

## YOUTH COURT OF SOUTH AUSTRALIA PRACTICE DIRECTION 5 OF 2023

### YOUTH ABORIGINAL COMMUNITY COURT ADELAIDE

I, Penelope Eldridge, Judge of the Youth Court of South Australia pursuant to Rule 12.1(3) of the *Joint Criminal Rules 2022* issue this practice direction in relation to the Youth Aboriginal Community Court Adelaide.

#### 1. FRAMEWORK FOR THE YOUTH ABORIGINAL COMMUNITY COURT ADELAIDE

- 1.1. The Youth Aboriginal Community Court Adelaide ("YACCA") is a specialist therapeutic court for Aboriginal and/or Torres Strait Islander young offenders. It provides an opportunity for an Aboriginal and/or Torres Strait Islander young offender to participate in a four month (and up to six-month) intensive treatment program where the young person, and their family are offered support and program services to address identified issues and to support the young person from engaging in further offending.
- 1.2. The YACCA includes Aboriginal Elders and Respected Persons in the court process and by doing so provides YACCA proceedings with a cultural authority. The YACCA is a sentence delayed court model; the young person's sentence is delayed while they work to address issues that contribute to their offending behaviour.
- 1.3. The young person works with a service provider agency to address criminogenic factors while they are participating in the court process. The young person returns to YACCA at short intervals (determined by need), and their progress and engagement with the service provider agency is monitored.
- 1.4. The YACCA aims to:
  - Provide a youth centric and culturally responsive court process to Aboriginal and/or Torres Strait Islander youths and their offending.
  - To engage the young person with an appropriate therapeutic service provider agency who will:
    - Address trauma, dynamic criminogenic needs and improve social, education and psychological outcomes for youth;
    - Implement relevant protective factors for young people; and
  - Reduce the frequency and severity of offending.
- 1.5. The YACCA will operate initially for two years and be evaluated.

#### 2. CONSTITUTION OF THE COURT

- 2.1. The YACCA when sitting must be constituted of a Judicial Officer.

#### 3. CULTURAL AUTHORITY

- 3.1. There will be a Cultural Authority who is present at all hearings of the YACCA.
- 3.2. A Cultural Authority is someone who is active in community, respected and this is not age restrictive. This person can be an Elder/Respected Person that sits with the Judicial Officer as part of YACCA proceedings and at the sentencing of the young person.
- 3.3. There is a Youth Court Panel of Elders and Respected Persons supported by the Manager Aboriginal Programs CAA and the Youth Court Aboriginal Youth Justice Officers.

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- 3.4. The Elder/Respected Person will participate in CAA education for Elders and Respected Persons facilitated by the CAA.

### **4. ELIGIBILITY**

- 4.1. Eligibility for participation is based on the following criteria:
  - a. The young person is Aboriginal or Torres Strait Islander or identifies as Aboriginal or Torres Strait Islander;
  - b. The young person has been charged with an offence;
  - c. The young person has admitted the offence;
  - d. The young person is not eligible for diversion to a Family Conference;
  - e. The young person is assessed as being of high risk of reoffending;
  - f. The young person has an issue that relates to criminogenic factors for which services are available;
  - g. The young person has agreed to participate in YACCA including agreement to engage in program services;
  - h. The young person has agreed to defer sentencing and to submit to drug testing where required; and
  - i. The young person is eligible for bail.

### **5. REFERRAL AND ASSESSMENT**

- 5.1. A referral form (YAC 1) must be lodged with the Youth Court 48 hours before a General Court hearing or as soon as practicable.
- 5.2. If a young person is identified as possibly being eligible for the YACCA, the matter is adjourned for 5 weeks to the YACCA to allow for an assessment.
- 5.3. The Aboriginal Youth Justice Officer will discuss the YACCA with the young person, their family and legal representation.
- 5.4. The Aboriginal Youth Justice Officer will provide a date for the assessment to the young person.
- 5.5. The young person will be assessed by the YACCA Coordinator and with the Aboriginal Youth Justice Officer present.
- 5.6. The YACCA Coordinator will prepare the assessment report and provide it to the Court one week before the hearing.
- 5.7. The YACCA assessment form (YAC 2) will be emailed to the parties.
- 5.8. To ensure expedient management of the young person's matter, if the YACCA assessment does not recommend the young person participating in the YACCA, the Judicial Officer will administratively refer the matter back to the General Court for the matter to be dealt with.

### **6. ACCEPTANCE ON PROGRAM**

- 6.1. If appropriate the Judicial Officer will accept the young person in the YACCA.
- 6.2. A Griffiths remand is ordered, and proceedings are adjourned for four months.
- 6.3. The matter is adjourned for 2 weeks to allow for the YACCA Coordinator to facilitate a referral to the YACCA Service Provider.
- 6.4. A week before the first YACCA review hearing, the service provider agency will provide the Court with the case plan.



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### **7. PROCEEDINGS**

- 7.1. Hearings for the YACCA are to occur in a Conference Room at the Adelaide Youth Court.
- 7.2. Hearings are to be recorded.
- 7.3. It is intended that the lawyer representing the child or young person, the representative from SAPOL prosecution, the young person and any support persons will attend in person.
- 7.4. All parties will have access to progress reports in relation to the young person.

### **8. ATTENDANCE**

- 8.1. The Judicial Officer, the Elder/Respected Person, SAPol prosecution (without uniform), the young person, the young person's lawyer, the young person's family, the YACCA Coordinator, the service provider agency and the Aboriginal Youth Justice Officer can attend the YACCA.
- 8.2. A support person can attend at discretion of the Judicial Officer in consultation with the AYJO. A support person is to seek consent by emailing the registry at [youthcourt@courts.sa.gov.au](mailto:youthcourt@courts.sa.gov.au) at least 2 business days prior to the hearing or by seeking permission from the Judicial Officer on the day.

### **9. PARTICIPATION AND INCENTIVES**

- 9.1. The Judicial Officer will speak directly to the young person and their family about their engagement and participation with the service provider agency.
- 9.2. The Elder/Respected Person may speak directly to the young person or their family.
- 9.3. The Elder/Respected Person provides advice to the Judicial officer about the young person, their family, local, social and cultural issues.
- 9.4. The service provider agency will provide the young person with an opportunity to address areas of concern and support the young person to use their voice in all proceedings.
- 9.5. The young person is to be encouraged to speak throughout proceedings (not his/her lawyer), supported by the Aboriginal Youth Justice Officer.
- 9.6. Successful engagement with the program will provide opportunity for a young person to identify a relevant incentive for them to work towards.

### **10. SUBSEQUENT ALLEGED OFFENDING AND BAIL VARIATIONS**

- 10.1. Any subsequent alleged offending relating to a young person who has been accepted onto YACCA must be at first instance listed into the YACCA. This is regardless of the location of the offence.
- 10.2. The Judicial Officer presiding will consider the nature of the alleged further offending and whether it is admitted or contested and will hear submissions from SAPol prosecution, the young person's lawyer and any recommendation of the YACCA Coordinator and the Elder/Respected Person about whether the young person can remain on the YACCA or should be removed and referred back to the General Court.
- 10.3. An application to vary bail in relation to a young person accepted on the YACCA must be listed in the YACCA and, if not opposed by SAPol prosecution, can be heard in chambers.

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### **11. MATTERS REMOVED FROM YOUTH ABORIGINAL COMMUNITY COURT ADELAIDE DUE TO NON-ENGAGEMENT**

- 11.1. If a young person is not engaging with the service provider agency the Judicial Officer can remove the young person from the YACCA and refer the matter back to the General Court.
- 11.2. In considering whether the young person should be removed the Judicial Officer will hear submissions from SAPol prosecution, the young person's lawyer and any recommendation of the YACCA Coordinator and the Elder/Respected Person about whether the young person can remain on the YACCA or should be removed.
- 11.3. If a young person is removed from the YACCA this does not exclude the young person being eligible in the future.

### **12. ROLES AND RESPONSIBILITIES**

- 12.1. The young person is to attend an assessment related to the YACCA, attend all hearings and participate in the programs (unless excused).
- 12.2. The lawyer representing the young person must be present at all hearings and can advocate for the young person if the legal rights of the young person are affected.
- 12.3. SAPol must be present at all hearings and can participate where there is a need to respond to an application from the young person.
- 12.4. The Aboriginal Youth Justice Officer will support the young person and their family in the assessment and attendance at the YACCA. The Aboriginal Youth Justice Officer will provide cultural advice to the Court and liaise with the YACCA Coordinator, Elder/Respected Person, Department for Human Services and, if the youth is under guardianship, the Department for Child Protection.
- 12.5. The YACCA Coordinator assesses the young person, liaises with the AYJO and the young person and their family, provides information to the court, makes referrals, monitors progress of the young person and coordinates multi agency approach regarding young person's needs.
- 12.6. The Department of Human Services – Youth Justice will supervise the young person while on bail.
- 12.7. The service provider agency provides therapeutic programs to the young person. The program works with the young person, their family and provide a flexible wrap-around service that is culturally safe and attends court to provide updates.
- 12.8. The service provider agency is a third-party organization determined by tender processes – managed externally to the Youth Court.

### **13. REFERRAL TO PROGRAMS AND SERVICES**

- 13.1. Referral to programs and the service delivery agency rests with the Manager Intervention Programs rather than the Court.

### **14. FILING AND SERVICE OF REPORTS**

- 14.1. Clear, concise and easily understood information for all parties participating in the YACCA is critical.
- 14.2. Assessment reports must be provided to the Court within 4 weeks.
- 14.3. The service provider agency will provide progress reports to the Court one week prior to the YACCA hearing.

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- 14.4. Reports must be filed by emailing [youthcourt@courts.sa.gov.au](mailto:youthcourt@courts.sa.gov.au)
- 14.5. Any party to the proceedings can obtain a copy of a report. SAPol, Legal Services Commission and Aboriginal Legal Rights Movement are to obtain the report via email. A young person can request a copy of a report at the Youth Court Registry.

### **15. CONCLUSION OF GRIFFITHS REMAND**

- 15.1. Successful completion of the program and/or efforts to participate in the program will be taken into account during sentencing of the young person.
- 15.2. The Judicial Officer will encourage the young person to remain engaged with the service provider agency even after completion of the program.

This practice direction will come into operation on 14 September 2023.

DATED 14 September 2023.



Penelope Eldridge

Judge of the Youth Court