

Youth Diversion in Tonga

Interim report: April 2007

Introduction

In December, 2006, the Hon. Attorney General and the Minister for Justice, Alisi Taumoepeau announced the introduction of a Youth Diversion pilot programme. The scheme avoids long delays and cumbersome court procedures for young people involved in minor offences while at the same time making them accountable for their offending.

An important reason for its introduction at that time was the need to respond quickly to offences committed during the disturbances that occurred on November 16th in Nukualofa. It is also intended to serve as a pilot for future diversionary options for all young people who commit offences.

This interim report briefly describes the objectives of the scheme, the process that has been adopted and the nature and outcome of cases referred to it. It then presents information on the extent to which the scheme is meeting its objectives and has been accepted by the community. Finally the report identifies some operational matters that deserve to be reviewed in order to enable the further development and improvement of the scheme.

Objectives

The scheme aims to ensure that the young people involved take responsibility for their actions and become involved in repairing the harm that they have caused – thus achieving the core objectives of the criminal justice system. The scheme is also intended to resolve matters quickly, and to avoid imposing a life-long conviction that can prevent travel and limit employment opportunities for these young people.

Specific objectives of the Youth Diversion process are to:

- Divert criminal issues from the courts in cases where young people are involved;
- Enable those who played a role in causing the damage to develop a full understanding of the harm they have caused and acknowledge their responsibility for it;
- Enable those who played a role in causing the damage to contribute to repairing the harm;
- Increase community involvement in the justice process, and community commitment to restoring peace and harmony in Tonga.

The process

The police prosecutor may refer young people aged 17 years and under who are not currently involved in serious offending and who do not have a history of serious offending for Youth Diversion. A meeting is then arranged by the probation officers in the Ministry of Justice with the 'Diversion Panel' which is made up of representatives of the justice system, the community and the family of the young person. Others who will be expected to attend the 'Diversion Meeting' will be: the young person, their parent or guardian, a police officer or prosecutor, and a support person chosen by the young person who may be a representative of their church or a member of their community.

Once a referral has been received, letters are sent out describing the process and inviting participants to attend. A probation officer visits the young person and their family to deliver a letter of explanation, discuss the diversion process and offer the young person and family the opportunity to be involved. If the offer is accepted, a suitable time and place for the panel diversion meeting is arranged.

At that meeting, the nature of the offending is discussed. If the young person admits their responsibility, a plan is developed that helps to repair the harm they have caused and avoid further offending. A document describing the details of the plan is signed by the young person, their family and the facilitator of the meeting. Provided the plan is completed, no conviction will be entered on the young person's record. However, the Crown retains the discretion to prosecute in those cases where the young person does not admit the offences, or does not accept the agreements reached by the Diversion Panel Meeting or complete the Diversion Plan in the time set down.

Nature and outcome of referrals¹

As of March 2007, a total of 42 young people who offended on November 16th 2006 and who were aged at least 12 and under the age of 18 years, have been referred for youth diversion. Three have declined to take part, three have not been located and two were excluded as they had previously offended. The remaining 34 have attended a diversion meeting and agreed to a diversion plan. Information on these cases comes from Ministry of Justice records and observations and interviews carried out by the evaluation team responsible for this report.

All these young people were first offenders who had been involved in relatively minor offending – mostly theft or other property matters. All have shown remorse for their offending and have agreed to a plan which acknowledges their responsibility, sets out actions designed to contribute to repairing the harm they caused and involves a programme designed to support their reintegration. In practice, this means that they have agreed to complete community work (mostly between 10 and 20 hours with a maximum of 60 hours) supervised by someone in their village, to attend a life skills training course offered by the Salvation Army and or a youth program in a relevant church, be placed on curfew, banned from various places such as 'Boys Hut', or attend school during the plan period.

Fifteen young people have successfully completed their plan, 28 are currently completing and one case is under review due to family problems. Except for this one case, all those involved are very pleased with the outcomes. In addition, the young people and their families are grateful for the opportunity for the young person to make good their wrong-doing without suffering severe and lasting penalties that could affect their future options.

Success in meeting objectives

To date the scheme has been extremely successful in meeting all its objectives. It has diverted minor cases from courts. It has enabled those who played a role in causing the damage to develop a full understanding of the harm they have caused and acknowledge their responsibility for it. In addition, the young people have been actively involved in ways that do something to repair the harm they caused. It has also increased the involvement of families and communities

¹ Data in this section comes from Ministry of Justice files; interviews with participants collected by Sean Buckley during March 2006; and on the basis of observations of diversion meetings carried out for 6 of the 34 cases by Gabrielle Maxwell or Sean Buckley.

in the justice process. Members of communities have played an active role in supervising the young people and the communities themselves have benefited from the work that has been done.

Moving forward

The success of the experience to date indicates that consideration should be given to further expanding the scheme to other offenders. This could be done in a number of ways:

- a) Extending the scheme to those involved in offending that did not occur on November 16th 2006;
- b) Considering the inclusion on a case by case basis of other young people involved in similar types of offences even if they are not first offenders;
- c) Considering on a case by case basis the inclusion of young people involved in other types of offences where there were mitigating factors, such as pressure from older people;
- d) Considering the development of a parallel process for adult offenders involved as first time and/or minor offenders.

Consideration should also be given to ways in which the process can be improved or extended, for example.

- a) Involving victims in the process, either directly or indirectly;
- b) Reviewing the effectiveness of current practice in recording and exchanging of information in police, prosecution and justice in managing cases and in enabling evaluation of the scheme;
- c) Providing for the confidentiality of information so that it can be freely exchanged in the diversion process the fear that it will be used to prosecute.
- d) Developing options for the review of cases when difficulties are experienced in completing plans;
- e) Increasing community support and involvement:
 - a. at village level in offering community work and supervision options;
 - b. through a variety of NGOs becoming more involved in providing programmes that provide support to young people and families
 - c. By setting up a community support group to provide for the ongoing exchange of views between government and the community in relation to youth justice;
- f) Examining the resources needed and how best they can be provided.

In conclusion

The undoubted success of the scheme leads us to conclude that it should be retained, extended and improved. If invited, we would plan to return to Tonga later this year, probably in July to assist with a full review of progress over the first six months of operation, to offer training to those involved in the operation of the process and to discuss with key officials and the community, options for the development of youth and restorative justice processes for the future.

*Dr Gabrielle Maxwell and Sean Buckley
Institute of Policy Studies,
School of Government
Victoria University of Wellington
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