

THE YOUTH JUSTICE ACT IN BRIEF

The *Youth Justice Act* relates to the administration of justice and operation of the court system in Tasmania. It applies to young people aged 10 years and over and under 18 years at the time of an alleged offence.

The main features of the *Youth Justice Act* include:

- an increase in the age of criminal responsibility from 7 to 10 years (children under 10 years cannot be charged with committing offences)
- establishment in the Magistrates Court of a new court for young people: the Youth Justice Division
- introduction of procedures to divert young people from the court system
- an increase in the range of sentencing options available for young people
- a focus on the rights of both young persons and victims within the criminal justice system.

The *Act* provides for the young person to express remorse or regret for their action, as a key part of the legal process. It also ensures that the young person:

- is made aware of their rights under the law
- has the offence and any penalties properly explained
- is sent to detention only as a means of 'last resort'
- receives penalties appropriate to their age, maturity and cultural identity
- receives penalties which give them the opportunity to develop a sense of social responsibility.

When a young person admits to committing an offence, the Police may proceed to:

- give a Formal Caution to the young person; or
- refer the matter to a Community Conference; or
- charge the young person, and have the matter taken to Court.

This Brochure describes the 'diversionary' measures, **formal cautioning** by the Police and **community conferencing** by the Department of Health & Human Services. A second brochure deals with the Court process under the *Youth Justice Act*.

FURTHER ADVICE & INFORMATION

Assistance can be obtained from the Legal Aid Commission of Tasmania during office hours (9am—5pm weekdays) by ringing:

1 300 366 611

Community Legal Centres:

Hobart Community Legal Service
166 Macquarie Street, Hobart 7000
Ph: 6223 2500

North-West Community Legal Centre
62 Stewart Street, Devonport 7310
Ph: 6424 8720

On the Web

www.lawstuff.org.au — the website for the National Children's & Youth Law Centre: it includes a site for Tasmanian laws and the option of e-mailing questions on the law and your rights.

www.hobartlegal.org.au — the website for Hobart Community Legal Service.

www.courts.tas.gov.au/magistrate — the website for the Magistrates Court of Tasmania, which includes information on going to Court.

If you don't have easy access to the Internet, you can book free time on State Library of Tasmania computers in many sites around Tasmania. Just ring and book.

There are many more provisions in the *Youth Justice Act* than can be reasonably included in this Brochure. Therefore, the information contained in it is a general guide to the law only. It should not be treated as legal advice. You should see a solicitor before admitting to an offence or appearing in court.

This Brochure has been produced by Hobart Community Legal Service, with assistance from the Department of Health & Human Services.

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Understanding the *Youth Justice Act 1997*
(No. 1 of 2 Brochures for Young People)

FORMAL CAUTIONING & COMMUNITY CONFERENCING

THE ADMINISTRATION OF JUSTICE FOR YOUNG PEOPLE IN TASMANIA



*Hobart Community
Legal Service Inc.*
Providing legal direction

DIVERSIONARY OPTIONS REQUIRE THAT YOU FIRST ADMIT TO HAVING COMMITTED THE ALLEGED OFFENCE

If you are apprehended by the Police for committing an offence, then you can either

- not admit to that offence (and the matter will proceed to Court), or
- admit that you committed the offence.

If you admit to it, then the Police must decide to

- divert you away from Court, or
- refer the matter to Court.

Only admit to committing an offence if

- you believe it is correct to do so, AND
- you are willing to constructively participate in the diversionary process (you may not know at this point if this option is available to you).

If the Police decide to divert you from Court, they will

- decide whether you should either
 - receive a formal caution, or
 - attend a community conference
- explain the detail of the offence to you
- explain your entitlements to legal advice and to a court hearing
- require you to sign a written admission of guilt
- require your agreement to either the formal caution or community conference.

You should ensure that

- a parent or other adult whom you know or choose attends the meeting with the Police
- you understand the offence
- you know which diversion measure is to apply
- you get legal advice, if you desire it, **before** you sign an admission of guilt
- you agree with the statement you sign.

You can reject the diversionary measure offered to you. In that case, the matter will go to Court.

If you identify with a particular community (such as Aboriginal, religious or ethnic community) then it is possible for a representative of that community to administer the Formal Caution instead of the Police.

FORMAL CAUTION

When will a Formal Caution apply? A Formal Caution is administered by an authorised Police officer, and is confidential. It applies if:

- you have admitted committing the offence
- the offence is of a minor nature, such as shoplifting, trespass or underage drinking
- you have not already been cautioned on a number of earlier occasions
- you have complied with previous ‘undertakings’.

Who attends a Formal Caution? Besides you and the authorised Police officer:

- the victim (if he or she chooses)
- your parent/guardian or other responsible adult (if this is possible).

What does the Formal Caution involve? It involves:

- the Police cautioning you against further offending
- explanation of the meaning of the caution, and that it can be used as evidence in any future offence
- an opportunity for you and any parent/guardian/responsible adult present to make a statement about the matter
- a decision as to any ‘undertaking’ that you are required to enter into.

What types of Undertakings can apply? An undertaking might involve any of the following:

- the payment of compensation for property loss/damage, and injury/loss to the victim
- restitution (replacement) of affected property
- performing up to 35 hours of community service for the victim’s benefit
- an apology to the victim for the offence
- any other action agreed to fit the matter.

An undertaking can last for up to three months.

What happens after the Formal Caution? A written record will be made, including

- details of the offence
- the names of all those present
- details of where the caution took place
- the undertakings which you agreed to.

You will be required to sign that record.

COMMUNITY CONFERENCE

When will a Community Conference apply? It is for offences too serious for cautioning, and can be requested by the Police or ordered by the Court. It is run by a ‘facilitator’ appointed by the Department of Health & Human Services and is confidential.

Who attends a Community Conference? Besides you, the facilitator and the authorised Police officer:

- your parent/guardian or other responsible adult
- any relative or person known to you (eg. a youth worker or counsellor) if considered helpful
- the victim (if he or she chooses) and any support persons they choose to bring
- Aboriginal community representative if applicable.

What does the Community Conference involve? The Community Conference aims to encourage you to accept responsibility for your behaviour, and involves:

- explanation of the meaning of the caution, and that it can be used as evidence in any future offence
- an opportunity for the victim (if they choose) to participate in the process
- decision as to the penalty (‘sanction’) (if any)
- your entering into an undertaking.

What types of Sanctions can apply? They are similar to Undertakings in a Formal Caution, except that

- up to 70 hours community service may apply
- the undertaking can last for up to 12 months
- the decisions are enforceable.

You’ll be required to sign a record of the Community Conference’s decision, and you’ll be given a copy.

What happens if the Community Conference breaks down? The Community Conference breaks down if

- you fail to attend it, or
- it can’t reach a decision (if you, the police officer or the victim disagree as to an undertaking), or
- you fail to fulfil your undertaking.

If any of these things happen, the Police may issue a complaint for an offence and the matter goes to Court.

Note that:

- you can ask that an adult valued by you (like a youth worker or counsellor) attend the Conference
- you can’t be prosecuted for the offence if you complete your undertaking — any charges against you for that offence will be dropped.