

[Act 1997 No 54]



New South Wales

## Young Offenders Bill 1997

### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.\*

#### Overview of Bill

The object of this Bill is to establish a scheme that provides an alternative process to court proceedings for children alleged to have committed offences, through the use of youth justice conferences, formal cautions and warnings.

#### Outline of provisions

##### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

---

\* Amended in committee—see table at end of volume.

---

**Clause 3** sets out the objects of the proposed Act which are to establish a scheme that provides an alternative process to court proceedings for children alleged to have committed offences, through the use of youth justice conferences, formal cautions and warnings and to provide an efficient and direct response to the commission of certain offences by children.

**Clause 4** defines certain words and expressions used in the proposed Act.

**Clause 5** defines *victim* to mean a person who suffers harm as a direct result of an act committed, or apparently committed, by a child in the course of an offence. The harm covered includes physical harm and harm to property.

**Clause 6** makes it clear that notes in the text do not form part of the proposed Act.

## **Part 2     General principles of scheme**

**Clause 7** sets out the general principles that are to guide the operation of the proposed Act and persons exercising functions under the proposed Act. They include the principle that the least restrictive form of sanctions are to be applied against a child who is alleged to have committed an offence and that criminal proceedings are not to be instituted against a child if there is an alternative and appropriate means of dealing with a matter.

**Clause 8** sets out the offences to be covered by the proposed Act. The offences to be covered will be summary offences and certain indictable offences that may be dealt with summarily. It will not cover offences that are not investigated by an investigating official within the meaning of the proposed Act or in certain other circumstances.

**Clause 9** sets out the procedures under the scheme. An investigating official dealing with a child who is alleged to have committed an offence covered by the proposed Act must consider whether the matter is to be dealt with by warning, caution or youth justice conference before commencing criminal proceedings.

**Clause 10** requires any admissions made for the purposes of the proposed Act, if possible, to be in the presence of a person responsible for the child, an adult present with the consent of a person responsible for the child, an adult chosen by the child (over age 16) or a legal practitioner chosen by the child.

**Clause 11** makes it clear that the proposed Act does not affect any jurisdiction of the Children's Court or limit the requirements of any law relating to evidence.

**Clause 12** makes it clear that the proposed Act does not affect other functions relating to methods of dealing with offences not covered by the proposed Act.

### **Part 3 Warnings**

**Clause 13** states that warnings may be given for summary offences covered by the proposed Act but not for any prescribed offence.

**Clause 14** confers on a child who has committed an offence for which a warning may be given an entitlement to be given a warning. However, this is to be subject to the circumstances not involving violence and any opinion of the investigating official that it is not in the interests of justice for the matter to be dealt with by warning. A child may be given a warning even though the child has previously committed offences.

**Clause 15** provides that warnings may be given at any place and to more than one child at the same time.

**Clause 16** requires an investigating official to take steps to ensure that a child understands the purpose, nature and effect of the warning.

**Clause 17** requires an investigating official to record the fact that a warning has been given but not the name of the child warned.

### **Part 4 Cautions**

**Clause 18** states that cautions may be given for offences covered by the proposed Act, other than offences prescribed by the regulations.

**Clause 19** sets out the conditions for giving a caution against further offending. They are that the child admits the offence, that the child consents to the giving of the caution and that the child is entitled to be given the caution.

**Clause 20** confers on a child who has committed an offence for which a warning may not be given an entitlement to be given a caution. However, this is to be subject to any opinion of the investigating official that it is not in the interests of justice for the matter to be dealt with by warning. In forming such an opinion, the investigating official is to consider the seriousness of the offence, the degree of violence involved, the harm caused to the victim and any previous offences committed by the child and may consider any other matters. If the investigating official is concerned about harm caused to the victim even though other serious factors are not involved, the investigating

official may refer the matter to a specialist youth officer to decide whether the matter is an appropriate one for a caution. A child may be given a caution even though the child has previously committed offences or been dealt with under the proposed Act.

**Clause 21** requires an investigating official to arrange a caution if the official determines that a matter should be dealt with by caution and to refer a matter to a specialist youth officer if the official determines that it is not in the interests of justice for a matter to be dealt with by way of a warning or caution.

**Clause 22** requires an investigating official to explain to the child certain matters relating to the offence, the child's right to obtain legal advice, the entitlement to have the matter dealt with by a court and the nature and effect of a caution. If possible, the explanation is to be in the presence of a person responsible for the child, an adult present with the consent of a person responsible for the child, an adult chosen by the child (over age 16) or a legal practitioner chosen by the child.

**Clause 23** enables the Director of Public Prosecutions to refer children for cautions.

**Clause 24** requires a written caution notice to be given to a child before the caution is given.

**Clause 25** provides that a child may decide not to proceed with a caution and may elect to have a matter dealt with by a court. It also enables an investigating official to decide to proceed by court rather than by caution at any time before the caution is given.

**Clause 26** requires cautions, if practicable, to be given not less than 10 days, and not more than 21 days, after notice is given of the caution. A caution must generally be given at a police station.

**Clause 27** enables cautions to be given by police officers or specialist youth officers authorised by the Commissioner of Police. Any such authorised person may, if the person thinks it appropriate, arrange for a caution to be given by a respected member of the community.

**Clause 28** sets out the persons who may be present when a caution is given. They include a person responsible for the child, members of the child's family or extended family, an adult chosen by the child, a respected member of the community, interpreters and other skilled persons in the case of a child who has a communication or cognitive disability or is subject to a probation or a community service order.

**Clause 29** sets out conditions for giving cautions, including requirements that the person giving the caution must take steps to ensure that the child understands the purpose, nature and effect of the caution, the requirement to have the assistance of appropriately skilled persons where needed and the requirement to ensure, if possible, that a person responsible for the child or an adult chosen by the child is present. The person giving the caution may request the child to provide an apology to any victim but must not impose any other conditions on a caution.

**Clause 30** provides that a caution notice must be given to a child who has been cautioned.

**Clause 31** enables courts to give cautions if the offence is one for which a caution may be given under the proposed Part.

**Clause 32** prohibits further criminal proceedings from being taken against a child in respect of an offence for which a caution has been given or an offence for which proceedings could not have been taken on a conviction of the child.

**Clause 33** requires records to be kept of cautions.

## **Part 5 Youth justice conferences**

### **Division 1 Preliminary**

**Clause 34** sets out the principles and purposes of youth Justice conferences. The principles require measures and sanctions taken or imposed by conferences to promote acceptance by children of responsibility for offences and, among other things, to take the least restrictive form that is appropriate in the circumstances. The rights of victims are also to be enhanced. The purpose of a conference is to make decisions and recommendations about, and to determine outcome plans in respect of, children who commit offences. Participants at conferences are to take into account the need to hold children accountable for their behaviour, the need to encourage the acceptance of responsibility, the need to make reparation to victims and the needs of the children.

**Clause 35** states that conferences may be held for offences covered by the proposed Act, other than offences prescribed by the regulations.

**Clause 36** sets out the conditions for holding a conference. They are that the offence is one for which a conference may be held, that the child admits the offence, that the child consents to the conference and that the child is entitled to be the subject of a conference.

**Clause 37** confers on a child who has committed an offence an entitlement to be dealt with by holding a conference. However, this is to be subject to any opinion of the investigating official that it is not in the interests of justice for the matter to be dealt with by conference. In forming such an opinion, the investigating official must consider the seriousness of the offence, the degree of violence involved, the harm caused to any victim and any previous offences committed by the child and may consider any other matters. A child may be given a warning even though the child has previously committed offences or been dealt with under the proposed Act.

**Clause 38** provides for a specialist youth officer to refer a matter to a conference administrator if the officer determines that a conference should be held. If the specialist youth officer determines that the matter may be dealt with by warning or a caution, the officer is to make the appropriate arrangements. If the specialist youth officer determines that the matter should be dealt with by commencing proceedings, the officer must refer the matter to the investigating official or appropriate authority.

**Clause 39** requires a specialist youth officer to explain to the child certain matters relating to the offence, the child's right to obtain legal advice, the entitlement to have the matter dealt with by a court and the nature and effect of a conference. If possible, the explanation is to be in the presence of a person responsible for the child, an adult present with the consent of a person responsible for the child, an adult chosen by the child (over age 16) or a legal practitioner chosen by the child.

**Clause 40** enables a court or the Director of Public Prosecutions to refer matters to conference administrators for conferences. The matters must relate to offences for which conferences may be held and the children concerned must admit the relevant offences and consent to the conference being held.

**Clause 41** enables a conference administrator to consult with a specialist youth officer as to whether a matter should be dealt with by caution or conference. If they fail to agree, the Director of Public Prosecutions is to determine how the matter is to be dealt with.

## **Division 2      Conferences**

**Clause 42** requires a conference administrator to appoint a conference convenor when a matter is referred for a conference.

**Clause 43** requires a conference to be held not later than 21 days after a referral and not less than 10 days after notice is given to the child.

**Clause 44** provides that a child may decide not to proceed with a conference and may elect to have a matter dealt with by a court. It also enables a specialist youth officer, the Director of Public Prosecutions or a court to decide to proceed by court proceedings rather than by conference at any time before the conference is held.

**Clause 45** sets out the matters to be dealt with, and the steps to be taken, before a conference is held. They include setting a date, time and place for a conference, consulting with the person who referred the matter, the child, a person responsible for the child and any victim, giving written notice of the conference, providing information to those attending and obtaining the views of those unable to attend.

**Clause 46** provides that conferences may be held at an agreed place, other than a police station, court house or office of the Department of Juvenile Justice.

**Clause 47** sets out the persons who may be present when a conference is held. They include a person responsible for the child, members of the child's family or extended family, an adult chosen by the child, any victim or a representative of the victim, a support person for the victim, a respected member of the community, interpreters and other skilled persons in the case of a child who has a communication or cognitive disability or is subject to a probation or a community service order.

**Clause 48** sets out conditions for the conduct of a conference by a conference convenor. The conference is to be conducted in a way that best assists the reaching of an agreement about an outcome plan and participants may, subject to any guidelines prepared by the Director-General of Juvenile Justice, regulate the procedure as they think fit. The convenor may exclude a person (other than the child or any victim) if the convenor feels that the presence of that person may frustrate the purpose or conduct of a conference. No recommendations can be made by a conference if the participants cannot determine whether the child admits the offence. Conferences may be adjourned and are, if practicable, to be finished not later than 7 days after they first start.

**Clause 49** enables the Director-General to prepare written guidelines for the conduct of conferences and requires conference convenors to conduct conferences in accordance with them.

**Clause 50** entitles a child to be advised, but not represented, by a legal practitioner at a conference. However, legal representation may be permitted by the conference convenor.

**Clause 51** provides that a matter must be referred back to the person or body that referred it for a conference if a child fails, without reasonable cause, to attend a conference.

**Clause 52** enables participants to agree to make such recommendations or decisions as they think fit, but only if the child and the victim (if personally present) agree. An outcome plan is, if possible, to be agreed by consensus. The kinds of matters that may be contained in an outcome plan include a requirement for an apology, the making of reparation to any victim or the community, participation by the child in an appropriate program and actions to reintegrate the child into the community. The proposed section also sets out limitations on outcome plans.

**Clause 53** requires a conference convenor to refer a matter back to the person who referred the matter for a conference if the conference is unable to agree on an outcome plan. Proceedings may be commenced or continued against the child.

**Clause 54** requires an outcome plan to be sent back to a court if the matter was referred for a conference by the court. The court may approve the plan or, if it does not, may continue the proceedings.

**Clause 55** enables conferences to be reconvened at the request of more than one participant for the purpose of reconsidering any aspect of the outcome plan. An outcome plan may be varied or replaced at a reconvened conference.

**Clause 56** confers on conference administrators the function of supervising and monitoring the implementation of outcome plans and requires written notice to be given as to whether or not outcome plans have been satisfactorily completed by the child.

**Clause 57** provides for notice that an outcome plan has not been satisfactorily completed to be accompanied by reports and recommendations by the conference convenor.

**Clause 58** prohibits further criminal proceedings from being taken against a child who has satisfactorily completed an outcome plan.

**Clause 59** requires records to be kept of conferences.

### **Division 3 Co-ordination of conferences**

**Clause 60** provides for the appointment of conference convenors.

**Clause 61** provides for the appointment of conference administrators.

## **Part 6     Miscellaneous**

**Clause 62** provides that the proposed Act binds the Crown.

**Clause 63** provides that proceedings for offences under the proposed Act or regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Clause 64** provides for the commencement or continuation of proceedings against a child when a decision is made not to give a caution or hold a conference or when a child elects not to proceed with a caution or conference or fails to attend a conference or fails to satisfactorily complete an outcome plan or a conference fails to reach an agreement.

**Clause 65** makes it an offence to publish or broadcast the name of any child dealt with under the proposed Act, or any information tending to identify the child. The maximum penalty for the offence is to be \$50,000 for a corporation or \$5,000 for an individual.

**Clause 66** prohibits the disclosure of information acquired, or records made, under the proposed Act, except to a child, a person responsible for a child or a legal adviser of the child, or for the purpose of determining whether to take action under the proposed Act or to a court for the purpose of making a decision concerning sentencing. The maximum penalty for the offence is to be \$50,000 for a corporation or \$5,000 for an individual.

**Clause 67** prevents statements, confessions or information made or given by a child during a warning, caution or conference from being admissible as evidence against the child in criminal proceedings.

**Clause 68** makes it clear that a person need not disclose, for the purposes of revealing the person's criminal history, that the person has received a warning or caution, or has been dealt with by a conference, under the proposed Act.

**Clause 69** makes it clear that an investigating official may act on information obtained during the course of a warning, caution or conference in relation to offences other than offences the subject of the warning, caution or conference.

**Clause 70** sets out how notices under the proposed Act may be given.

**Clause 71** provides that the Director-General, a conference administrator, a conference convenor or a person acting under their direction, are not personally liable for matters or things done in good faith for the purpose of executing the proposed Act or any other Act. The proposed section also excludes such persons for being liable for an offence relating to disclosure of information about crimes.

**Clause 72** sets out the regulation making power.

**Clause 73** gives effect to the amendments to the *Children (Criminal Proceedings) Act 1987*.

**Clause 74** gives effect to Schedule containing savings and transitional provisions.

**Clause 75** provides that the Act is to be reviewed by the Minister as soon as possible after 3 years from the date of commencement of the proposed section.

### **Schedule 1 Conference convenors**

The proposed Schedule sets out provisions relating to the appointment and employment of conference convenors.

### **Schedule 2 Amendment of Children (Criminal Proceedings) Act 1987**

The proposed Schedule amends the *Children (Criminal Proceedings) Act 1987* to make it clear that previous actions, such as warnings, cautions and youth justice conferences, are not to be disclosed in evidence in criminal proceedings relating to other offences. The amendments also enable the Children's Court to make an order releasing a person on condition that a person comply with an outcome plan determined by a youth justice conference.

### **Schedule 3 Savings and transitional provisions**

The proposed Schedule contains savings and transitional provisions.