Youth Justice Conferencing in New South Wales: A Personal View of the practicalities and politics of introducing the *Young Offenders Act* 1997 (NSW)

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The views expressed in this paper are those of the author and do not necessarily reflect the views of the NSW Government

Introduction

Over the last ten years there have been significant shifts in thinking about and doing the processes and practices of juvenile justice in New South Wales. These shifts perhaps began with the 1982 package of Bills which followed the Jackson Green Paper which finally translated into law with the 1987 legislative package. This package created a clear legal separation between children who were in need of care and children who were alleged to have committed a criminal offence. Some of the most criticised provisions of the 1939 *Child Welfare Act* were abolished – for example, children in need of care could no longer be charged with being neglected or in moral danger. The Children's Court was restructured to separate care and protection hearings from criminal proceedings against children. Arguably stronger protections for children in police custody were introduced. However, the bureaucratic arrangements remained unchanged – juvenile justice remained a unit within the (then) Department of Youth and Community Services.

Three years later the Youth Justice Coalition released its report *Kids in Justice*, a comprehensively researched critique of juvenile justice that set out a 'blueprint for the '90's'. The report conceptualised children who were the objects of juvenile justice intervention, and their families, as consumers of government services. It also drew from the draft UN Convention on the Rights of the Child and other international instruments concerning minimum human rights standards in juvenile justice. Many of the recommendations in the report were adopted. These included the establishment of a separate Office (now Department) of Juvenile Justice and the appointment of an independent Juvenile Justice Advisory Committee. Some years later (in 1995) some of the juvenile crime prevention recommendations in Kids in Justice were also adopted.

The Standing Committee on Social Issues of the Legislative Assembly of the NSW Parliament has also been actively investigating the processes of juvenile justice during the '90's. Their 1992 report *Juvenile Justice in New South Wales* confirmed the major findings of *Kids in Justice*. Since then they have released reports on *Suicide in Rural New South Wales* (1994), a *Report into Youth Violence in New South Wales* (1995), a report on an *Inquiry into Children's Advocacy* (1996) and most recently a report on *Children of Imprisoned Parents* (1997). In all these reports the Committee has taken a strong and principled stand on the needs and rights of the children and young people of New South Wales.

The Hon Ann Symonds has been a fierce advocate for children and young people as a member of this committee over many years and as its chair in recent years. She recently retired from Parliament. Her enormous commitment and hard work in this area will be sadly missed. She has been an inspiration and support to many in government, in opposition and in the community and youth sector over the years.

The Juvenile Justice Advisory Council's first task was to carry out a comprehensive investigation into all of the legislation, practices and policies of juvenile justice in New South Wales. Working parties consisting of government and community sector personnel spent many months researching, arguing writing and revising the Green Paper, *Future Directions for Juvenile Justice in NSW* (1993). This report drew from Kids in Justice, The National Report of the Royal Commission into Black Deaths in Custody, the Standing Committee on Social Issues report on Juvenile Justice in New South Wales and the work of the Human Rights and Equal Opportunity Commission.

The Green Paper emphasised the need to instigate crime prevention strategies for keeping children and young people out of the processes of juvenile justice. The Council argued that measures should be introduced across all sectors of government to recognise that most young people grow out of crime and that less rather than more punitive responses were appropriate in the majority of instances of offending by children and young people. The Green Paper also recommended that Community Aid Panels were the Council's preferred form of 'Community Alternative to Court Processing'.

My interest in community alternatives to court processing began about this time. As a legal academic and member of the Youth Justice Coalition I had researched and written critically on Community Aid Panels in 1992. This work led me to read and think more widely about processes located outside the formal juvenile justice interventions which might have more potential for keeping offending children and young people out of detention and in their communities than had existing processes.

The New Zealanders had introduced Family Group Conferences in 1990 with the passage and proclamation of their *Children, Young Persons and their Families Act* 1989 (CYPFA). Judge Mick Brown, a fierce advocate of Family Group Conferences visited Australia and charmed and convinced everyone he spoke with of the value of the FGCs for all New Zealanders, but especially for their Maori and Pacific Island families and communities. Sergeant Terry O'Connell and others had visited New Zealand and based their Wagga Wagga version of family group conferences on what they had learned there. Aboriginal communities conceived and ran their own forms of diversionary programs for young people, CAPs continued to operate. The (then) Attorney General, John Hannaford, together with senior officers from the Departments of Juvenile Justice, Courts Administration and the Attorney General visited New Zealand. They "returned with a commitment that we should introduce a conferencing scheme into New South Wales."

There was increasing evidence that the New Zealanders' radical new diversionary experiment was based on a different paradigm from those operating elsewhere, one which put family support and victim satisfaction at the center, rather than the perimeter, of reactions to offending by young people. The philosophy underlying the CYPFA has four main strands: 'family responsibility, children's rights, (including the right to due process), cultural acknowledgment and partnership between the state and the community'. Ian Hassall, a New Zealand Children's advocate, after quoting these strands from the Minister for Social Welfare's speech made during the passage of the legislation through the New Zealand parliament, continued: "The full meaning attached to them differs from person to person. In the minds of some, 'family

responsibility' is undoubtedly a code for 'reduced cost to the state'". I shall return to this issue later in the paper.

In New South Wales the then coalition government was also giving increasing attention to community alternatives to court processing. The White Paper that followed the Green Paper promised to "develop effective and regulated diversionary interventions for young people who have offended which empower the victims of crime." A pilot scheme of Community Youth Conferences and revised training on informal and formal police cautioning was promised.

While there is some overlap in the 'philosophical strands' of the pilot scheme of Community Youth Conferences that eventuated, and those of the New Zealand Family Group Conferences, the differences are stark. The language of the former is couched in terms of accountability and responsibility by offending young people, parental authority, responsibility and discipline, and appropriate punishment for offending behaviour. Victim participation in the juvenile justice process is given as the primary benefit. Community involvement and participation are said to be important goals. The language of the New Zealand philosophy is about family responsibility, but it is also about children's rights, (including the right to due process), cultural acknowledgement and partnership between the state and the community. These latter strands were arguably lacking in the policy on community alternatives to court processing set out in the White Paper. Nowhere does the White Paper suggest that the Government's aim was to foster partnership between state and community.

The Labor government came to power in NSW in 1995. To its credit, the pilot scheme was continued, and carefully evaluated. A cross government committee under the direction of the Attorney General's Department, the Minor Offenders Punishment Scheme (MOPS) Working Party, was established. Its brief was to consult with the community as widely as possible, consider the recommendations of the report on the evaluation of the CYCs, write a discussion paper for extensive community consultation and ultimately prepare draft legislation to introduce the final agreed form of an alternative to court processing to operate state wide. Members of the Working Party also visited New Zealand to see Family Group Conferences in operation and learn from the New Zealand experiences.

Over the same period there had been considerable critical research and writing about the policing of young people. The picture painted was generally bleak. Relations between police and Aboriginal young people in all Australian states were generally abysmal. Young people who differed visibly from the Anglo 'norm' also did not fare well in accessing what benefits there were to be had from alternatives to court processing such as police cautions and conferences. It remains to be seen whether the operation of the *Young Offenders Act* 1997 will have a significant positive impact on this sector of the youth population.

In 1995, after considerable consultation with youth sector representatives and others, the NSW Police Service released a *Youth Police Statement 1995-2000.* This document 'outlines the role and responsibilities of the Police service and its commitment to children and young people'. While not a panacea for the ills that permeate the relations between police and young people in NSW and elsewhere, the document does

contain the seeds for a better working relationship, provided that those working under it adhere to the principles contained in it and the youth sector is vigilant in lobbying operational police to pay more than lip service to these principles.

In my view, however, the Bill that became the *Young Offenders Act* 1997 contained the framework for both changing police practices with offending young people and introducing a form of conferencing that draws more closely on the New Zealand model of partnership between community and state than the form of conferencing outlined in the White Paper.

The *Young Offenders Act* 1997

Introduction and passage through Parliament

When the Young Offenders Bill was introduced into Parliament in June 1997, there was overwhelming support from all sides of politics. As Ann Symonds said in her second reading speech:

> It is highly significant that we can produce so publicly a bipartisan approach, which is constructive and is in the best interests not only of the community but of young offenders. It will stand as a fine example to us as a group of legislators to repeat in other areas of public policy in which there may be pressure to have a bipartisanship of a different kind

During this debate, politicians of all colours recognised that young people and the issue of youth crime can so often be presented in a very negative light, even though there is a general recognition that there is no youth crime wave. As Patricia Forsythe said:

> So much has been said about young people and crime that we might believe that we are in the midst of an epidemic of juvenile crime that is consistently on the rise. The reality and the facts do not bear this out

Ian Cohen of the Greens analysed the Bill from first principles. In particular he was concerned to emphasise that the provisions of the Bill should be consistent with the statement in the White Paper that

> United Nations Rules and Conventions concerning juvenile justice will continue to be an important source of guidance for the State Government.

The *Young Offenders Act* 1997

Objects and principles:

The Act that emerged from the work of the interdepartmental committee and the final shaping through the processes of Parliament is, arguably, largely consistent with UN Conventions concerning children.

The Act sets out a graduated hierarchy of interventions for children and young people caught breaking the criminal law.

The objects of the 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

The Act contains a list of 7 principles that are to apply generally to all actions taken under it (section 7), and another section setting out the principles and purposes of conferencing (section 34). These principles draw from UN CROC. The generally applicable principles are that:

> (a) … the least restrictive form of sanction is to be applied against a child who is alleged to have committed an offence
>
> (b) … children … are entitled to be informed about their right to obtain legal advice and to have an opportunity to obtain that advice …
>
> (c) … criminal proceedings are not to be instituted against a child if there is an alternative and appropriate means of dealing with the matter
>
> (d) … criminal proceedings are not to be instituted against a child solely in order to provide any assistance or services needed to advance the welfare of the child or his or her family or family group
>
> (e) … children who are alleged to have committed an offence should be dealt with in their communities in order to assist their reintegration and maintain community ties

(f) …parents are to be recognised and included in justice processes involving children and … parents are to be recognised as being primarily responsible for the development of children

(g) … victims are entitled to receive information about their potential involvement in, and the progress of, action taken under the Act

For conferencing, section 34 contains some important principles that draw closely on CROC. These are that:

(a) … measures for dealing with children who are alleged to have committed offences are to be designed so as:

(i) to promote acceptance by the child .. of responsibility for his or her own behaviour, and

(ii) to strengthen the family or family group of the child concerned, and

(iii) to provide the child concerned with the developmental and support services that will enable the child to overcome the offending behaviour and become a fully autonomous individual

(iv) to enhance the rights and place of victims in the juvenile justice process

(v) to be culturally appropriate, wherever possible, and

(vi) to have due regard to the interests of any victim

(b) … sanctions imposed on children who commit offences are :

(i) to be of a kind most likely to promote the development of such children within their family or family group, and

(ii) to take the least restrictive form that is appropriate in the circumstances, and

(iii) to assist children to accept responsibility for offences.

(c) … any measures for dealing with, or sanctions imposed on, children who are alleged to have committed offences take into account:

(i) the age and development of any such children, and

(ii) the needs of any children who are disadvantaged or who are disconnected from their families, and

(iii) the needs of any children with disabilities, especially those with communication and cognitive difficulties, and

(iv) the gender, race and sexuality of any such children.

…

(3) In reaching decisions at a conference, the participants are to have regard to the principles set out in this section and the following matters:

(a) the need to deal with children in a way that reflects their rights, needs and abilities and provides opportunities for development,

(b) the need to hold children accountable for offending behaviour,

(c) the need to encourage children to accept responsibility for offending behaviour,

(d) the need to empower families and victims in making decisions about a child's offending behaviour,

(e) the need to make reparation to any victim

The *Young Offenders Act* 1997 thus provides a careful framework that has similar philosophical strands to the New Zealand scheme of family group conferences: family responsibility, children's rights (including the right to due process), cultural acknowledgement and partnership between state and community. The challenge is to ensure that these principles are borne out in practices under the Act. As I have argued elsewhere, '.. any alternative system must ensure that it is less, not more imperfect than any system it seeks to replace'.

The *Young Offenders Act* 1997

Impediments to translating principles into practice

Unfortunately, the Act does not seek to replace the previous system. Rather, as the Hon JF Ryan said in the Second Reading debates on the Bill,

> It needs to be said that the New Zealand Act was not introduced – as I believe this bill is – as a clip-on to a juvenile justice system. It was

> introduced as a revolutionary rewriting of the New Zealand juvenile justice system, a rewriting that redesigned the system from top to bottom, fundamentally and completely. One of the most notable changes in the New Zealand system was that the number of children kept in custody was reduced from 300 or 400 to 60. We in New South Wales should remember that about 450 young people are now in custody.

Does the Act then provide a legal and operational framework that is sufficiently robust to ensure that its objects can be achieved, its principles adhered to? Can a single Act of Parliament revolutionise the way we respond to offending young people? I believe that it contains the seeds for all this but that there are some significant political, structural and operational hurdles to be addressed before this is possible.

Unfortunately, while ever certain provisions remain in the Act, in particular the limitations on the range of offences which can be dealt with under the Act, and some structural features of present juvenile justice processes remain in place, it will be difficult for the objectives of the Act to be fully achieved.

Further impediments to the full achievement of the aims of the Act include the political climate in NSW in the lead up to the election next March. Predictably, the law and order fervour that has charactised every recent election in NSW (as in most other states) is already building. Predictably, young people are again being demonised as the other to be feared and therefore heavily policed. In addition to the *Children (Protection and Parental Responsibility) Act* 1997, an amendment to the *Crimes Act* 1900 that significantly increased police powers was recently rushed through Parliament. This legislation will potentially impact most heavily on young people and has been roundly criticised by youth advocacy and civil liberties groups. It is a variation on the so-called 'street safety' proposals that surfaced in 1996 which, if introduced, would have potentially criminalised groups of three or more young people who happened to be together in a public place.

The *Young Offenders Act* 1997

Operation of the Act

(a) Fettering police discretion

The Act carefully circumscribes the wide discretion previously available to police in deciding who should be given warnings or cautions, who should be referred for a conference, and who should be sent to court, and provides that the least intrusive intervention should be chosen in all cases. The criteria that police and others (eg, DPP, Courts) must use in making these decisions are set out in the Act.

(b) Checks and balances

The Act also contains checks and balances on these decision making powers concerning all decisions made under the Act. Decisions by Specialist Youth Officers (SYOs) under the Act can be challenged in the first instance by conference

administrators and, if a conference administrator and an SYO fail to agree, they must refer the matter to the DPP. Where a matter gets to court and the court considers that a less intrusive intervention should have occurred, depending on the view taken by the magistrate, s/he can either administer a caution or refer the matter back to a conference administrator for conferencing. In either case, the SYO who made the original decision will be informed of the court's action.

(c) Police warnings

Warnings are the least intrusive intervention under the Act. They can be given by police 'on the run' for most summary offences where no violence is involved in the offending behaviour. A record must be kept of the fact that a warning has been given and of the child's sex, age and racial background, but the officer must not record the name of the child.

(d) Police Cautions

Cautions are a serious intervention under the Act; much more than a 'slap on the wrist'. They can be an occasion for police to advise children and families of the services available in the area that might be able to assist in the prevention of further offending or provide support for the child and their family. The criteria for entitlement to be dealt with by a caution are the same as those for entitlement to be dealt with by participation in a conference. Police must consider the seriousness of the offence, the degree of violence involved, the harm caused to any victim, 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. The child must admit the offence and agree to be cautioned.

The Act sets out time limits and places for giving a caution, and who is entitled to be present at a caution (this can include an interpreter, a support person for the child or an appropriately skilled person where the child has a cognitive disability. A respected member of the community can be invited by police to administer the caution. Care must be taken by police to ensure that the child understands the purpose, nature and effect of the caution. No sanctions other than a written apology to be given to any victim may follow a caution.

Children may withdraw their consent to be given at a caution and elect for a court to deal with the mater at any time before the caution is administered.

(e) Youth justice conferences

Youth justice conferences are organised and run by conference convenors. Convenors are community members who are chosen by local conference administrators for their common sense, understanding of broader structural issues relating to youth crime, knowledge and understanding of victims' issues, and group work skills. They are not appointed under the *Public Sector Management Act* 1998, but are appointed as part of a pool of local convenors after an application and selection process and assessed as suitable to organise and facilitate conferences after 4 days of intensive training. Conference administrators engage convenors to organise and facilitate conferences by matching them with the parameters of the specific conference. Cultural understanding, age, sex and other relevant factors are taken into account in making this decision.

Convenors are paid for each hour taken in preparation, facilitation and debriefing with a conference administrator.

The Act provides clear guidelines on time limits for holding conferences after a referral is received. It sets out the steps that a convenor must take in preparation for a conference, those entitled to be present at a conference, who can be invited to attend where their presence would aid in decision making, and the parameters for outcome plans. Legal advisers may participate in a conference, but not as legal representatives except in limited circumstances such as where the child or young person is unable to speak for him/herself.

Conferences may be held at any place except a police station, a court house or a DJJ office.

Unlike in most other schemes of conferencing, only the young person and the victim have a right of veto over outcome plans. Children and young people may withdraw their agreement to participate in a conference at any time before the conference is held, but Specialist Youth Officers may also decide that a conference should not be held even after they have referred the matter to a conference administrator.

The way in which the conference is conducted is left to the good sense and wisdom of the convenor and the participants. Guidelines have been prepared, based on lessons from other schemes and input from administrators and convenors. They will remain living documents that can be adapted with experience.

The Act also contains strict provisions protecting the privacy of conference proceedings and setting penalties for those who breach these provisions. Researchers need to obtain permission from the Minister in order to observe conference proceedings.

A Youth Justice Advisory Committee has been appointed by the Attorney General. This committee is composed of representatives from a range of relevant government departments and community organisations. It is responsible for advising the Minister (the Attorney General) and the Director General (of DJJ) on regulation making, preparation of guidelines for conferences, selection criteria for, and appointment and training of convenors, review and monitoring of the operation of the Act, and any other matters considered relevant by the Committee.

The Act was proclaimed on 6 April 1998

The *Young Offenders Act* 1997

Implementation of the Act

Clearly, for the Act to work well, those who have responsibilities under it need to be carefully selected, and adequately and appropriately trained.

The NSW Police Service has responsibilities under the Act, specifically those of the Specialist Youth Officer. The policy officers in the Service responsible for the operationalisation of police responsibilities under the Act were commissioned officers

with many years of experience of operational policing behind them and, equally important, some experience in working at the policy level with youth sector representatives. They had organised two forums for Youth Liaison Officers in 1996 and 1997, and had worked on the development of the Police Service Youth Policy document, and on a project on young people and public space with the Youth Action and Policy Association. Their understanding of 'best practice' in the policing of young people was very different from that revealed in the research on police and young people referred to earlier.

The position of Youth Liaison Officer (YLO) is now an identified position with clearly defined responsibilities, only one of which is the role of Specialist Youth Officer (SYO) defined in the Act. One YLO has been appointed in each of the 80 Local Area Commands, partly on the criteria of interest and experience in policing and in working with young people, and partly through selection by a panel including both police and community representatives. YLOs undertake extensive course work that includes education on the wider social and structural factors related to offending by children and young people.

Conference administrators, employed as full time public servants in the Department of Juvenile Justice (DJJ) have also received extensive training to undertake their responsibilities under the Act.

The Act assumes a close working relationship between SYOs and conference administrators. To foster a professional working relationship, these two groups spent a week in joint training at the NSW Police Academy in late March 1998. This provided the administrators with some understanding of the operational issues in policing young people and the culture of policing generally. It also exposed YLOS to different and generally more progressive values and attitudes of the conference administrators. One positive result of this joint training is that administrators and SYOs are now able to have a forthright debate when they disagree on police decisions concerning referrals for conferences. Similar training sessions will be held periodically in future.

The *Young Offenders Act* 1997

Legal advice and child advocacy

In the second reading debates, many speakers were at pains to emphasise that conferencing should not be at the expense of children's legal rights. Richard Jones' (Independent) comments are typical:

> ...the considerable advantages of conferencing must not be acquired at the expense of the legal rights of young people. I believe that in several important respects the bill neglects the advocacy needs of young people. The Standing Committee on Social Issues ... 250 page report [on children's advocacy] unequivocally concluded that children's advocacy was especially needed by the State's most abused, neglected, poor, uneducated, vulnerable, powerless and marginalised children. ... [C]hildren's advocacy does not drive a wedge between the child and his or her family. It is not a threat to society, and it need not be confrontational or antagonistic. ... Child advocacy merely ensures that

> the legal rights of children are safeguarded and in this respect the Bill has several weaknesses. .... Providing adequate legal advocacy services would decrease the likelihood of a forced admission. .... [Providing] adequate advocacy services would help avoid an inappropriate conference outcome.

Ann Symonds (Labor) argued that

> one of the ways that advice could be supplied to these young people is to adopt the unanimous recommendations of the Social Issues Committee to establish a children's advocacy network across the state. That should be developed as a matter of urgency with the introduction of this legislation because the two would knit together very well. It is important that the children's advocacy network be statewide. This would ensure that young people undertaking community conferencing in the city would have access to [community legal centres specialising in children's advocacy]; and young people in Brewarrina, Dubbo, Broken Hill and Murwillumbah could access the network in these towns. The network would not be costly when one considers the benefits that would result from it.

The Act does contain provisions that are designed to protect, as far as possible, the legal rights of children 'alleged, accused or recognised to have infringed the penal law' to have 'legal or other appropriate assistance'.

For example, children who are detained by police and dealt with under the Act are entitled, at all relevant points, to be informed of their right to legal advice and to have an opportunity to obtain that advice. The issues raised by these provisions are real. How can every child dealt with under the Act actually receive the advice to which they are entitled at a time at which it will be of most benefit to them? How much funding is necessary to ensure that this occurs in every area of NSW? The answer to the latter, at this stage in the implementation and operation of the Act, is mere guesswork.

One heartening recent development that provides a partial answer to the first question, is the establishment within the Legal Aid Commission in 1997 of a specialist Children's Legal Service (CLS). The establishment of the CLS flows directly from the recommendations in the report on children's advocacy by the Upper House Standing Committee on Social Issues, and is consistent with the recommendations in the report of the ALRC/HREOC inquiry into children and the legal process. At present the CLS provides salaried solicitors who are largely responsible for representing children in criminal matters in the metropolitan specialist Children's Courts, and a legal advice service for metropolitan Juvenile Justice (Detention) Centres. State wide coverage by the CLS is dependent on the allocation of further funding. In its short existence, the CLS has been successful in reducing delays, providing an identifiable lawyer who is able to continuously represent a child in all criminal matters, and improving the quality of legal advice and service available to children in detention.

Unfortunately, ensuring that timely and appropriate legal advice is available for every child dealt with under the Act is still not possible. The Legal Aid Commission operates a 1800 advice line only during business hours. CLS, CLC and ALS lawyers are not available 24 hours a day. Children and young people are rarely conveniently arrested and processed by police during working hours.

Community Legal Centre specialist children's lawyers and Aboriginal Legal Service lawyers advocating for Indigenous children are not, in practice, able to fill the gaps. Telling children that they have a right to legal advice, and then ensuring that they take advantage of this right, are not the same thing. Many children (or, in practice, their parents) do not understand the value of 'seeing a lawyer' when they have already made admissions to the police and agreed to be cautioned or to participate in a conference. The time at which legal advice could provide real protection to children is before any admissions are made – before a child is interviewed by the police. In practice, advice will not be available at this point, unless police and local children's lawyers can establish 24 hour advice services.

The *Young Offenders Act* 1997

Cultural issues

My remarks in this section are confined to the two groups most over-represented in detention centre populations, Indigenous and Indo-chinese children and young people. There are equally important challenges concerning cultural appropriateness for other cultures whose children and young people come to police attention but I will not attempt to cover the field.

(a) Indigenous young people and Indigenous communities

One of the most pressing issues in juvenile justice generally in NSW and elsewhere is the over-representation of Indigenous young people at all stages of the process, and in particular, in custody. Much of this work indicates that Indigenous children and young people 'are less likely to receive the benefit of diversionary options and are more likely to receive adverse decisions when police utilise discretionary powers'. Given that police still retain the gate keeping role under the Act, it is crucial that such decisions are thoroughly and regularly scrutinised, particularly in the early stages of its operation.

Early indications concerning cautioning rates are, prima facie, promising. About ten percent of the more than 1200 cautions under the Act between 6 April and 29 May were for Aboriginal young people. Aboriginal young people constitute about two percent of the relevant youth population state wide.

See Attachment A: 'Cautions by Region by Aboriginality'

Unfortunately, this figure cannot be compared with previous cautioning rates as the relevant data were never seriously collected.

The indications concerning conferencing are less encouraging. In the same period, police referred 188 young people to a DJJ conference administrator for a conference.

Not all these referrals were accepted. Of these referrals, however, only 13 were for Aboriginal young people. These figures may be lower than those for cautioning because, at the time those they were collected, Part 5 of the Act was not operational in most areas of NSW that have a high proportion of Aboriginal young people in the relevant youth population.

It is easy to cite available data. It is much more difficult to address other more textured criticisms of the impact of conferencing on Indigenous people. The thoughtful work of Harry Blagg and Chris Cunneen, in particular, raises many issues that will be a challenge to address in practice. For example, Blagg suggested, at a seminar organised by the Sydney Institute of Criminology in early April this year, that those involved in developing conferencing should be aware of 'the decolonisation of the Indigenous landscape [and] the regimes and structures that would need to be reformed and redefined before some kind of ceremonial meeting places could be constructed where a range of 'justice' issues could be debated'. He suggests that we should re-appraise the New Zealand scheme in terms of its structural underpinnings, rather than concentrating solely on the 'moment of the conference'. It is essential that those responsible for the operation of the (New South Wales) Act do not repeat the mistakes made in earlier models of conferencing in Australia of 'privileging certain of the features of the New Zealand scheme while silencing others'.

In New Zealand, police powers were reduced, and children under 14 were not to be subject to a potentially confrontationist conference with the introduction of the *Children, Young Persons and their Families Act* 1989. In New South Wales, The *Young Offenders Act* 1997 fetters police discretion, and contains the principle that 'the least restrictive form of sanction is to be applied against a child who is alleged to have committed an offence, having regard to matters under the Act'. Yet the Act applies to all children aged between 10 and 18. Those aged under 14 will be equally eligible for conferencing under the Act as those aged 14 and over.

There has been some criticism by some Indigenous people about the lack of consultation that was undertaken prior to the introduction of the Act. This criticism is not to be taken lightly. It raises starkly the contradictions inherent in implementing a legislative scheme within a relatively tight time framework in a way that recognises and acknowledges in practice the issues raised by Blagg and others outlined above.

Aboriginal communities have generally expressed a commitment to the principles of conferencing. Ensuring that they can own the process in all cases, while a real challenge, is critical to the aim of translating the rhetoric surrounding the introduction of the Act into reality.

The wording of the Act reflects a tension between the political imperative of 'getting tough' on young offenders and introducing a scheme of youth justice conferences that 'enables a community based negotiated response to offenders involving all affected parties', that assists reintegration and sustains family and community ties. This disjunction illustrates a desire on the part of politicians to ensure that the lessons from the New Zealand scheme about family empowerment and cultural reclamation are not ignored while at the same time avoiding the possibility of being accused (by the media and political opponents) of 'going soft' on young offenders.

Now that the initial round of recruitment and training of conference convenors has been undertaken in most areas of New South Wales, conference administrators are reviewing and reflecting on the gaps in this practice and in the pool of convenors now available to them in light of the cultural mix in their geographical areas. Most administrators have a number of indigenous peoples in these areas. Many have expressed dissatisfaction with the recruitment process. There is time now for administrators to seek to establish the kind of dialogue with indigenous peoples that Blagg suggests – one that 'takes account of Indigenous relationships and patterns of authority' and that has the potential to 'disturb our [colonisers'] notions of linkage between time and place'. This process will not be easy nor will it necessarily conform with bureaucratic urgency. But it is absolutely critical if the Act is to achieve the object of being 'culturally appropriate' and 'strengthening the family or family group of the child concerned'.

(b) Indo-Chinese young people and their families

Indo Chinese communities present very different challenges. The little research available suggests that the relations between Indo-chinese young people and police is shot through with racist assumptions that are different from but have echoes of those concerning Indigenous young people. However, family relations in Indo-chinese cultures are generally quite different from those in Indigenous and Anglo communities. The traumatic experiences suffered by many Indo chinese people in reaching Australia are highly relevant to the ability of conferences to be culturally relevant. Many relations between Indo-chinese young people and their families break down simply because young people have come into contact with police or become enmeshed in juvenile justice interventions. Ensuring that these families attend youth justice conferences and participate fully and in a culturally appropriate way will be an immense challenge. These and other issues will be equally difficult to address, particularly given the dearth of guidance available on these issues.

Structural Issues

Placement and organisation

One of the decisions made by the Working Party was the government agency to be given responsiblity for conferencing. The two Departments under consideration were Juvenile Justice and Attorney General's. Factors which influenced the final decision to place the Conferencing Unit within the Department of Juvenile Justice included the existence of DJJ offices in widely scattered parts of the state, including regional locations; sufficient independence from the criminal justice process to be able to maintain the integrity of the process; and a desire to prevent the conferencing process from becoming bureaucratised and ineffective in achieving its aims. Operating in this context is a delicate balancing act, which requires good communication skills and is difficult to achieve. In my view it remains to be seen whether it is possible to keep the processes sufficiently 'unbureaucratised' or independent from other criminal justice processes in this location.

One way of attempting to do this is to ensure, as we have attempted to do that conference convenors are not permanent employees of DJJ but are representative of the communities in which conferences will operate.

During a recent visit to New Zealand with my operations co-ordinator, Tim Matthews, I was pleased to hear the very positive reactions from family group conference personnel to this arrangement. While this arrangement will not necessarily fully address the need for independence from other juvenile justice interventions, it does seek to ensure that the process of conferences is as independent as possible when a government Department has carriage of the overall administration of Part 5 (Youth Justice Conferences) of the Act.

Pay grades for and numbers of conference administrators (who are local managers of the scheme with significant and wide responsibilities, including selection, training and management of a pool of community based and focussed convenors) are perhaps too low and should be revisited. The differences between their roles and legislative responsibilities are very different from, and generally much more extensive than those of existing officers of the DJJ of similar grades. They are responsible for introducing and operating an alternative to the existing juvenile justice system, and have significantly different approaches and philosophical understandings from those of some existing DJJ personnel. At present there are 16 conference administrators, who operate out of the same offices as existing DJJ staff. The issue of pay scales relates to my next point, overall funding.

Funding

In the second reading debates on the Young Offenders Bill there was a clear recognition that adequate funding would be essential for the scheme to succeed. John Hannaford (shadow Attorney-General, Liberal) suggested a figure of $3-4 million per annum. The Attorney indicated that $1.4 million had been set aside for the establishment phase and a total of $6.6 million for the next three years. Given the bipartisan commitment to the success of the operation of the Act, there is little reason to think that this funding will not remain available. Given the principles contained in the Act that measures for dealing with children under the Act are to be designed to strengthen the family or family group of the child and to provide the child concerned with the developmental and support services that will enable the child to overcome the offending behaviour and become a fully autonomous individual, even this relatively generous funding commitment may prove inadequate, even in the short term.

The only Department to receive this funding was DJJ. All other departments (including the Police Service, which has significant responsibilities under the Act) were expected to find the resources out of existing allocations. It is to their credit that the Police have been able to appoint YLOs in every Local Area Command, organise and run joint training for YLOs and conference administrators and in most instances demonstrate a fierce and ongoing commitment to seeking to improve the the policing of young people and the relations between police and young people through the operation of the Act.

Conclusion

It remains to be seen whether the operation of the Act fully achieves its stated objectives and remains true to the principles set out in its provisions outlined in the early sections of the paper. The Act must be evaluated and its operation reviewed

after three years of operation and a report presented to Parliament. The YJAC regularly monitors its operation and gives advice on how to address the issues identified.

New South Wales is not New Zealand. It is different – larger (geographically and numerically), more culturally diverse with infinite divisions across culture and class and perhaps gender. We have more tiers of Government than New Zealand, and perhaps more competing political agendas.

All of us who have responsibilities under the Act must endeavour ensure that the operation of the Act is culturally appropriate. Children's rights and victims' rights must be acknowledged and respected. Gender issues need to be addressed. Practical arrangements need to be instituted to address disability and disadvantage.

We need to continue to work cooperatively across government, while at the same time working together with children, their families, communities and victims to achieve the aim of ensuring that those who are most affected by youth crime have the resources to respond to its effects. Unless we can achieve these goals, and are provided with sufficient human and financial resources to do so, we will have failed those whose time and energy contributed to the introduction and implementation of this progressive piece of legislation.

Police Service Data

Court Alternatives Summary (Conference Referrals)

Referrals

Female			Total	% Aboriginal
Aboriginal	Not Aboriginal	Unknown		
9	36	0	45	20.00

Male			Total	
Aboriginal	Not Aboriginal	Unknown		
4	132	7	143	2.80

All offences			Total	
Aboriginal	Not Aboriginal	Unknown		
13	166	7	188	6.91

Cautioning Data 6 April - 29 May 1998

Female	*Aboriginal*	*Non Aboriginal*	*Unknown*	**Total**	***% Aboriginal***
	37	288	9	334	11.08

Male	*Aboriginal*	*Non Aboriginal*	*Unknown*	**Total**	
	89	834	27	950	9.37

Total	*Aboriginal*	*Non Aboriginal*	*Unknown*	**Total**	
	126	1122	36	1284	9.81

Source: NSW Police Service, 19 June 1998

Caution Data by LAC, 6 April-29 May 1998

			Sex		*Aboriginality*		*TSI*		*Other*		*Age*			
Region	**LAC**	**Total**	M	F	M	F	M	F	M	F	10 to 12	13-14	15-18	unknown
City East		77	53	24	3	0	1	0	12	10				
	Celts Group	2	2	0	0	0	0	0	0	0	0	0	2	0
	City Central	10	4	6	0	0	1	0	0	0	0	1	9	0
	Eastern Beaches	18	11	7	0	0	0	0	1	3	0	5	13	0
	Eastern Suburbs	4	4	0	0	0	0	0	2	0	0	0	8	0
	Kings Cross	6	5	1	2	0	0	0	0	0	0	0	6	0
	Redfern	3	2	1	1	0	0	0	1	1	1	0	2	0
	Rose Bay	1	1	0	0	0	0	0	0	0	0	0	1	0
	Surry Hills	3	3	0	0	0	0	0	1	0	0	0	3	0
	The Rocks	30	21	9	0	0	0	0	7	6	2	4	24	0
Endeavour		93	66	27	4	5	0	0	10	2				
	Ashfield	5	3	2	0	0	0	0	0	0	0	2	3	0
	Burwood	6	4	2	3	1	0	0	0	0	2	1	3	0
	Campsie	2	2	0	0	0	0	0	0	0	0	1	1	0

	Eastwood	32	28	4	0	0	0	0	1	1	0	3	29	0
	Gladesville	20	16	4	0	0	0	0	5	0	0	3	17	0
	Leichhardt	20	8	12	1	4	0	0	2	0	0	7	13	0
	Marrickville	7	4	3	0	0	0	0	1	1	0	2	5	0
	Newtown	1	0	1	0	0	0	0	1	0	0	1	0	0
Georges River		125	104	21	4	1	0	0	24	1	2	27	96	
	Bankstown	25	23	2	3	0	0	0	5	1	1	9	15	0
	Flemington	21	20	1	0	0	0	0	7	0	1	4	16	0
	Hurstville	9	8	1	0	0	0	0	1	0	0	1	8	0
	Kogarah	10	9	1	0	0	0	0	2	0	0	2	8	0
	Miranda	39	23	16	1	1	0	0	1	0	0	10	29	0
	Sutherland	21	21	0	0	0	0	0	8	0	0	1	20	0
Greater Hume		177	125	52	6	5	1	0	19	7	6			
	Blacktown	21	14	7	1	0	0	0	4	0	1	1	19	0
	Cabramatta	4	1	3	0	1	0	0	1	1	0	0	4	0
	Camden	15	14	1	0	0	0	0	0	0	0	0	15	0
	Campbelltown	43	35	8	1	0	1	0	0	0	3	9	31	0
	Fairfield	7	6	1	1	1	0	0	4	0	0	2	5	0
	Green Valley	20	14	6	0	0	0	0	0	0	0	4	16	0

	Liverpool	29	13	16	2	1	0	0	5	6	1	7	21	0
	Macquarie Fields	17	12	5	0	1	0	0	2	0	0	3	14	0
	Mt Druitt	21	16	5	1	1	0	0	3	0	1	4	15	1
Hunter		122	80	42	5	4	0	0	0	0				
	Hunter Valley	12	12	0	0	0	0	0	0	0	1	1	10	0
	Lake Macquarie	37	24	13	2	3	0	0	0	0	2	8	27	0
	Lower Hunter	31	19	12	2	0	0	0	0	0	0	10	21	0
	Manning/Great Lakes	25	15	10	1	1	0	0	0	0	0	15	8	2
	Newcastle	9	7	2	0	0	0	0	0	0	0	0	9	0
	Waratah	8	3	5	0	0	0	0	0	0	0	0	8	0
Macquarie		118	91	27	4	0	4	1	18	8				
	Blue Mountains	9	7	2	0	0	0	0	0	0	0	0	9	0
	Hawkesbury	2	2	0	0	0	0	0	0	0	0	0	2	0
	Holroyd	10	9	1	1	0	0	0	2	0	0	4	6	0
	Parramatta	37	26	11	0	0	0	0	13	8	2	9	26	0
	Penrith	18	16	2	0	0	0	0	1	0	0	3	15	0
	Quakers Hill	7	7	0	0	0	0	0	0	0	0	1	6	0
	Rosehill	10	9	1	0	0	4	1	0	0	0	2	8	0
	St Mary's	13	6	7	3	0	0	0	0	0	0	4	9	0

	The Hills	12	9	3	0	0	0	0	2	0	0	0	12	0
Nth Metropolitan		145	119	26	2	0	0	0	18	2				
	Brisbane Waters	28	24	4	0	0	0	0	2	0	0	2	26	0
	Harbourside	19	16	3	0	0	0	0	8	2	0	1	18	0
	Kuringai	28	21	7	0	0	0	0	0	0	0	4	23	1
	Manly/Davidson	9	9	0	0	0	0	0	3	0	1	3	5	0
	North Metropolitan	1	1	0	0	0	0	0	0	0	1	0	0	0
	North Shore	19	16	3	0	0	0	0	3	0	4	2	13	0
	Northern Beaches	14	9	5	2	0	0	0	0	0	0	2	12	0
	Tuggerah Lakes	27	23	4	0	0	0	0	2	0	1	8	18	0
Northern		165	113	52										
	Coffs/Clarence	45	25	20	3	2	0	0	0	0	7	16	22	0
	Mid North Coast	21	13	8	4	5	0	0	0	0	3	6	12	0
	New England	13	8	5	4	1	0	0	0	0	2	3	8	0
	Oxley	28	26	2	6	1	0	0	0	0	8	6	14	0
	Richmond	34	19	15	2	0	0	0	0	0	2	11	21	0
	Tweed/Byron	24	22	2	1	0	0	0	0	0	3	1	20	0

Sth Eastern		95	74	21										
	FarSouth Coast	19	15	4	1	1	0	0	0	0	0	3	7	0
	Lake Illawarra	23	21	2	0	0	0	0	0	0	1	4	18	0
	Monaro	12	12	0	6	0	0	0	0	0	1	1	10	0
	Shoalhaven	34	24	10	0	0	0	0	0	0	1	10	22	1
	Wollongong	16	11	5	0	0	0	0	0	0	3	0	12	1
Southern Rivers		81	64	17										
	Albury	9	6	3	0	0	0	0	0	0	2	1	6	0
	Cootamundra	17	14	3	0	0	0	0	0	0	1	5	11	0
	Deniliquin	21	17	4	10	3	0	0	0	0	0	10	10	1
	Goulburn	8	4	4	0	0	0	0	0	0	1	0	7	0
	Griffith	8	6	2	0	1	0	0	0	0	2	1	3	2
	Wagga Wagga	18	17	1	1	0	0	0	0	0	1	5	12	0
Western		86	63	23										
	Barrier	16	11	5	9	1	0	0	0	0	0	2	5	4
	Barwon	12	7	5	4	3	0	0	0	0	2	1	9	0
	Canobolas	5	4	1	1	0	0	0	0	0	1	0	4	0
	Castlereagh	3	3	0	1	0	0	0	0	0	0	2	1	0
	Chifley	22	18	4	1	0	0	0	1	0	2	7	13	0
	Darling River	4	4	0	1	0	0	0	0	0	0	1	3	0

	Lachlan	7	6	1	0	0	0	0	0	0	1	2	4	0
	Mudgee	1	1	0	0	0	0	0	0	0	1	0	0	0
	Orana	16	9	7	7	4	0	0	0	0	5	5	6	0

Police Cautioning Data 6 April - 29 May 1998

Region	***Number of offences***	***Sex***		***Age***			***Ethnicity***		
		M	F	10 to 12	13 to 14	15 to 18	Aboriginal	TSI	Other
City East	78	54	24	3	11	64	3	1	21
Endeavour	93	66	27	2	19	72	10	0	12
Georges River	125	104	21	2	26	95	5	0	26
Greater Hume	177	125	52	6	30	141	10	0	29
Hunter	122	80	42	3	34	85	9	0	0
Macquarie	118	91	27	2	22	94	4	0	29
Nth Metropolitan	145	119	26	7	21	117	2	2	18
Northern	165	113	52	24	43	98	29	0	1
Sth Eastern	95	74	21	6	18	71	8	0	0
Southern	81	64	17	11	20	50	14	0	0
Western	86	63	23	11	22	53	32	0	1
Totals	1285	953	332	77	266	940	126	3	137
Percent		74.16	25.84	5.99	20.70	73.15	9.81	0.23	10.66

Source: NSW Police Service Computerised Operational Policing System, 19 June 1998 (Data provided for Youth Justice Advisory Committee)