



New South Wales

Young Offenders Amendment Act 2002 No 69

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Young Offenders Amendment Act 2002 No 69

Act No 69, 2002

An Act to amend the *Young Offenders Act 1997* with respect to cautions and youth justice conferences; and for other purposes. [Assented to 10 September 2002]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Young Offenders Amendment Act 2002*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Young Offenders Act 1997 No 54

The *Young Offenders Act 1997* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 20 Entitlement to be dealt with by caution

Insert after section 20 (6):

- (7) Despite any other provision of this section, a child is not entitled to be dealt with by caution in relation to an offence if the child has been dealt with by caution on 3 or more occasions:
 - (a) whether by or at the request of a police officer or specialist youth officer under section 29 or by a court under section 31, and
 - (b) whether for offences of the same or of a different kind.

[2] Section 23 Referrals for cautions

Insert after section 23 (4):

- (5) Despite any other provision of this section, the Director of Public Prosecutions may not refer a child for a caution in relation to an offence if the child has been dealt with by caution on 3 or more occasions:
 - (a) whether by or at the request of a police officer or specialist youth officer under section 29 or by a court under section 31, and
 - (b) whether for offences of the same or of a different kind.

[3] Section 31 Cautions by courts

Insert after section 31 (4):

- (5) Despite any other provision of this section, a court may not give a caution to a child in relation to an offence if the child has been dealt with by caution on 3 or more occasions:
 - (a) whether by or at the request of a police officer or specialist youth officer under section 29 or by a court under this section, and
 - (b) whether for offences of the same or of a different kind.

[4] Section 37 Entitlement to be dealt with by conference

Insert after section 37 (5):

- (6) Despite any other provision of this section, it is not appropriate for a child to be dealt with by caution in relation to an offence if the child has been dealt with by caution on 3 or more occasions:
 - (a) whether by or at the request of a police officer or specialist youth officer under section 29 or by a court under section 31, and
 - (b) whether for offences of the same or of a different kind.

[5] Section 38 Determinations by specialist youth officers

Insert after section 38 (3):

- (4) Unless it is impracticable to do so, a specialist youth officer must consult with the investigating official before making any decision as to whom the matter is to be referred.
- (5) Despite any other provision of this section, a specialist youth officer may not refer a child for a caution in relation to an offence if the child has been dealt with by way of caution on 3 or more occasions:
 - (a) whether by or at the request of a police officer or specialist youth officer under section 29 or by a court under section 31, and
 - (b) whether for offences of the same or of a different kind.

[6] Section 40 Referrals for conferences by DPP and courts

Insert after section 40 (5):

- (6) Unless it is impracticable to do so, the Director of Public Prosecutions must consult with the investigating official (if any) before making any decision as to whom the matter is to be referred.

[7] Section 41 Conference administrator may refer matters to DPP

Omit “On referral of a matter by a specialist youth officer for a conference under this Part, a conference administrator may consult with the specialist youth officer” from section 41 (1).

Insert instead “Unless it is impracticable to do so, a conference administrator must, on referral of a matter by a specialist youth officer for a conference under this Part, consult with both the specialist youth officer and the investigating official”.

[8] Section 41 (2), (6), (7) and (8)

Omit “and the specialist youth officer” wherever occurring.

Insert instead “, specialist youth officer and investigating official”.

[9] Section 41 (9)

Insert after section 41 (8):

- (9) Despite any other provision of this section, a child may not be referred for a caution in relation to an offence if the child has been dealt with by caution on 3 or more occasions:
 - (a) whether by or at the request of a police officer or specialist youth officer under section 29 or by a court under section 31, and
 - (b) whether for offences of the same or of a different kind.

[10] Section 44 Right not to proceed

Insert after section 44 (4):

- (5) Despite any other provision of this section, a child may not be referred for a caution in relation to an offence if the child has been dealt with by caution on 3 or more occasions:
 - (a) whether by or at the request of a police officer or specialist youth officer under section 29 or by a court under section 31, and
 - (b) whether for offences of the same or of a different kind.

[11] Section 47 Participants in conferences

Insert after section 47 (2) (b):

- (b1) if the child attends a government or non-government school (within the meaning of the *Education Act 1990*) as a student, a representative of the school,

[12] Section 52 Outcomes of conferences

Omit section 52 (2), (3) and (4). Insert instead:

- (2) Before determining an outcome plan, the participants in the conference must give particular consideration to the desirability of the child's participation in an appropriate program, as referred to in subsection (5) (c).
- (3) An outcome plan is, if possible, to be determined by consensus of the participants in the conference and, subject to subsection (4), may be agreed to by the conference even though it is not agreed to by all the participants.
- (4) The child, and any victim of the offence who personally attends the conference, each have a right of veto with respect to the whole of an outcome plan, or with respect to any decision proposed to be contained in an outcome plan, regardless of the views of any other participant in the conference.

[13] Section 52 (5A)

Insert after section 52 (5):

- (5A) The kinds of program that may be appropriate to be contained in an outcome plan include the following:
 - (a) counselling programs,
 - (b) drug and alcohol rehabilitation programs,
 - (c) educational programs,
 - (d) other programs aimed at improving a child's prospects, whether conducted by a government agency, an educational institution or a community organisation (such as a Police and Community Youth Club).

[14] Section 53 Failure of conference to reach decision

Insert “or if the child or any victim of the offence who has personally attended the conference has exercised his or her right of veto with respect to an outcome plan” after “regulations” in section 53 (1).

[15] Section 55 Reconvening of conferences

Omit section 55 (5), (6) and (7). Insert instead:

- (5) Any variation or replacement of an outcome plan is, if possible, to be determined by consensus of the participants in the reconvened conference and, subject to subsection (6), may be agreed to by the conference even though it is not agreed to by all the participants.
- (6) The child, and any victim of the offence who personally attends the reconvened conference, each have a right of veto with respect to the whole of the new outcome plan, or with respect to any decision proposed to be contained in the new outcome plan, regardless of the views of any other participant in the conference.

[16] Schedule 3 Savings and transitional provisions

Insert at the end of clause 1 (1):

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[Second reading speech made in—
Legislative Assembly on 4 June 2002
Legislative Council on 20 June 2002]