

Children's Court of New South Wales

Practice Note 11

Youth Koori Court

First issued: 16 January 2015

Amended: 5 March 2015

Further amended: 1 February 2019

1. Objective

- 1.1 This practice note establishes an alternative process for managing cases involving young Aboriginal and Torres Strait Islander people charged with criminal offences before the Children's Court, to be known as the Youth Koori 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 will seek to achieve these aims by:
 - a. Allowing 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 interventions to address these risk factors.

2. Sittings of the Youth Koori Court

- 2.1 The Youth Koori Court will operate at Parramatta and Surry Hills Children's Court and such other courts as directed by the President of the Children's Court.
- 2.2 Subject to paragraph 2.3 a case is not to be adjourned to Parramatta or Surry Hills Children's Court or any other court where the Youth Koori Court operates for the sole purpose of having the case referred to the Youth Koori Court.
- 2.3 Where a young person has matters for sentence in a Children's Court other than a Children's Court where the Youth Koori Court operates as well as matters for sentence in a Children's Court where the Youth Koori Court operates and the young person has indicated that he or she will seek referral to the Youth Koori Court, a judicial officer may, at the request of the young person, adjourn the other matters for sentence to the Children's Court where the Youth Koori Court operates for the purpose of referring those matters 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 the young person.
- 3.2 The legal representative for the young person is to complete an **Application for referral to the Youth Koori Court** and hand up the application to the presiding judicial officer.
- 3.3 Where the young person has entered a plea of guilty, or indicated an intention to plead guilty, the presiding judicial officer will refer the case to the Youth Koori Court if satisfied that the eligibility criteria are met.
- 3.4 Where the young person has had his or her offence proven after a hearing the presiding judicial officer may refer the young person to the Youth Koori Court for sentence, if satisfied that the eligibility criteria are met, or proceed to sentence in the usual manner.

3.5 Where a case is referred to the Youth Koori Court following a hearing a transcript of the judgment is to be ordered and/or an agreed statement of facts is to be filed.

4. Eligibility Criteria

- 4.1 To be referred to the Youth Koori Court a young person must;
- a. Have indicated that he or she will plead guilty to the offence or the offence has been proven following a hearing,
 - b. be descended from an Aboriginal person or Torres Strait Islander, identify as an Aboriginal person or Torres Strait Islander and must be accepted as such by the relevant community,
 - c. Be charged with an offence within the jurisdiction of the Children's Court that is to be determined summarily,
 - d. At a minimum, be highly likely to be sentenced to an order which would involve Juvenile Justice supervision,
 - 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 Where the judicial officer refers a case to the Youth Koori Court the matter is to be adjourned to the Youth Koori Court, in the ordinary course and subject to available listings, not less than one week and not more than two weeks of the referral, using the Youth Koori Court diary.
- 5.2 The young person is to be directed to the YKC casework co-ordinator or other designated person to make arrangements to participate in 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, after considering the screening assessment and any other additional relevant information or submissions from the nominated Aboriginal and Torres Strait Islander Elders

or Respected Persons, the young person's legal representative, the police prosecutor and any other person the Youth Koori Court considers appropriate, assess the young person's suitability for the Youth Koori Court having regard to:

- a. The availability of suitable services in the area of the young person's residence
- b. The likely impact of inclusion of the young person in the process on the victim or the victim's family having regard to the nature of the offence and/or the delay in sentencing
- 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.

6.2 Notwithstanding that a young person would otherwise be assessed as suitable the Youth Koori Court may decline to accept the young person into the process because the Youth Koori Court does not have the capacity to accept any new cases at that time.

6.3 In the case of a young person who has pleaded guilty prior to or at the time of the referral to the Youth Koori Court, if the case is assessed as unsuitable or is otherwise excluded from the process the case is to be referred back to the general Children's Court list for sentencing.

6.4 In the case of a young person who had his or her offence(s) proven after hearing and the young person is assessed as unsuitable or is otherwise excluded from the process, the case is to be referred back to the judicial officer who presided over the hearing for sentence.

6.5 In appropriate cases the Youth Koori Court will order a Juvenile Justice Background Report at the same time that the young person is assessed as unsuitable or otherwise not admitted to the Youth Koori Court.

6.6 If the case is assessed as suitable the Youth Koori Court will note the acceptance of the case on the court record.

6.7 The Youth Koori Court will then 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 purpose of a Youth Koori Conference is to provide an environment that promotes frank and open discussion about the risk factors that may be impacting on the young person's involvement in crime and to encourage the young person to agree on taking action, with appropriate supports, to address these risk factors.
- 7.2 In the usual course the Youth Koori Court Conference is to be held two weeks from acceptance into the Youth Koori Court.
- 7.3 The Youth Koori Court Conference is to be facilitated by a judicial officer or other mediator approved by the President.
- 7.4 The Youth Koori Court Conference is to be attended by;
- a. The young person and his or her legal representative
 - b. A member of the young person's family
 - c. Additional members of the young person's family at the discretion of the judicial officer or mediator
 - d. A support person for the young person at the discretion of the judicial officer or mediator
 - e. An Aboriginal or Torres Strait Islander Elder or Respected Person nominated by the Youth Koori Court
 - f. The Youth Koori Court casework co-ordinator
 - g. A representative from Juvenile Justice
 - h. Representatives from other government and non-government support agencies including but not limited to Justice Health, Family and Community Services and the Department of Education at the discretion of the judicial officer or mediator.
 - i. A police prosecutor
 - j. The Youth Koori Court officer
- 7.5 Where an agreed **Action and Support Plan** is developed at a Youth Koori Court Conference the case will be listed before the Youth Koori Court the same day for consideration of the plan.
- 7.6 Where an **Action and Support Plan** cannot be developed at the Youth Koori Court Conference the young person is to be directed to appear before the Youth Koori Court the same day for further case directions including referral to

a second conference or referral to the general Children's Court list for sentencing.

8. Confidentiality of the Youth Koori Court Conference

- 8.1 Any person participating in a Youth Koori Court Conference is to be advised that it is an offence under section 15A of the *Children (Criminal Proceedings) Act 1987* to publish or broadcast any information, picture or other material that identifies or is likely to lead to the identification of any child connected with criminal proceedings.
- 8.2 Anything said or done at a Youth Koori Court Conference is to remain confidential except in the following circumstances;
- a. Information, behaviours and outcomes disclosed during a conference may be discussed in any listing of the case before the Youth Koori Court.
 - b. If a mediator holds a private session with some but not all participants it is to be conducted on the basis that what is said or done during the private session cannot be disclosed to anyone else, including the judicial officer without the express consent of the person who made the disclosure.
 - c. A police prosecutor may discuss the outcome of a conference with a victim in the case.
 - d. Relevant information about the case may be disclosed to a service provider or potential service provider with the consent of the young person or, following consideration in the Youth Koori Court of any submissions made on this issue, by direction of the Youth Koori Court.
 - e. Any Action and Support Plan prepared as part of a conference forms part of the record of the Court.
 - f. Any person participating in a conference (including a private session) may disclose information obtained during a conference if;
 - i. He or she has reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury any person or damage to property

- ii. He or she has reasonable grounds to suspect that a child or young person is at risk of significant harm as a result of obtaining the information as part of the conference.
- iii. Any other law requires them to disclose the information.

9. Approval of Action and Support Plan

- 9.1 The Youth Koori Court will consider the Action and Support Plan developed at the conference.
- 9.2 Where the Youth Koori Court approves the Action and Support Plan the young person is to be directed to commence the Action and Support Plan and the case will be adjourned for a period pursuant to section 33(1)(c2) of the *Children (Criminal Proceedings) Act 1987* of approximately 3 months but no more than 12 months from the date of the finding of guilt for review of compliance with the Action and Support Plan.
- 9.3 Where it is anticipated that the young person will be in a position to complete the Action and Support Plan within this period the Youth Koori Court will order the preparation of a Juvenile Justice Background report to be submitted at least 2 working days prior to the next court date.
- 9.4 Where it is anticipated that the young person will require a longer period to complete the Action and Support Plan the Youth Koori Court may order the preparation of a Special Purpose Juvenile Justice report to be submitted at least 2 working days prior to the next court date.
- 9.5 The case may also be listed before the Youth Koori Court periodically within the adjourned period to monitor the progress of the implementation of the Action and Support Plan.
- 9.6 If the Youth Koori Court declines to approve the Action and Support Plan further directions will be made including referral to a second conference or referral to the general Children's Court list for sentencing.

10. Review of compliance with Action and Support Plan

- 10.1 At the nominated adjournment of the case for review of the Action and Support Plan, or such earlier date nominated by the court, the Youth Koori Court will determine whether to:
 - a. Sentence the young person, or

- b. Defer sentencing for a further period of not more than 12 months from the date of the finding of guilt in relation to any offence to allow the young person to comply with the Action and Support Plan;
- 10.2 In determining whether to further defer the sentence the Youth Koori Court will have regard to;
- a. The age of the young person
 - b. The nature of the offence(s) committed
 - c. The requirements of the Action and Support Plan
 - d. The level of commitment demonstrated by the young person
- 10.3 Where the Youth Koori Court determines to defer the sentence further it may amend the Action and Support Plan if it considers it appropriate to do so.

11. Non-compliance with the Action and Support Plan

- 11.1 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.
- 11.2 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 the case is to be re-listed before the Youth Koori Court.
- 11.3 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.
- 11.4 The Youth Koori Court will determine whether the young person should be discharged 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.
- 11.5 If the Youth Koori Court discharges the young person from the process the case will be adjourned for sentence.

12. Withdrawal of consent to participate in the Youth Koori Court

- 12.1 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, unless the presiding judicial officer otherwise determines
- a. Note the court papers that consent has been withdrawn
 - b. Adjourn all offences for sentence
 - c. Direct the preparation of a Juvenile Justice Background report.

13. Sentencing

- 13.1 Where a young person;
- a. Successfully complies with the Action and Support 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*.
- 13.2 Any sentence imposed 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.
- 13.3 A condition imposed as part of a sentence by the Youth Koori Court may involve a requirement to continue to participate in completion of the Action and Support Plan.

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.

His Honour Judge Peter Johnstone

President, Children's Court of NSW

Date: 1 February 2019