

Report on the Review of the
YOUNG OFFENDERS ACT
1997

NSW Attorney General's
Department

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

The NSW Attorney General's Department has undertaken a statutory review of the *Young Offenders Act 1997* (the Act). Section 76 of the Act requires the Act to be reviewed three years from the date of commencement to determine whether the policy objectives of the Act remain valid and its terms remain appropriate for securing those objectives. This report is the result of that review process.

There are three components to the review of the Act, namely:

- An interim report of a study by the University of New South Wales (UNSW);
- A re-offending study by the Bureau of Crime Statistics and Research (BOCSAR); and
- This report, which brings together the findings of the UNSW and BOCSAR studies and the issues raised by individuals and organisations in submissions received by the NSW Attorney General's Department in relation to the review.

Overview of this Report

The UNSW Study

The UNSW is conducting a three year study into the implementation and outcomes of the Act which is due for completion in early 2003. To assist with the report on the statutory review of the Act, the UNSW has prepared an interim report containing extensive findings on the implementation of the Act and the outcomes achieved.¹

The key findings in the interim report include the following:

- The introduction of the Act has led to an increase in the use of warnings and cautions in dealing with young offenders and a corresponding decline in the use of court proceedings;
- The type of offence committed affected the type of intervention used (for example, offences against the person are much more likely to result in court appearance);
- The highest rate of referral to conference was among first offenders with less serious offences against the person;
- Aboriginal young people are more likely to be taken to court and less likely to be cautioned, but equally like to be given warnings or referred to conferences, than non-ATSI young people;
- Young women were more likely to be cautioned or given warnings than young men, but less likely to be referred to court or conference; and
- Parents and other family members are participating in the conferencing process.

A survey conducted as part of the study indicates that the majority of caution and conference participants were satisfied with the way their case was dealt with. Other findings from the survey include:

- The majority of young people, family/support persons and victims agreed that the outcome plan from their conference was fair for the victim; and
- The overwhelming majority of young people and their family/support persons who attended a caution thought that the caution was fair to the young person in relation to the

¹ Janet Chan, Sally Doran & Natasha Petkoska, *Reshaping Juvenile Justice: A Study of the NSW Young Offenders Act 1997 - Interim Report*, 2002.

offence committed. A similar proportion of young people and of family/support persons felt the same in relation to the conference they attended.

The interim report highlighted a number of difficulties in implementing the Act, including problems arising from the requirement that young people admit to the offence before police can consider the use of cautions or conferences. Other problems identified include insufficient training for those involved in the implementation of the Act, insufficient accessing of legal advice, insufficient resources for youth liaison officers, conference administrators and conference convenors, and the lack of support services for young offenders, particularly in regional areas.

Possible areas for reform identified by the interim report centre around the following issues:

- The absence of a legislative time frame within which a conference must be held from the date of the offence;
- The way in which the Act can be used in relation to repeat offenders, particularly Aboriginal and Torres Strait Islander young offenders;
- The use of conferences for cases where there are no victims, or the victim chooses not to attend;
- The absence of clear legislative guidance on how to deal with young people with a mental illness; and
- The lack of involvement of the Department of Community Services in the implementation of the Act.

The BOCSAR study

The re-offending study by the BOCSAR² demonstrates that youth justice conferences are an effective way of reducing juvenile crime. The study compares re-offending by young people who participated in a conference with re-offending by young people who attended court. The results of the study indicate that the risk of re-offending and the rate of reappearances per year was 15-20% lower for juvenile offenders who were conferenced than for those who went to court. The study also found that, of the juvenile offenders who re-offended, those who were conferenced had a greater crime-free period than those who went to court.

Public submissions

Individuals and organisations who responded to a call for submissions on the Act strongly supported the use of alternative processes to court proceedings for dealing with young offenders. Their submissions identified a number of benefits arising from the diversion of young offenders, including:

- Minimising the stigma attached to a court appearance;
- Greater efficiency and cost-effectiveness of diversionary options compared with the court process;
- Greater involvement of families, support people and victims;
- Avoidance of criminal record for minor criminal behaviour;
- Speedier resolution of criminal matters; and

² Luke, G. & Lind, B. *Reducing Juvenile Crime: Conferencing versus Court*, 2002, Crime and Justice Bulletin no. 69, NSW Bureau of Crime Statistics and Research, Sydney.

- Greater participation of young offenders in the process, which promotes greater acceptance of and responsibility for their offending behaviour.

A number of stakeholders supported an expansion of the range of offences covered by the Act. These stakeholders felt that youth justice conferencing was effective for relatively serious offences, such as robbery offences, because the conferences forced the offender to really consider the consequences of his or her actions and the impact on the victim. It was also suggested that the range of offences should be expanded to include any offences for which children can receive a penalty notice.

A key concern in a number of submissions was the entitlement of young offenders to obtain legal advice before making admissions. While submissions acknowledged the commendable work of telephone advisory services for children, they also highlighted a number of problems with providing this type of service. For example, there is a general lack of privacy for the child when communicating with his or her solicitor, inhibiting frank and open discussion. There is also no obligation on the police to provide solicitors with documentation that may assist in assessing whether a child should make an admission under the Act. These practical problems often lead solicitors to advise the child not to make admissions.

Another key concern raised in submissions is the rate of diversion for Aboriginal and Torres Strait Islander (ATSI) young people. To address this concern, a number of amendments to the Act were suggested, including removing the mandatory requirement to consider the number of offences committed by the child when applying the Act. The need to increase the number of ATSI conference convenors was also identified.

Other issues raised in the submissions include:

- The disparity between disclosure requirements for young offenders under the Act and the *Children (Criminal Proceedings) Act 1987*;
- The status and consequences of cautions and conferences on children in NSW (for example, can a caution or conference prevent a young person from raising good character in any subsequent criminal prosecution);
- The lack of involvement of victims in cautioning; and
- The need for police to be able to defer cautions in certain circumstances.

Conclusion

In view of the findings detailed in the interim report from the UNSW study, the BOCSAR study and the comments provided in the public submissions, this report concludes that the objectives of the Act remain valid. However, some recommendations are made regarding the terms of the Act to ensure that they remain appropriate for securing those objectives. These recommendations are as follows.

Recommendation 1

The range of offences covered by the Act be extended to cover all offences for which the Children's Court has jurisdiction.

Recommendation 2

The ranges of offences for which a warning may be given be expanded to include larceny involving theft from a shop.

Recommendation 3

The Act be extended to cover offences for which penalty notices may be issued to children.

Recommendation 4

The Government consider providing additional funding to enable the Hotline for Under 18s to expand its hours of operation to 24 hours, 7 days a week.

Recommendation 5

A person who may administer a caution under the Act may defer a caution so that a person responsible for the child, or an adult chosen by the child, may attend. The absence from a caution of an adult support person for the child will not preclude a caution from proceeding.

Recommendation 6

One student/probationary police officer (out of uniform) may observe a caution where consent is given by the child and the child's adult support person (if present).

Recommendation 7

A person who may administer a caution under the Act may defer a caution where the child is so affected by alcohol or other drugs that she/he cannot effectively participate in the caution.

Recommendation 8

The Act be amended so that its disclosure requirements are consistent with those under the *Criminal Records Act 1991*.

Recommendation 9

The NSW Attorney General's Department review, in consultation with relevant agencies, the status and consequences of cautions and conferences on children in NSW.

Recommendation 10

Police (out of uniform) be able to observe youth justice conferences for training purposes at the discretion of the conference convenor and with the consent of the child and victim(s).

Recommendation 11

The specialist youth officer who referred a matter to a youth justice conference may be informed of the contents of an outcome plan, on request, and that the specialist youth officer be able to pass on this information to the investigating officers.

Recommendation 12

The NSW Attorney General's Department seek clarification from the Crown Solicitor on whether the requirement to dismiss charges under section 57(2) is a specific dismissal power under the Act.

Recommendation 13

The Act be amended to extend the time limit for youth justice conferences to 28 days.

Recommendation 14

The Act be amended to:

- Include as an object of the Act the aim of addressing the over representation of ATSI children in the criminal justice system through the use of warnings, cautions and conferences; and
- Include as a principle of the diversionary scheme established by the Act the principle that the over representation of ATSI children in the juvenile justice system can be addressed through the use of warnings, cautions and conferences. This principle recognises that conferencing can be a more appropriate way of dealing with juvenile offending, particularly for ATSI children, children with an intellectual disability and children from ethnic communities.

Recommendation 15

A more general discretion be established for gatekeepers by removing the mandatory requirement to consider the number of offences committed by the child when applying the Act.

Recommendation 16

The NSW Attorney General's Department in consultation with the Department of Aboriginal Affairs, the Aboriginal Justice Advisory Council, the Department of Juvenile Justice, and other relevant agencies, investigate conferencing frameworks that incorporate customary law.

Recommendation 17

The Director General of the Department of Juvenile Justice be given the discretion to appoint a person as a conference convenor in appropriate cases, even if the person has been convicted of a criminal offence punishable by imprisonment for 12 months or more.

Recommendation 18

The Act be extended to allow fisheries officers to issue warnings and cautions and refer young people (through specialist youth officers) to youth justice conferences (see also recommendation 1 above).

Recommendation 19

The Act be amended to allow victims, where a matter is refer for a caution, to write a letter detailing the harm they have suffered and to allow the person administering the caution to read the letter to the young offender as part of the cautioning process.

Recommendation 20

The Act create a statutory presumption that bail is dispensed with when a matter is referred to conference. The court would, however, retain the power to impose unconditional bail in special circumstances.

Recommendation 21

The issue of finger printing young offenders be considered as part of the recommended review of the status and consequences of cautions and conferences (see Recommendation 9 above).

Recommendation 22

The consent of the young offender be required before the court or the DPP can refer a matter for conferencing under the Act.

Recommendation 23

The Act be amended to allow the investigating official, where appropriate, to notify the parents or guardian of the young offender in writing where a warning has been administered. The investigating official must first give consideration to the effect such notification may have on the welfare of the child.

1. INTRODUCTION

1.1 Reason for the review

Section 76 of the *Young Offenders Act 1997* requires the Act to be reviewed three years from the date of commencement to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. Section 76 of the Act commenced in April 1998. A report on the outcome of the review is required to be tabled in both Houses of Parliament.

1.2 Framework for the review

There are three components to the review of the Act.

(i) Study by the University of New South Wales

The School of Social Science and Policy at the UNSW is conducting a three year study into the implementation and outcomes of the Act. The study is being conducted in partnership with the Department of Juvenile Justice (DJJ) and Aboriginal Justice Advisory Council (AJAC).

The UNSW will complete the final report on its study in early 2003. An interim report, containing extensive findings, has been prepared for the purposes of the review of the Act.

Information regarding the UNSW study and its findings is contained in Chapter 6 of this report.

(ii) Re-offending study by the Bureau of Crime Statistics and Research

The BOCSAR commissioned a study into the re-offending rates of young offenders who are dealt with by way of a youth justice conference compared to young offenders who are dealt with by the court.

Information regarding the study and its findings is contained in Chapter 7 of this report.

(iii) This report

This report has been prepared by the NSW Attorney General's Department. The report:

- Brings together the findings of the UNSW and BOCSAR studies and the issues raised by individuals and organisations in submissions received by the NSW Attorney General's Department in relation to the review;
- Assesses the objectives and terms of the Act as required by section 76 of the Act; and
- Makes a range of recommendations.

Consultation has been an important part of the review process and involved:

- Advertisements placed in major newspapers in November 2001, inviting interested individuals and organisations to make submissions to the review. A list of individuals and organisations from which the NSW Attorney General's Department has received submissions is at Appendix A to this report;

- Invitations sent to identified stakeholders, inviting them to make submissions to the review; and
- Consultation with the Youth Justice Advisory Committee (YJAC), established under the Act to provide advice to the Minister and Director General on the Act. The Committee has an independent chair and comprises representatives of the Attorney General's Department, DJJ, NSW Police; Cabinet Office; Juvenile Justice Advisory Council; Juvenile Crime Prevention Advisory Committee; and representatives of the interests of victims and the interests of children and young people.

1.3 Outline of this report

Chapter 1 of this report is an introductory chapter, which explains the reason for the review of the Act and outlines the framework for the review.

Chapter 2 provides background information in relation to the difficulties with the previous juvenile justice system, trial pre-court diversionary schemes that preceded the introduction of the Act, and the development of the Young Offenders Bill and its passage through Parliament.

Chapter 3 provides information on the implementation of the Act.

Chapter 4 provides a description of how the Act operates.

Chapter 5 provides background information in relation to previous evaluations of the Act conducted by the BOCSAR and Ms Nancy Hennessy, Member, Administrative Decisions Tribunal. It also provides background information in relation to a current NSW Law Reform Commission reference on sentencing, which includes the sentencing of young offenders.

Chapter 6 provides an overview of the interim report of the study by the UNSW into the implementation and outcomes of the Act.

Chapter 7 provides details, including findings, of the study by the BOCSAR into the re-offending rates of young offenders who are dealt with by youth justice conference and by the court.

Chapter 8 examines the objectives of the Act and assesses their continued appropriateness, taking into account the submissions that have been received by the NSW Attorney General's Department and the findings of the two studies.

Chapter 9 examines specific terms of the Act and assesses their continued appropriateness, taking into account the submissions that have been received by the NSW Attorney General's Department and findings of the two studies.

2. BACKGROUND TO THE INTRODUCTION OF THE ACT

2.1 Difficulties with the old juvenile justice system

The Act is based on a successful diversionary scheme for young offenders established in New Zealand under the *Children, Young Persons and Their Families Act 1989* (NZ). As in New Zealand, the Act was introduced to counter some of the difficulties associated with the operation of previous juvenile justice legislation, particularly the problems of bringing children accused of less serious offences into the criminal justice system through court-instituted proceedings. The Act implements strategies of restorative justice which, where appropriate, enable family participation in decisions concerning the conduct of their children.

In his Second Reading Speech for the *Young Offenders Bill 1997*, the then Attorney General, the Hon J W Shaw QC, described the decade prior to the introduction of the Act as follows:

Over the past 10 years the operation of the juvenile justice system has been the subject of a number of reviews, conducted both within and outside government. These reviews have highlighted common concerns about the appropriateness, effectiveness and efficiency of bringing children accused of less serious offences into the criminal justice system through the institution of criminal proceedings before a court. Studies have shown that the majority of matters for which young people come to court are relatively minor and that most young people come to the attention of the criminal justice system only once, and do not re-offend.³

2.2 Trial pre-court diversionary schemes

In light of these concerns, a range of administratively based pre-court diversionary schemes were trialed in NSW. These included discretionary powers recognised in police instructions relating to police cautions, the “Wagga Wagga model” of enhanced police cautioning, and Community Aid Panels.

Evidence suggested that there was substantial variation across the State in the use of pre-court diversionary options for young offenders and that, compared to many other jurisdictions, diversionary options were under-used in NSW. It was also suggested that these programs lacked accountability and there was a lack of guidance with respect to their use.

In 1993, a number of these alternative schemes were reviewed by the Juvenile Advisory Council in the *Juvenile Justice Green Paper*.⁴ As a result of the Council’s findings, it was acknowledged that there was a need to develop effective and regulated interventions for young people who have offended, which empower the victims of crime. In accordance with

³ Hon J Shaw MLC, NSW Legislative Council Hansard, 21 May 1997, p 8958.

⁴ Juvenile Justice Advisory Council of New South Wales, *Future Directions for Juvenile Justice in New South Wales*, Green Paper, New South Wales Government, Sydney, 1993.

this approach, the *Juvenile Justice White Paper*,⁵ released in 1994, recommended the establishment of a formal, integrated, consistent, accountable and co-ordinated framework to be known as Community Youth Conferencing. In 1995, the Community Youth Conferencing scheme, which was initiated by the NSW Attorney General's Department, was commenced as a pilot scheme in Wagga Wagga, Moree, Bourke, Murrumbidgee, Campbelltown and Castle Hill.

2.3 The consultation process

In early 1996, the NSW Community Youth Conferencing scheme was evaluated. While some aspects of the scheme were considered successful, many deficiencies were also exposed which appeared to be the result of systematic and structural problems. Nevertheless, victims and offenders generally expressed satisfaction with the conference process and conference outcomes. The evaluation concluded that conferencing is a viable alternative to the traditional criminal justice process, particularly for young people.

In keeping with the NSW Government's commitment to introduce a conferencing scheme for young offenders based on the New Zealand model of Family Group Conferencing, a working party consisting of Dr Patrick Power, Crown Prosecutor, and senior officers from the Attorney General's Department, Office of the Director of Public Prosecutions (DPP), DJJ, NSW Police, Ministry for Police and Department of Corrective Services was established to look at ways of improving the existing juvenile justice system.

In October 1996, a discussion paper prepared by the working party was released for public comment. Face to face consultations also took place. In particular, extensive consultation was undertaken with interested government agencies, advisory bodies and peak youth and community networks, including youth advocacy groups, victims groups, Aboriginal organisations and ethnic youth workers. All of these bodies expressed general support for the Working Party's proposals.

2.4 The Young Offenders Bill 1997

In February 1997, a revised proposal for legislation was formally adopted by the Government. Legislation to give effect to the proposal was introduced into Parliament in early 1997 in the form of the *Young Offenders Bill 1997*. In his Second Reading Speech, the Hon JW Shaw QC stated:

The Young Offenders Bill builds on the work that has already been done in this State, by introducing a structured, consistent and principled approach to dealing with juvenile offending across the State.⁶

The Bill was passed by Parliament in June 1997 with some minor amendments. The Act commenced on 6 April 1998.

⁵ *Breaking the Crime Cycle - New Directions for Juvenile Justice in New South Wales*, White Paper 1994, New South Wales Government, Sydney.

⁶ Hon J Shaw MLC, *NSW Legislative Council Hansard*, 21 May 1997, p 8958.

3. IMPLEMENTATION OF THE ACT

The Act has been implemented through a combination of cross government and community co-operation. The NSW Police, Youth Justice Conferencing Directorate (YJCD) within the DJJ, DPP, Children's Court, Legal Aid Commission and YJAC have all played important roles.

3.1 NSW Police

The key elements of the NSW Police's response to the introduction of the Act included the creation and deployment of Youth Liaison Officers (YLOs), the provision of training for officers, the creation and deployment of Specialist Youth Officers (SYOs), increasing the accountability of the performance of Local Area Commands, ongoing internal promotion of the Act and implementing strategies related to the under-representation of ATSI young people in diversionary statistics.

Youth Liaison Officers

A critical feature of the NSW Police's response to the Act was the creation of the YLO position. Eighty YLOs were created (one per Local Area Command), recruited and deployed at the beginning of 1998. These positions were designed to assume considerable responsibility for the implementation of the Act, through local training, monitoring diversion rates, acting as SYOs and promoting the provisions of the Act with staff in their Commands.

Specialist Youth Officers

SYOs have a crucial role under the Act. They are trained to apply the criteria of the Act to matters before them and have the delegated authority of the Commissioner of Police to refer matters for youth justice conferencing or to court.

Training on the Act

Further to the training delivered to YLOs and SYOs, there has been considerable training of all police. In the 1998/99 financial year, police were required to undertake a mandatory training package. Failure to complete the package had implications for receiving salary increments and hence there was strong motivation to complete the requisite training. Recruits are also provided with training on the provisions of the Act. Training on the Act is covered in various aspects of the Diploma of Policing Practice.

Enhanced Accountability

Accountability for the performance of Local Area Commands and for individual decisions made under the Act has been enhanced as a result of a number of initiatives implemented by the NSW Police. These include the following:

- The police computer database (COPS) was modified to support the introduction of the Act;
- In 2001, standard data queries were developed allowing easy access to diversionary data at local, regional and State levels; and

- Operational Crime Reviews were used to monitor the performance of Local Area Commands in relation to diversion of children from court.

Ongoing Promotion

Various promotional strategies have been adopted to support the introduction and implementation of the Act. These include Multiple Police Service Weekly (internal publication) articles, articles in Police News (Police Association magazine), segments on Police TV (internal police television broadcast), the creation of an internal police training video, development and issuing of 10,000 notebook cards that explain the key provisions of the Act, distribution of a flow-chart outlining the key decisions under the Act, the development of brochures, inclusion of a module on the Act in the Crime Prevention Workshop manual, and various articles in an array of external publications.

Under-Representation of ATSI Children in Diversionary Procedures

To help increase the diversion rates for ATSI children, the NSW Police has undertaken a number of initiatives. These include the following:

- A small research project to investigate the barriers to diversion for ATSI children;
- The development of a protocol for respected ATSI community members to issue or assist in issuing police cautions; and
- The development in Brewarrina of a strategy involving police and the Western Aboriginal Legal Service working together to improve ATSI children's access to legal advice.

3.2 Youth Justice Conferencing Directorate

In 1997 the YJCD was established as an independent unit within the DJJ. The first task of the YJCD was to undertake the remainder of the key tasks associated with the implementation of Part 5 of the Act in collaboration with other stakeholders. These key tasks included:

- Recruiting and training conference administrators and clerical officers;
- Recruiting, training and accrediting conference convenors;
- Producing brochures on youth justice conferencing and the Act;
- Promoting the Act and youth justice conferencing to the community; and
- Drafting the YJC/Police Protocols Manual, the Youth Justice Conferencing Policy and Procedures Manual, the Conference Convenors Training Manual, the Youth Justice Conferencing Renewal of Current Competencies Policy and Procedure Manual, the YJC Strategic Plan, and the Specialist Youth Officers Training Manual, as well as local protocols with specialist Children's Courts and Local Courts that sit as Children's Courts in rural and regional areas.

By late 1997, five full time staff had been recruited for the YJCD. The YJCD is responsible for the co-ordination and efficient operation of youth justice conferencing under the Act. The work of the YJCD also includes:

- Delivering joint training and information sessions on the Act and youth justice conferencing for lawyers, magistrates and community groups, most usually in collaboration with staff of the Attorney General's Department, Children's Legal Service of the Legal Aid Commission, and Judicial Commission;

- Organising ongoing refresher training for convenors in collaboration with Transformative Justice Australia and conference administrators;
- Hosting quarterly state wide meetings of conference administrators;
- Participating in local convenor training and information sessions for lawyers, magistrates and community groups organised by conference administrators; and
- Providing administrative support for the YJAC.

Conference administrators are recruited from a variety of backgrounds and have legislative and administrative responsibilities under Part 5 of the Act related to receiving, processing and following up referrals to youth justice conferences. Administrators are based in DJJ offices in 7 Sydney metropolitan areas, and in Lismore, Coffs Harbour, Kempsey, Armidale, Newcastle, Wollongong, Queanbeyan, Wagga Wagga, Orange and Dubbo. Their geographical areas of responsibility are patterned on the areas covered by the NSW Police Local Area Commands. Conference administrators work locally with a number of YLOs.

Conference administrators are responsible for the selection, training, and supervision and monitoring of conference convenors. Conference convenors are individuals who live and work in and generally are representative of the population mix of the local communities in which youth justice conferences are held. Since early 1998, over 700 people, about 10% of whom are Aboriginal, have been trained as conference convenors. Administrators in areas with significant ethnic populations have recruited and trained convenors from the major ethnic communities. There are now 400 active convenors.

3.3 The Director of Public Prosecutions

The DPP plays a crucial role under the Act. Where a SYO refers a matter to a conference administrator for a youth justice conference and the administrator and SYO do not agree that the referral meets the criteria, the administrator can refer the matter to the DPP. The DPP then acts as an ‘umpire’ and determines whether the matter should be dealt with by giving a caution, by holding a conference or by commencing proceedings. This is an important check on police and conference administrators’ decision making powers.

3.4 The Children’s Court

The Children’s Court is also required by the Act to play an important role as a final check on police decisions. The Court is empowered to administer a caution under the Act (s31) and can also refer a child to an administrator for a youth justice conference (s40).

Prior to the proclamation of the Act, members of the working party from the NSW Attorney General’s Department gave presentations on the Act at all magistrates’ conferences held in the State. In October 2000, the Senior Children’s Magistrate issued a Practice Direction in relation to the Act - *Practice Direction 17: Practice Direction for the Young Offenders Act 1997*.

3.5 The Legal Aid Hotline for Under 18s

The Legal Aid Hotline for Under 18s (the Hotline) was set up in October 1998 in response to the introduction of the Act. The objective of the Hotline is to provide children with direct access to a children’s criminal law solicitor to obtain advice on their options under the Act. Children who call the Hotline are able to obtain advice on:

- Whether to make an admission;
- Whether to accept a caution or a conference;
- Cautioning and conferencing processes; and
- Court processes.

The Hotline is also a general source of advice for children who are ‘in trouble with police’. The service is marketed through a range of Legal Aid publications including the ‘Get Street Smart’ booklet.

The Hotline received 13,476 calls from 1 July 2000 to 30 June 2001, averaging over 1,000 calls per month. The demand on the service has increased by approximately 5,000 calls each financial year.

Detailed Legal Aid Hotline statistics are not yet available for the 2001/2002 financial year. However, Legal Aid advises that since the expansion of the Hotline in March 2002 an average of 1,300 calls have been received each month.

The Hotline originally operated from 9.00 am to midnight, Monday to Friday and from noon to midnight on weekends and public holidays. Since 9 March 2002, the Hotline has been available 24 hours on weekends and public holidays. This has dramatically increased the availability of legal advice for young people in police custody.

3.6 The Youth Justice Advisory Committee

The YJAC, established under section 70 of the Act, monitors and provides advice to the Attorney General on the Act’s operation.

YJAC consists of representatives from such agencies as the NSW Attorney General’s Department, NSW Police, DJJ, Legal Aid Commission, Office of Children and Young People, Department of Aboriginal Affairs and AJAC. The Senior Children’s Magistrate and a representative of the interest of victims are also members of YJAC.

4. OPERATION OF THE ACT

4.1 Diversion under the Act

The Act establishes a scheme that provides an alternative process to court proceedings for dealing with juveniles who commit certain offences through the use of warnings, cautions and youth justice conferences. The Act recognises that:

- Underlying social factors contribute to juvenile offending;
- Children require different treatment by the justice system to adults;
- Children should generally only be imprisoned as a measure of last resort; and
- Children who commit offences should bear responsibility for their actions, but require guidance and assistance because of their state of dependency and immaturity.

Under the Act, a child is entitled to be dealt with by way of a warning, caution or youth justice conference if he or she meets the relevant criteria in the Act. For example, the offence must be one that is covered by the Act (very serious matters such as murder, manslaughter, sexual offences, drug trafficking and offences resulting in the death of a person can only be dealt with by a court) and in the case of cautions and conferences, the young offender must admit the offence and consent to being cautioned or conferenced.

Warnings

A warning is given to a young offender by the investigating official. Warnings are recorded on the COPS. Warnings provide an efficient, immediate and direct response to trivial non-violent offences committed by young offenders. The use of warnings recognises that many young people who commit trivial offences do not go on to commit further offences.

Cautions

A caution is given to a young offender by a police officer at a police station. The young offender is accompanied by his or her parent(s) or another adult chosen by the young offender and must face what he/she has done. Being given a caution is considered a serious intervention. Cautions can take up to an hour to administer and are recorded on COPS. The person giving a caution may request that the young offender provide a written apology to any victim of the offence. Cautions may also be given by a court.

Youth justice conferencing

A youth justice conference is designed to promote acceptance by the young offender of responsibility for his or her own behaviour; strengthen the young offender's family; provide the young offender with developmental and support services to enable him or her to overcome their offending behaviour; and enhance the rights and place of victims in the juvenile justice process.

A conference is facilitated by a convenor and brings together the young offender and his or her family, the victim(s) and his or her support person(s), a SYO from the NSW Police, and other people such as an interpreter, social worker or health worker, if appropriate. Conference participants talk about the offence committed; the impact on the victim(s), young offender's family and community; and what action can be taken to put right the wrong that has been done.

Conference participants work towards an outcome plan for the young offender to make amends. An outcome plan may include the young offender making an apology to the victim(s), making reparation to the victim(s) or community, participating in an appropriate program, or other actions aimed at reintegrating the young offender into the community.

The implementation and completion of an outcome plan is closely monitored. If an outcome plan is not satisfactorily completed, the young offender may still face prosecution through the court.

4.2 Data on the operation of the Act⁷

Statewide Diversion

The following data shows the percentage of children diverted from court in each calendar year since the Act commenced.

Year	Diversion	Court	% Diversion
1998	7,645	17,729	30.13
1999	11,269	16,858	40.06
2000	14,186	13,882	50.54
2001	15,277	13,042	53.86

Statewide Diversion 1998-2001⁸

The rate of diversion has increased each year, reaching 53.86% in 2001. Prior to the introduction of the Act, a cautioning scheme operated under the *Commissioner's Instructions 75.04*. The literature suggests that the greatest level of diversion achieved in NSW under this scheme was 25%,⁹ with the normal level fluctuating between 6% and 13%.¹⁰ Consequently, the rate of diversion achieved in NSW since the introduction of the Act compares very favourably with previous diversionary statistics in NSW.

Diversionary Interventions by Calendar Year

⁷ The data in this section of the report has been sourced from several agencies (such as the NSW Police, BOCSAR, the NSW Department of Juvenile Justice and the Children's Court). Due to differences in counting procedures between the agencies, care should be exercised in interpreting the information provided. Nevertheless, there are clear benefits in drawing information of this nature together and observing the emerging trends.

⁸ The Act commenced on 6 April 1998. As such, diversion is predictably lower in the first year, as there were no diversions recorded for January, February and March 1998. This data has been extracted from the *Enterprise Data Warehouse* of the NSW Police.

⁹ Cunneen, C. (1988) 'An Evaluation of the Juvenile Cautioning System in New South Wales', in *Changes in Direction of Juvenile Justice*, Proceedings of the Institute of Criminology, No. 75, Sydney University Law School, Sydney, p.25.

¹⁰ Blagg, H. and Wilkie, M. (1995) *Young People and Police Powers*, The Australian Youth Foundation, Sydney, p.56; Boss, P., Edwards, S. and Pitman, S. (1995) *Profile of Young Australians: Facts, Figures and Issues*. Churchill Livingstone, p.154.

The following data was provided by the BOCSAR and NSW Police and shows the number of warnings, cautions and conferences for each year between 1998 - 2001.¹¹

Intervention	1998	1999	2000	2001
Warning	2,537	8,272	13,393	20,265
Caution	5,616	8,542	9,097	9,465
Youth Justice Conference	508	1,339	1,248	1,148

Diversionary Interventions by Calendar Year

The data above shows increases across the three forms of diversion since the introduction of the Act (6 April 1998). Warnings have increased by almost 18,000 since the first year of the Act's operation.

Impact of the Act on the Children's Court

While it is clear that the diversionary options under the Act are being used, it is important to also confirm whether there has been a reduction in Children's Court appearances. Increases in the use of diversionary options without a reduction in Children's Court appearances would simply demonstrate a net increase in the number of children formally dealt with by police. Such an occurrence (sometimes referred to as 'net-widening'), would suggest that the implementation of the Act had been unsuccessful in establishing a scheme that provides an alternative process to court proceedings, and rather had introduced a scheme additional to court proceedings.

The following data shows the number of matters finalised in the Children's Court per year.¹²

Year	No. of Matters	Year	No. of Matters
1991-92	13,753	1996-97	16,113
1992-93	12,537	1997-98	15,672
1993-94	13,608	1998-99	13,672
1994-95	14,269	1999-2000	11,436
1995-96	14,759	2000-01	9,969

Children's Court Finalised Matters

There were 15,672 finalised Children's Court matters in 1997-98, compared with 9,969 in 2000-2001. This represents approximately a one-third reduction in the total number of finalised Children's Court matters in the four years since the Act has been introduced.

Repeat Cautions

¹¹ The figures for 1998 were taken from the BOCSAR report, *NSW Recorded Crime Statistics 2000*. The figures for 1999, 2000 and 2001 were taken from BOCSAR's report *NSW Recorded Crime Statistics 2001*.

¹² The data is from the Children's Court Information System.

The following data was provided by the NSW Police on the number of cautions each young person was issued during the period 1 January 1999 to 31 December 2001.

Number of Cautions	Number of Juveniles	Percent	Cumulative Percent
One	19,053	83.11	83.11
Two	2925	12.76	95.87
Three	705	3.08	98.95
Four	177	0.77	99.72
Five	53	0.23	99.95
Six	9	0.04	99.99
Seven	2	0.01	100
TOTAL	22,924		

Repeat Cautions

The data above shows that 95.87% of children in the three-year period did not receive more than two cautions. This is not to say that they did not have further police interventions, but it suggests that only a very small percentage of children receive more than two cautions.¹³

¹³ The NSW Police advise that care should be exercised when interpreting the data for the multiple caution recipients, because errors were revealed in the data which inflate the number of children who received multiple cautions. Consequently, it is likely that the actual number of children who received multiple cautions was less than indicated, For example, the actual number of children who received four cautions is probably less than 177 for the three-year period.

5. PREVIOUS EVALUATIONS OF THE ACT

5.1 The Hennessy Report (1999)

During 1999, the YJAC became concerned that, after 15 months of the operation of the Young Offenders Act, fewer matters were being diverted from courts than anticipated and that the rate of diversion for ATSI young people appeared to be considerably lower than the rate for the remainder of the youth population.

YJAC commissioned Ms Nancy Hennessy, a member of the Administrative Decisions Tribunal, to conduct a review of the first 12 months of the Act's operation and to investigate the provisions which relate to "gatekeepers" under the Act. "Gatekeeper" is the collective term for those people who have the power to make decisions under the Act, within statutory limits, as to whether a young offender should be dealt with by way of a warning, caution, youth justice conference or court proceedings. Gatekeepers include the police, specialist youth officers, the DPP and magistrates.

Ms Hennessy's report, entitled *Review of Gatekeeping Role in Young Offenders Act 1997 (NSW)*, was the outcome of a three month study. According to the report, in NSW during 1998/99, the total diversion rate (ie. young offenders dealt with by way of a caution or conference) was approximately 37%. While it was largely viewed as encouraging that over one third of young offenders were not facing court proceedings, the diversion rate was still not at the level hoped for by YJAC. Nearly 63% of matters were still being dealt with by courts (as opposed to 46% in South Australia).

Diversion rates for ATSI young people were even lower - 24% compared with 37% for all offenders. While conference referral rates were only slightly lower for Aboriginal young people than for the total population, ATSI young people were dealt with by a court in a much greater percentage of cases (76% as opposed to 63%).

The report identified nine barriers to effective compliance with the provisions of the Act. Eight barriers related to police performance, while one related to magistrates. Responses to the report were formulated by the NSW Police and the NSW Attorney General's Department, and a number of initiatives were subsequently implemented. These responses include the development of protocols and training programs.

Following the release of the Hennessy Report, YJAC recommended legislative amendments to improve diversion rates, particularly for ATSI children. The proposed amendments aim to firmly anchor in the objects of the Act and the principles of the diversionary scheme the intention that the Act should be used as a means to address the over representation of ATSI children in the juvenile justice system. Specifically, it was recommended that the Act be amended to give effect to the following proposals:

- Include as an object of the Act the aim of addressing the over representation of ATSI children in the juvenile justice system through the use of warnings, cautions and conferences;
- Include as a principle of the diversionary scheme the principle that the over representation of ATSI children in the juvenile justice system can be addressed through the use of warnings, cautions and conferences;

- Include as a principle of conferencing the principle that participation in a conference can be the most effective way to address both the reasons for the offending behaviour and the impact of the offence on the offender, the victim and the community;
- Remove the number of any offences committed by the child as a matter for consideration by an investigating official, the DPP or the court when determining the entitlement of a child to be dealt with by a caution or conference; and
- Provide that a conference administrator who is consulting a SYO as to whether a matter should be dealt with by holding a conference should consider the same range of matters which are to be considered by an investigating official, the DPP or the court when determining the entitlement of a child to be dealt with by a caution or conference.

The legislative changes recommended by YJAC are being considered as part of the current review of the Act.

5.2 Report by the Bureau of Crime Statistics and Research (2000)

In 2000, the BOCSAR released a report entitled *An Evaluation of the NSW Youth Justice Conferencing Scheme*.

One aspect of the evaluation included determining whether specific statutory requirements had been met. These requirements relate to conference attendees and conferencing time frames. A larger component of the study involved measuring conference participants' satisfaction with both the conferencing process and the outcome plans developed at conferences. This was achieved by conducting a State-wide survey of three types of conference participants - victims, offenders and support persons for the offender.

To evaluate the scheme, the Bureau surveyed a total of 969 conference participants; including victims, offenders and support persons of offenders (usually the offender's parents).

Most of the victims, offenders and support persons who participated in the survey were satisfied with their conference. Some of the key findings include the following:

- At least 87% were either 'quite satisfied' or 'very satisfied' with the arrangements made for them to get to the conference;
- At least 92% stated that they understood what was going on in the conference;
- At least 95% believed that the conference was either 'somewhat fair' or 'very fair' to the offender;
- At least 91% believed that the conference was either 'somewhat fair' or 'very fair' to the victim;
- At least 92% perceived that they had been treated with respect during the conference;
- At least 91% felt that they had had the opportunity to express their views in the conference;
- At least 89% felt that the conference had taken account of what they had said in deciding what should be done;
- At least 78% perceived that the outcome of the conference was 'fair' for the offender;
- At least 89% perceived that the outcome plan was either 'somewhat fair' or 'very fair' for the victim; and,
- At least 79% were satisfied with the way their case had been handled by the justice system.

Most of the conferences included in the survey observed specific statutory objectives and guiding principles of the conferencing scheme. For example, it was reported that, generally, offenders:

- Were informed of their right to obtain legal advice and how to obtain such advice;
- Accepted responsibility for their offence;
- Felt that the offence they had committed was wrong;
- Understood what it felt like for those affected by their actions; and
- Understood the harm they had caused to the victim.

The data revealed that the majority of the conferences held over a period of 17 months successfully achieved the legislation's intention of including victims and the offender's immediate family in conferences.

However, only 8% of these conferences met the statutory time frame (21 days) within which conferences are to be held. It was found that 60% of conferences were held within 42 days from the date of the conference referral and within 21 days of the offender's written notification of the conference.

The report comments that the longer time frames are likely due to the time and effort required to accomplish the numerous administrative tasks associated with organising conferences. These tasks seem to occupy more time than the legislation allows. Convenors appear to have given a higher priority to fully completing the pre-conference tasks, rather than strictly adhering to the statutory time frames and perhaps compromising the quality of the pre-conference preparation.

The report provides a strong endorsement of the use of alternatives to court proceedings for dealing with juvenile offenders. It confirms that both young offenders and victims experience high levels of satisfaction with the conferencing process. The report also confirms that offenders accepted responsibility for their offences, felt that the offence they had committed was wrong, understood what it felt like for those affected by their actions, and understood the harm they had caused to the victim.

The report is evidence of the success of conferencing under the Act in providing a more appropriate framework within which to address and make restitution for the harm done by young offenders. These responses recognise that, in some circumstances, alternative programs may be more effective in ensuring young people do not again engage in criminal activity.

5.3 The current NSW Law Reform Commission reference

In April 1995, the then NSW Attorney General, the Hon J W Shaw QC, made a reference to the NSW Law Reform Commission in the following terms:

Terms of reference

To inquire into and report on the laws relating to sentencing in New South Wales with particular reference to:

- (i) The formulation of principles and guidelines for sentencing;*
- (ii) The rationalisation and consolidation of current sentencing provisions;*

- (iii) *The adequacy and use of existing non-custodial sentencing options with particular reference to home detention and periodic detention;*
- (iv) *The adequacy of existing procedures for the release of prisoners by the Offenders Review Board and the Serious Offenders Review Council and the benefits that might accrue from the review of the decisions of the Offenders Review Board and the Serious Offenders Review Council by judicial officers; and*
- (v) *Any related matter.*

In undertaking this reference, the Commission should have regard to the proposals in relation to sentencing contained in the Australia Labor Party policy documents formulated in Opposition.

The Commission divided the reference it had been given into three phases:

- The first phase dealt with general principles of sentencing;¹⁴
- The second phase dealt with sentencing of Aboriginal offenders;¹⁵ and
- The Commission is currently reviewing the law of sentencing as it relates to young people, women and corporate offenders.¹⁶

The Commission plans to publish its report on sentencing issues relating to young offenders in late 2002.

¹⁴ New South Wales Law Reform Commission, *Sentencing* (Report 79, 1996).

¹⁵ New South Wales Law Reform Commission, *Sentencing: Aboriginal Offenders* (Report 96, 2000).

¹⁶ New South Wales Law Reform Commission, *Sentencing: Young Offenders* (Issues Paper 19, 2001).

6. STUDY BY THE UNIVERSITY OF NEW SOUTH WALES

6.1 Objective of the study

The School of Social Science and Policy at the UNSW is conducting a three year study into the implementation and outcomes of the Act. The study is being conducted in partnership with the DJJ and the NSW AJAC, with the full co-operation of the NSW Police.

The UNSW will complete the final report on its study in early 2003. To assist with the statutory review of the Act, the UNSW has prepared an interim report containing extensive findings regarding the implementation and outcomes of the Act.¹⁷ This chapter is based on excerpts from the interim report.

6.2 Methodology

The study by the UNSW is based on:

- Statistical analysis of system-level data from databases maintained by the NSW Police and the DJJ;
- Interviews and focus group discussions with policy officers, practitioners and other stakeholders;
- Interviews with a sample of young people, their family or support persons and victims, whose matters were dealt with by way of caution, youth justice conference or appearance at court;
- Analysis of a random sample of youth justice conference case files; and
- Analysis of policy and administrative documents.

It is important to note that not all components of the research have been completed for the purposes of the interim report.

The interim report uses the data collected to date to examine the outcomes of the diversionary scheme established by the Act, and the level of compliance with the principles, procedures and rules of the Act. The interim report also examines how the implementation of the Act could be improved and highlights a number of possible areas for reform.

While the interim report does consider the establishment of the structures and processes required to implement the Act, this issue will be more fully explored for the final report.

6.3 Key findings

The key findings of the interim report are as follows.¹⁸

¹⁷ Janet Chan, Sally Doran & Natasha Petkoska, *Reshaping Juvenile Justice: A Study of the NSW Young Offenders Act 1997 - Interim Report*, 2002.

¹⁸ The author of the UNSW study notes that there are several limitations to the study. The most significant limitation is due to low response rates from the conference and court participants and from victims in caution cases, and also due to the use of focus groups. As a result, the samples of interviewees may be biased through self-selection.

6.3.1 Implementation

A number of structures and processes have been successfully implemented following the commencement of the Act. These include:

- The establishment of the Youth Justice Conferencing Directorate in the DJJ;
- The appointment and training of conference administrators, and the ongoing recruitment and training of conference convenors;
- The establishment of conference procedures and guidelines;
- The appointment and training of YLOs and SYOs in the NSW Police;
- The establishment of caution procedures and guidelines; and
- The establishment of the Legal Aid Hotline for providing legal advice to young people under 18 years of age.

A fuller analysis of the implementation of these structures and processes will be included in the final report of the study.

6.3.2 Outcomes

Some key questions which have been explored as part of determining the outcomes of the Act include the following:

- How has the Act been received by police, magistrates, lawyers and other practitioners in the juvenile justice system?;
- How has the Act been received by the community?;
- Are participants in the various justice interventions satisfied with these processes?;
- Has the Act resulted in higher rates of diversion from the courts? Is there any evidence of net widening?;
- Has the Act been applied consistently across geographical locations?; and
- Did it result in differential treatment of young offenders from certain groups?

Outcomes are described in the interim report in terms of the following issues:

1. Impact of the system;
2. Rates of diversion;
3. Consistency in use of interventions;
4. Equity in the use of interventions;
5. Satisfaction of participants; and
6. Acceptance of the Act by practitioners and the community.

Impact of the system and rates of diversion

The UNSW study demonstrates that the introduction of the Act has led to an increase in the use of warnings and cautions in dealing with young offenders and a corresponding decline in the use of court proceedings.

Prior to the introduction of the Act, the majority of cases (84.5%) involving young offenders were dealt with in the Children's Court, with cautions being used in less than 20% of cases. Since the commencement of the Act, the number of cases dealt with by the Children's Court has fallen dramatically, with the percentage of children's criminal matters coming before the court falling to 68%, 64% and 59% during the first three years of the Act's operation.

The use of cautions has increased substantially, rising from 29% in the first year of the Act's operation to 36% in the third year. Less than 5% of cases were dealt with by youth justice conferencing in the first three years of the Act's operation.

The UNSW study has also found that the introduction of the diversionary options available under the Act has not resulted in any 'net widening'.¹⁹

Consistency in use of interventions across NSW

The UNSW study identified regional differences in the use of interventions across DJJ regions in NSW.²⁰ Discussions in interviews and focus groups indicated that stakeholders considered police willingness to use diversionary options to be dependent on their knowledge, attitude and experience in relation to the Act. Stakeholders also considered that subjective factors, such as police attitude to the Act, may also impact on the way that police exercise their discretionary powers.

Equity in the use of interventions

There was widespread agreement among the majority of stakeholders that the way in which police exercised their discretionary powers under the Act has resulted in differential treatment of ATSI young people.

This view is supported by statistical data detailed in the interim report. Compared with non-ATSI young people, ATSI young people were more likely to be taken to court (64% compared with 48% for non-ATSI young people), less likely to be cautioned (14% compared to 28% for non-ATSI young people), but equally likely to be given warnings or referred to conferences. Where an ATSI young person was a first offender, that person had about the same chance as a non-ATSI first offenders of going to court or attending a conference. ATSI first offenders were, however, less likely to receive a caution and more likely to receive a warning.

Statistical data also shows that young women were more likely to be cautioned (34% versus 24%) or given warnings (23% versus 19%) than young men, but less likely to be referred to court (41% versus 54%) or conference (3% versus 4%).

Where a young person was a first offender, the interim report found that the type of offence committed affected the type of intervention used. For example, offences against the person were much more likely to result in a court appearance (96% of first offenders with serious offences against the person were taken to court, while only 3% were referred to a conference). Warnings were used most frequently for first offenders with offences other than those against the person or theft, while cautions were used most frequently for first offenders who committed theft. The highest rate of referral to conference was among first offenders with less serious offences against the person.

Unfortunately, the interim report was unable to provide a detailed breakdown of ethnicity from the police data available.

¹⁹ In relation to the Act, net widening would be occurring if diversionary options are being used in addition to, rather than instead of, court.

²⁰ However, any comparison of interventions across regions needs to take into account the level of both crime and population size.

Satisfaction of participants

Surveys conducted as part of the UNSW study reveal that the majority of caution and conference participants were satisfied with the way their case was dealt with.

Some of the key findings of the surveys are:

- The majority of young people (85%), family/support persons (80%) and victims (72%) agreed that the outcome plan from their conference was fair for the victim;
- The overwhelming majority of young people (97%) and their family/support persons (91%) who attended a caution thought that the caution was fair to the young person in relation to the offence committed. A similar proportion of young people (91%) and of family/support persons (97%) felt the same in relation to the conference they attended; and
- 64% of victims who attended conferences agreed that they were satisfied with the way in which the case was dealt with (28% strongly agreed, while 36 % agreed).

The use of cautions and conferences was regarded by practitioners participating in focus groups as more relevant and responsive to the young person's individual circumstances than the court system. Some practitioners believed that the Act has resulted in a good outcome for victims, as victims are never represented in the Children's Court and often feel neglected by the court system. The interim report also highlights that there was a general consensus among lawyers, policy makers and Aboriginal elders in interviews and focus group studies that the outcome plans reached in conferences were often more onerous than sentences imposed by the court.

The survey of participants also provides an insight into the perceived impact of cautions and conferences. The majority of young people (95%) and family/support persons (87%) agreed that after a caution, the young person had a proper understanding of the harm caused by their actions. Nearly all family/support persons (94%) who attended a caution thought that the caution made the young person face up to what they had done. In relation to conferences, all young people and the majority of victims (66%) and family/support persons (75%) agreed that after the conference, the young person had a proper understanding of the harm caused by their actions.

A very high proportion of young people agreed that what happened in the caution (90%) or the conference (91%) encouraged them to obey the law in the future.

Acceptance of the Act

The UNSW study found a general acceptance of the Act among practitioners, although concerns were raised that private lawyers were often not very knowledgeable about the Act. Practitioners also generally believed that there was variation among magistrates in terms of their acceptance, and/or application, of the Act.

Stakeholders and practitioners also believed that police acceptance of the Act has improved over the years, although there was still some resistance. Police who have a good understanding of the Act, and those who have attended a youth justice conference, were considered to be more likely to have a positive attitude towards the Act. The level of acceptance of the Act by police was also perceived to be influenced by the level of acceptance by the community, particularly in small rural towns where police can face

constant criticism if they embrace the perceived ‘soft options’ available under the Act for young people.

The consensus among practitioners was that community attitudes toward juvenile justice have not improved since the commencement of the Act. The public still embrace a punitive attitude towards juvenile justice, and the general perception that the Act is a ‘soft option’ has served to shift community attitudes towards juvenile justice in a negative direction. Public misconceptions about diversionary programs and ignorance about the benefits of restorative justice were seen to be partly the result of negative media attention.

6.3.3 Compliance with the principles, procedures and rules of the Act

A key part of the UNSW study involved examining the extent to which principles, procedures and rules specified under the Act are complied with in the day-to-day operation of the Act.

Types of offences

An analysis of the profile of offences dealt with under the Act suggests that, generally, the sanctions as they relate to offence-type are being administered within the spirit of the Act. However, this is a preliminary finding and a more detailed analysis will be conducted for the final report.

Prior offences

A prior offence is one of the matters to be taken into consideration when deciding whether a matter should be dealt with by way of caution, or referred for a conference. However, a number of sections of the Act provide that a young person is not ‘precluded’ from being given a warning or a caution, or being dealt with by a conference, ‘merely because the child has previously committed offences or been dealt with under this Act’ (sections 14(3), 20(6) and 37(5)).

Key findings from an analysis of prior records of young offenders dealt with under the Act indicate that:

- 69% of young people who attended a conference did not have a prior court appearance (17% had one prior court appearance, 7% had two prior court appearances, and 7% had three or more prior court appearances);
- 90% of young people who were referred to conference had never been conferenced before (9% had one previous conference, and 1% had two or three prior conferences); and
- Less than 2% of young people who were conferenced had one or more previous court appearances resulting in a control order.

Right to legal advice

The Act required the investigating officer (section 22(b) for cautions) or the SYO (section 39(b) for conferences) to explain to the child that he/she is entitled to obtain legal advice and where that legal advice may be obtained.

A survey of young people dealt with under the Act found that 54% of young people who attended a caution and 78% of those who attended a conference said they were told that

they could speak to a lawyer. Among the young people who were told of this right, 26 % in the caution sample and 9% in the conference sample actually spoke to a lawyer. In the majority of situations, legal advice was given over the telephone.

Involvement of parents and victims

A guiding principle of the Act is that ‘parents are to be recognised and included in justice processes involving children’ and ‘victims are entitled to receive information about their potential involvement in, and the progress of, action taken under this Act’ (section 7).

An analysis of data from the DJJ indicates that parents and other family members are participating in the conferencing process. Immediate family members of the young person were present in 85% of conferences, while 17% of conferences were attended by the extended family and 38% by other supporters.

A significant proportion of victims are also participating in conferences. However, the proportion of conferences attended by victims has declined from 72% in Year 1²¹ to 66% in Year 3 of the operation of the Act.²²

Compliance with procedures

The UNSW study found that there was a generally high level of compliance with the procedures and rules of the Act. Some key findings include:

- In the caution sample, a parent, step-parent or guardian was present at the police interview in about two-thirds of the cases (64%) and another adult in a further 13% of cases. Two young people reported that no one else was present at the caution;
- In the conferencing sample, a parent, step-parent or guardian was present at the police interview in just over half the cases (55%) and another adult in a further 23% of cases.
- All of the young people who attended a conference said they gave their consent;
- All of the young people who attended a conference, and 69% of those who were cautioned, reported that they understood that they could choose at any time not to go ahead with the caution or conference;
- All of the young people who attended a conference, and 62% of those who were cautioned, agreed that ‘in the end’ it was their choice to go to the conference or caution;
- The majority of conference participants (78% of young people, 89% of family/support persons and 89% of victims) were told by the convenor what would happen at the conference. A small minority reported that they were told ‘nothing at all’; and
- Only a fraction of young people (39%) and family/support persons (32%) reported having been told what was expected of them at the caution, while quite a high proportion (36% of young people and 42% of family/support persons) said they were told ‘nothing at all’.

Compliance with conference objectives

One of the objectives of the Act is to establish a youth justice conferencing system that enables ‘a community based negotiated response to offences involving all the affected parties’, emphasises restitution and the acceptance of responsibility by the offender, and meets the needs of victims and offenders.

²¹ Year 1 is the first year of operation of the Act, namely 6 April 1998 - 5 April 1999.

²² Year 3 is the third year of operation of the Act, namely 6 April 2000 - 5 April 2001.

The UNSW study concludes that the youth justice conferencing scheme established under the Act has adopted a community-based approach that goes further than most traditional juvenile justice initiatives. Conference convenors are recruited from members of the local communities and conferences are required to involve ‘non-experts’ in the determination of outcome plans (that is, the young people, their family and support persons, the victims and their support persons).

In order to have meaningful involvement in the conference and the negotiation of an outcome plan, participants would need to have some understanding of the process. Surveys of participants show that 96% of young people, 92% of their family/support persons and 97% of victims felt they ‘understood everything’, while the rest said they ‘understood some of it.’

A high proportion of survey participants indicated that they felt they had a chance to say what they wanted at the conference (78% of young people, 67% of family/support persons and 91% of victims). The vast majority of victims (85%) felt they had ‘a lot’ of opportunity to explain the loss and harm that resulted from the offence. 83% of young people, 72% of family/support persons and 88% of victims thought that they had “some” or “a lot” of say over the outcome plan developed at the conference. 56% of victims thought they had “a lot” of say over the outcome plan.

As part of their outcome plans, 75% of young people were to apologise to the victim(s); 11% were to work for the victim; 28% were to work for the community; 18% were to pay financial reparation; and 43% were to perform other tasks. For victims, the most important thing to them was for the young person to “say sorry” (74%), followed by “a chance to meet the young person” (63%), the young person understanding the impact of their actions (51%), and “the young person making amends for what they did” (40%).

Compliance with time limits

The bulk of conferences (81% in Year 1 and 93% in Year 3 of the operation of the Act) were held later than the required 21 days after the referral.

6.4 Possible areas for reforms

The interim report also examines what obstacles and difficulties were encountered in the implementation of the Act and suggests some possible areas for reform.

Difficulties in implementation

One of the key difficulties with the operation of the Act identified by a large number of focus group participants is the practice by lawyers of advising young offenders not to make an admission to the offence. As the Act requires the young person to admit the offence in order to be dealt with by a caution or conference, this practice leaves police with no option but to summons the young person to go to court. However, when the young person appears in court, their legal adviser will often encourage them to make admissions.

Legal practitioners voiced concern about encouraging young people to make admissions to offences, particularly if diversion does not eventuate. In their view, it would be unprofessional to advise a client to make an admission to an offence without being able to look closely at the young person’s case. Other lawyers commented that giving young

offenders the advice of ‘say nothing’ over the telephone is the only reasonable advice they can give under the circumstances for a number of reasons. Firstly, the young person is often advised over the telephone in the presence of police, which makes it difficult for the child to open up to the lawyer. Secondly, the advice to say nothing is based on the fact that the young person should not admit anything unless they know the particulars of the charge.

Further tension is created because the lawyers often try to get information from police as to whether or not the young person is going to be offered a caution or a conference and the police will not always be prepared to say.

Some young people are advised not to make a statement because they are under 14 years of age and may have the benefit of *doli incapax*.

If a young person goes to court, lawyers are given a written facts sheet which states precisely how they were arrested and what they are alleged to have done. In these circumstances, lawyers do not have to trust what the police say to them over the phone, and are in a better position to advise the young person how to plead. A lack of trust of police is particularly pronounced in ATSI communities.

Another key problem relates to using the Act as a bargaining tool. Some youth workers, lawyers and conference convenors believed that police were putting pressure on the young person to plead guilty in order to be given the option of going to a conference. Young offenders could be admitting offences which they had not committed, or to which they had a defence in order to avoid involvement in the criminal justice process.

Stakeholders also commented that the police are often not using their discretion to caution or conference as much as they could.

Other problems identified in the interim report include:

- Insufficient training for those involved in the implementation of the Act, such as YLOs, conference convenors and conference administrators;
- Insufficient resources for YLOs, conference administrators and conference convenors;
- Insufficient accessing of legal advice by young people;
- The failure of police to record all warnings;
- The tendency for outcome plans to often be harsher or more onerous than penalties imposed by the court; and
- The lack of support services (educational, drug and alcohol, counseling and general youth services), particularly in country regions.

Possible Areas of Reform

Scope of offences

There was agreement among stakeholders that the scope of offences covered under section 8 of the Act should be expanded to include more serious offences. Many believed that the individual circumstances, rather than the label of the crime, should determine which matters are suitable for conference or cautioning. They also considered that more serious offences, such as some violence matters and some driving matters, would benefit from conferencing, particularly where it serves the purpose of giving the offender some sort of insight into what they have done and the fact that it is a human being whom they have affected.

Time frames

There was a strong consensus among conference convenors that the time frame stipulated in the legislation was overly restrictive. In practice, the process of organising a conference took longer than the legislative time frame.

Cooling off period

It was widely agreed by conference convenors and some YLOs that the 10 day ‘cooling off’ period from when the young offender received the notice of the conference to the actual conference date was not useful. Conference convenors generally believe that victims and the young offenders wish to attend a conference as soon as possible after the offence. They also felt that there is ample time between the offence and the conference for young people to obtain legal advice and change their mind about attending the conference without the additional 10 day cooling off period.

Delay between date of offence and conference

The Act does not currently stipulate a maximum time period after the offence within which the conference must be held. The UNSW study shows that the mean number of days from offence to conference has risen steadily from 102.2 days to 129.9 days since the introduction of the Act.

Excessively long delays between the date of the offence and the conference was viewed by stakeholders as problematic for a number of reasons. If too much time elapses, it may trivialise the conference and make it meaningless, such as where the young person has reoffended and has a court date pending. Delays may also result in emotions changing. The victim and offender may have dealt with the emotions associated with the offence by the time the conference is held, and the conference may be detrimental to them. Similarly people may move away from communities with time, making it more difficult to locate the participants.

One recommendation made was to amend the Act to stipulate a three month time limit between the date of offence and the conference.

Multiple conferences

Section 37(5) of the Act provides that a child is not precluded from being dealt with by a conference merely because the child has previously committed an offence and been dealt with under the Act in relation to other matters. The Act therefore allows conferences for repeat offenders. However, the extent to which repeat offenders are referred to conferences is restricted by the requirement that the young person’s history of prior cautions and conference is a factor to be considered when deciding to refer a matter for conferencing.

There was considerable discussion and debate amongst YLOs, conference convenors, youth workers, general duties police officers and senior police regarding the effectiveness of conferencing for repeat offenders and the advantages/disadvantages of amending the Act to set a limit on the number of conferences that a young person can attend. While some stakeholders argued that it may take several conferences to make an impact on a young person, others felt conferences were not useful for repeat offenders.

Recommendations ranged from setting a limit on the number of conferences that can be held for any one young person, to incorporating a requirement that repeat offenders be assessed and referred for counseling, guidance and rehabilitation.

The requirement that a young person's prior offending history be considered in deciding whether to caution the young person or refer the young person for a conference was considered to have an adverse impact on ATSI young people. ATSI young people have longer criminal histories than non ATSI young people, especially for minor matters, such as offensive language. The existence of these lengthy criminal histories, albeit for minor offences, often means that ATSI young people are being excluded from conferences. It was suggested that the seriousness of prior offences, and not just the number of prior offences, needs to be considered when deciding to refer a matter for conferencing. This is already a requirement under the Act (section 37(3)(d) requires a SYO to consider the number and *nature* of any offences committed by the child, and the number of times the child has been dealt with under the Act, when considering whether it is appropriate to deal with a matter by conference).

The Act also currently allows the use of multiple cautions for repeat offenders. In general, there was agreement that the Act should more explicitly deal with recidivism by placing an upper limit on the number of cautions that can be issued.

Conferences with no victim or when no victim is present

The Act provides that a young person can attend a youth justice conference for a relevant offence even though there is no victim or the victim is not present at the conference.

There was strong agreement amongst conference convenors, youth workers and YLOs that conferences were not useful nor effective in these circumstances. It was suggested that the objective of restitution by the offender is defeated if the victim is not present. The absence of the victim also narrows the options for the outcome plan, as the decision-making regarding the outcome plan is in the hands of the young offender and their family.

Dealing with young people with a mental illness

The absence of clear legislative guidance on how to deal with young people with mental illness was regarded as a significant shortcoming of the legislation. The lack of guidance had, on occasion, caused difficulties with the conferencing process. These problems were compounded by the limited availability of resources/support services for adolescents with mental health issues. It was recommended that the legislation be amended to provide more direction on this issue.

Confidentiality

Although the Act currently provides that the young person's identity must remain confidential, there was concern by youth workers that the confidentiality of the young person was not being maintained. As more people in the local community become involved in conferencing, details become common knowledge in the community. It was also suggested that police may be disclosing details of the young offender to the victim to allow the victim to commence civil proceedings.

The lack of a provision to protect the anonymity of the victim was also raised as an issue.

Absence of role for the Department of Community Services

There was a strong consensus amongst youth workers, YLOs and conference convenors that the Act provides a relatively enclosed system that does not connect with welfare based agencies such as the Department of Community Services (DoCS). As young offenders commonly face a range of issues that are welfare based, the lack of involvement by DoCS was regarded as problematic. There was strong agreement that DoCs needs to be more closely involved.

7. STUDY BY THE BUREAU OF CRIME STATISTICS AND RESEARCH

7.1 Objective of the study

As part of the review of the Act, the BOCSAR commissioned a study to examine the impact of youth justice conferencing on juvenile re-offending compared to the court process.²³

7.2 Methodology

The study compared re-offending patterns for juveniles offenders who were conferenced and juvenile offenders who went to court between April 1998 and April 1999, the first year after the Act was introduced.

Two measures of re-offending were used in the study. First, the number of days to first re-appearance by a juvenile offender at court or a conference and, second, the number of re-appearances per year for a juvenile offender during a follow-up period, which ended in June 2001.

Only first time juvenile offenders were included in the study in order to aid comparison of offenders who were conferenced and offenders who went to court and to reduce the effect of prior sanctions. Between April 1998 and April 1999, 590 first time offenders were conferenced and 3,830 first time offenders had a proven court outcome.

To take into account any “selection effect” (ie. juvenile offenders who choose to go to court rather than a conference might be more likely to re-offend) the study included three groups. The first group comprised first time offenders who had a proven court outcome in the year before the Act was introduced. The second group comprised first time offenders who had a proven court outcome in the year after the Act was introduced. The third group comprised first time offenders conferenced in the year after the Act was introduced.

Data used for the study was obtained from databases maintained by the DJJ.

7.3 Key findings

The findings of the study show that conferencing can be considerably more effective than the court process in reducing juvenile re-offending and in increasing the crime-free period for those juveniles who do re-offend.

The risk of re-offending and the rate of re-appearances per year was 15-20% lower for juvenile offenders who were conferenced than for those who went to court. Of the juvenile offenders who re-offended, those who were conferenced had a greater crime-free period than those who went to court. The difference in the crime-free period between the conference and court groups increased over time.

Other key findings from the study are:

²³ *Reducing Juvenile Crime: Conferencing versus Court*, Luke, G. & Lind, B. 2002, Crime and Justice Bulletin no. 69, NSW Bureau of Crime Statistics and Research, Sydney.

- ATSI juvenile offenders who were conferenced had a lower risk of re-offending than those who went to court. However, two years following a conference, the proportion of ATSI juvenile offenders who had re-offended was higher than non-ATSI juveniles;
- There was no significant difference between the three groups of juvenile offenders included in the study in terms of their gender. About 80% of all three groups were male;
- Juvenile offenders who were conferenced were younger than those who went to court; and
- Juvenile offenders who were conferenced were more likely to be from the Western or Southern regions of NSW than those who went to court, and less likely to be from the Sydney East/Central Coast region.

The study also found that juvenile offenders referred to a conference were more likely to have committed a theft offence than those who went to court. Juvenile offenders who went to court were more likely to have committed an offence against the person than those referred to a conference.

8. OBJECTIVES OF THE ACT

8.1 Legislative statement of objectives

A legislative statement of the objectives of the Act is set out in section 3 of the Act:

3. Objects of Act

The objects of this Act are:

- (a) To establish a scheme that provides an alternative process to court proceedings for dealing with children who commit certain offences through the use of youth justice conferences, cautions and warnings, and
- (b) To establish a scheme for the purpose of providing an efficient and direct response to the commission by children of certain offences, and
- (c) To establish and use youth justice conferences to deal with alleged offenders in a way that:
 - (i) Enables a community based negotiated response to offences involving all the affected parties, and
 - (ii) Emphasises restitution by the offender and the acceptance of responsibility by the offender for his or her behaviour, and
 - (iii) Meets the needs of victims and offenders.

8.2 Submissions

Respondents to the call for public submissions on the Act generally agreed that the objectives remain valid. They strongly supported the use of an alternative process to court proceedings for dealing with young offenders, and identified a range of benefits. These include:

- Minimising the stigma attached to a court appearance;
- Greater efficiency and cost-effectiveness of diversionary options compared to the court process;
- Greater involvement of families, support people and victims;
- Avoidance of criminal record for minor criminal behaviour;
- Speedier resolution of criminal matters; and
- Greater participation of young offenders in the process, which promotes greater acceptance of and responsibility for their offending behaviour.

Respondents strongly supported youth justice conferencing as a constructive method of diverting young offenders from court. Respondents agreed that conferencing enables affected parties to be involved in negotiating a response to offences committed by young offenders, meeting the needs of victims and offenders. They also agreed that conferencing emphasised restitution by the young offender and acceptance of responsibility for his or her behaviour.

Respondents pointed to the findings in the reports published by the BOCSAR in 2000 and 2002 as evidence of the success of youth justice conferencing. The findings of these reports are detailed in chapters 3 and 6 of this report.

A number of respondents expressed concern about the relatively low rate of diversion under the Act for ATSI young people. This issue was examined in the Hennessy Report, which was published in 1999. The findings of the Hennessy Report are detailed in chapter 5 of this report.

8.3 Discussion

There continues to be a need for alternative processes to court proceedings for dealing with young offenders, which include warnings, cautions and youth justice conferencing. Evaluations of the Act to date provide a strong endorsement of the approach adopted under the Act. The objectives of the Act as stated in section 3 of the Act therefore remain valid.

Chapter 8 of this report examines whether the terms of the Act remain appropriate for achieving the stated objectives of the Act.

Concerns about the relatively low rate of diversion under the Act of ATSI young people are valid. This issue is explored in detail in chapter 8 of this report, where consideration is given to how the rate of diversion of ATSI young people may be improved.

9. TERMS OF THE ACT

9.1 Range of Offences

General expansion of offences covered by the Act

The Act currently covers "indictable offences that may be dealt with summarily under Division 3 of Part 2 of the *Criminal Procedure Act 1986* or another prescribed law" (s8). Very serious matters like murder, manslaughter, sexual offences, drug trafficking and offences resulting in the death of a person can only be dealt with by a court.

Section 8(2) of the Act lists a range of offences that are specifically excluded from the coverage of the Act. These offences include traffic offences committed by a young person who is old enough to obtain a permit for a licence, offences that have resulted in the death of a person, apprehended violence offences, and certain drug offences under the *Drug Misuse and Trafficking Act 1985*.

The *Children (Criminal Proceedings) Act 1987* is not a "prescribed law" under the Act. This has the effect of limiting the range of offences covered by the Act to those which can be dealt with summarily by the Local Court if the young person were an adult.

A number of respondents to the review submitted that the range of offences covered by the Act should be increased. In its submission, the Shopfront Youth Legal Centre (SYLC) commented that:

“Youth justice conferencing is suitable for a wide range of offences, even very serious ones. It is not a ‘soft option’” Indeed, it could be said that conferencing works best in the case of relatively serious offences because the young offender is obliged to really consider the consequences of his or her actions, in particular the harm caused to the victim. In most cases, conferencing is a more effective mechanism than court for achieving this.”

Some stakeholders, such as the Law Society of NSW (Law Society) and the SYLC, submitted that the Act should include all drug offences capable of being dealt with summarily by the Children’s Court.

The Legal Aid Commission of NSW (Legal Aid) noted in its submission that:

“Robbery and robbery in company, are offences commonly committed by children and particularly by children with no previous involvement in the juvenile justice system. We often represent children who are charged with a robbery offence who have no criminal history (under the Act or the *Children (Criminal Proceedings) Act*), attend high school regularly and live with their parents.

.....

“Many robbery type offences are suitable for conferencing given the nature of the offence and the lack of antecedents of the offenders. A conference for a child who has admitted a robbery type offence will require that child to confront the victim, usually another child. The conference process is arguably more difficult and personally demanding than receiving a bond, a community service order, a

probation order or a suspended sentence. In our experience the more serious the offence referred to conference, the more successful the conference turns out to be.”

Steal from the person and demand money with menaces are matters that are currently dealt with successfully under the Act through conferences and cautions. Legal Aid submitted that similar offences, such as robbery in company, could also be dealt with successfully under the Act.

However, while many stakeholders support an expansion in the range of offences covered by the Act, it is clear that very serious offences like murder, sexual offences, serious assaults and offences resulting in the death of a person should continue to be dealt with only by the court.

Recommendation 1

- The range of offences covered by the Act be extended to cover all offences for which the Children’s Court has jurisdiction.

Warnings for some larceny offences

Larceny involving theft from a shop is currently ineligible for a warning, as it is not a summary offence. The NSW Police submission has commented that:

“Given the generally minor nature of these offences, it would seem that a warning would be an appropriate and desirable course of action in many circumstances, particularly when the value of the property is significantly low.”

Recommendation 2

The ranges of offences for which a warning may be given be expanded to include larceny involving theft from a shop.

Penalty notice offences

The NSW Police submission commented that any offences for which children can receive penalty notice, such as traffic offences and offences related to the *Liquor Act 1982* and the *Rail Safety Act 1993*, are not currently covered by the Act. As children do not generally have the capacity to pay monetary penalties, it is arguable that it is inappropriate for children to be issued with penalty notices.

Recommendation 3

The Act be extended to cover offences for which penalty notices may be issued to children.

Apprehended Violence Orders

Section 8(2) of the Act specifically excludes breaches of apprehended violence orders (AVOs) from being dealt with under the Act.

A number of respondents to the review were of the view that it would be beneficial to victims and offenders to deal with some breaches of AVOs under the Act. These respondents felt many breaches of AVOs are trivial and could be appropriately dealt with by a conference or caution.

In its submission, the SYLC comments that “AVOs are sometimes taken out by parents against their own children as a behaviour management tool, and not out of any genuine fear of violence. Similarly, AVOs are often taken out by friends who have had a falling out with the young person.”

The Senior Children’s Magistrate submits that the Act should be amended to cover AVOs where there is no actual violence, and the victim is an adult and agrees to the referral.

Being dealt with by way of conference may assist the parties to resolve their differences and minimise the potential of a further breach. However, the police, DPP and Children’s Court, should retain a discretion to ensure that inappropriate matters are not dealt with under the Act.

A number of respondents advocated the inclusion of some AVO matters under the Act, but noted that conferencing may be an inappropriate option for many domestic violence offences, as it may compound the abuse already suffered by the victim.

While it may be appropriate for certain breaches of AVOs to be dealt with under the Act (such as the breach of a condition not to come within a certain distance of an applicant’s home/workplace), it would not be appropriate for the Act to cover breaches where actual violence has occurred. Breaches of AVOs involving actual violence would be excluded by the criteria in the Act that gatekeepers must consider when determining if and how a matter should be dealt with under the Act.

The Act should be extended to enable certain breaches of AVOs to be dealt with under the Act. This can be achieved by implementing recommendation 1 (see above).

9.2 Legal Advice

Lawyers advising clients not to make admissions of guilt or not to be diverted

A young person must admit the offence before police can consider issuing a caution or referring the young person for a conference. In its submission, the NSW Police raised concerns that some lawyers are acting “contrary to the spirit and the objects of the Act” by advising children not to be interviewed and not to admit guilt. The NSW Police has also submitted that this is one of the reasons for the lower than expected diversion rates under the Act.

However, other respondents to the review point out that it is important to remember that children have a right to be appropriately and properly informed of their legal rights. The Law Society commented that:

“In many cases, lawyers will advise young people that participating in a conference is likely to produce the most favourable outcome. However, to be eligible under the YOA [*Young Offenders Act*], the young person must admit the offence. It is unethical for a lawyer to advise a young person to admit an offence

and agree to a caution or conference if the young person is not guilty of the offence. Further, there are some situations in which the advice to the young person may be that it is not appropriate to proceed under the YOA, for example where *doli incapax* is an issue ...”

Telephone advice services

Respondents to the review, such as the NSW Police and Law Society, acknowledge the commendable work of telephone advice lines for children, such as the Hotline for Under 18s (the Hotline) operated by Legal Aid’s Children Legal Service and the Aboriginal Legal Service Custody Notification Line. However, respondents also commented that there are limitations to the provision of telephone legal advice.

The Hotline provides children with direct access to a children’s criminal law solicitor to obtain advice on options under the Act and has been operating since October 1998. In March 2002, the hours of operation for the Hotline were extended to 9:00 am to midnight on weekdays and 24 hours a day on weekends and public holidays (see also Chapter 3).²⁴ Legal Aid and the NSW Police are currently developing protocols to further improve the operation of the Hotline.

The Law Society commented in its submission that telephone advice line practitioners are often “hampered in the legal advice that they can give because they are not provided with documentation in relation to the allegations being made.....and police are often unwilling to allow sufficient time for a young person to be properly advised.”

Currently, there is no obligation on police to provide copies of COPS entries, the child’s antecedents or any other material that may assist in assessing whether a child should make an admission under the Act. In its submission, Legal Aid commented that:

“Incomplete disclosure by Police of relevant facts has meant that many children have been advised not to make admissions in matters that could have been dealt with appropriately under the Act.“

Legal Aid has commented that Children’s Legal Service solicitors are increasingly frustrated in their ability to give proper and useful advice to children in custody through the Hotline due to the lack of privacy afforded to the child by police. Legal advice is often given in circumstances where the conversation is likely to be overheard. This may intimidate the child and inhibit the child’s discussions with the solicitor. Likewise, a solicitor aware that a conversation with the child will be overheard may be less likely to give frank advice. NSW Police submit that affording the child privacy when receiving legal advice is desirable, but is often frustrated due to limited resources.

A number of respondents to the review, such as the NSW Police, believe that considerable resources need to be invested in expanding the Hotline and other telephone advice lines so that children can easily access appropriate, professional legal advice. It is noted that the NSW Government has recently committed additional resources to the Hotline as part of the NSW Government’s response to the Upper House *Cabramatta Policing Report*. This funding was used to expand the Hotline’s operation to 24 hours on weekend and public

²⁴ Originally, the Hotline operated from 9.00 am to midnight Monday to Friday and from noon to midnight on weekends and public holidays.

holidays. Further funding will be required if the Hotline's operation is to be expanded to 24 hours, 7 days a week.

Young offenders obtaining legal advice before making admissions

Section 39 of the Act currently requires that SYOs explain to a child that he or she is entitled to obtain legal advice, and where that legal advice may be obtained, before the officer refers the matter for a conference. A similar requirement is imposed by section 45 of the Act on conference convenors before a conference is held.

Some respondents to the review have expressed concerns that there is no legislative requirement that a child actually receives legal advice before an admission is made.

Legal Aid commented in its submission that given that "the Act is effectively a statutory inducement to a child to waive their right to silence, an admission by a child should not be used unless the child has first had the opportunity to obtain legal advice." The Intellectual Disability Rights Service submitted that, due to the increased vulnerability of people with intellectual disability, the "availability of legal advice is critical to adequate protection of offenders with intellectual disability in relation to admissions and consent."

"Cooling off" period

Sections 26(1) and 43 of the Act state that cautions and youth justice conferences must, "if practicable", be conducted between 10 and 21 days following the serving of the notice of caution on the child for cautions and the receipt of the conference referral by the conference administrator. This section allows an informal "cooling off" period for the young person during which he or she can seek further legal advice and assess the available options.

The NSW Police has submitted that there are practical barriers preventing the 10 day cooling off period being adhered to universally, including the seriousness of some offences.

Some respondents expressed concerns that not allowing the 10 days to pass may harm the interests of the child. They submit that releasing children under a formal cooling off period for the purpose of obtaining legal advice from a solicitor would assist the operation of the Act in many of these cases. During the cooling off period, solicitors would be able to negotiate with police for a caution or conference for an appropriate charge. Children would be able to obtain legal advice in less stressful and more private circumstances, without forgoing the opportunity to be diverted by police under the Act. Equally, junior police would have an opportunity to seek advice from SYOs about appropriate action under the Act.

In its submission, the Intellectual Disability Rights Service has noted that it is often difficult for people with intellectual disabilities to communicate effectively over the telephone and that a formal cooling off period may help address this problem.

The NSW Police oppose a formal cooling off period due to concerns over possible delays to investigations.

Victims Services believe that some victims may be concerned if young offenders are released under a cooling off period.

Although some stakeholders are strongly opposed to establishing a formal cooling off period, it is clear that some action must be taken to further improve the access of children to legal advice.

Recommendation 4

The Government consider providing additional funding to enable the Hotline for Under 18's to expand its hours of operation to 24 hours, 7 days a week.

9.3 Cautions

Persons who may attend cautions

Under section 29(3) of the Act, the person giving a caution must ensure, so far as practicable, that a person responsible for the child or an adult chosen by the child is present when the caution is given.

The NSW Police have indicated that it is generally deemed inappropriate by police to caution a child on his or her own, particularly when the child is aged between 10 and 16 years. According to the NSW Police, the “involvement of parents or guardians is regarded as an integral component of the issuing of a caution.” Consequently, the NSW Police have suggested that the Act be amended to provide that a caution can only be given if a suitable adult is present.

Legal Aid has expressed concerns that many disadvantaged children do not have parents or guardians, or may have parents or guardians that are difficult to locate. The amendment proposed by the NSW Police may therefore create a barrier to some disadvantaged children being cautioned.

The NSW Police have also submitted that section 28 of the Act be amended so that, where the child and the support person consents, other police or student police may be present for training purposes.

Recommendation 5

A person who may administer a caution under the Act may defer a caution so that a person responsible for the child, or an adult chosen by the child, may attend. The absence from a caution of an adult support person for the child will not preclude a caution from proceeding.

Recommendation 6

One student/probationary police officer (out of uniform) may observe a caution where consent is given by the child and the child's adult support person (if present).

Deferring cautions

There is currently no express power granted under the Act to allow police to defer the giving of cautions in appropriate cases. The NSW Police have submitted that such a power would be useful in situations where, for example, a child is too affected by alcohol or other drugs to effectively participate in the caution.

Recommendation 7

A person who may administer a caution under the Act may defer a caution where the child is so affected by alcohol or other drugs that she/he cannot effectively participate in the caution.

Discrepancies in requirements to disclose cautions given under the Young Offenders Act 1997 and the Children's (Criminal Proceedings) Act 1987

A number of respondents were concerned that the disclosure requirements in relation to a caution under the Act differ from those in relation to a caution under the *Children (Criminal Proceedings) Act 1987* (the *CCP Act*).

Cautions under the CCP Act

An order under section 33 of the *CCP Act* dismissing a charge and administering a caution is a "conviction" for the purposes of the *Criminal Records Act 1991* (the *Criminal Records Act*). As a result, such an order is immediately "spent" (s 8(3), *Criminal Records Act*).

Once a conviction is spent, section 12 of the *Criminal Records Act* applies and the person is not required to disclose that information. However, section 12 does not apply in relation to the exceptions set out in section 15 of the *Criminal Records Act* (as discussed below).

Cautions under the Young Offenders Act

The *Criminal Records Act* does not apply to cautions given under the *Young Offenders Act* administered by either the police or the court.

Under section 68(1) of the *Young Offenders Act*, a person is not required to disclose to any other person for any purpose information concerning a caution. However, section 68(1) does not apply in relation to the exceptions set out s.68(2)(a) of the Act (as discussed below).

Requirements to disclose cautions under the CCP Act and the Young Offenders Act

Section 15(1) of the *Criminal Records Act* and section 68(2)(a) of the *Young Offenders Act* both require a person cautioned under the respective Acts to disclose information concerning the caution in relation to employment as a judge, magistrate, justice of the peace, police officer, prison officer, teacher, teachers aide or a provider of child care services under Part 3 of the *Children (Care and Protection) Act 1987*. Similarly, section 15(2) of the *Criminal Records Act* and section 68(2)(b) of the *Young Offenders Act* both require disclosure of information concerning a caution for arson if the person applies for employment in fire fighting or fire prevention.

Furthermore, a person cautioned under the *CCP Act* would also have to disclose such information if he/she applied for employment in child-related employment within the meaning of Part 7 of the *Commission for Children and Young People Act 1998*. The *Young Offenders Act* does not have a similar disclosure requirement. Consequently, a person cautioned under the *Young Offenders Act* is offered greater protection against disclosure than a person cautioned under the *CCP Act*.

The Senior Children's Magistrate has suggested that there should be equal disclosure requirements for cautions regardless of whether they are administered under the *Young Offenders Act* or the *CCP Act*, and that the relevant legislative provisions should be

contained in the *Criminal Records Act*. This suggestion is consistent with the NSW Government's approach to employment screening to protect children.

Recommendation 8

The *Young Offenders Act* be amended so that its disclosure requirements are consistent with those under the *Criminal Records Act*.

Disclosure requirements under the Young Offenders Act

The disclosure requirements under section 68(2) of the Act (as discussed above) remain in force irrespective of the length of time that has elapsed between the offence for which the caution was issued and the lodging of the application for employment.

In addition, under sections 15(2) and 16(2) of the Act, police are obliged to retain a COPS record of a young offender's contact with both the police and courts, including the issuing of a caution under the Act. This internal record is used by police to determine the course of action to be taken in any subsequent dealings they may have with the child.

In the Australian Law Reform Commission's (ALRC) *Report No. 84*, it was observed that as most children "grow out" of crime, they should not be branded in adulthood by youthful mistakes. One submission referred to in the ALRC report noted that:

"the maintenance of a criminal record incurred as a youth stigmatises the young offender, and this stigmatisation could drive them further into criminality".²⁵

The Council of Aboriginal Legal Services ("COALS") has submitted that "the stigma attached to [a record of a caution] could exert a significant prejudicial effect against the individual in relation to employment opportunities and future prospects." COALS has suggested that this problem be addressed by limiting the length of time that police may retain such records.

There appears to be a need for education to increase awareness about disclosure requirements under the Act and consequences for employment. Young offenders cautioned or conferenced under the Act are not necessarily precluded from employment in certain areas. They may be, however, required to disclose information regarding the caution or conference when applying for certain positions. The employer will then take this information into account as part of the decision-making process.

Other consequences of a caution

The Senior Children's Magistrate noted in his submission that the status of a caution was reviewed in a recent English case²⁶. In this case, the consequences of a formal caution were listed as follows:

- It may influence the decision whether or not to prosecute if the person cautioned should offend again;
- Photographs and fingerprints may be kept for a period of three years instead of being destroyed immediately as would be the case if he were neither cautioned nor prosecuted;

²⁵ at [1941].

²⁶ *Abraham v Commissioner of Police of the Metropolis* [2001] 1 WLR 1257 at 1261.

- The caution retained on the offender’s record may be cited in court following conviction of another offence; and
- Its existence may deny the person cautioned the advantage of a good character direction in any subsequent criminal prosecution.

The Senior Children’s Magistrate has proposed that the consequences of cautions administered under NSW law be reviewed. In particular, clarification may be required of the status of arrest record material (for example, can photographs and fingerprints be kept, and if so, for how long?²⁷) where a young people has been cautioned or conferenced. The issue of whether a caution or conference may prevent the young person from raising good character in any subsequent criminal prosecution also needs to be examined.

Recommendation 9

The NSW Attorney General’s Department review, in consultation with relevant agencies, the status and consequences of cautions and conferences on children in NSW.

9.4 Conferencing

Greater attendance by police at conferences

Section 47 of the Act lists the people who may attend a conference. It has been suggested that this list should be expanded to include police officers for training purposes. This would provide an ideal opportunity to expose junior police officers to the conference process and to assist them in gaining a better understanding of the Act.

Recommendation 10

Police (out of uniform) be able to observe youth justice conferences for training purposes at the discretion of the conference convenor and with the consent of the child and victim(s).

Notification of contents of outcome plan

The Act currently makes no provision for police who do not attend the conference to be informed of the contents of an outcome plan. The NSW Police have suggested that the Act be amended to permit the investigating police involved in the matter, or the SYO who referred the matter to a conference, to be provided with this information upon request.

Recommendation 11

The specialist youth officer who referred a matter to a youth justice conference may be informed of the contents of an outcome plan, on request, and that the specialist youth officer be able to pass on this information to the investigating officers.

Dismissal of charges after successful conferencing

²⁷ The destruction provisions in *Children (Criminal Proceedings) Act 1987* s 38(1) only apply to dismissals under *Children (Criminal Proceedings) Act 1987* s 33(1)(a).

Under section 40(1) of the Act, the court may refer a matter to conferencing. If the court subsequently finds that the conference outcome plan has been satisfactorily completed, it must dismiss the charges (see section 57(2) of the Act).

The Senior Children's Magistrate has submitted that at present it is unclear whether this requirement to dismiss is a specific dismissal power under the *Young Offenders Act*, or a direction to dismiss under the *CCP Act*. In his submission, the Senior Children's Magistrate requests that this matter be clarified.

YJAC has also considered this issue and is of the view that the requirement to dismiss the charges is a specific power under the *Young Offenders Act*.

Recommendation 12

The NSW Attorney General's Department seek clarification from the Crown Solicitor on whether the requirement to dismiss charges under s.57(2) of the *Young Offenders Act* is a specific dismissal power under that Act.

Compensation for conference participants' expenses

Some respondents commented in their submissions that many victims and support people are incurring considerable expenses when they attend conferences. Such costs may include travel and accommodation expenses, economic loss, and the cost of interpreters.

In its submission, the SYLC has commented that:

“It is important for young people whose parents are unavailable or inappropriate to attend a conference, to have an adult support person present. We are of the view that these support persons should be paid for their time. Many of these people would be youth workers employed by organisations which generally operate on a shoestring budget. Such organisations would often be unable to release a staff member to attend a youth justice conference, and the youth worker would therefore be attending the conference in his or her own time. Given the low salaries that most youth workers earn, it is unreasonable to expect them to do large amounts of voluntary work.”

Some respondents have requested that the Act be amended to include provision for the compensation for victims and support people for reasonable expenses incurred while attending conferences. The Director of the YJCD has advised that the YJCD already pays for any reasonable 'out of pocket' expenses for conference participants, including food travel and interpreters.

Conferencing timeframes

Sections 26(1) and 43 of the Act state that cautions and youth justice conferences should be conducted between 10 and 21 days, following the serving of the notice of caution for cautions and the receipt of the conference referral by the conference administrator for conferences.

The BOCSAR's 2000 report (see Chapter 7), found that of the 1,885 youth justice conferences analysed, 8.1% (152) met the statutory time frame. The majority of conferences (60.1% or 1,133) were held within 42 days of the date of the conference referral. While it

was found that not all youth justice conferences were held within the statutory time frame, it is notable that the majority were conducted within 42 days.

In its submission, the NSW Police have commented that:

“Given the number of participants needing to be contacted and the various issues requiring attention in the preparation phase, the time required to conduct conferences is not seen as unrealistic or problematic. Preparation for conferences should be timely, but more importantly, should be conducted properly to ensure that maximum value is gained via the process.....Consequently, the [NSW Police] is confident that the Act provides a direct and timely response to offences committed by children. This timely response is seen as beneficial in educating children about the consequences of their unlawful behaviour and compares favourably to the experiences of many children appearing in Children's Courts, where lengthy delays are not uncommon.”

A number of respondents felt the Act's time frame for conferencing is unrealistic. The NSW Department of Aboriginal Affairs (“DAA”) commented that:

“As a result [of unrealistic timeframes], the interests of the young person may be being jeopardised. ... This time limit may place significant pressure on conference co-ordinators to resolve cases speedily to the detriment of the victim and/or the offender. There would be a particular impact in rural areas where the offender and/or victim has to travel a significant distance to attend a conference. Given the high level of indigenous people living in rural areas, the DAA is concerned that these timeframes may impact disproportionately on ATSI children.”

Reasons suggested for timeframes not being met include the following:

- Locating conference participants;
- Availability of police;
- Adequately preparing for each case;
- Difficulty in finding a venue for the conference; and
- Allowing sufficient time for victims to prepare themselves.

Recommendation 13

The Act be amended to extend the time limit for youth justice conferences to 28 days.

9.5 Increasing the diversion rate of ATSI young offenders

The objects and principles of the Act

A major concern for respondents to the review is that the rate of diversion for ATSI young people appears to be considerably lower than the rate of diversion for the rest of the youth population.

The Hennessy Report (see Chapter 3) found that the diversion rates for ATSI young people were 24.3% compared with 37.2% for all offenders. While conference referral rates were only slightly lower for ATSI young people than for the total population, ATSI young people

were dealt with by the court in a much greater percentage of cases (75.6% as opposed to 62.7%).

The NSW Police have provided the following data about the different rates of diversion for ATSI and non-ATSI children between 1998 and 2001.²⁸

Year	% Diversion ATSI	% Diversion Non-ATSI
1998	16.58	33.35
1999	24.60	44.09
2000	26.64	51.90
2001	33.07	54.82
Overall	25.32	46.10

Diversion by ATSI and non-ATSI 1998-2001

The data shows that, while there has been some improvement in the diversion rate for ATSI young people since the release of the Hennessy Report in 1999, this rate continues to be lower than the rates for non-ATSI young people.

Amendments to the Act have been suggested to firmly anchor in the objects of the Act and the principles of the diversionary scheme the intention that the Act should be used as a means to address the over representation of ATSI children in the juvenile justice system. The amendments would also seek to link the amended objects and principles with the entitlement of a child to be dealt with by a caution or conference.

Such amendments would complement the messages which are presently being delivered to “gatekeepers” through training and education programs, guidelines, practice directions and manuals about the purpose and operation of the Act.

Recommendation 14

The Act be amended to:

- Include as an object of the Act the aim of addressing the over representation of ATSI children in the criminal justice system through the use of warnings, cautions and conferences; and
- Include as a principle of the diversionary scheme established by the Act the principle that the over representation of ATSI children in the juvenile justice system can be addressed through the use of warnings, cautions and conferences. This principle recognises that conferencing can be a more appropriate way of dealing with juvenile offending, particularly for ATSI children, children with an intellectual disability and children from ethnic communities.

Relevant considerations for investigating officials

Sections 20, 23 and 37 of the Act set out the relevant considerations gatekeepers are required to take into account when considering whether it is appropriate to deal with a

²⁸ The data was extracted from the *Enterprise Data Warehouse* of the NSW Police.

matter by a caution or conference. These considerations include “the number and nature of any offences committed by the child and the number of times the child has been dealt with under this Act.”²⁹

According to the DAA, when deciding whether to caution, conference or send a child to court, police place greater emphasis on the *number* of offences previously committed, rather than their *nature*. The DAA argue that this can lead to more indigenous children being directed to court, increasing their criminal convictions and their further marginalisation. The DAA has submitted that more weight should be placed on the *nature* of offences committed.

Recommendation 15

A more general discretion be established for gatekeepers by removing the mandatory requirement to consider the number of offences committed by the child when applying the Act.

Incorporating Aboriginal customary law in youth justice conferencing

Some respondents have suggested that Indigenous traditions of justice should be encouraged in an attempt to redress the imbalance of power between the State, its agents and those Indigenous Australians involved with the criminal justice system. COALS has suggested that consideration be given to trialing a conferencing framework that incorporates customary law.

Recommendation 16

The NSW Attorney General’s Department in consultation with the Department of Aboriginal Affairs, the Aboriginal Justice Advisory Council, the Department of Juvenile Justice, and other relevant agencies, investigate conferencing frameworks that incorporate customary law.

Indigenous representation amongst convenors

Some respondents believe that there is a shortage of ATSI conference convenors. These respondents felt that ATSI conference convenors have a deeper understanding of the underlying causes of ATSI children’s offending behaviour and could assist in developing more meaningful outcome plans.

However, the YJCD reports that around 10% of all conference convenors are ATSI. According to the Directorate, the proportion of ATSI convenors is expected to continue to increase as information about the benefits of conferencing for ATSI young offenders and their families spreads amongst ATSI communities.

Some respondents to the review argue that high ATSI conviction rates prevents many ATSI people from becoming convenors, despite having the necessary skill and inclination. Schedule 1 of the Act currently provides that persons convicted of an offence punishable by 12 months imprisonment are ineligible to be conference convenors. This problem could be overcome by amending the schedule to allow exceptions on a case by case basis.

²⁹ See sections 20, 23 and 37 of the *Young Offenders Act 1997*.

The DAA has submitted that the training required for conference convenors may not be appropriate for ATSI people wishing to become convenors. The DAA's understanding is that training is largely paper-based, which many ATSI people would find overwhelming. The YJCD, while acknowledging that convenors must have a reasonable standard of literacy and numeracy, reports that conference convenor training is set out in an approved competency based package, which is continually updated and adapted. This allows for a great deal of flexibility in delivery, and is based on active participatory adult learning principles. Further, considerable efforts have been expended by conference administrators in adapting the training to Aboriginal learning styles, including negotiation with local TAFE college to incorporate the training as a module of a communications course offered by the Aboriginal Education Unit.

Recommendation 17

The Director General of the Department of Juvenile Justice be given the discretion to appoint a person as a conference convenor in appropriate cases, even if the person has been convicted of a criminal offence punishable by imprisonment for 12 months or more.

Fisheries offences

The DAA has raised concerns in its submission that current fisheries management is impacting unfairly on ATSI people in NSW. Of particular concern is the increasing number of young ATSI people who are coming into contact with the criminal justice system as a result of fisheries offences. For example, ATSI youth are being charged for fisheries offences in areas where seafood is a customary food source.

It is suggested that the Act and Regulation be amended to allow fisheries officers under the *Fisheries Management Act* 1994 to, where appropriate, issue warnings, cautions and refer young offenders alleged to have committed fisheries offences for a youth justice conference (via specialist youth officers). A specially trained fisheries manager could attend the conference to discuss the harm caused and participate in the formulation of outcome plans.

Recommendation 18

The Act be extended to allow fisheries officers to issue warnings and cautions and refer young people (through specialist youth officers) to youth justice conferences (see also recommendation 1 above).

9.6 Victims rights

Victims' involvement in cautioning

The Victims Advisory Board has submitted that victims should be involved to a greater extent in the cautioning process. Currently, under section 28 of the Act victims are not permitted to attend.

Victims Services has suggested an amendment to the Act to permit, at the discretion of the investigating officer, the presence of the victim when a caution is administered and that the victim be given the opportunity to make an impact statement to the offender. However, Legal Aid comments that such an amendment is inappropriate since it would blur the distinction between cautions and conferences.

Recommendation 19

The Act be amended to allow victims to write a letter detailing the harm they have suffered and to allow the person who administers the caution to read the letter to the young offender as part of the cautioning process.

Notifying victims of completion/breach of outcome plans

One of the guiding principles of the Act is that “victims are entitled to receive information about their potential involvement in, and the progress of, action taken under this Act”. Some respondents to the review have argued that the Act should be amended so that victims are notified where an offender has completed, or has failed to complete an outcome plan.

There is already an express requirement in the Act that victims are to be notified of such information. Section 56 of the Act requires a conference administrator to give notice as to whether or not the outcome plan has been satisfactorily completed by the child. The notice under this section must be given to the child, any victim, the person or body that referred the matter for a conference, the Commissioner of Police (if the matter was referred by the DPP or a court) and any other person on whom the outcome plan imposed obligations.

Provision of information to the victim

Some respondents to the review have expressed concern that victims are not receiving sufficient information concerning the conference process and their rights under the Act. Victims Services has suggested that the Act be amended to include explicit instructions regarding the treatment of victims involved in conferences. This should include a mandatory requirement to provide written information to the victim about the conferencing process and the victims rights, including the right to access information and support services, the conference process, and the right to have a support person at the conference.

The YJCD already provides comprehensive information to the victims who are participating in a conference, including:

- Notification that their matter is to be conferenced and the convenor’s contact details;
- Information booklets from different agencies;³⁰
- Progress on the preparation for the conference; and
- Outcomes of the conference.

9.7 Other Matters

Bail

Where a child has admitted an offence but has not entered a plea of guilty, the court may refer the matter for conferencing under the Act (s.40). The *Children’s Court Practice Direction No. 17* states that where such a referral is made the child should be excused from attending court and bail dispensed with. However, some respondents report that the court sometimes fails to dispense with bail when making a referral to a youth justice conference, contrary to the *Practice Direction*.

³⁰ These include the Victims of Crime Bureau’s booklet *What Now?*, the NSW Police’s pamphlet *Information for Victims of Youth Crime*, and a copy of the pamphlet *Youth Justice Conferencing*.

According to the Law Society, this “has resulted in injustice to the young person in some instances. The [Law Society] has been alerted to instances where young people, having attended a court-referred youth justice conference, were arrested and spent a night in custody for breach of onerous bail conditions (including strict curfews), on the day they had informed the youth justice conference administrator that they had completed their outcome plans.”

Recommendation 20

The Act create a statutory presumption that bail is dispensed with when a matter is referred to conference. The court would, however, retain the power to impose unconditional bail in special circumstances.

Fingerprinting of young offenders

The NSW Police have raised concerns that children who commit high volume offences (such as break and enter) will often be diverted from court without fingerprints being taken. A percentage of these children will persist with such offending, yet the absence of fingerprints makes it difficult for police to clear offences linked to them. Consequently, the NSW Police have recommended the establishment of guidelines for fingerprinting children diverted from court for high volume offences, in which fingerprints could be used to solve other related crimes.

Recommendation 21

The issue of finger printing young offenders be considered as part of the recommended review of the status and consequences of cautions and conferences (see recommendation 9 above).

Court referral for conferences

Some respondents to the review have expressed concerns that the consent of the young offender is not a currently a factor that the DPP or court must consider under section 40 when referring a matter for conferencing under the Act. COALS commented in its submission that it is therefore “debatable whether those young offenders who do not consent to being referred to a youth justice conferences can participate fully in accordance with the purported objectives of the Act. “

Recommendation 22

The consent of the young offender be required before the court or the DPP can refer a matter for conferencing under the Act.

Notifying parents of warnings in all cases

There is currently no obligation on police to notify the parent(s) of a child when they administer a warning. The NSW Police reports in its submission that, where appropriate, some police do notify the parents of a child who has received a warning.

The NSW Police have suggested that Part 3 of the Act should be amended to formalise this process and provide direction to police that a standard letter can be sent to the parent(s) or guardian(s) of a child where appropriate.

Recommendation 23

The Act be amended to allow the investigating official, where appropriate, to notify the parents or guardian of the young offender in writing where a warning has been administered. The investigating official must first give consideration to the effect such notification may have on the welfare of the child.

APPENDIX A: LIST OF RESPONDENTS TO THE REVIEW

Aboriginal and Torres Strait Islander Commission

Baker's Dry Cleaners

Children's Court

Community Relations Commission

Council of Aboriginal Legal Services

Country Women's Association

Director of Public Prosecutions

Intellectual Disability Rights Service

Juvenile Crime Prevention Advisory Committee

Juvenile Justice Advisory Council of NSW

Kempsey Shire Council

The Law Society of New South Wales

Legal Aid Commission of NSW

Murray Shire Council

New South Wales Bar Association

NSW Commission for Children and Young People

NSW Council for Intellectual Disability

NSW Department of Aboriginal Affairs

NSW Health Department

NSW Police

Shopfront Youth Legal Centre

Victims Advisory Board

Victims Services

Gunnedah Local Court

Youth Justice Coalition

GLOSSARY OF TERMS

AJAC	Aboriginal Justice Advisory Council
ATSI	Aboriginal and Torres Strait Islander
BOCSAR	NSW Bureau of Crime Statistics and Research
COALS	Coalition of Aboriginal Legal Services
COPS	Computerised Operational Policing System (NSW Police database)
CCP Act	Children (Criminal Proceedings Act) 1987
DAA	Department of Aboriginal Affairs
DJJ	Department of Juvenile Justice
DPP	Office of the Director of Public Prosecutions
SYLC	Shopfront Youth Legal Centre
SYOs	Specialist Youth Officers (NSW Police Service)
The Act	Young Offenders Act 1997
UNSW	University of New South Wales
YJAC	Youth Justice Advisory Committee
YJCD	Youth Justice Conferencing Directorate (Department of Juvenile Justice)
YLOs	Youth Liaison Officers (NSW Police Service)