

# Children's Court of New South Wales

## Practice Note 11

### Youth Koori Court

First issued: 16 January 2015

Amended: 5 March 2015, 1 February 2019 and 17 March 2023

#### 1. Objective

- 1.1 This practice note establishes procedures that apply in the Youth Koori Court, an alternative process for Aboriginal and Torres Strait Islander young people charged with criminal offences before the Children's Court.
- 1.2 The aim of the Youth Koori Court is to:
  - a. increase Aboriginal and Torres Strait Islander community, including Aboriginal and Torres Strait Islander young people's, confidence in the criminal justice system
  - b. reduce the risk factors related to the re-offending of Aboriginal and Torres Strait Islander young people
  - c. reduce the rate of non-appearances by young Aboriginal and Torres Strait Islander offenders in the court process
  - d. reduce the rate of breaches of bail by Aboriginal and Torres Strait Islander young people and
  - e. increase compliance with court orders by Aboriginal and Torres Strait Islander young people.
- 1.3 The Youth Koori Court seeks to achieve these aims by:
  - a. encouraging Aboriginal and Torres Strait Islander community involvement in the court process
  - b. providing low volume case management mechanisms that will facilitate greater understanding of and participation in the court process by the young person
  - c. identifying relevant risk factors that may impact on the young person's continued involvement with the criminal justice system and

- d. monitoring appropriate therapeutic and other interventions to address these risk factors.

## **2. Sittings of the Youth Koori Court**

- 2.1 The Youth Koori Court will sit at Parramatta, Surry Hills and Dubbo Children's Court and such other courts as directed by the President of the Children's Court.
- 2.2 Subject to paragraph 3.2 and 3.3 a case is not to be adjourned to a court where the Youth Koori Court sits for the sole purpose of referring a case to the Youth Koori Court.

## **3. Referral to the Youth Koori Court**

- 3.1 A referral to the Youth Koori Court can only be made on the application of a young person.
- 3.2 Where a young person has matters for sentence in the Youth Koori Court and unrelated matters for sentence in a Children's Court that does not sit as the Youth Koori Court, the young person may request that the unrelated matters be transferred to the Youth Koori Court for sentence.
- 3.3 Where a young person has matters listed for sentence in a Children's Court location that does not sit as a Youth Koori Court, the young person may seek a Youth Koori Court referral by application to the President.
- 3.4 The legal representative for the young person is to provide the Court with an **Application for referral to the Youth Koori Court**.
- 3.5 An eligible young person who has entered a plea of guilty or indicated an intention to plead guilty **will** be referred to the Youth Koori Court.
- 3.6 An eligible young person who has had an offence proven after hearing may ask the presiding judicial officer for a referral to the Youth Koori Court for sentence. The presiding judicial officer **may** refer the offence to the Youth Koori Court or proceed to sentence.
- 3.7 Where a young person has entered a plea of guilty the facts are to be filed. Where a young person has had an offence proven after hearing the prosecution is to file an agreed statement of facts or request a transcript of the judgment.

#### **4. Eligibility Criteria**

- 4.1 To be referred to the Youth Koori Court a young person must:
- a. have entered a plea of guilty, indicated they will enter a plea of guilty, or had an offence proven after a hearing
  - b. be descended from an Aboriginal person or Torres Strait Islander, identify as an Aboriginal person or Torres Strait Islander and be accepted as an Aboriginal or Torres Strait Islander by the relevant community
  - c. be charged with an offence that will be finalised by the Children's Court
  - d. be likely to receive a sentence that is either a community-based order with Youth Justice supervision or a control order
  - e. be 10 to 17 years of age at the time of the commission of the offence(s) and under 19 years of age when proceedings commenced and
  - f. be willing to participate.

#### **5. Listing of cases referred to the Youth Koori Court**

- 5.1 A referred case is to be adjourned to the Youth Koori Court after seven days and within 14 days of the referral, subject to the available listings in the Youth Koori Court diary. The Registry is to notify the Court Liaison Officer for the Youth Koori Court of the referral.
- 5.2 The young person is to be directed to the Youth Koori Court Casework Co-ordinator or other designated person to arrange a screening assessment to enable the Youth Koori Court to assess his or her suitability for the Youth Koori Court process.

#### **6. First appearance in the Youth Koori Court**

- 6.1 At the first appearance the Youth Koori Court will assess the young person's suitability for participation in the Youth Koori Court.
- 6.2 The court will consider the screening assessment and any relevant information or submissions from Aboriginal and Torres Strait Islander Elders or Respected Persons, the young person's legal representative, the police prosecutor and any other appropriate person with regard to:
- a. the availability of suitable services in the area of the young person's residence

- b. the likely impact on the victim or the victim's family having regard to the nature of the offence and/or the delay in sentencing of the young person in the Youth Koori Court
  - c. the strength of the young person's commitment to the requirements of the Youth Koori Court
  - d. the availability of suitable Elders or Respected Aboriginal or Torres Strait Islander persons after consideration of the young person's cultural heritage and identity.
- 6.3 The Youth Koori Court may decline to accept the young person into the Youth Koori Court because the Youth Koori Court does not have the capacity to accept any new cases at that time.
- 6.4 A young person who either pleaded guilty or indicated an intention to plead guilty and is then assessed as unsuitable for the Youth Koori Court or excluded from the Youth Koori Court will be referred back to the general crime list for sentence.
- 6.5 A young person whose offence(s) was proven after hearing and is then assessed as unsuitable for the Youth Koori Court or excluded from the Youth Koori Court will have their sentence proceedings referred back to the judicial officer who presided over the hearing.
- 6.6 When a young person is unsuitable or excluded from the Youth Koori Court the Youth Koori Court judicial officer will order a Youth Justice Background report where appropriate.
- 6.7 When a young person is suitable for the Youth Koori Court the Youth Koori Court will record the admission of the young person to the Youth Koori Court.
- 6.8 After a young person has been admitted to the Youth Koori Court the Youth Koori Court will refer the case to a Youth Koori Court Conference for the development of an **Action and Support Plan**.

## 7. **Youth Koori Court Conference**

- 7.1 The Youth Koori Court Conference is to be held two weeks from acceptance into the Youth Koori Court unless otherwise directed.
- 7.2 The Youth Koori Court Casework Co-ordinator will help or arrange for the young person to be assisted to prepare a draft Action and Support Plan prior to the Youth Koori Court conference.

- 7.3 The Youth Koori Court Conference is to be conducted in court and on the record. The following people may attend the conference:
- a. the young person and his or her legal representative
  - b. a member or members of the young person's family if available
  - c. a support person for the young person at the discretion of the judicial officer
  - d. one or more Aboriginal or Torres Strait Islander Elder or Respected Person nominated by the Youth Koori Court
  - e. the Youth Koori Court Casework Co-ordinator
  - f. a representative from Youth Justice
  - g. representatives from other government and non-government support agencies including but not limited to Justice Health, Family and Community Services, the Children's Civil Law Service (Legal Aid NSW) and the Department of Education at the discretion of the judicial officer
  - h. a Police Prosecutor
  - i. the Youth Koori Court, Court Liaison Officer
  - j. the presiding Youth Koori Court judicial officer.

## **8. Approval of Action and Support Plan**

- 8.1 If the Youth Koori Court approves the Action and Support Plan the young person will be directed to commence the Action and Support Plan. The case may be adjourned for graduation and sentence pursuant to section 33(1)(c2) of the *Children (Criminal Proceedings) Act 1987*.
- 8.2 If the Youth Koori Court does not approve the Action and Support Plan the Court will make directions including referral to a second conference or referral to the general Children's Court list for sentencing.

## **9. Review of compliance with Action and Support Plan**

- 9.1 The case will be listed before the Youth Koori Court periodically, in the normal course at intervals of 2 to 4 weeks, to monitor the progress of the implementation of the Action and Support Plan. A revised Action and Support Plan may be submitted for approval at any one of these reviews.

- 9.2 At the nominated adjournment of the case for review of the Action and Support Plan, or such other date nominated by the Court, the Youth Koori Court will determine whether to:
- a. list the Young Person for sentence on some or all matters,
  - b. direct the preparation of a revised Action and Support Plan to be submitted at the next review, or
  - c. adjourn the case for further review of the Action and Support Plan.

**10. Non-compliance with the Action and Support Plan**

- 10.1 If the agency responsible for supervising the young person's compliance with the Action and Support Plan forms the view that the young person is not complying with his or her obligations under the plan the agency is to notify the Youth Koori Court Casework Co-ordinator.
- 10.2 If the young person is concerned that a service or agency included in the Action and Support Plan is not meeting its commitments under the plan, the young person's legal representative should notify the Youth Koori Court Casework Co-ordinator.
- 10.3 The Youth Koori Court Casework Co-ordinator is to notify the young person's legal representative and the Police Prosecutor and refer the notification to the judicial officer to determine whether to re-list the case before the Youth Koori Court.
- 10.4 If the prosecution seeks to have the young person discharged from the Youth Koori Court process it must file and serve an **Application to Discharge from the Youth Koori Court** not less than 48 hours prior to the next review date.
- 10.5 The Youth Koori Court may discharge the young person from the Youth Koori court process if the Youth Koori Court is satisfied that the young person has not complied with the Action and Support Plan or for any other reason.
- 10.6 If the Youth Koori Court discharges the young person from the process the case will be adjourned for sentence in the Youth Koori Court or the general Children's Court list.

## **11. Withdrawal of consent to participate in the Youth Koori Court**

11.1 If the young person informs the Youth Koori Court that he or she wishes to withdraw consent to participate in the Youth Koori Court process the Youth Koori Court shall

- a. note the court papers that consent has been withdrawn
  - b. adjourn all offences for sentence and
  - c. direct the preparation of a Youth Justice Background report,
- unless otherwise determined by the presiding judicial officer.

## **12. Sentencing**

12.1 Where a young person;

- a. successfully complies with the Action and Support Plan or part of the Plan
- b. withdraws consent to continue to participate in the Youth Koori Court process or
- c. is discharged from the Youth Koori Court process

the Children's Court, whether or not it is sitting as a Youth Koori Court shall take into account the young person's participation in and, where appropriate, completion of the Youth Koori Court process when sentencing the young person in accordance with section 33(1) of the *Children (Criminal Proceedings) Act 1987*.

12.2 Any sentence imposed by the Children's Court following the young person's participation in all or part of the Youth Koori Court process shall not be more punitive than that which may have been imposed had the young person not participated in the process. This applies when sentencing a young person who has withdrawn or been discharged from the Youth Koori Court or graduated from the Youth Koori Court.

## **13. Graduation**

13.1 Where a young person has successfully complied with an Action and Support Plan the Youth Koori Court may hold a graduation ceremony following sentence.

**14. Role of Elders and Respected persons**

14.1 Aboriginal and Torres Strait Islander Elders and Respected persons may

- a. provide cultural advice to the Youth Koori Court
- b. assist the young person to understand the cultural expectations on young Aboriginal and Torres Strait Islander people
- c. assist the young person to understand his or her cultural heritage, history, and norms
- d. offer support and advice to the young person on how to improve connections with his or her culture and community
- e. assist in the identification of culturally significant issues, programs or supports that might be included in the Action and Support Plan
- f. speak in the Youth Koori Court about the young person and their participation in the Youth Koori Court prior to the young person's sentence in the Youth Koori Court.

14.2 Aboriginal and Torres Strait Islander Elders and Respected persons will not otherwise participate in sentencing the young person.



Judge Ellen Skinner

**President, Children's Court of NSW**

Date: 17 March 2023