

“Court in the Act”

***The Youth Court; The Children, Young Persons, and their Families Act 1989;
And topical issues arising for NZ Youth Justice practitioners***

A newsletter co-ordinated by the Principal Youth Court Judge to those involved in the Youth Justice community. Contributions, feedback, letters to the Editor, are not only acceptable, but encouraged

No. 6, May 2003

***“Tama tu tama ora”
(He who strives, lives fully)***

(Youth Unit at Rimutaka Prison)

Youth Court Website

Imagine a trumpet fanfare. The Youth Court website was formally launched a couple of weeks ago. In fact, it is not so much a Youth Court website but a comprehensive youth justice website. It has five main sections:

- About the Youth Court
- About Youth Justice
- Young People
- Families
- Victims

The official address of the website is:
<http://www.courts.govt.nz/youth/>

The first section, “About the Youth Court” is an overview of the Youth Court with some commonly asked questions and answers. Have a look also at the “virtual tour” of a Youth Court.

The section dealing with “About Youth Justice” is for all Youth Justice professionals and academics. It has some very interesting features that you should check out. One feature

remains to be added to this section. That is, a fully indexed compendium of all known reported and unreported Youth Court cases. When this is introduced, I will let you all know. It will be the first time that all youth Court cases have been collected in one location. In time, I hope that all the cases themselves can be accessed through the Website.

The remaining three sections, are all purpose designed and written to appeal to various participants in the youth justice system: young people, their families, and victims.

I would be interested in your feedback. The website will be regularly updated.

A History of Youth Justice in New Zealand

I recently commissioned an article summarising the history of youth justice in New Zealand. I attach that for your interest. It is written by Emily Watt, who is a freelance researcher and writer. It is fascinating reading. If you want to understand why we have the system we have, and what were

the forces that brought it into effect, then this is compulsory reading. Keep it under your pillow at night!

Note: This article is also on the website in the "About Youth Justice" section.

Joint Training

There have recently been six, three-day training seminars for Police Youth Aid and CYFS Youth Justice staff held in regions throughout New Zealand. Unfortunately, there was not room to include Health and Education staff who have involvement in youth justice, particularly those Health and Education officials involved in local YOTS.

I attach a copy of my powerpoint presentation made to the seminars, which many of you have requested.

SPELD NZ Inc. (Specific Learning Disabilities Federation)

I am always happy to include in this newsletter information from Government departments and community groups. Here is information received from the secretary of SPELD NZ Inc.

SPELD and Youth offending

It has been argued that classroom failure is a major cause of youth offending. Some very clever, well-motivated children are found to achieve consistently far below their expected intellectual level due to some specific learning disability such as dyslexia. School for these children is a humiliating, depressing and sometimes

terrifying place. A loss of self-worth results inevitably in trouble for some, and it appears their numbers are disproportionately high in the prison population.

The organisation dedicated to helping those with specific learning disabilities is SPELD NZ. This is a non-profit federation of 30 local groups which has lobbied for three decades (with little success) to have dyslexia and related conditions recognised by the Ministry of Education.

SPELD NZ gives support to families affected by the sometimes traumatic social effects of learning disability, and it offers assessment and tuition by specially trained educators.

Two courses are offered. The most important is the three-week block course to train SPELD tutors. It can also be done by correspondence.

The other is a two-day Parent and Teacher Aide course, which gives a brief introduction to learning disabilities. This second course does not require any prior qualifications and is suitable for workers in any welfare agency.

SPELD NZ is not strictly a social welfare organisation as its purpose is mainly educational. It is run by volunteers, though testing and tuition are paid for by parents and caregivers. There are over 530 tutors and about 2,500 pupils, of whom three-quarters are boys. There can be little doubt that the contribution made by these tutors each year help to raise the sights of many children, providing them with a sense of dignity and hope and reducing the likelihood of their appearance in places like the Youth Court.

If you wish to know more about SPELD NZ please contact:

President, 121 Maryhill Terrace, Dunedin, Ph: (03) 455 2790

Secretary, PO Box 25, Dargaville, Ph: (09) 439 5955, Email: faj@xtra.co.nz or go to www.speld.org.nz

Youth Justice Independent Advisory Group

The new Youth Justice structure comprises three tiers:-

1. A Senior Ministers Group;
2. The National Youth Justice Advisory Group, chaired by Ms Susan Howan from the Ministry of Justice. It includes representatives from CYFS, Police, Courts, Health, Education and the Ministry of Social Development.
3. Local Youth Offending Teams (YOTS). There are 32. They have been in operation for about six months now. They usually consist of eight representatives, two each from CYFS, Police Youth Aid, Health and Education.

Standing outside that “tiered” structure, but part of it, is the Youth Justice Independent Advisory Group (IAG), of which the Principal Youth Court Judge is the Chairperson. Five members have been initially appointed to this group. They are as follows:

- James Johnston – Barrister and solicitor, Wellington, with particular interest in youth law; senior youth advocate. Foundation member, NZ

Law Society Youth Justice subcommittee.

- Dr Ian Lambie – Senior Lecturer in Clinical Psychology, Auckland University; Associate Director, Centre for Child and Youth Mental Health; clinical consultant for SAFE programme (community based sexual offender treatment service) in Auckland and part-time clinical psychologist with Child and Youth Services, Waitematā Health.
- John Langley – Principal of Auckland College of Education; previously director of Teacher Registration Board. One of the founders and first chairperson of Project Early, early intervention programme for young children with behaviour disorders, in Christchurch.
- Frank Moulton – Previous head of Police Youth Aid Team in Palmerston North; re-employed by Police to set up and co-ordinate three early intervention Youth Boards in Palmerston North.
- Anni Watkin – Manager of Youth and Cultural Development Society, Christchurch, which works with young people who offend. Wide background of involvement in community groups working with adult and youth offenders.

The purpose of the IAG is to assist in the delivery and implementation of the Youth Offending Strategy. The IAG will be a forum for discussing initiatives and developments in the youth justice sector and developing independent advice to Ministers. It will also be a forum for feedback and constructive comment from the community and the practitioner perspective to senior Government officials in the youth

justice sector, on policy and advice to Ministers.

If you have any concerns about the youth justice sector, it would be helpful to relay these to any member of the IAG so that they can be discussed and highlighted.

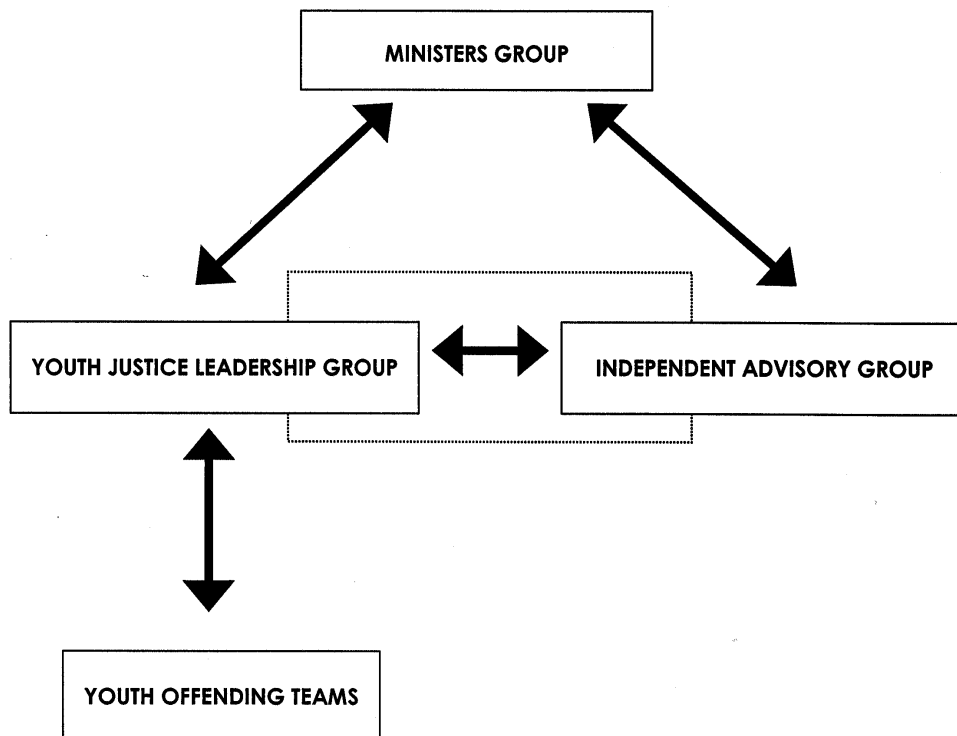
I am also hopeful that the IAG can be something of a proactive “ginger group” and to some extent will be able hold the youth justice system as a whole to account.

The new Youth Justice structure, is set out below in diagrammatic form.

**Access to Previous
“Court in the Act”
Newsletters**

All the previous editions of “Court in the Act” are now available on the Youth Court Website, in the “About Youth Justice” section – *Media Releases and Newsletters*

New Framework for Co-ordination and Leadership



SPECIAL FEATURE

Timeframes for holding Family Group Conferences

There have been some recent problems in respect of convening and holding family group conferences within the legislative timeframes.

To avoid any confusion, I set out a table showing the appropriate timeframes for each type of Family Group Conference. We should all note the distinction between the word “convene, and the word “completed”. I hope this is a useful reminder to us all. I also attach a recent Practice Note issued by Neil Cleaver, the National Manager Family Group Conference Co-ordinators, as to the importance of adhering to timeframes.

- * “CONVENE” means “to take the appropriate steps ... in order to cause the conference to meet” (Children, Young Persons and Their Families Act 1989, s2).
 “COMPLETE” means take place; hold.

| FGC TYPE | “CONVENE” | “COMPLETE” |
|---|---|--|
| Care & Protection S247(a) | Within 21 days of YJC receiving report from enforcement officer S249(1) | Within 1 month of convening S249(6)(b) |
| “Pre-charge” S247(b) | Within 21 days of YJC receiving notification that despite consultation the informant desires that the young person be charged S249(2) | Within 1 month of convening S249(6)(b) |
| “Custody” <i>Young person denies charge and is remanded in custody under s238(1)(d) or (e)</i> S247(c) | Within 7 days of court order S249(3) | Within 7 days of convening S249(6)(a) |
| Court ordered Charge “not denied” S247(d) | If remanded in custody under s238(1)(d) or (e), within 7 days ; Otherwise within 14 days of court order S249(4) | Within 7 days of convening S249(6)(a) |
| Charge proved S247(e) | Within 14 days of the finding of proof S249(5) | Within 1 month of convening S249(6)(b) |
| At any other stage if desirable S281B | No time specified | No time specified |



child,
youth
and
family

Co-ordinators' Network

Practice Note No. 4

Undue Delays in Convening or Holding Youth Justice FGCs

The Co-ordinators' Network has recently received criticism from the Courts and Judiciary regarding the undue delays in the convening and holding of FGCs.

S.249 of the Act clearly outlines the timeframes we must adhere to following notification or direction for FGC. There has been case law that indicates failure to meet these timeframes invalidates the FGC, and consequently removes the jurisdiction of the Court to deal with the matter (*HvPolice [1999NZFLR966]*). When this occurs, victims access to justice is denied – an outcome that is unacceptable to both the victim and the enforcement agency responsible for presenting charges.

It would appear there are practice issues that are contributing to, and ultimately resulting in the 'undue delay' cases that have recently received negative attention from our stakeholders. Various reasons cited by Co-ordinators for delays include:

- Family/whanau/young person did not attend the FGC despite consultation and written notice;
- Police request the referral 'be put on hold' rather than withdraw the referral due to circumstances that have arisen regarding the young person, staffing or further charges pending etc.
- Outstanding assessments, reports, Statement of Facts, or other vital information.

The most common issue appears to be the non-attendance of whanau/young person at the FGC despite the appropriate consultation taking place pre-conference.

S.250 (S.36 of the CYP&F Amendment Act) of the Act states:

*"Every Youth Justice Co-ordinator shall, before convening a Family Group Conference pursuant to this part of this Act in respect of a child or young person, **make all reasonable endeavours to consult** with the child or young person's family, whanau or family group in relation to:*

- (a) The date on which, and the time and place at which, the conference is to be held; and*
- (b) The persons who should attend the conference; and*
- (c) The procedure to be adopted at the conference ..."*

The legislation charges the Co-ordinator with the responsibility to make **"all reasonable endeavours"** and this should be clearly case-noted in each instance. When the young person or their family fails to attend, it does not invalidate or prevent the FGC from legally occurring. The FGC should proceed with the entitled members who are present, ie Co-ordinator, Police and Youth Advocate, and the appropriate recommendations should be made and written up in the usual manner.

When Police, Advocates or other interested parties make requests to postpone or delay the process, **this must be denied**, as the responsibility for or consequences regarding the meeting of timeframes does not rest with these parties. In the event that Police make this request, the option of withdrawing the 'referral' and re-notifying at a later date is available to them and this should be introduced as an alternative to proceeding to FGC by the Co-ordinator.

The same principle should be applied to Court-directed FGCs. The FGC must be both convened and held within the statutory timeframes and the decisions reported back to the Court. The Judge then can exercise his/her right to re-order the FGC or take whatever alternative action they consider appropriate.

In summary, it is entirely unacceptable to convene and hold FGCs outside of the statutory timeframes.

- Failure to convene and hold FGCs within statutory timeframes may result in matters being dismissed from the Court resulting in victims' access to justice being denied;
- Failure to convene and hold FGCs within statutory timeframes bring the justice process into disrepute;
- It is the duty of the Youth Justice Co-ordinator alone to meet this statutory requirement and only a Youth Justice Co-ordinator can be held to account for the performance of this duty;
- All Youth Justice Co-ordinators must convene and hold FGCs within the statutory timeframes without exception.

The contents of this Practice Note are to be put into effect immediately.

24 April 2003

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