

YOUTH COURT OF SOUTH AUSTRALIA
PRACTICE DIRECTION 3 of 2019
CRIMINAL JURISDICTION

Family Conferences Division 3 of the *Young Offenders Act 1993*

Pursuant to Division 3 under the Young Offenders Act, Judge Penelope Eldridge hereby issues the following Practice Direction regarding the operations of Family Conferences.

FAMILY CONFERENCES UNDER THE YOUNG OFFENDERS ACT

In this practice direction references to “the Act” are to the *Young Offenders Act 1993* as amended and references to “the Court” are to the *Youth Court of South Australia*.

1. NOTIFICATION

- 1.1. A notification to a Youth Justice Co-ordinator by a Police Officer requesting that a Family Conference be convened shall comply with the SAPOL *Referral to a Youth Justice Co-ordinator* form.
- 1.2. In the case of a referral to Family Conference pursuant to section 17(2) of the Act the court registry shall transfer the court file or copy including the Court’s orders to the Youth Court Conferencing Unit. SAPOL shall then forward the supplementary file details including the names and addresses of parties specified under section 10(1) of the Act on the *Referral to a Youth Justice Co-ordinator* form to be appended to the court file.
- 1.3. As soon as practicable after receipt of the notification, the Youth Justice Co-ordinator shall fix a date, time and place for the Family Conference and issue such notices and invitations to the relevant persons as required by the Act.
- 1.4. The following forms shall comply with the corresponding forms as set out hereunder:
 - 1.4.1. *Notice to a Youth to Attend a Family Conference* form (formerly Form 62);
 - 1.4.2. *Invitation to Attend a Family Conference* form (formerly Forms 63a, 63b and 63c.);
 - 1.4.3. *Notice to Police of a Family Conference* form (formerly Form 64)
- 1.5. Notices or invitations to Family Conferences are sufficiently served if:
 - 1.5.1. served personally on the youth or otherwise in accordance with the directions of the Youth Justice Co-ordinator; and
 - 1.5.2. for other persons if posted by pre-paid post to the last known residential or business address of that person or otherwise in accordance with the directions of the Youth Justice Co-ordinator including email.

2. CONDUCT OF FAMILY CONFERENCES

2.1. At the Family Conference, the Youth Justice Co-ordinator shall:

- 2.1.1 ensure that the Representative of the Commissioner of Police provides full particulars and details of the allegations and the offences to which such allegations relate;
- 2.1.2 ensure that all participants are aware of the Family Conference expectations regarding conduct and safety and will advise the youth of the obligation to abide by requirements of the Family Conference including participation and behaviour;
- 2.1.3 encourage and enable (as far as practicable) the youth to participate fully in the Conference and be heard on all relevant issues;
- 2.1.4 ensure that the Conference does not proceed in relation to any offence which is not admitted by the youth;
- 2.1.5 encourage and enable (as far as practicable) the victim or the victim's representative to participate in the Conference and be heard on all relevant issues;
- 2.1.6 encourage and enable (as far as practicable) a person who has suffered loss or damage as a result of the offence or their representative to participate in the Conference and be heard on all relevant issues;
- 2.1.7 encourage the guardians of the youth, relatives and other persons who have accepted an invitation to attend the Conference to participate and be heard on all relevant issues;
- 2.1.8 subject to sub-rule 2.1.9 hereof ensure that the youth participates personally in the Conference and that representations are not made to the Conference by a legal practitioner or other person purporting to act on behalf of the youth;
- 2.1.9 allow the youth and any legal practitioner advising the youth, the guardians, youth worker, or other participant (if present or available by telephone) an opportunity to confer in order that the youth may be advised;
- 2.1.10 adjourn the hearing of the Conference at the discretion of the Youth Justice Co-ordinator for any purpose required in the interests of justice or for the due process of the case including for enquiries to be made outside of the Conference.
- 2.1.11 ensure that the Conference does not proceed if the youth disputes or changes his or her admission of the offence as recorded by SAPOL or the Youth Court and explore the necessity for the matter to be returned to SAPOL and afford the youth the opportunity to seek legal advice.

2.2. The Youth Justice Co-ordinator will:

- 2.2.1 encourage and facilitate discussion, and where necessary or appropriate mediate between the participants of the family conference;
- 2.2.2 provide and explore details of available services or options;
- 2.2.3 record the details of the outcome or undertakings agreed at the family conference.

3. FAMILY CONFERENCE OUTCOMES

3.1. If the Family Conference fails to reach a decision:

- 3.1.1. the Youth Justice Co-ordinator shall refer the matter to the Registrar of the Court by filing a *Referral to Court from Family Conference* form;
- 3.1.2. the Registrar shall notify the youth, the guardians of the youth, the representative of the Police Commissioner, the victim and any person who has suffered loss or damage as a result of the offence of the date and place of the Court

hearing of the matter. The notifications will comply with the *Notice to a Youth to Attend a Family Conference, Notice of a Family Conference Referred to Court and Notice to Police of a Family Conference Referred to Court*.

3.2. If a formal caution is administered at the Conference, the Youth Justice Co-ordinator shall file with the Registrar a ***Formal Caution Against Further Offending*** form.

3.3. Family Conference undertakings entered into by the youth shall comply with the ***Family Conference Agreement*** form and be filed by the Youth Justice Co-ordinator with the Registrar.

3.3.1. The Youth Justice Co-ordinator shall explain to any youth who enters into an undertaking and to any person who agrees to supervise: the provisions of the undertaking; any undertaking conditions; and the consequences of non-compliance.

3.3.2. Upon conclusion of the Family Conference the Youth Justice Co-ordinator shall provide a copy of the undertaking filed with the Registrar to the youth, the police representative, the guardians of the youth and, if they request, the victim and any person who has suffered loss or damage as a result of an offence.

3.3.3. The Youth Justice Co-ordinator shall provide a ***Supervision of Family Conference Undertaking*** form to any person appointed to supervise an undertaking by the youth.

3.3.4. The Supervisor shall complete and return the *Supervision of Family Conference Undertaking* form to the Youth Justice Co-ordinator upon completion of the undertaking by the youth, or non-compliance by due date.

3.3.5. The Youth Justice Co-ordinator shall advise the Commissioner of Police in writing of completed undertakings.

4. FAMILY CONFERENCE NON-ATTENDANCE, NON-COMPLIANCE AND INABILITY TO PROCEED

4.1. Upon the Youth Justice Co-ordinator being satisfied that a youth has:

4.1.1. failed to attend at the time appointed for a Family Conference, or;

4.1.2. not complied with a requirement or undertaking from a Family Conference; the Youth Justice Co-ordinator shall provide the Commissioner of Police with a ***Notice to Police from Family Conference*** form advising of the failure or non-compliance.

4.2. In the case of non-compliance with a requirement or undertaking from a Family Conference referred by the Youth Court pursuant to section 17(2) of the Young Offenders Act, SAPOL will advise the Court that the matter is to proceed in Court on the original charge with a new returnable date and a fresh summons to issue

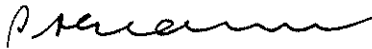
4.3. At any stage of conduct of a Family Conference referral, upon the Youth Justice Co-ordinator forming the opinion based upon information received including expert assessment, report and legal advice, and not by reason of the youth's non-attendance at a Family Conference or failure to comply with a Family Conference undertaking or requirement, that the youth does not have the ability to participate in a Family Conference due to issues of capacity or other reason restricting or prohibiting that youth's participation, the Youth Justice Co-ordinator shall provide notice to the Commissioner of Police advising ***No Action Taken*** and the Family Conference outcome shall be noted accordingly for closure.

5. RECORDS

- 5.1. Records of Family Conferences shall be kept under the custody and control of the Registrar.
- 5.2. Records of Family Conferences shall be kept confidential and not disclosed to any person without the consent of the Youth Justice Co-ordinator and all persons present at the conference or the consent of the Judge of the Youth Court in accordance with this practice direction.
- 5.3. Records of Family Conferences including outcomes and certificates of court record may be released to requesting parties including but not limited to the Commissioner for Victims' Rights, solicitors acting for parties, the Crown Solicitor's Office, Department of Human Services and Australian Border Force in accordance with directions and rulings provided from time to time by the Judge of the Youth Court. In each instance, the release will be subject to a standing ruling provided by the Judge or an ad hoc determination made by the Judge on a case by case basis.

6. This practice direction will come into operation on 28/10/19.

DATED 25 October 2019



Penelope Eldridge
Judge of the Youth Court