This Legislation Bulletin was prepared to assist Members in their consideration of the Bill in the Queensland Legislative Assembly. It should not be considered as a complete guide to the legislation and does not constitute legal advice.

The Bulletin reflects the legislation as introduced. The *Queensland Legislation Annotations*, prepared by the Office of the Queensland Parliamentary Counsel, or the *Bills Update*, produced by the Table Office of the Queensland Parliament, should be consulted to determine whether the Bill has been enacted and if so, whether the legislation as enacted reflects amendments in Committee. Readers are also directed to the relevant *Alert Digest* of the Scrutiny of Legislation Committee of the Queensland Parliament.

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1. INTRODUCTION

One of the purposes of the Juvenile Justice Amendment Bill 1996 is to add provisions to the Juvenile Justice Act 1992 which will allow for and regulate the holding of community conferences. These provisions are discussed in this Legislation Bulletin. Section 2 of the Bulletin describes the relevant provisions and compares them with comparable provisions existing in other jurisdictions. Section 3 of the Bulletin briefly overviews experience in the conduct of similar conferences in other jurisdictions.

Other aspects of the Juvenile Justice Amendment Bill 1996 are discussed in a companion Legislation Bulletin, No 4 of 1996. The Parliamentary Library has also recently published a Research Bulletin which provides additional background

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information on community conferences and compares current practices in other jurisdictions.²

In introducing the Juvenile Justice Amendment Bill 1996, the Attorney-General and Minister for Justice, Hon DE Beanland MLA, said:

A very important policy is enshrined in the Bill. It is a process of community youth conferencing. This is a new process to divert children from the criminal justice system. This will add another layer above cautions and can be used instead of criminal process.³

A community conference is a meeting held in response to an offence committed by a child, to determine outcomes for the child and endeavour to repair the damage as much as possible. For the purposes of the Juvenile Justice Act 1992, a child is a person who has not turned 17 years.⁴ A fundamental precondition to the holding of a community conference is that the child must admit to committing the offence.

The meeting is attended by various interested parties including the child, his or her parent or other relative, a police officer, and the victim, if the victim agrees to attend. The goal of the meeting is to agree on appropriate actions by the offender such as offering an apology, paying restitution, or performing work such as community service. Provided any agreed undertakings are complied with, the child avoids a court appearance in relation to the offence.

South Australia and Western Australia are the only other Australian jurisdictions with comparable statutory provisions. The South Australian provisions, in the Young Offenders Act 1993, are the most similar to those proposed in Queensland, although the expression family conference is used rather than community conference. In Western Australia, the Young Offenders Act 1994 does not use the term conference but provides for Juvenile Justice Teams, one of whose duties is to conduct meetings which are similar in many respects to those conducted in South Australia as family conferences, and proposed for Queensland as community conferences. Forms of community conferences have also been conducted in New South Wales, Victoria and the ACT, but without legislative provisions.⁵

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⁴ *Juvenile Justice Act 1992* (Qld), s 5. The Act contains a provision (s 6) that by regulation, the definition of a child for the purposes of the Act may be changed to include a person who has not turned 18 years. Such a regulation has not been issued.

⁵ These are described in *Family Conferencing: A Community Approach to Juvenile Justice*. 
A forerunner to the Australian legislation discussed above is the New Zealand Children, Young Persons, and Their Families Act 1989. That Act was the first to establish the concept of conferences as a diversionary process for young offenders. It uses the term family group conference, to incorporate the Maori concept of family groups. Family groups may include varying levels of relationships depending on the individual circumstances. In reviewing the first several years of family group conferences in New Zealand, Trish Stewart concluded that their importance lies in their ability to:

- increase the range of diversionary options through which young offenders can be made accountable for their offending;
- ensure a shift in philosophy from one of unilateral state intervention in the lives of children, young people and their families to one based on partnership with the state;
- enable culturally diverse processes and values to be recognised and affirmed; and
- involve victims in the decisions about outcomes for the children and young people who have offended against them.  

In discussing aspects of the proposed Queensland provisions, comparisons will be made where possible to provisions in the South Australian, Western Australian and New Zealand legislation, and in some cases to published material describing the conference processes in those jurisdictions. All references to legislation in South Australia, Western Australia and New Zealand are to the Acts listed in the above paragraphs, unless stated otherwise.

In introducing the Bill, and pointing out that similar systems are operating in other states and New Zealand, the Attorney-General and Minister for Justice commented that “This system has, however, been crafted with local conditions in mind”.  

2. COMMUNITY CONFERENCE PROPOSALS FOR QUEENSLAND

The Juvenile Justice Amendment Bill 1996 proposes to insert provisions relating to community conferences into the Juvenile Justice Act 1992, primarily in new Divisions 2-4 of Part 1C (inserted by Clause 8) and new Division 1A of Part 5 (inserted by Clause 43).


Subdivision 1 of Division 2 of Part 1C ([proposed ss 18A-18G]) contains provisions which apply to community conferences generally. Other proposed sections contain provisions which relate to the two sources of referral of children to conferences: by a police officer (Subdivision 2 of Division 2 of Part 1C, [proposed ss 18H-18J]); or by a court (new Division 1A of Part 5, [proposed ss 119A-119D]).

2.1 **The Basic Conference Process**

**Proposed section 18A(3)** summarises the three basic steps of the process:

- a police officer or a court makes the decision to refer an offence [and, by implication, the child involved] to a conference;
- a conference is convened between the child and other concerned persons; and
- the conference participants endeavour to reach an agreement on subsequent action.

These basic steps are common to conferencing in all jurisdictions.

2.2 **Intended Benefits**

**Proposed ss 18A(2)&(4)** provide that the child, the victim and the community are each intended to benefit from the conference process. Specific benefits for the child include having the opportunity to meet the victim, take responsibility for the offence, and make restitution and/or pay compensation. The child’s exposure to the court system should also be reduced. Benefits for the victim include the opportunity to meet the child, receive an explanation of the offence, express concerns and provide input into the outcome of the conference. The intended community benefits are expressed as fewer offences, reduced costs, and greater dispute resolution at the community level.

The list does not include any possible benefits to families or parents, although the Bill ([Clause 4]) does propose to insert additional principles of juvenile justice which express the goals of strengthening the child’s family and supporting the parents ([proposed new ss 4(e)(iii) & 4(eb)]).

**Comparisons**

A similar list of intended benefits is not included in the conference legislation of the other jurisdictions. However many of the principles involved (eg, encouraging young offenders to accept responsibility for offences, inclusion of victims in the criminal justice process, and support of families) are included in sections which list
the objectives of the legislation or the principles on which it is based (eg, SA s 3; WA ss 6-7; NZ ss 4,5,208).

### 2.3 ADMISSION OF GUILT

**Proposed section 18A(1)** provides that in order for a conference to be held, the child must admit committing an offence, or must be found guilty by a court. This is a feature common to all conferencing systems, although the precise terminology in relation to an admission varies. In WA, the young person must “accept responsibility for the act or omission constituting the offence” (s 25(4)); in SA he or she must “admit the commission of [the] offence” (s 7(1)); and in NZ he or she must “admit the offence” (s 259).

Although the child must admit committing an offence, that admission is generally inadmissible in any proceeding (**proposed s 18P**). Some exceptions to that inadmissibility are outlined in **proposed section 18P(2)**, which are: if all parties to the conference agree to the admission; in proceedings relating to a conference conducted from a court referral; where an Act so provides; or in relation to an offence in the conduct of a conference.

### 2.4 REFERRAL TO A COMMUNITY CONFERENCE

The two possible sources of a referral of an offence to a community conference are a police officer and a court (**proposed s 18C**).

#### 2.4.1 Referral by a Police Officer

A police officer, when considering dealing with a child in relation to an offence, will have the choice of taking no action, administering a caution, referring the offence to a community conference, or starting a proceeding. These options, apart from the community conference option, are currently in section 10 of the Act. **Clause 10** of the Bill inserts the community conference option into section 10, and renumbers the section as section 19.

**Current section 10(2)** provides that the police officer must consider:

- **a)** the circumstances of the alleged offence; and
- **b)** the child’s previous history known to the police officer.

**Proposed section 18A(5)** adds the requirement that when considering referring an offence to a community conference, a police officer (or a court) must also have regard to:
a) the offence’s nature; and  
b) the harm suffered by anyone because of the offence; and  
c) whether the interests of the community and the child would be served by having the offence considered or dealt with in an informal way.

Further, for a conference to occur on the reference of a police officer,

- the victim, if any, must agree;  
- the police officer must consider that a caution is inappropriate and that the referral is more appropriate than starting a proceeding;  
- a convenor must be available; and  
- the convenor must agree that the offence is suitable for a conference (proposed ss 18H(1)&(3)).

Comparisons

The Queensland proposal is unique in requiring that the victim must consent to an offence being referred to a conference, and that a referral is dependent on the availability of a convenor. In **South Australia**, a victim is entitled to attend and participate only. The young person is entitled to request that the matter be dealt with by the Youth Court. Otherwise, the police officer may only refer a matter to the court if, in the officer’s opinion, “the matter cannot be adequately dealt with by the officer or a family conference because of the youth’s repeated offending or some other circumstance of aggravation” (SA s 7(4)(b)).

In **Western Australia**, the decision to refer an offence to a juvenile justice team is made by a police officer based on principles set out in section 24 of the Act. Further, Schedules 1 and 2 of the WA Act list offences which may not be referred to a juvenile justice team and may not be the subject of a caution (ie they must be referred to a court). A juvenile justice team may return a matter to a police officer if the team believes the matter should be dealt with by a caution or by a court (WA s 32(6)). First offenders are always to be dealt with by a juvenile justice team rather than by a court (WA s 29).

In **South Australia** and **New Zealand**, the convenors do not have a discretion to decline to conduct a conference, except in New Zealand when both the convenor and the family agree that the holding of the conference “would serve no useful purpose” (NZ s 248(1)(c)). In **New Zealand**, even when the police officer believes that a young person should be dealt with by a court for an offence, the matter must first go to a family group conference which then makes a recommendation to the court (NZ ss 245(1),247(b),279).
2.4.2 Referral by a Court

If a court finds a child guilty of an offence, the court at its own discretion may refer the offence to a community conference, either

- for the community conference to deal with the offence (an indefinite referral) (proposed s 119B); or
- for the community conference to provide information to assist the court in making a sentence order (proposed s 119D).

However, in either case,

- the victim, if any, must agree;
- the court must consider the reference to be appropriate; and
- a convenor must be available (proposed s 119A(2)).

The court may give any directions it considers appropriate in relation to the referral (proposed s 119A(3)).

An indefinite referral should mean the end of the court proceeding, provided the community conference reaches an agreement and provided the child does not contravene the agreement. The child is then considered to have been found guilty of the offence without a conviction being recorded (proposed s 119B). If either condition is not met, the court then has the option to take no further action, refer the offence to another community conference, or sentence the child for the offence (proposed s 119C).

If the referral was to assist the court in making a sentence order, the court, in making the order, is required to consider any conference agreement, the report of the convenor, the participation by the child in the conference, and any action by the child towards carrying out the agreement (proposed s 119D). However the court is not obliged to follow the agreement in making a sentence order.

Comparisons

In South Australia and Western Australia, a court may refer an offence committed by a young person to be dealt with by a conference or a juvenile justice team respectively (SA s 17(2); WA s 28). However in each case the matter does not normally come back to the court. In New Zealand, a court-referred offence is returned to the court with a recommendation from the family group conference, which the court is required to consider (NZ s 279), as is proposed for Queensland.
2.5 COMMUNITY CONFERENCE CONVENORS

Proposed s 18B provides that a person may be appointed as a community conference convenor by the chief executive of the administering department, if the chief executive is satisfied that the person has appropriate experience or training. For a particular conference, the convenor must be independent of the circumstances of the offence.

There is no requirement for convenors to be employees of the department. It is possible that persons will be appointed on a similar basis to those appointed as mediators under the Dispute Resolution Centres Act 1990, who are not employees of the department but are remunerated on a case-by-case basis.

The document describing proposed changes to the Juvenile Justice Act, released for public comment in June 1996, stated that

Conferences will be conducted by independent trained specialists chosen from a panel maintained by the Justice Department.\(^8\)

The explanatory notes to the Bill state that:

It is expected that some convenors will have specialist training in victim-offender mediation. Others will have life experience warranting their approval; for example, they may have been teachers or youth workers.\(^9\)

Comparisons

The other jurisdictions differ from the Queensland proposal in this respect, in that convenors are employees of the agency responsible for the conference process. In South Australia and New Zealand their title is Youth Justice Co-ordinator and they are appointed by the Courts Administration Authority and the department responsible for social welfare, respectively (SA s 9; NZ s 425). In Western Australia they are Juvenile Justice Team Coordinators, employed by the department responsible for juvenile justice (WA s 36).

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\(^8\) Proposed Changes to the Juvenile Justice Act, document released for public comment, June 1996, p 3.

2.6 PARTICIPATION IN A COMMUNITY CONFERENCE

The list of possible participants in a community conference is similar in all jurisdictions. Proposed s 18D lists participants as:

- the convenor
- the child
- a legal practitioner acting for the child
- a member of the child’s family
- an adult nominated by the child
- the victim
- representatives of the victim including a legal practitioner or a family member
- a representative of the police service (in the case of a referral by a police officer) or the prosecution (in the case of a referral by a court), and
- another person decided by the convenor.

The convenor, the child and a representative of the referring agency would normally always participate in a conference. Those attending to support the child (a legal practitioner, family member or other adult) may only attend at the child’s request. The victim may choose whether to attend or be represented or be accompanied. Inclusion of the victim gives effect to the principle (inserted as s 4(ea)) that a victim of an offence by a child should have the opportunity of participating in the process of dealing with the child.

Comparisons

Attendance by the victim and/or their representative is voluntary in all jurisdictions. In South Australia the victim is invited to bring “some person of the victim’s choice to provide assistance and support” (SA s 10(2)(c)). Under the Queensland proposal, it appears that if the victim wanted to bring someone other than a family member, this could only occur with the approval of the convenor under the category of “another person decided by the convenor”. In New Zealand, the victim may send a representative, and if attending in person may be “accompanied by any reasonable number of persons … for the purpose of providing support to that victim” (NZ s 251(2)).

In Western Australia, the Juvenile Justice Team consists of the coordinator and a member of the police force, and may also include a representative of the Minister for Education, and where the young person is a member of a minority group, a person nominated by the members of that group. The victim is to be given the opportunity to make submissions to the team and to participate in proceedings at the discretion
of the team (WA s 31(1)). There is no specific provision for the victim to be represented or accompanied.

The Queensland proposal is unique in providing that those attending to support the child (legal practitioners, family members or other adults) may only do so at the child’s request (unless they attend under the category of “another person decided by the convenor”). In South Australia and New Zealand, where the expressions family conference and family group conference respectively are used, family members are automatically entitled to attend (SA s 10; NZ s 251). In introducing the Young Offenders Bill to the South Australian Legislative Assembly, the Minister for Health, Family and Community Services, Hon MJ Evans, said:

Family conferences will also allow parents to participate fully in the decision-making process. This will not only empower the parents but will also require them to accept responsibility for their offending children.\(^\text{10}\)

In Western Australia, the Juvenile Justice Team may only deal with a young person in the presence and with the agreement of a responsible adult, who is usually a parent of the young person. This requirement may only be dispensed with if the young person has reached 17 years and is considered by the team to have sufficient maturity to live independently (WA s 30).

### 2.7 Conduct of Community Conferences

Proposed section 18E gives the convenor the authority to convene and conduct community conferences, and requires participants to respect all decisions of the convenor. Detailed instructions on the conduct of conferences are not given. This is the case in all jurisdictions, and enables the convenor to adapt the conduct of the conference to specific circumstances. Under amendments proposed in Clause 87, matters relating to the conduct of conferences may be included in regulations.

The New Zealand Act contains certain general stipulations on the preparation and conduct of conferences. The convenor is required whenever possible to consult with the young person’s family in relation to the conduct of the conference, and is required to consult with both the young person’s family and the victim in relation to the date and location of the conference (NZ s 250). The convenor is also required to ascertain the views of any person entitled to attend but unable to do so, and present those views to the conference (NZ s 254). The New Zealand Act also provides that the family members may consult privately among themselves during the conduct of a conference (NZ s 251(4)).

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\(^{10}\) Hon MJ Evans MLA, Young Offenders Bill 1993, Second Reading Speech, Parliamentary Debates (South Australia), 1 April 1993, p 2851.
The aim of the community conference is to reach an agreement about future action. **Proposed s 18F(3)** provides that:

*The agreement must contain provisions under which:

1. the child admits committing the offence; and
2. the child’s compliance with the agreement is monitored.*

In addition to the compulsory provisions, the agreement may also contain a provision about:

1. the making of restitution or payment of compensation;
2. an apology that must be made to a victim;
3. the child’s future conduct while a child;
4. a program mentioned in subsection (5) [a program similar to a community service order or a probation order];
5. another matter the convenor considers appropriate. (**proposed s 18F(4)**)

However the agreement may not treat the child more severely than the child could be treated by a court for the offence, and the agreement may not contravene the **sentencing principles** which are set out in section 109 of the Act (**proposed s 18F(6)**).

The agreement must be agreed to and signed by the convenor, the child, the representative of the referring agency, and, if present, the victim (**proposed s 18F(2)**). If the victim is not present, but is represented by a legal practitioner or another person, there appears to be no requirement for the victim’s representative to agree to or sign the agreement.

If the agreement includes a program similar to a community service order or a probation order, it will also be signed by the chief executive of the relevant department (**proposed s 18F(5)**). In this case, the chief executive may arrange and monitor the program (**proposed s 18G**). **Clause 44** of the Bill proposes to amend **section 120(1)(e)** of the Act to increase the maximum period of community service that a court may order, from 60 to 100 hours, for a child under 15 years at the time of sentencing, and from 120 to 200 hours, for a child 15 years or more at the time of sentencing. **Current section 120(1)(d)** of the Act provides that the maximum period of probation that may be imposed by a court constituted by a judge is two years.

An approved form will be provided on which the convenor will record the agreement, and once signed all signatories must receive a copy (**proposed ss 18F(1),(7)**). The convenor must provide a report about the conference to the referring officer within 14 days (**proposed s 18E(6)**).
Comparisons

An agreement of this general type is the desired outcome in all jurisdictions. In each case, the agreement of at least the young person and the representative of the referring agency is required. In **South Australia**, these are the only two parties whose agreement is essential but the Act states that all parties should reach consensus if possible (SA ss 11(2),(3)). In **Western Australia**, any decision made by the Juvenile Justice Team must be unanimous, and must also be agreed to by the responsible adult and the victim if either was present at the proceedings of the team (WA ss 30(2),31(2),38(1)).

In **New Zealand**, all members of a conference are required to agree to any decision. If the referring officer and any other person directly involved in the implementation of any decision were not at the conference, their agreement must also be sought by the convenor. If that agreement cannot be obtained, the conference must be reconvened to reconsider its recommendations (NZ s 263).

The range of possible outcomes is similar in all jurisdictions. The **South Australian** legislation provides for the possibility of compensation, community service and apologies (SA s 12(1)). In **Western Australia**, no specific outcomes are prescribed. The team may not impose an order for restitution or compensation but may have regard to an undertaking or agreement reached in relation to those matters (WA s 32(5)).

The **New Zealand** Act allows for “**appropriate penalties**” or reparation to the victim (NZ s 260). Around 25% of conferences in a recent survey in New Zealand recommended action to assist the young offender (for example, with work, education or training), in addition to any penalties imposed.\(^\text{11}\) Further details of this survey are provided in Section 3.2 of this Bulletin.

In each jurisdiction, the conference or team has authority to impose requirements that it considers appropriate to the circumstances, other than those specifically provided in the legislation. Each jurisdiction other than Queensland also provides that the conference may issue or recommend a caution. In **South Australia**, the conference may itself administer a formal caution (SA s 12(1)(a)), and in **Western Australia** and **New Zealand** the team or conference respectively may recommend that a caution be administered by a police officer (WA s 32(6); NZ s 260(3)(b)).

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2.8  **FULFILMENT OF CONFERENCE AGREEMENTS**

**Proposed s 18I** provides that in the case of a referral by a police officer, if a child fulfils the terms of the conference agreement, he or she cannot be prosecuted for the offence. At least one of the anticipated benefits of a community conference (that the child will have less involvement with the court system) will have been achieved.

The standard practice when the child does not attend a conference as directed, or when an conference cannot reach an agreement, or when an agreement is contravened, is for the matter to be returned to the referring agency. In the Queensland Bill this is provided for in **proposed s 18J** in the case of a referral by a police officer and **proposed s 119C** in the case of a referral by a court.

In either case the referring agency has a range of options including taking no further action, referring the offence to another community conference, or initiating or continuing with a proceeding against the child. In each case the relevant officer must consider any participation by the child in the conference and any action undertaken in relation to an agreement.

**Comparisons**

In **South Australia**, any unsuccessful conference outcome must be referred to the Youth Court (SA ss 11(5),12(8)). In **Western Australia** and **New Zealand**, unsuccessful outcomes must be reported to the original referring agency (WA ss 32(2),32(4),38(2); NZ s 264), as is proposed for Queensland.

The Queensland proposals do not stipulate how or by whom a child’s compliance with an agreement is to be monitored, or by what means a referring officer or agency may become aware that an agreement has been contravened. This is generally the case in the other jurisdictions also, although in practice the convenors have an ongoing role in monitoring the agreement. In **South Australia**, post-conference practice was described by Wundersitz and Hetzel as follows:

*The co-ordinator’s post-conference role is to follow up undertakings by arranging community service placements or referrals for counselling, training and employment. Wherever possible, supervisors for specific aspects of the agreement are appointed from among the conference participants, usually either a parent or relative, and it is their task to inform the co-ordinator if the condition in question has been completed. The co-ordinator is also available to assist both supervisors and young people when compliance is threatened.*

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In **Western Australia**, the juvenile justice team appears to monitor compliance with agreements because it may take action if it is not satisfied that a young person has complied or is complying with specified terms (WA s 32(4)).

### 2.9 CONFIDENTIALITY OF INFORMATION FROM COMMUNITY CONFERENCES

**Proposed section 18L** provides that information gained by a convenor in relation to a conference is confidential. It may be disclosed only in specified circumstances: with the agreement of all parties to the conference, for reporting purposes specified by the Act, for statistical purposes where the identity of persons is not revealed, or in relation to an offence in the conduct of a conference.

**Proposed section 18K** provides that where a conference agreement has been reached following a referral from a police officer, a member of the Queensland Police Service may not give information likely to reveal the identity of the child to anyone other than a member of the Queensland Police Service. However exceptions occur with certain categories of persons, which are listed in subsection (3), as follows:

- a) a parent of the child; or
- b) a complainant for the offence; or
- c) the chief executive [of the department administering this section of the Act]; or
- d) a member of a police service of the Commonwealth or another State dealing with a child offender; or
- e) a legal practitioner acting for the child; or
- f) a court, or legal practitioner acting for a party in a proceeding in which the administration of the caution or the making of the community conference agreement is admissible in evidence; or
- g) a person who has the function of investigating offences under an Act and who is dealing with a child offender; or
- h) a person who is undertaking research approved by the commissioner of the police service; or
- i) another person, for the purpose of this Act.

These provisions also apply in the case of a caution which will be or has been administered to a child. A similar provision exists currently in relation to cautions (section 18). **Clause 11** proposes to omit current section 18 as its purpose will be taken over by proposed section 18K. The maximum penalty for contravention of section 18K will be 100 penalty units ($7500), the same as currently applies in section 18.
In the case of (d) and (g) above, the persons mentioned may be dealing with any child offender, not necessarily the child involved in the conference agreement or caution.

2.10 ADMISSIBILITY OF AGREEMENTS OR OTHER CONFERENCE INFORMATION AS EVIDENCE

Generally speaking, a community conference agreement (or a caution) is not admissible as evidence in a proceeding (proposed s 18M). An exception applies in some circumstances if the person commits another offence. In those circumstances (see below), the agreement becomes a disclosable community conference agreement. A caution may become a disclosable caution under similar circumstances. Whether an agreement becomes a disclosable community conference agreement, or a caution becomes a disclosable caution, depends on the nature of the offence and whether the later offence is committed as a child or an adult.

If a child has been the subject of a community conference agreement (or received a caution) in relation to a seven year offence (ie, a life offence or an offence for which an adult could be sentenced to seven or more years imprisonment - see clause 5, amendment of section 5), and commits a subsequent offence, then that earlier agreement (or caution) is disclosable in the proceeding for the later offence (proposed s 18N).

If a person commits an offence as an adult, and had been dealt with as a child for at least two ‘seven year offences’, then any community conference agreement made (or caution received) as a child is disclosable in relation to the offence committed as an adult (proposed s 18O).

In addition to the agreement itself, evidence of anything done or said (including an admission) in the conduct of a conference is also generally inadmissible as evidence in any proceeding (proposed s 18P). The conduct of a conference includes activity to establish it and arising from it. Such evidence may be admitted under specified circumstances: if all parties to the conference agree; in proceedings relating to a conference conducted from a court referral; where an Act so provides; or in relation to an offence in the conduct of a conference.

Comparisons

In South Australia, publication of information about a caution or conference is only disallowed to the extent that it could identify any young person involved, or any other person involved without that other person’s consent (SA s 13). In subsequent offences committed prior to 18 years of age, information from cautions or conferences is admissible but is to be “regarded as of minor significance” (SA
s 58(2). In relation to offences committed as an adult, information from cautions or conferences is to be disregarded.

In Western Australia, no report of the proceedings of a juvenile justice team, or information likely to identify a young person in relation to a proceeding, may be published in any form (WA s 40).

In New Zealand, no information from a conference is admissable as evidence in any court proceedings (NZ ss 37,271). No report of any conference proceedings may be published, except as statistical or research information and then no information that could identify an individual may be published (NZ ss 38,271). However a copy of the record of a conference is given to certain participants, including the young person, his or her parents and legal representatives, the referring officer, the victim, and any person directly affected by any recommendation of the conference (NZ s 265).

**2.11 REGULATIONS**

Current Schedule 1 of the Act lists matters which may be included in regulations. **Clause 87** inserts items related to community conferences into that schedule. The inserted matters are:

a) convening and conduct of a community conference; and

b) reports to be given by a community conference convenor; and

c) time for completing a community conference; and

d) regulating contents of community conference agreements; and

e) keeping of names of persons approved as community conference convenors and information about community conferences.
3. OVERVIEW OF COMMUNITY CONFERENCE PRACTICE IN OTHER JURISDICTIONS

Programs similar to the community conference program proposed for Queensland have been operating for several years in some jurisdictions (although with varying terminology). The most extensive experience is in New Zealand, where family group conferences have been conducted since 1989. In South Australia, the Young Offenders Act 1993 commenced on 1 January 1994 and family conferences have been conducted since February 1994. In Western Australia, while the Young Offenders Act 1994 commenced on 13 March 1995, Juvenile Justice Teams had been operating as part of a pilot project since July 1993.13

3.1 SOUTH AUSTRALIA

Wundersitz and Hetzel summarised information from the first 15 months of the operation of family conferencing in South Australia (February 1994 to April 1995). In that period, 1,592 conferences were held.14 The nine Youth Justice Co-ordinators each convened five or six conferences per week. In the first 12 months, approximately 40% of matters that came to the attention of the police were dealt with by formal caution, 14% by family conferences and 40% were referred to the Youth Court.15 The fate of the other 6% was not stated, but they may have been informal cautions.

The major categories of offences referred to conferences in 1994 were offences against property (64.2%), offences against the person (12.4%), offences against good order (12.1%), and drug offences (10.4%). Of the young people whose age was recorded, 16% were 10-13 years and 84% were 14-17 years.16

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14 Wundersitz & Hetzel, p 116.

15 Wundersitz & Hetzel, p 118.

The following extracts from Wundersitz and Hetzel give an overview of the conference procedure in South Australia:

Each conference consists of three distinct stages: the introductory stage, the second stage during which the impact of the conference is discussed, and the final stage in which the hoped-for resolution is reached. During the first stage, the coordinator introduces participants and reminds the group of the purpose and structure of the process on which they are about to embark.

… The young person is then reminded of their legal rights, including their right at any stage during the conference to request an adjournment for legal advice, to leave the meeting, or request that the process be terminated if they consider that they are being dealt with unfairly.

… At the beginning of the second phase, the police youth officer briefly outlines the details of the offence and seeks the young person’s agreement to the facts. The young person is, in most instances, then asked to tell their story of what happened.

… Drawing on mediation skills, the coordinator then encourages victims, family members and supporters to speak freely about the offence and its impact, and invites the young person to respond to their statements and feelings. The aim is to establish an atmosphere of respect in which the young person’s input is taken seriously, while ensuring that other participants feel free to challenge. … If there seem to be significant obstacles to participation, the coordinator may choose to take the young person out of the room to talk.

… The young person is given the opportunity to acknowledge responsibility and feel shame for their actions, while victims are given time to voice their often deep-seated feelings of hurt and damage. Victims and family members often become very emotional as the effects of the offence are revealed. Much of this may come as a surprise to the young offender and tears often flow.

… The goal of [the third] phase is to negotiate a fair outcome which takes into account the victim’s need for restitution and reparation, community expectations regarding accountability, and the young person’s needs and circumstances.

… To identify appropriate outcomes, the coordinator usually calls upon the young person first for suggestions about what needs to be done to repair the harm caused. The views of the other participants, especially the victims, are then sought. … Negotiation continues until agreement is reached and it is usually at this point that the police youth officer is asked for an opinion.

… early feedback from victims and offenders indicated that they would have felt more satisfied if there had been more time to think about the final decision. As a result, the team is currently experimenting with the practice of allowing all parties to take a short break during the third stage to consider outcomes separately [as occurs in New Zealand].

… It is during this third stage that evidence of reconciliation between victim and offender often occurs, perhaps in the form of a heart-felt apology or spontaneous handshake. … However, there are also occasions when reconciliation is not
possible, either because the victim is not ready to forgive or the young person has not taken the crucial step of accepting responsibility for their behaviour.\textsuperscript{17}

Outcomes of conferences in South Australia have included community service, monetary compensation, apologies, attendance at counselling and participation in training programs.\textsuperscript{18} The police and the young people exercised their power of veto over the recommended outcomes only sparingly, and compliance with undertakings was high. Of undertakings due for completion by 30 April 1995, 86\% were complied with, 3.4\% were waived because of near compliance, and the remaining 10.6\% were referred to the police for further action.\textsuperscript{19}

Wundersitz and Hetzel reported that initial feedback from conferences involving Aboriginal young people has been positive. This is despite some organisational and logistical difficulties, particularly with conferences held in traditional communities. Two of the nine Youth Justice Co-ordinators are of Aboriginal descent, and wherever possible they convene any conferences involving Aboriginal young people.\textsuperscript{20}

Wundersitz and Hetzel concluded as follows:

\begin{quote}
The South Australian family conference system is now in its second year of operation and preliminary indications are positive. For the first time in this State’s history, young offenders are being formally confronted by their victims and are being given the opportunity to make direct reparation for the damage caused. For their part, victims now have a direct input into the decision-making process and have the opportunity to express their feelings of anger, frustration and hurt. That victims are supporting the new system is indicated by the high victim participation rate and by the fact that 93 percent of victims contacted during a small pilot study reported that they found participation in the conference helpful.\textsuperscript{21}
\end{quote}

\textsuperscript{17} Wundersitz & Hetzel, pp 127-131.

\textsuperscript{18} Wundersitz & Hetzel, pp 131-132.

\textsuperscript{19} Wundersitz & Hetzel, p 133.

\textsuperscript{20} Wundersitz & Hetzel, pp 134-137.

\textsuperscript{21} Wundersitz & Hetzel, p 133. The source of information on the pilot study was an unpublished paper by T Goodes (1995).
3.2 **NEW ZEALAND**

One distinct outcome of the introduction of family group conferences in New Zealand is that since the Children, Young Persons, and Their Families Act came into force the number of young people appearing before the Youth Court has decreased markedly, from 13,000 to 1,800 per year.\(^{22}\)

Several other characteristics of conferences in New Zealand were reported by Maxwell and Morris based on a study conducted during 1990 and 1991. The study sample included all young people (almost 700) who came to the attention of the police in five areas of New Zealand over a three-month period. Family Group Conferences (FGCs) were arranged for over 200 of those young people including 70 who appeared in the Youth Court.\(^{23}\)

**Attendance**

Most FGCs were attended by between five and ten people and the average attendance was nine. The young person involved and at least one of their parents or carers attended almost all (96-98%) FGCs. Extended family members were present at 39% of conferences, siblings at 21% and a family supporter at 19%. By contrast, just over half (54%) of the FGCs did not include the victim or the victim’s representative. In most cases, the reason for the victims’ absence was that the time nominated was not suitable or they were not given enough warning. This problem was addressed by amendments to the NZ Act in 1994, which (among other things) inserted a requirement for consultation with victims about the timing and location of the conference.\(^{24}\) Fewer than 4% of the victims in Maxwell and Morris’ survey indicated that they did not come to the conference because they did not want to meet the offender.

**Outcomes**

Agreement was reached in 95% of the FGCs in the sample. The two most common outcomes were apologies and community work (70% and 58% of cases respectively). Some form of active penalty (community work, monetary penalties, donations or restrictions on liberty) was imposed in 83% of non-court referred

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\(^{23}\) Maxwell & Morris, pp 20-38.

\(^{24}\) *Children, Young Persons and Their Families Amendment Act 1994* (NZ) (No 121 of 1994).
FGCs and 89% of court referred FGCs. Action to assist the young offender, in relation to work, education or skills, was recommended in around 25% of cases.

**Satisfaction**

The young offenders, their parents, the police and the coordinators all reported a high level of satisfaction with the outcome of the FGC: 84, 85, 86 and 91 percent respectively. The level of satisfaction among victims was lower: just over half (53%) of those who attended conferences were satisfied with the outcome, and around one third were dissatisfied. The main causes of dissatisfaction were a perception that the penalties were too lenient or a subsequent failure on the part of the offender to carry out an agreed undertaking. Maxwell and Morris commented that some victims’ view of an appropriate penalty was unrealistically high, but this could be overcome by a more adequate briefing of victims prior to the FGC. Maxwell and Morris also commented that many of the cases where the victims expressed satisfaction seemed to have involved genuine reconciliation.

**Conclusions**

The following two excerpts from Maxwell and Morris’ conclusion summarise the outcomes of their survey and other observations:

> **FGCs are clearly working far more effectively than was expected … Almost all the parents or care givers take an active part in the conference and, when offences are serious or persistent, extended family members are prepared to come and provide additional support and help. Victims are willing to attend and most of them play a constructive and helpful part. Agreements are reached in most FGCs about the appropriate outcome and, at the same time, young people are held accountable for their offences and remain, for the most part, with their family and in the community, with support to make a fresh start.**


> **Enthusiasm is tempered by a recognition that it is impossible to expect the production of a magical event given the unrehearsed cast, a host of different directors and an unexplored script at every performance.**

26 Maxwell & Morris, p 42.
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