

# RESTORATIVE JUSTICE INITIATIVES IN NEW ZEALAND

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## I. THE FAMILY GROUP CONFERENCE

The Youth Justice Family Group Conference (FGC) is a statutory decision-making process involving, among others, the young offender (alleged or proved), members of their family/whanau, and the victim of the offence and their supporters.

It is a forum to determine whether the child or young person committed the alleged offence, and, where the offence is admitted, to develop a plan that ensures:

- The child or young person is held accountable and encouraged to accept responsibility for their offending.
- The interests of the victim are taken into account.
- Any measures taken for dealing with the offending, strengthen the family/whanau and family group, and foster their ability to develop their own means of dealing with offending by their child or young person.
- The principles of the Children, Young Persons and their Families Act (CYP&F Act—here after referred to as the Act) are followed.

For the FGC to be valid it must be convened in accordance with the legislation. To enable participants to speak freely and without fear that things they say may be used against them or published, the use of information shared during the conference cannot be used in the courts, or be published.

## II. PRINCIPLES

The principles that govern the FGC are set out in the Act. Summarised these principles state:

- a. Unless the public interest requires otherwise, proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter.
- b. Proceedings should not be instituted solely to provide assistance or services needed to advance the welfare of the young person or their family group.
- c. Measures taken should be designed to strengthen families and foster their own means of dealing with their offending young.
- d. Young offenders should be kept in the community where practicable and consonant with the need to ensure public safety.
- e. Age of itself is a mitigation factor in determining whether a sanction should be imposed and the nature of any sanction.
- f. Sanctions should take the form most likely to maintain and promote the development of the offender within their family group, and be the least restrictive form appropriate.
- g. Any measures taken should have regard to the interests of victims.

## III. TYPES OF REFERRALS

There are a number of different types of referrals for a FGC. These are:

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**A. Child Offender (10 – 13 years inclusive)**

1. Grounds

When a police officer has serious concerns for a child's well being, because of their offending and the police officer believes that a declaration that the child is in need of care and protection is required in the public interest.

2. Referred by

Police, after consultation with a Youth Justice Coordinator.

3. Function

To consider whether the child is in need of care and protection because of their offending and if so, to make decisions, recommendations and plans.

4. Time limits

Must be convened within 21 days and completed within one month unless special reasons exist.

**B. Young person (14 – 16 years inclusive), Alleged to Have Committed an Offence**

1. Grounds

The police allege that a young person has committed an offence. They have not been arrested and the police believe that the public interest requires proceedings to be instituted. This type of referral is known as an 'intention to charge' referral.

2. Referred by

Police, after consultation with a Youth Justice Coordinator.

3. Function

To consider whether the young person the young person admits the offence, whether they should be prosecuted or whether there is another way of dealing

with the matter, and if so, to make decisions, recommendations and plans.

4. Time limits

Must be convened within 21 days and completed within one month unless special reasons exist.

**C. Young Person in Custody on Denial of Offence**

1. Grounds

A young person appears in Court, denies the charge and the Court makes an order placing them in the custody of the Director-General.

2. Referred by

Court directs Youth Justice Coordinator to convene an FGC.

3. Function

To make recommendations to the Court about the custody of the young person pending determination of the charge.

4. Time limits

Must be convened within 7 days and completed within 7 days unless special reasons exist.

**D. Young Person Appears in Court— Offence Not Denied**

1. Grounds

The young person appears in court either following arrest or on a summons, and does 'not deny' the charge.

2. Referred by

Court directs a Youth Justice Coordinator to convene an FGC.

3. Function

To consider whether the young person admits the offence and whether they should be dealt with by Court or whether

there is another way to deal with the matter. To make decisions, recommendations and plans.

4. Time limits

If the young person is in custody — must be convened within 7 days and completed within 7 days, unless special reasons exist.

If the young person is not in custody — must be convened within 14 days and completed within 7 days, unless special reasons exist.

**E. Charge Against a Young Person has been Proved**

1. Grounds

A young person appears in Court, denies the charge and the Court find the charge has been proven.

2. Referred by

Court directs Youth Justice Coordinator to convene an FGC.

3. Function

To consider how the young person should be dealt with for the offence and make decisions, recommendations and plans.

4. Time limits

Must be convened within 14 days and completed within 7 days unless special reasons exist.

**IV. PERSONS ENTITLED TO ATTEND THE FGC**

The Act sets out the people who are entitled to attend the FGC. These are:

- the child or young person.
- every person who is:
  - a parent
  - a guardian

- a person having care of the child or young person.
- members of the child or young person's family/whanau or extended family group.
- a Youth Justice Coordinator.
- a police officer.
- any victims and support persons, or their representative.
- Youth Advocate.
- persons representing organisations when the child or young person is subject to Court orders.
- any other person the family/whanau or family group of the child or young person wishes to be present.

Exclusion of entitled persons is not permitted.

**V. PREPARING FOR THE FGC**

When convening the FGC the Act requires the Youth Justice Coordinator to:

- Consult with the young person, their family, the police and victim to set the time, date and place of the FGC.
- Obtain the views of those unable to attend.
- Ensure all relevant information and advise is available to the FGC.

**A. Best Practice in FGC Preparation**

Thorough preparation is the key to a successful FGC. Necessary preparation includes identifying the entitled members, fully informing the young person, their family and the victim, of their rights and obligations, the importance of their role in the conference, and about the FGC process itself. It is also an opportunity for the participants to build their trust in the coordinator — the coordinator must be perceived as fair, non-judgemental and sensitive to the participants concerns.

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1. Interviewing the young person

Face-to-face meetings are usually conducted with the young person in the presence of their parents or caregivers. It is often necessary to speak to the young person alone. This is especially important where there is significant conflict between the young person and their parents, or if the offence was committed by the young person against their parents.

As well as providing information to the young person and their parents, the opportunity is used to identify other family members and significant people in the young persons life.

2. Interviewing the young person's family

Face-to-face meetings achieve the best results in terms of attendance of the wider family group, however distance sometimes prevents this. In these circumstances contact is made via phone in preference to correspondence.

Often the parents of the young person will take responsibility to contact other members of the family and discuss the forthcoming conference with them. When this happens the parents give the contact details of these family members to the coordinator who follows up with a written invitation for them to attend the conference.

3. Interviewing the victim and their supporters

The coordinator is often the first 'official' other than the investigating police officer, to talk to the victim since the offence. It is therefore important that the coordinator meets face-to-face with them and any supporters they wish to bring to their conference. This meeting provides the opportunity for the victim to discuss the offence and its impact. In

addition the coordinator will explain the conference process and assist the victim to consider realistic outcomes.

**B. Setting the Time, Date and Place for the FGC**

The FGC should be arranged for a time and date that suits the young person, their family, the victim and the attending police officer. This usually means outside core school and working hours. Police stations and Courts are not suitable venues for an FGC. For reasons of personal safety or comfort, victims may be more likely to attend an FGC if it is held at a neutral venue.

**VI. HOLDING THE FGC**

**A. Opening the Conference**

The opening of the conference is usually determined by cultural protocol. For example if the conference is on a Marae a formal welcome will be made to the conference participants. However, it is important that the coordinator ensures that introductions are made so that everyone is aware of each other's name, their relationships to the offence, and the young person or victim.

Coordinators also take the opportunity to reinforce information given at the conference preparation stage. Particularly:

- The process that the conference will follow.
- The principles of the Act that govern the conference.
- The confidential nature of the conference proceedings.
- That the coordinators role will be to facilitate the process to enable the conference to come to an agreement about what should happen as a consequence of the offence.

## **B. Determining whether the Young Person Admits the Offence**

The usual practice is for the coordinator to ask the police officer to begin by reading out the offence and the summary of facts. The coordinator will then ask the young person whether they admit the offence as the police officer has outlined. If the young person does not admit the offence the conference is closed and the matter is referred back to the police, or the court, for their decision on any subsequent action. If the young person admits the offence the conference proceeds.

## **C. Information Sharing/Story Telling**

In this stage of the conference each participant will tell his or her story. The purpose of this is to elicit the facts of the offence and the impact of the young persons actions on all participants. Each person is given the opportunity to speak without interruption.

### **1. The young persons story**

It is important that the young person begins by telling their story. In this way they begin 'admitting' what they did in front of the victims and their own family. If others start by telling what happened the young person is likely to become defensive and deny points of detail. The young person may leave out details in order to minimise what happened. Victims and co offenders usually correct any inaccuracies. The conference should not move beyond the young persons story until they have touched on:

- What happened on the day/night of the offence.
- What they were thinking about.
- Who has been affected by what happened.
- In what way people have been affected.

Questions may be needed to help prompt the young person to express what has happened, e.g. "What had you been doing?", "What time was it?", "What was it liked to be picked up by the police?". Failure of the young person to provide basic acknowledgement of what happened and the harm caused is likely to result in increasing the victim's sense of indignation.

The use of open questions, basic listening skills, and a limited amount of paraphrasing and summarising can be helpful in assisting the young person. Silence can also be used.

Initially, when young offenders are asked "Who was affected by you actions?" they may not immediately acknowledge the impact on all those who were affected. The young person should be encouraged to acknowledge the harm caused to the victim, themselves and their family. The impact of this harm will be reinforced as the conference proceeds.

### **2. The victims story**

Once the young person has moved towards some form of acknowledgement of the impact of their offending (tacit as it may be) it is appropriate to invite the victim to speak.

Normally victims do not require the same level of prompting as the young offender. The purpose of this stage is not for the victim to abuse or castigate the young person. If the young person has already begun to accept some level of responsibility for their actions, displays of moral indignation from the victim are less likely.

It is important that the victim and their supporters focus on the specific incident and how they were affected. Generalisations are not helpful and

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quickly result in the young person 'turning off'. Such generalisations can include the victim blaming the young person for other occasions when they were victimised or blaming the young person for all 'youth crime'. When this happens the coordinators refocus the discussion to the specific offence in question.

After the victim has had the opportunity to tell their story, coordinators usually ask them if there are any questions relating to the facts of the offence that they would like to ask the young person.

3. Victim support group

The victim supporters are next invited to talk about what happened, how it affected them and their friend or family member who was victimised.

4. Young person's family

After the victim's support group has spoken the family of the young person is given the opportunity to talk about how the offence has affected them and what action they have taken in respect of the young person as a result of the offence. Each family member should be given the opportunity to speak.

Once all participants have had the opportunity to tell their story the coordinator will give the views of person who were entitled but unable to attend, and any other information that the conference may need to reach an agreement.

At this stage of the conference it is normal for the discussion to become more free flowing. Coordinators suggest that the general rule of thumb is — the less intervention the better. However, discussion should continue to focus on the incident and its affects. Some diversions

are a danger at this point. For example, exchanges between the victim and the young persons family might become aggressive and unhelpful: "If you had control of your kids this wouldn't have happened". If this is allowed to continue the young person will become a detached spectator of other peoples conflict, instead of being encouraged to accept responsibility for his/her own actions.

After everyone has had the opportunity to discuss the offence and its impact the discussion shifts from the past to the present. The object of this phase is to mark the changed perception of both offender and victim about the offence and each other. It is usual at this phase to be marked by family private deliberation time. All other members of the conference are excluded from this time unless specifically invited by the family. It is common for the family to consider what they have heard and what is needed to restore harmony with the victim and within their family.

**D. Decisions, Recommendations and Plans**

When the family has completed there private deliberations the conference gets back together. The focus at this stage is clearly on the future. The purpose is to develop a fair and workable plan that meets participant's needs for repairing the harm done by the young persons actions. (It is more appropriate to frame this stage in terms of working out how the young person can make amends rather than in terms of setting punishment.)

To introduce this phrase the victim may be asked a general question such as: "Having heard everything what would you like to come out of today?"

It is important that the victim and the young person and their family negotiate the outcome plan for themselves. The police officer and lawyer (if they attend), can provide feedback on whether or not the decisions are in keeping with the principles and legal requirement of the Act.

The coordinator should also test the proposed plan for workability and fairness. The discussion must include monitoring of the agreement. The agreement should be monitored by the parties, (family and victim), but the victim may not wish to have a role in this.

The coordinator records the conference in detail, specifying exactly what has been agreed, roles responsibilities, timeframes and action to be taken if the young person cannot, or does not complete the agreement.

All conference participants sign the agreement.

## **VII. POST FGC**

After the conference the coordinator distributes a copy of the agreement to all the conference participants. A copy of the agreement is also sent to the police or court, depending on which agent referred the matter to the conference.

The persons identified in the plan monitors it to ensure that the young person complies with what was agreed, and notifies the coordinator when the matter is completed. The coordinator will then formally advise all conference participants and the referring agent — either the court or police.