you don't have a lawyer at the conference, you can call the Legal Aid Hotline for under 18s.

Next, you, your family and your other support people discuss what you think should be in the outcome plan. This discussion takes place away from the other conference participants.

When you have come up with a plan, you explain it to everyone else at the conference. Everyone discusses your proposed plan fully. The victim or the police might suggest changes to it. You and the victim get to have the final say on what is in the outcome plan. If you and the victim can't agree, then your case might go to court instead. The convenor's role at this stage is to help everyone to agree on an outcome plan.

Next, the conference participants need to agree on a *monitor*. This is a person who is appointed to check that you complete each part of the outcome plan, and to help you if you have problems completing it. The monitor should be someone who is at the conference, such as your family, your support person, or anyone else who agrees to do this. Sometimes the conference administrator becomes the monitor. (The administrator is different to the convenor. The administrator works in your local office of Juvenile Justice.)

4. *Wrap up*

The convenor writes up the outcome plan which you, the victim and the monitor must each sign.

5. *Informal get together*

At some conferences, all conference participants are invited to stay and share refreshments.

Outcome plans

Conferences don't have penalties the way courts do. Instead of penalties, conferences have *outcome plans*. The *outcome plan* is your plan to make up for the harm you have caused to the victim of the community.

Your outcome plan should be realistic and achievable – it should be things you are actually able to complete in the next 6 months. It should also relate to the offence in some way, and meet the needs of the victim.

Every outcome plan is different, but may, for example, require you to:

- apologise to the victim (spoken or written)

- give back things you stole
- pay money for things you stole or damaged
- fix something that you damaged
- do unpaid work for the victim (eg mow lawns)
- do unpaid work in the community (eg clean up rubbish, help elderly people)
- do a training course or program to keep you out of trouble or help you get skills
- attend counselling.

Is it private?

The media or members of the public do not attend your conference.

The conference convenor may permit a person to attend and observe a conference to carry out research or evaluation, but only if this research has been specifically approved by the Minister for Juvenile Justice, and only if the young offender and the victim both consent.

The officials who attend the conference (eg the convenor, police) must not reveal your identity to anyone, except to other officials in the legal system.

Everything you say is confidential and can't be used against you later in court. However if you (or anyone else at the conference) mentions another crime, the police can investigate it. This might be a crime you or a friend committed, or a crime where you or someone else is the victim. If this happens, you should get advice from a lawyer.

What if you don't turn up?

If you don't turn up to a conference without a good reason, you will probably have to go to court instead.

Always talk to the convenor if you don't want to go, or if you can't go on that particular day. If there is a good reason why you can't go, the conference can probably be rescheduled.

A CONVENOR'S VIEW OF A CONFERENCE

– **Tim**, conference convenor, western Sydney

A youth justice conference in western Sydney ended with tears of relief and a clear feeling that the conference had gone a long way towards 'righting the wrong' and enabling a previously traumatised victim to get on with her life and career.

The victim, the owner-operator of a small business, had been severely shocked when she realised she had almost picked up a 'bomb' placed on the steps near the entrance to her business by a group of young people. The bomb had been

manufactured from a bottle and other readily available ingredients. Shocked by the explosion, which blew out a window, she relived the trauma of a previous experience when a number of people had been killed near her.

The group of young people became eligible for a conference on admitting their part in the incident when interviewed by the police in the presence of a parent.

At the first meeting with the victim in her home, the convenor was confronted by a tearful young woman who felt the perpetrators should be locked up and the key thrown away. With the assistance of her parents she listened to an outline of the conference system and its possible benefits. She really felt she did not want to meet these young people. Nevertheless, she agreed to consider the idea, seek some legal advice and hold a further meeting with the convenor.

Before the second meeting, held some days later, she had spoken to the police, sought legal advice and gone over the idea with a close family friend. The family friend was at the second meeting and provided objective advice on the possible advantages of a conference. He encouraged realistic expectations on possible financial payments by the youngsters, namely that they may be able to pay the victim's wages for the two days she had to employ a replacement. Realistic options in the form of an apology, financial payment and voluntary service were explored. The victim agreed to attend the conference, accompanied by her parent and the family friend, on being assured that the investigating police officer and the specialist youth officer would be attending.

Interviews with each of the young people in their respective homes with their parents present were carried out amicably. The feeling that others were to blame was expressed, but everyone accepted the overriding position that each of them was responsible for the violent act, and the young people and their parents agreed to attend the conference. Possible options of verbal and/or written apologies; monetary payment and some hours of voluntary service were explored in detail with each family. Legal advice and where to obtain it was highlighted.

The conference was held in an attractive room of a suitable size in a nearby community centre. All participants were informed by phone of the time and location of the conference, and received a letter confirming these arrangements. Some 20 chairs were arranged in a circle with name tags of conference participants attached and a whiteboard and table was set up at one end for the convenor. The two police officers were at the opposite end. Before the conference began, three of the young people attending agreed to serve refreshments afterwards.

Each young person combined their (sometimes awkward) explanation of what they had done and why, with their own form of apology. The victim spoke tearfully and often in a high pitched voice of the effect the explosion had had upon her. Her supporters added to the detail where necessary. Parents of the young people expressed grave concern at what had happened and a desire to do what they could to 'right the wrong'. The police officer explained the gravity of the offence.

By the time the parties separated to prepare a suitable and acceptable outcome plan, a mutual understanding and respect was spreading around the room. Meeting in the absence of the victim and her support people, the young people decided to write a letter of apology to the victim and offer to pay the wages of the tradesperson

employed for the two days and each offer to complete 10 hours of voluntary work. A unique feature of the plan was an offer to distribute a pamphlet advertising the victim's business.

When everyone came back together, the voluntary work was increased by five hours and the other aspects were accepted. The victim thanked everyone for their support, saying the conference had given her the confidence to get on with her life.

The convenor had a very busy time writing out the outcome plan for each of the young people. It was pleasing to note each family had prepared a suitable voluntary work project to be supervised by a parent. The money was paid by cheque from the parents of the young people, with each agreeing to pay it back from their pocket money. Two parents undertook to coordinate the letter-drop.

Refreshments were appreciated and enabled young people, parents, victim and the police to mix informally. Verbal expressions of regret were confirmed by handshakes and in some cases hugs.

Careful and detailed planning provided the basis for a successful outcome. Close contact by the convenor with all sides before the conference enabled their needs to be explored. A running sheet ensured that all aspects were covered and the convenor could move the parties through the process with confidence. The size of the conference appeared to help realistic negotiations. Clearly, each side came to the conference with some idea of their top and bottom line in considering options. Finally, it is worth noting that the investigating officer and the specialist youth officer expressed confidence in the conference processes.

After the conference

The outcome plan

At the end of the conference, the convenor gives everyone who was at the conference a copy of the outcome plan.

The convenor then hands back responsibility for your case to the administrator. (The administrator runs the conference section of the regional office of the Department of Juvenile Justice.) The convenor tells the administrator about your conference and outcome plan, and gives the administrator all the official papers about your case.

The convenor is not usually involved in the outcome plan. Communities and families should be the main support for young offenders after the conference. The administrator might contact the convenor if they need to reconvene (restart) the conference, but this happens rarely (see below).

The court must approve some outcome plans

If your case was sent to the conference by the court (not by the police), then the court first has to approve the outcome plan. The administrator gets approval for

you so you usually don't have to go to court yourself. Once the court approves the outcome plan, you can start carrying it out.

How long do you have to complete your outcome plan?

You have 6 months to complete your outcome plan.

- If the police sent your case to the conference, then you have 6 months from the date of the conference.
- If the court sent your case to the conference, then you have 6 months after the court approves your outcome plan.

If you have trouble completing your outcome plan

The conference appoints a person (or several people) to check that you carry out the outcome plan. These people are called monitors. The monitor tells the administrator when you complete the outcome plan, or part of the outcome plan. The monitor might also help or support you to carry out the plan.

If you need some help, talk to the monitor, your support person, the administrator or a lawyer. If there is some reason why you can't complete the outcome plan, you might be able to work something else out. Get help as soon as you realise that you need it. Don't just let the 6 months run out and do nothing.

If you don't complete your outcome plan

If you don't complete the outcome plan, then what happens next depends on why you didn't complete it.

If the outcome plan becomes unsuitable or unworkable, the administrator can *re-convene* the conference. You, and (roughly) the same people who were at the conference before, meet again. You all work out what to do now. The people at the reconvened conference usually work out a new outcome plan.

If there is no good reason why you didn't complete the outcome plan, then the administrator tells the police or the court (whichever one sent your case to the conference).

- If it was the police, then the police might send you to court for the offence.
- If it was the court, then you have to go back to court. The court then deals with you for your original offence (not for failing to finish the outcome plan).

After you finish the outcome plan

The conference administrator tells the police, or the court, when you have completed your outcome plan (whichever one sent your case to the conference).

- If it was the police, then the administrator tells the police that you completed the outcome plan, and your case is closed (it's over!)

- If it was the court, then the administrator tells the court that you have completed the plan. (Sometimes you don't have to go to court yourself for this.) Then your case is closed.

Once your case is closed, nothing more happens to you for that offence. The legal system cannot prosecute you or punish you again for that offence.

Do you get a criminal record?

You do not get a criminal record if you go to a conference and complete the outcome plan.

However, police keep details of conferences, which will go on your *court alternatives history*. This may be taken into account in some situations including:

- If you get into trouble again, the police can look at your court alternatives history when deciding whether to offer you a warning, caution or conference.
- If you commit another offence and are being sentenced by the Children's Court, the court is allowed to look at your court alternatives history.
- If you apply for a job as a child care worker, teacher or teacher's aide, judge, magistrate, justice of the peace, police officer, or prison officer, the employer can find out about all your offences, including the conference offence and any others that aren't on your criminal record.
- If you apply for a job in fire fighting or fire prevention, the employer can find out about any arson (fire starting) offences.

What's better – a conference or court?

There is no one answer to this question. It depends on the offence, whether a court might find you guilty or not, whether you might get a criminal record or not, and your past offences.

It also depends a lot on how you feel about being at court or being in a conference, and how you feel about carrying out an outcome plan or the possible penalties from court.

Some cases go to conference when the police should only caution instead. Talk to a lawyer about whether your case might be one of these.

If you want to see what it's like to have to go to a conference, have a look at www.djj.nsw.gov.au/conferencing_video.htm.

Always get legal advice

You should get legal advice before you admit guilt or accept a caution or conference. You have the right to talk to a lawyer before you make a statement or answer police questions – ring the Legal Aid Hotline for under 18s. Police must let you ring

a lawyer from the police station if you ask. See *Getting legal advice and assistance* chapter.

CONFERENCE OR COURT – GET LEGAL ADVICE

Feeling guilty and being legally guilty of a particular offence is not always the same thing! And it isn't always obvious whether a conference or court is the best option for you. Some reasons to get advice from a lawyer:

- Police might charge you with a more serious offence than the one you are guilty of.
 - Both court and conferences can be very stressful, in different ways. Find out what it might be like before you accept or reject a conference.
 - A conference isn't meant to decide on an outcome plan which is more severe than the penalty the Children's Court might give you, but there are no guarantees.
 - You don't get a criminal record from a conference, but you might get one from court.
 - If you're dealt with in court for an offence involving violence, you may have to pay restitution to the government later on for any *victims compensation* that has been paid to the victim (see *Victims and compensation* on page 65). This won't happen if you have been to a conference instead.
 - If you are under 14, the Children's Court can find you not guilty if you didn't know what you did was *seriously wrong* (see *What to plead* on page 276).
 - A court can dismiss your case if you have a mental illness or intellectual disability. See *If you have an intellectual disability or a mental illness* on page 347.
-

Role of support people at conferences

Support people at conferences are family, friends or professionals such as youth workers or social workers. They attend at the request of the young offender or the victim.

Who can be a support person?

For the victim

The YOA says that *a support person or persons for any victim* can attend the conference. So basically the victim can choose anyone as their support person or support people.

For the young offender

The YOA says that *an adult chosen by the child* can attend the conference. So the young offender can choose who they want as support person. The convenor can let them bring a support person who is under 18 if they don't have anyone else and that person will be a good support at the conference.

As well as a support person, the young offender can invite a lawyer to the conference. The lawyer can advise the young person but cannot represent them (speak for them) at the conference without special permission. Most conferences do not have lawyers present because Legal Aid is not usually able to provide funding for them to attend.

Role of the support person

There is no set role for a support person at a conference. Nothing written down on paper says what they should or shouldn't do.

One of the first things support people should do is to ask the victim or offender (whoever has invited them) why they want them to come along and what they are required to do at the conference. There are a number of roles for a support person to play, depending on the victim or offender, the support person's relationship with them, and the other people attending the conference.

Anyone appearing as a support person should be familiar with the YOA. Most of it is in plain English and Part 5 – *Youth justice conferences* is fairly short and easy to read (see *Resources* on page 422 for details about how to access Acts including the YOA). An understanding of the young offender's rights and the victim's rights is important so that the support person can help the person prepare for the conference and to think about what could be part of the outcome plan.

At the conference, support people are asked by the convenor to introduce themselves in relation to the offence and the offender or victim. This is a good time for support people to declare their role in supporting the person. Not only will this be positive for the person, but it also means that the other people present understand who the support person is and why they are there.

Supporting the victim

Supporting the victim begins before the conference. The victim needs to understand the process of the conference and their rights during the conference. Some victims choose not to attend. They might wish to send a representative in their place.

The victim can bring any support people they wish, such as family, friends or professionals such as counsellors. The victim's support person should help the victim say what they want to say, in a constructive manner without rudeness or aggression.

The victim might need help to negotiate the outcome plan. If necessary, the support person and the victim can ask for a short break to discuss the outcome plan privately.

The victim might have needs which the conference cannot meet, such as counselling or financial help. Support people should do what they can to refer the victim to other services (see *Victims of crime* on page 55).

SUPPORTING A VICTIM AT A CONFERENCE

– Karen, youth worker, southern Sydney

How I came to be there ...

Some time ago I was contacted by a friend of mine. His son had been stabbed in the hand with a knife by his friend during a disagreement at school.

My friend and his son asked me to attend a youth justice conference as their support person. The father was quite distraught about the attack on his son and was in need of support. The son, however, appeared relatively unconcerned and reserved about the incident.

Who attended

- the convenor
- the offender and his parents
- the victim with his father and myself
- the local police youth liaison officer
- the teacher who was present at the time of the incident.

What happened

The convenor introduced everyone present, explained the process of the conference and outlined the reason for the conference. The convenor asked the police officer to describe the offence, then invited each person to speak about how they felt about the incident and how it had impacted on their lives.

The offender was clearly taking the process seriously and was genuinely apologetic for his behaviour. There was great concern regarding the incident between the two boys expressed by both the parents of the offender and the father of the victim. The victim's father expressed how the incident had brought a great deal of stress and tension to the family.

By far the most powerful moment of the conference was when the teacher expressed his feelings about the impact the incident had, not only on himself, but on the class of students present at the time. The incident had clearly been shocking and stressful for the teacher. He had to deal with the safety of the two boys, the safety of others, and the shock wave felt through the classroom among the students, and by distraught parents and colleagues.

It was during the teacher's explanation that I saw the extent to which his behaviour had affected a range of people really dawn on the offender. He was clearly moved by the emotional response of his teacher who also expressed his respect for the boy, having known him for a number of years.

After a break, the victim's father outlined their request for reparation (how to make it up to the victim). The group discussed it and after some minor changes, first the victim and his father, then the whole group, accepted it. This became the outcome plan.

I was recently informed that the outcome plan has been completed.

Supporting the young offender

Support for the young offender during the conference is very important. The young offender's support person may be the person at the conference who has been least affected by the crime. This puts them in a good position to be of real support to the young offender.

It might be appropriate for the support person to meet the young offender's family (if they are attending) before the conference. This might help to break down any mistrust or uncertainty about the support person's place in the young offender's life.

Encourage the young person to get legal advice

Most young offenders referred to conferences don't see the point of legal advice, but there are good reasons why they should get advice before (and sometimes even during) their conference (see *Conference or court – get legal advice* on page 243).

Luckily, advice is easy to get from the Legal Aid Hotline for under 18s. A support person should encourage the young offender to get advice, or call the Hotline themselves on the young person's behalf.

Monitor the outcome plan

The family and the young offender decide on someone to monitor the outcome plan. Sometimes, if there are a number of parts to the outcome plan, there is more than one monitor. There is no reason why a support person can't volunteer to be the monitor for the whole plan or a section of the plan, if this is useful for the young offender and their family. Outcome plans need to be completed within 6 months so support people need to be available during this time.

Other needs of the young offender

A support person is often the best person to think about the young offender's own life and any needs they have. Support people can bring up these issues at the conference if they are relevant to the discussions. They may make suggestions for the outcome plan to help with issues in the young person's life. They can also offer information about referrals to agencies which could help the young person. See *After the conference* on page 240 for more information about the role of support people.

WHAT SANDRA LEARNT AS A YOUNG OFFENDER SUPPORT PERSON

– **Sandra**, youth worker, western Sydney

Every conference is different. The story of my first conference as a support person is elsewhere in this chapter. From that experience I learnt to:

- check with the young offender if they can read, write and understand English, especially if a written apology was likely to be suggested

- ask the convenor to book an interpreter if the young offender or their family or support person needs it
 - encourage the young offender to get legal advice before the conference. They or you can ring the Legal Aid Hotline for under 18s on 1800 10 18 10.
 - make sure the young offender is well briefed about how the conference works and their rights in the conference process, especially that they don't have to agree to something just because the adults suggest it
 - before the conference, work with the young offender to set some clear outcome plan options that they are happy with, that are realistic and that are likely to be suitable to the victim as well
 - check with the young offender that they understand the outcome plan before they sign it. (Don't leave this to the convenor – if you don't think the young person understands – ask them!)
-

Role of support people afterwards

Conferencing encourages the people close to the young offender to take responsibility for supporting them after the conference, especially in carrying out the outcome plan. Ideally, the conference identifies the best people for this role, and they agree to do certain things after the conference. Obviously the young offender benefits greatly if these support people take responsibility for actually doing what they agreed to and don't have to be chased up by the young person, the administrator or anyone else.

Support people should monitor the performance of the outcome plan and related issues in the young offender's life (if this is possible and appropriate). Early identification of things which might prevent the young person from completing the outcome plan is essential. The remedies available can be applied quickly and flexibly, but the earlier that problems are addressed the better the chance of success.

If, despite everyone's efforts, the young offender appears likely to fail to complete the outcome plan, then the young person should get legal advice.

Are conferences effective?

The *Young Offenders Act 1997* (YOA) has been part of the law in most parts of NSW since April 1998 and everywhere in NSW since July 1998. Since then, a number of researchers have looked carefully at two things:

- whether the YOA has changed (for the better!) the way that police deal with children and young people in NSW without increasing the number of children and young people who they deal with (this is often called *net widening*), and
- whether children and young people are less likely to offend again after they have been cautioned or participated in a youth justice conference than when they have been sent to court.

The results of these studies do not paint a universally positive picture, depending on which issues they were looking at, how they did their research and how much what they found can be applied everywhere in NSW.

Attorney-General's review

The Attorney-General is responsible for ensuring that the YOA does what it says it is meant to do. The law says that the Attorney-General had to review the way in which the YOA was working by July 2001 and report to parliament by July 2002.

The Attorney-General's staff did a review, and completed their report on the YOA in October 2002, but the Attorney did not give this report to parliament until July 2004.

The Attorney-General's report was based on the results of a University of NSW study, two studies by the NSW Bureau of Crime Statistics and Research, and some issues about their experiences with and ideas about the YOA that people raised with the staff of the Attorney-General's Department who wrote the review.

University of NSW research

The University of NSW researchers looked at how warnings, cautions and conferences were going in the first 3 years after the YOA became part of the law in NSW, and whether the YOA was doing what it was designed to do. This study found that:

- The implementation of the Act had been largely successful, although there were clear regional variations.
- The operation of the Act had not contributed to net widening because the number of finalised Children's Court appearances had decreased since the Act commenced, as had the number of children in custody.
- Compliance with the Act was generally high.
- However, community attitudes towards juvenile justice had not improved, largely because of negative media attention to sensational cases.

In late 2005, Professor Janet Chan, the chief researcher for the University of NSW study, published a book about the results of that study and the other studies mentioned earlier. At least four people have now completed a PhD that looked at various aspects of youth justice conferences.

NSW Bureau of Crime Statistics and Research (BOCSAR) studies

BOCSAR looked closely at the first 18 months of youth justice conferencing, and at reoffending by children and young people after they had participated in a youth justice conference.

In the first study, which was published in 2000, BOCSAR surveyed 353 young people, 353 people who attended a conference as a support person for the young of-

fender, and 263 victims. BOCSAR found that most of the young offenders, their supporters and victims were satisfied with the way their conference was organised and run, and thought that going to a conference was better than going to court.

The majority of the young people who participated in this study had been told that they could get legal advice and where they could get it. However, only a small proportion of these young people actually obtained legal advice before they participated in a youth justice conference.

The second report used by the Attorney-General's staff for the review of the YOA was published by the BOCSAR in April 2002. This study compared the reoffending rates for young people who participated in a youth justice conference with the reoffending rates for those who attended court. BOCSAR found that participation in a conference had the overall effect of reducing or delaying a young person's risk of reoffending by up to 20 per cent, and that this was as true for Aboriginal young people as for non-Aboriginal young people.

More recently BOCSAR has looked at reoffending rates for children and young people after they have been cautioned or participated in a youth justice conference. In this study, published in 2007, BOCSAR found that young people who were cautioned were less likely to reoffend than young people who went to a conference or to court, but that those who went to a conference were less likely to reoffend than those who went to court.

Youth Justice Coalition study

In a small study published by the Youth Justice Coalition (YJC) in July 2002, the researchers spoke with 24 young people about 29 experiences of cautions and youth justice conferences. Almost half of the young people were from Wagga Wagga (in southern NSW). About two thirds of the young people in this survey said that they had not been told, or were unsure whether they had been told, about their right to get legal advice by the police prior to being cautioned or participating in a conference.

Conference administrators told the YJC researchers that young people were being told by police about their right to legal advice, but that many young people were told to access legal advice only after they had admitted their guilt to the police. Of those who were actually told of their right to legal advice, 86 per cent indicated that they were not informed of how to obtain such help. It was also evident from the survey, that many young offenders (76 per cent) had a limited understanding of why it might be important to obtain legal advice.