1 Essential Summary

This policy provides the framework for Juvenile Justice New South Wales (JJNSW) employees to manage conferences in accordance with the *Young Offender Act 1997* (YOA) and its regulation.

Youth Justice Conferencing (YJC) is a formal, legal process which encapsulates a wide range of practices that are based on restorative justice principles.

This policy defines the responsibilities of JJNSW employees and convenors in the administration and management of the legislative requirements and business practices of YJC.

This policy relates to:

- Regional Directors
- Area Managers
- Assistant Managers
- Case Workers, and
- Convenors.
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1 Scope
This policy applies to all JJNSW employees and convenors who are responsible for the management, administration and delivery of YJC.

2 Purpose
This policy provides the framework that underpins the principles and purpose of conferencing.

This policy assists JJNSW to:

- meet the legislative and governance responsibilities of the YOA and achieve its objectives
- ensure JJNSW employees and convenors carry out their tasks appropriately and consistently
- provide guidance to employees in making decisions whilst enhancing the efficiency of work processes and accountability of business practices
- define when a YJC referral is appropriate based on the eligibility and suitability criteria of alleged offence/s
- increase knowledge and understanding of YJC processes from point of referral to finalisation of Outcome Plans, and
- improve recognition of the collaborative partnership between JJNSW and NSW Police in the administration of YJC process.
### 3 Definitions

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<td><strong>Assistant Manager</strong></td>
<td>Assistant Managers are based at Juvenile Justice Community Offices and are responsible for the administration of YJC.</td>
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<tr>
<td><strong>Indictable Offences</strong></td>
<td>Indictable offences are more serious offences that cannot be heard in the absence of the defendant (the person accused of the crime). These offences are usually heard in the Magistrates’ court for a committal hearing. The offence may then be committed for trial before a judge in a higher court such as the District court or Supreme court and have the maximum penalty of five years imprisonment imposed.</td>
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<td><strong>Convenor</strong></td>
<td>Is a person appointed as a convenor under section 60 of the YOA.</td>
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<td><strong>Penalty Unit</strong></td>
<td>NSW Acts and Regulations use penalty units to describe the amount payable for a fine that may be imposed by a court for an offence. One penalty unit equals $110 (as of 20 April 2016). To convert the amount in penalty units into a dollar amount, multiply $110 by the number of penalty units. The maximum number of penalty units is 10.</td>
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<td><strong>Specialist Youth Officer (SYO)</strong></td>
<td>A member of the NSW Police Force appointed as a Specialist Youth Officer who has the authority under the YOA to make determinations of actions taken with a young person who has committed certain offences. The actions entail the giving of cautions, referral to conferences and commencement of court proceedings.</td>
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<td><strong>Summary Offences</strong></td>
<td>Summary offences are matters which are tried by a magistrate or Judge alone and with a maximum penalty of two years imprisonment imposed.</td>
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<td><strong>Victim</strong></td>
<td>A person or organisation directly affected by the offence (see the Act Section 5)</td>
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<td><strong>Young Person</strong></td>
<td>A child/young person is defined under NSW legislation as a person over the age of 10 and under the age of 18 years. For the purpose of this policy, it also refers to the person who had committed an alleged offence.</td>
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<td><strong>Young Offenders Act 1997 (YOA)</strong></td>
<td>The Young Offenders Act 1997 is the legislation which defines the way young people who have allegedly committed an offence may be dealt with in New South Wales, if the offence and circumstances meet the criteria as described in sections 4.2, 4.3 and 4.4 of this document.</td>
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<tr>
<td><strong>Young Offenders Regulation 2016 (YOR)</strong></td>
<td>Young Offenders Regulation 2016 defines the rules and administrative codes or rules of YOA.</td>
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4 YJC Referrals

4.1 Referring Agencies
JJNSW can receive YJC referrals from one of the following agencies:
- NSW Police
- Office of the Director of Public Prosecutions (DPP), and
- Children’s Court and District Court.

4.2 Offence Eligibility Criteria
The eligibility criteria determine whether an offence can be dealt with through YJC under the YOA. For a young person to be eligible for YJC, the offence must be both:
- a summary offence or an indictable offence that can be dealt with summarily, and
- an offence that is covered under the Act

Under Section 8 of the YOA, offences that are not covered include:
- strictly indictable offences
- traffic offences committed by a person who is of age to hold a learner licence (Under the Road and Transport Act, 2013 the legal age is 16 years for a motor vehicle and 16 and nine months for motorcycle as of 20 April 2016)
- offences that resulted in the death of a person (Crimes Act 1900)
- sexual offences under Sections 61, 66, 80 and 81 of the Crimes Act 1900 (i.e. 61 E, 61L, 61M, 61N, 61O, 66C, 66D, 80, 81A or B)
- offences that fall under the Crimes (Domestic and Personal Violence) Act 2007 (e.g. Stalk and Intimidate)
- offences investigated by person other than police officers and appointed officials (e.g. fisheries)
- Drug offences that fall under the Divisions 1 and 2 of Part 2 of the Drug Misuse and Trafficking Act (DRTA) 1985 that involves more than the prescribed small quantity of a prohibited drug with the exception of the following which are eligible for conferencing:
  1. illicit drug (other than cannabis) offences involving not more than the small quantity as specified to that prescribed drug under the DRTA 1985, or
  2. illicit drug (cannabis leaf) offences under DRTA:
     - if the offence involves not more than half the small quantity as specified to that drug under the DRTA, or

Youth Liaison Officer

A member of the NSW Police Force appointed as a Youth Liaison Officer who is responsible for delivering cautions and referring young people to YJC. YLOs are the administrators of the YOA for NSW Police.
the offence involves more than half but not more than the total, small quantity of cannabis leaf within that Act, AND it would be in the interest of rehabilitation and appropriate in all circumstances to deal with the matter under the YOA.

4.3 Suitability Criteria for the Young Person

A conference may be considered if the young person who is alleged to have committed an offence meets the following suitability criteria:

- the referring agency determines the young person is entitled to be dealt with by a conference
- the young person admits to the offence, and
- the young person consents to participating in a conference.

4.4 Proceed to Delegation of Conference

Assistant Managers are responsible for reviewing all referrals received from the referring agencies against the legislative criteria as highlighted in sections 4.2, 4.3, and 4.4 of this document before delegating the matter to a Convenor for a conference. If the referral did not meet the eligibility criteria and/or the suitability criteria, the matter should be returned to the referring agency for further consideration.

In accordance with YOR, the referring agencies would ensure that relevant information is provided for Assistant Managers to assess the referred matter against the eligibility and suitability criteria for a conference. For Police referrals, in addition to the eligibility and suitability criteria, Assistant Managers should consider the following determination criteria:

- seriousness of the offence
- degree of violence involved in the offence
- harm caused to any victim, and
- number and nature of offences committed by the young person and previous interventions under the YOA.

If there is disagreement regarding the referred matter between the Assistant Manager and the Police on whether it meets the determination criteria for a conference, the Assistant Manager following consultation between JJNSW and NSW Police must refer the matter to DPP for arbitration. The DPP must then advise the Assistant Manager the decision in writing within 14 days that the matter should be dealt with by way of a caution; or initiate criminal proceedings; or proceed to conference.

4.5 Right not to Proceed with Conference

Young people and/or Police have the right to withdraw the referred matter from consideration for a conference before a conference is held for the following reasons:

- young person decides to withdraw from YJC process
- referring agency decides that the referred offence should be dealt with by way of court or caution, and
- the allegation for the referred offence is withdrawn.
5 Conference

5.1 Timeframe

A conference is to be conducted within 28 days after the referral for the conference is received by the Assistant Manager. The YOA provides JJNSW the discretion to extend the period for a conference to be held, that is greater than 28 days, as it was identified that there may be a range of issues making it difficult to conduct conferences within the specified timeframe.

Further, a conference is not to be held less than 10 days (cooling off period) after notice is given to a young person unless it is considered impracticable to do so. In accordance with the YOA, Assistant Managers have the discretion to extend or conduct a conference within the 10 days cooling off period to account for issues that may hinder a conference being held within the specified timeframe. For example, a young person is relocating interstate with his family within the 10 day cooling off period. Following consultation and approval of Assistant Manager, coupled with the agreement of the participants a conference can be held within 10 days as it was considered impracticable to conduct a conference within the legislative timeframe.

5.2 Preparation

Assistant Managers must allocate the referred matter to a Convenor to proceed with conference. Preparation of conferences is essential for effective facilitation, to maximise support and successful completion of Outcome Plans. The responsibilities of the Convenor include:

- contact all eligible participants and establish rapport
- arrange date, time and venue of conference
- inform participants of their roles, expectations, responsibilities and their legal rights in the conference process
- identify the young person’s criminogenic needs and responsivity factors
- administration of the YLSI/CM-SV
- identify any issues that may hinder a young person or their supports from attending or participating in a conference
- recognise and address Work Health and Safety issues
- identify existing and potential supports, and
- maintain records of conference from point of delegation to development of an Outcome Plan.

5.3 Confidentiality

JJNSW employees and Convenors need to be aware of the circumstances and functions whereby Disclosures are revealed under the YOA and YOR, this includes providing information to a victim about a young person and vice versa.

JJNSW employees and Convenors must obtain an Authority (written consent) from the young person and/or their parent/carer to provide and/or obtain information from an external agency. The Convenor must ensure that Victims’ confidentiality is protected throughout the YJC process and they are to be engaged in a manner that is consistent with the NSW Charter of Victims (Victim Rights Act 1996).
5.4 Work Health and Safety

Assistant Managers are responsible for ensuring that all Convenors are familiar with the Agency’s Work Health and Safety (WHS) policy and procedures and that they are adhered to accordingly. Also, Area Managers are responsible for ensuring that appropriate resources and local emergency protocols are available to support the safety needs of the conference participants including the Convenor.

5.5 Conference Participants

To ensure that the objectives of YJC are met, support people identified by the young person and/or victim should be invited to the conference by convenors following consultation with the key participants and the Assistant Manager. Participants who are entitled to attend a conference under the Act include:

- the young person/s
- the victim/s or their representative
- the Convenor
- an adult responsible for the young person and/or a responsible adult nominated by the young person
- member of the young person’s family or extended family
- victim’s support
- the investigating officer /SYO / YLO, and
- legal adviser for the young person (not for the purpose of being represented at the conference).

Persons who are invited to attend the conference if appropriate include:

- a cultural adviser for the young person (e.g. Elder)
- a JJ case worker if the young person is subject to a supervised mandate
- specialist professional (e.g. school liaison officer, counsellor or health worker)
- an interpreter, and
- a conference Administrator (e.g. Assistant Manager and Area Manager for the purpose of quality assurance).

It is the responsibility of the Convenor to ensure the attendance and participation of parents/guardians or adults chosen by the young person in the conference process.

5.6 Persons to accompany young person

Persons who are required to accompany young people during the preparation phase and participation of conferences are:

For a young person who is aged 14 years or over, a parent/carer/guardian or an adult chosen by the young person must be involved in the preparation and participation of a conference.

When a young person is under the age of 14 years, a parent/carer/guardian or an adult whom the parent/carer/guardian had delegated must be involved in the preparation and participation of a conference.
5.7 Veto Outcome Plan

Under the YOA, the victim and the young person are the only participants with the capacity to veto an Outcome Plan in the conference. Victims who do not attend a conference do not have the right to veto the outcome plan. Young people who do not attend a conference will have their matter referred back to the referring agency for further consideration.

5.8 Conduct of Participants

During the preparation stage, if the convenor determines that a participant may hinder the conferencing process, the Assistant Manager must be consulted before a decision is made to preclude the participant from attending.

During the conference, if the convenor determines that a participant is hindering the conferencing process, they may adjourn the conference for a short period to address the issue with the participant. If the participant continues to hinder the conferencing process, the convenor has the authority to ask the participant to leave the conference.

5.9 Venue

In accordance with the YOA, conferences are not to be conducted at venues where the agency’s operational business is primarily involved with young offenders. Conferences are not to be conducted at police stations, court houses or Juvenile Justice Community Centres. The exception applies when a young person is detained in a detention centre - a conference can be held in a centre.

5.10 Conducting Conferences

In order to meet the objectives of the YOA, the following factors must be discussed as part of the conference process:

- circumstances of the offence
- harm caused to the victim
- factors that are associated with the young person’s offence, and
- development of an Outcome Plan.

If a young person fails to attend a scheduled YJC without a plausible excuse, the convenor should inform the Assistant Manager who must refer the matter to the referring agency for further consideration.

5.11 Adjournment

Where participants are not in agreement, the convenor may consider adjourning the conference for a short period, up to seven days to allow participants to reflect on their position or seek legal advice. Adjourning the conference for a later date should only be used in exceptional circumstance, following consultation and approval of the Assistant Manager to minimise the burden imposed on relevant parties.

If an outcome plan cannot be agreed upon at the reconvened conference, the convenor must notify the Assistant Manager who will return the matter to the referring agency for further consideration.
6 Outcome Plans

6.1 Development

Outcome plans document the young person’s commitment to make reparation and/or to undertake strategies to address their offending behaviour. The activities / tasks developed in Outcome Plans cannot exceed the penalty that the court would impose for the referred offence.

In accordance with the YOA, tasks identified in the Outcome Plan must be completed within six months from date when the plan was developed following the conference for police referrals. However, for court referrals tasks should be completed within six months from date when the court approves the Outcome Plan.

An outcome plan may contain the following components:

- task oriented activities that facilitate reintegration to the community
- participation of young person in a program (e.g. counselling, Alcohol and Other Drug assessment)
- an oral or written apology, or both, to any victim, and
- reparation to any victim/s or community.

The participants of the conference collectively engage, negotiate and actively work towards identifying reparations (e.g. volunteer work, financial reparation) for the purpose of repairing harm caused by the offending behaviour.

6.2 Outcome Plan Considerations

There are limitations, exclusions and specific provisions that Convenors need to consider and be familiar with to facilitate a successful conference that complies with the YOA and YOR.

6.2.1 Limitations:

- the financial reparation not exceeding the amount of $1,100 (See definition, the maximum of 10 penalty units applies);
- the maximum period of community work must not exceed 70 hours.

6.2.2 Exclusions:

- commitment by young person to attend school as it is an existing requirement by law to participate in an educational / vocational program until the age of 17 years; and
- curfews, prohibitions or non-association of peers.

6.2.3 Specific provisions:

- for fire or arson related offences, appropriate parties must be invited (e.g. NSW Fire and Rescue) to participate in the conference and the outcome plan must include:
  - attendance by the young person at a program or at the screening of a film or video, designed to provide education as to the harmful effects of fire; AND
  - the making of reparation for the offence.
• for graffiti offences (section 52 (6) (e) of the Graffiti Control Act 2008), the young person must perform at least one of the following in an Outcome Plan:
  ➢ graffiti removal work; OR
  ➢ community service work that is comparable to graffiti removal work; OR
  ➢ the payment of compensation that does not exceed the amount the court would impose; OR
  ➢ participation in a personal development / educational program.

6.3 Recommendations in Outcome Plan
Conference participants may recommend activities or tasks that may be beneficial to the young person noting that it was not a contributing factor in their offending behaviour. Recommendations in an Outcome Plan are not legally binding. For example, if participants identified that a young person may have unresolved grief or loss issues and it was not a contributing factor to the offending behaviour, counselling would be included in the Recommendation section of the Outcome Plan.

6.4 Approval of Outcome Plans
The Assistant Manager must refer the agreed Outcome Plan to a court, if the court had referred the young person for conferencing. Courts’ response would be:
• outcome plan is approved, or
• the matter will progress to proceedings.

The Outcome Plan is not required to be forwarded to the Police or DPP for approval.

6.5 Monitoring of Outcome Plans
The Convenor is responsible for appointing participants in the conference as Monitor/s to oversee the Outcome Plan to ensure targets highlighted are completed within the agreed timeframe/s. Convenors must not appoint victims as monitors. Family members can be appointed as monitors only when all other alternatives or courses of action have been considered. Family members do not require a WWCC.

All monitors who are not family members (excluding police) are required to have a valid WWCC to monitor young people undertaking tasks identified in the Outcome Plan.

6.5.1 Role of the Monitor
When a conference participant (an independent) is the agreed assigned Monitor, they would be responsible for:
• checking if the young person is doing what they agreed to do
• supervising a young person doing an identified task / activity
• organising for another person to monitor the young person in completing the work agreed upon (e.g. due to leave) then they must advise and gain approval from the Assistant Manager of change of circumstance, and
• advising the Assistant Manager when a young person has completed; or is having problems completing the agreed task/ activity for action.

6.5.2 Role of the JJ Case Worker

At the end of each conference, the Assistant Manager is responsible for assigning a JJ Case Worker to provide support to Monitors. Within this role, **JJ Case Workers are responsible for contacting Monitors fortnightly** to confirm that the young person is complying with their obligation to complete an identified activity. If there are concerns that the young person is not doing what they had agreed to do, the JJ Case Worker will consult and refer the matter to the Assistant Manager for consideration and action.

These contacts are primarily a mechanism for checking on the young person’s progress with regard to the completion of identified tasks prescribed in the Outcome Plan. For example, if the Outcome Plan requires the young person to participate in four sessions of Alcohol and Other Drugs (AOD) counselling, the JJ Caseworker is only required to check with the Monitor to determine whether the individual is attending and/or has attended the four sessions. Once this information is confirmed and recorded on the Client Information Management System (CIMS), this task of the Outcome Plan is marked as completed.

6.5.3 JJ Case Worker as Monitor

In cases where the Monitor’s role cannot be delegated, the Assistant Manager will assign a JJ Case Worker as a Monitor so that the young person’s progress is not impeded by circumstances outside of his/her control. This is **only** to be used as a last measure when all other alternatives have been exhausted.

6.6 Proviso for Minor Modifications of Outcome Plans

Where circumstances requires, Assistant Managers have the discretion to make minor changes to an outcome plan. Examples of minor modifications include:

• changing the host agency where a young person is undertaking a task
• extending the deadline of task (within the six months timeframe), or
• making a direct substitution where the intention of the task is clear.

6.7 Warning process

Where young people are not doing what they had agreed to do as part of their Outcome plan, the Assistant Manager or their delegate will initiate the warning process by sending a formal notification (letter) to remind the young person of their obligation to undertake and complete their agreed task.

6.8 Finalisation of Outcome Plans - Satisfactory completion

The Assistant Manager must advise the referring agency in writing when an outcome plan is completed. Victim/s, young person/s, or any other person to whom the Outcome Plan had enforced obligations (e.g. Monitor) must be notified as well.

Following notification, no further criminal proceedings may be pursued against the young person for the referred offence/s for which the conference was held. Juvenile Justice (JJ) involvement with the young person will also cease at this stage unless there is a concurrent supervised order.

6.9 Extension
The Assistant Manager is responsible for ensuring young people complete their outcome plans within the legislated timeframe of six months. When issues or difficulties arise, Assistant Managers or the delegated JJ NSW employees (e.g. Case Workers) is responsible for implementing strategies to assist the young person to complete identified tasks within the specified timeframe.

For police and DPP referrals, any extensions over the six months period require the approval of the JJ Regional Director. For court referrals, any extensions over the six months period require the approval of the presiding magistrate or judge.

6.10 Reconvene a Conference

With the approval of the Area Manager, the Assistant Manager may reconvene a conference at the request of more than one conference participant if the outcome plan cannot be met due to reasons outside of the young person’s control. It must be considered as the last option to reconvene a conference at this stage of the YJC process.

6.11 Unsatisfactory Completion of Outcome Plans

The Assistant Manager must provide a written notification to the referring agency that the young person failed to complete the Outcome Plan satisfactorily. The written notification would include the circumstances regarding the conference, the young person’s performance and/or any other relevant information to be sent to the referring agency.

7 References

7.1 Legislation

- Young Offender Act 1997
- Young Offenders Regulation 2016
- Crimes Act 1900
- Criminal Procedure Act 1986
- Children (Criminal Proceeding) Act 1987
- Criminal Procedure Amendment (Summary Proceedings for Indictable Offences) Act 2016
- Road Transport Act 2013
- Domestic Violence Act 2007
- Drug Misuse and Trafficking Act 1985
- Victim Rights Act 1996
- Victims Support and Rehabilitation Act 1998
- Care and Child Protection Act 1998
- Graffiti Control Act 2008 Sections 5 & 6
- Children (Community Service Orders) Act 1987
• *Rural Fires Act 1997, section 100*
• *Fire Brigades Act 1898 sections 32-35*

### 7.2 Policies

- Privacy Management Plan
- Information Security Policy
- Records Management Policy
- Convenor Work Health and Safety Policy

### 7.3 Procedures

- Administration of Youth Justice Conferencing
- Appointment of Youth Justice Conferencing Convenor
- Convenor Reappointment

### 7.4 Resources

- Memorandum of Understanding between NSW Juvenile Justice & Fire and Fire & Rescue NSW

### 8 Document Information

Title: Youth Justice Conference Policy  
**Business Centre:** Operations Unit  
**Author:** Senior Project Officer, Youth Justice Conferencing  
**Approver:** A/Director Operations Unit  
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