

# Young Offenders Act 1997 No 54

[1997-54]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**  
[Justice Legislation Amendment Bill \(No 2\) 2018](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Young Offenders Act 1997 No 54



New South Wales

An Act to establish procedures for dealing with children who commit certain offences through the use of youth justice conferences, cautions and warnings instead of court proceedings; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Young Offenders Act 1997*.

### 2 Commencement

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

### 3 Objects of Act

The objects of this Act are:

- (a) to establish a scheme that provides an alternative process to court proceedings for dealing with children who commit certain offences through the use of youth justice conferences, cautions and warnings, and
- (b) to establish a scheme for the purpose of providing an efficient and direct response to the commission by children of certain offences, and
- (c) to establish and use youth justice conferences to deal with alleged offenders in a way that:
  - (i) enables a community based negotiated response to offences involving all the affected parties, and
  - (ii) emphasizes restitution by the offender and the acceptance of responsibility by the offender for his or her behaviour, and
  - (iii) meets the needs of victims and offenders, and
- (d) to address the over representation of Aboriginal and Torres Strait Islander children in the criminal justice system through the use of youth justice conferences, cautions and

warnings.

#### 4 Definitions

In this Act:

**adult** means a person who is of or over the age of 18 years.

**broadcast** includes broadcast by radio, television or any on-line service.

**caution** means a formal police caution relating to an offence given under Part 4.

**child** means a person who is of or over the age of 10 years and under the age of 18 years.

**conference** means a youth justice conference convened or proposed to be convened under Part 5.

**conference administrator** means a person appointed as a conference administrator as referred to in section 61.

**conference convenor** means a person appointed as a conference convenor under section 60.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**graffiti offence** means an offence committed under the [Graffiti Control Act 2008](#).

**investigating official** means:

- (a) a police officer, or
- (b) a person appointed by or under an Act and whose functions include functions in respect of the prevention or investigation of offences, prescribed by the regulations for the purposes of this definition.

**on-line service** means a service provided by or through the facilities of a computer communication system and accessed through a telecommunications network that allows for:

- (a) the input, output or examination of computer data or computer programs, or
- (b) the transmission of computer data.

**parent** of a child includes:

- (a) a guardian of the child, and
- (b) a person who has the lawful custody of the child,

but does not include the father or mother of the child if the father or mother, as the case may be, has neither guardianship nor custody of the child.

**person responsible** for a child means:

- (a) a parent of the child, or
- (b) a person who has the care of the child (whether or not the person has the custody of the child).

**relevant conference administrator**, in relation to a conference, means the conference administrator who appointed the conference convenor for the conference.

**Secretary** means the Secretary of the Department of Justice.

**specialist youth officer** means a member of the NSW Police Force appointed as a specialist youth officer for the purposes of this Act by the Commissioner of Police.

**traffic offence** has the same meaning as it has in the [Children \(Criminal Proceedings\) Act 1987](#).

**victim** has the meaning given by section 5.

**youth liaison officer** means a member of the NSW Police Force appointed as a youth liaison officer for the purposes of this Act by the Commissioner of Police.

## 5 Meaning of “victim”

- (1) For the purposes of this Act, a victim means a person who suffers harm as a direct result of an act committed, or apparently committed, by a child in the course of a criminal offence.
- (2) A person suffers harm if, as a result of such an act:
  - (a) the person suffers physical harm or suffers mental illness, nervous shock or other psychological harm (including fear, humiliation, shame or stress), or
  - (b) the person’s property is deliberately taken, destroyed or damaged or the person suffers financial loss.
- (3) For the purposes of this Act, a victim that is an organisation or a Government authority may be represented by an officer of, or other person nominated by, the organisation or authority.

## 6 Notes

Notes in the text of this Act do not form part of this Act.



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

### **7 Principles of scheme**

The principles that are to guide the operation of this Act, and persons exercising functions under this Act, are as follows:

- (a) The principle that the least restrictive form of sanction is to be applied against a child who is alleged to have committed an offence, having regard to matters required to be considered under this Act.
- (b) The principle that children who are alleged to have committed an offence are entitled to be informed about their right to obtain legal advice and to have an opportunity to obtain that advice.
- (c) The principle that criminal proceedings are not to be instituted against a child if there is an alternative and appropriate means of dealing with the matter.
- (d) The principle that criminal proceedings are not to be instituted against a child solely in order to provide any assistance or services needed to advance the welfare of the child or his or her family or family group.
- (e) The principle that, if it is appropriate in the circumstances, children who are alleged to have committed an offence should be dealt with in their communities in order to assist their reintegration and to sustain family and community ties.
- (f) The principle that parents are to be recognised and included in justice processes involving children and that parents are to be recognised as being primarily responsible for the development of children.
- (g) The principle that victims are entitled to receive information about their potential involvement in, and the progress of, action taken under this Act.
- (h) The principle that the over representation of Aboriginal and Torres Strait Islander children in the criminal justice system should be addressed by the use of youth justice conferences, cautions and warnings.

### **7A Persons in relation to whom Act applies**

- (1) This Act applies in relation to a person who:
  - (a) is or was a child when an offence covered by this Act is or was committed or alleged to have been committed, and
  - (b) is under the age of 21 years when being dealt with under this Act.
- (2) Subject to subsection (3), if a person in relation to whom this Act applies is no longer a child when he or she is being dealt with under this Act, a reference to a child in

another provision of this Act concerning how a child is to be, or may be, dealt with is to be read as including, where appropriate, a reference to an individual who is of or under the person's age.

- (3) The following provisions of this Act do not apply to a person in relation to whom this Act applies if the person is no longer a child:
- (a) section 10 (which relates to who is to be present with a child when he or she makes admissions for the purposes of this Act),
  - (b) section 22 (2) (which relates to who is to be present with a child when an explanation concerning a caution is given),
  - (c) section 29 (3) (which relates to who is to be present with a child when a caution is given),
  - (d) section 39 (2) (which relates to who is to be present with a child when an explanation concerning a conference is given),
  - (e) any other provision that requires the presence or consent of, or consultation with, a person responsible for a child,
  - (f) any provision (or any provision belonging to a class of provisions) prescribed by the regulations.

## **8 Offences covered by Act**

- (1) The offences covered by this Act are, except as provided by this Act:
- (a) summary offences, and
  - (b) indictable offences that may be dealt with summarily under Chapter 5 of the [Criminal Procedure Act 1986](#) or another prescribed law, committed, or alleged to have been committed, by children.
- (2) Despite subsection (1), an offence is not covered by this Act if:
- (a) the principal person who investigates the offence is not an investigating official within the meaning of this Act, or
  - (b) the offence is a traffic offence committed by a child who was, when the alleged offence occurred, old enough to obtain a learner licence under the [Road Transport Act 2013](#) to drive the motor vehicle to which the offence relates, or
  - (c) the offence results in the death of any person, or
  - (d) the offence is an offence under section 61E, 61L, 61M, 61N, 61O (1), (1A) or (2), 66C, 66D, 80, 81A or 81B of the [Crimes Act 1900](#), or

- (e) the offence is an offence under the *Crimes (Domestic and Personal Violence) Act 2007*, or
  - (e1) the offence is an offence under Division 1 of Part 2 of the *Drug Misuse and Trafficking Act 1985* other than an offence to which subsection (2A) applies, or
  - (f) the offence is an offence under Division 2 of Part 2 of the *Drug Misuse and Trafficking Act 1985* other than:
    - (i) an offence under section 23 (1) (a) or (c) of that Act to which subsection (3) applies, or
    - (ii) an offence under section 27 or 28 of that Act of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence under section 23 (1) (a) or (c) to which subsection (3) applies,
  - (g) the offence is prescribed by the regulations for the purposes of this section.
- (2A) An offence under Division 1 of Part 2 of the *Drug Misuse and Trafficking Act 1985* is covered by this Act if in the opinion of the investigating official or prosecuting authority:
- (a) in relation to an offence relating to a prohibited drug other than cannabis leaf within the meaning of the *Drug Misuse and Trafficking Act 1985*—the offence involves not more than the small quantity applicable to that drug under that Act, or
  - (b) in relation to an offence relating to cannabis leaf:
    - (i) the offence involves not more than half the small quantity of cannabis leaf within the meaning of the *Drug Misuse and Trafficking Act 1985*, or
    - (ii) there are exceptional circumstances in that:
      - (A) the offence involves more than half, but not more than the total, small quantity of cannabis leaf within the meaning of that Act, and
      - (B) it would be in the interests of rehabilitation, and appropriate in all the circumstances, to deal with the matter under this Act.
- (3) An offence under section 23 (1) (a) or (c) of the *Drug Misuse and Trafficking Act 1985* is covered by this Act if in the opinion of the investigating official or prosecuting authority:
- (a) the offence involves not more than half the small quantity applicable to the prohibited plant within the meaning of the *Drug Misuse and Trafficking Act 1985*, or
  - (b) there are exceptional circumstances in that:

- (i) the offence involves more than half, but not more than the total, small quantity applicable to the prohibited plant within the meaning of the *Drug Misuse and Trafficking Act 1985*, and
- (ii) it would be in the interests of rehabilitation, and appropriate in all the circumstances, to deal with the matter under this Act.

## **9 Procedures under scheme**

- (1) The procedures available for dealing with children who have committed, or are alleged to have committed, offences covered by this Act are as follows:
  - (a) a warning may be given, including a warning in accordance with Part 3,
  - (b) a caution may be given, but only if it is a caution given in accordance with Part 4,
  - (c) a conference may be held, but only if it is a youth justice conference held in accordance with Part 5.
- (2) An investigating official dealing with a child who has committed, or is alleged to have committed, an offence must, before issuing a summons or attendance notice or otherwise commencing criminal proceedings against the child, determine:
  - (a) whether the offence is one covered by this Act, and
  - (b) in the case of such an offence, whether the child should be dealt with under Part 3 or 4 or the matter should be referred to a specialist youth officer under Part 5 to determine whether a youth justice conference should be held.
- (2A) In the case of an offence prescribed by the regulations, an investigating official must also determine the matters referred to in subsection (2) (a) and (b) before issuing a penalty notice for the offence.
- (2B) In determining whether a child should be dealt with under Part 3 or 4 or referred to a specialist youth officer under Part 5, an investigating official is (if the official considers it practicable) to make that determination within the period of 14 days after the official becomes aware of the offence or alleged offence.
- (2C) A failure of an investigating official to comply with subsection (2B):
  - (a) does not prevent action being taken under this Act, or
  - (b) invalidate any action taken under this Act.
- (3) An investigating official may, at any time after commencing proceedings and before the proceedings are heard, decide to deal with a child alleged to have committed an offence under Part 4 or consider whether the matter should be referred to a specialist youth officer under Part 5, if the investigating official forms the opinion that the child is entitled to be dealt with under Part 4 or Part 5.

## **10 Admission of offences**

An admission by a child of an offence is not an admission for the purposes of this Act unless it takes place in the presence of:

- (a) a person responsible for the child, or
- (b) an adult (other than an investigating official) who is present with the consent of a person responsible for the child, or
- (c) if the child is 14 years or over, an adult chosen by the child, or
- (d) an Australian legal practitioner chosen by the child.

## **11 Relationship with other legislation**

- (1) This Act does not affect any jurisdiction conferred on the Children's Court under the [Children \(Criminal Proceedings\) Act 1987](#) or on any other court under any other law.
- (2) This Act is in addition to, and does not limit, the requirements of any law relating to evidence.

## **12 Relationship with other procedures**

This Act does not affect the functions of any person dealing with an offence or alleged offence, to give a warning for, or take any other action in relation to, an offence or alleged offence if:

- (a) the person is not an investigating official, or
- (b) the offence is not an offence covered by this Act, whether or not the person is an investigating official.

## **Part 3 Warnings**

### **13 Offences for which warnings may be given**

A warning may be given for a summary offence covered by this Act, other than a graffiti offence or any other offence prescribed by the regulations for the purposes of this section.

**Note—**

Section 8 sets out offences covered by this Act.

### **14 Entitlement to be dealt with by warning**

- (1) A child who has committed or is alleged to have committed an offence in respect of which a warning may be given is entitled to be dealt with by warning.
- (2) Despite subsection (1), the child is not entitled to be dealt with by warning if:
  - (a) the circumstances of the offence involve violence, or

(b) in the opinion of the investigating official, it is more appropriate to deal with it by another means because it is not in the interests of justice for the matter to be dealt with by warning.

- (3) A child is not precluded from being given a warning merely because the child has previously committed offences or been dealt with under this Act.
- (4) If an investigating official is of the opinion that it is not in the interests of justice to deal with a matter by warning a child and that it is appropriate to deal with it by other means, the investigating official must consider whether to deal with the matter under Part 4 or to refer it to a specialist youth officer under section 21 (2) for consideration of whether action should be taken under Part 5.

### **15 Giving of warnings**

- (1) A warning is to be given by the investigating official and may be given at any place, including a place where the child is found.
- (2) An investigating official who gives a warning to a child must not:
  - (a) attach any conditions to the giving of a warning, or
  - (b) impose any additional sanctions on a child to whom a warning is given.
- (3) A warning may be given to more than one child at the same time.

### **16 Explanation of warnings**

An investigating official who gives a warning to a child must take steps to ensure that the child understands the purpose, nature and effect of the warning.

#### **16A Parents of child may be notified of warning**

- (1) An investigating official who gives a warning to a child, or a youth liaison officer, may notify the parents of the child (whether in writing, verbally or in person) that a warning has been given to the child in respect of an offence committed by the child.
- (2) However, an investigating official or youth liaison officer may not notify a parent of a child under subsection (1) if the official or officer is of the opinion that the disclosure of the giving of the warning would pose an unacceptable risk to the safety, welfare or well-being of the child.

### **17 Records of warnings**

- (1) An investigating official must make a record of any warnings given by the official under this Part.
- (2) The record is to contain the matters prescribed by the regulations for the purposes of this section.

- (3) Despite anything to the contrary in the *State Records Act 1998* or any other law, the Commissioner of Police is to ensure that any record made under this section of a warning is destroyed or expunged (as the case requires) as soon as is reasonably practicable after the person to whom the record relates reaches the age of 21 years.

**Note—**

The Commissioner of Police may delegate this function. See section 31 of the *Police Act 1990*.

- (4) This section does not require that a record made under this section be destroyed or expunged if the record is held by one of the following:
- (a) the Australian Bureau of Statistics,
  - (b) the Australian Institute of Criminology,
  - (c) the Bureau of Crime Statistics and Research,
  - (d) the Ombudsman.

## **Part 4 Cautions**

### **Division 1 Cautions by persons other than courts**

#### **18 Offences for which cautions may be given**

A caution may be given for an offence covered by this Act, other than a graffiti offence or any other offence prescribed by the regulations for the purposes of this section.

**Note—**

Section 8 sets out offences covered by this Act. Under section 31, a court may give a caution for a graffiti offence.

#### **19 Conditions required to be able to give caution**

A formal police caution against further offending may be arranged and given in relation to an offence to a child who is alleged to have committed the offence, if:

- (a) the offence is one for which a caution may be given, and
- (b) the child admits the offence, and
- (c) the child consents to the giving of the caution, and
- (d) the child is entitled to be given a caution.

#### **20 Entitlement to be dealt with by caution**

- (1) A child who is alleged to have committed an offence for which a caution may be given is entitled to be dealt with by caution if the investigating official determines that the matter is not appropriate for a warning or the offence is one for which a warning may not be given.

- (2) Despite subsection (1), the child is not entitled to be dealt with by caution if, in the opinion of the investigating official, it is more appropriate to deal with it by other means because it is not in the interests of justice for the matter to be dealt with by giving a caution.
- (3) In considering whether it is appropriate to deal with a matter by caution, an investigating official is to consider the following:
  - (a) the seriousness of the offence,
  - (b) the degree of violence involved in the offence,
  - (c) the harm caused to any victim,
  - (d) the number and nature of any offences committed by the child and the number of times the child has been dealt with under this Act,
  - (e) any other matter the official thinks appropriate in the circumstances.
- (4) Despite subsection (1), an investigating official may, if of the opinion that the victim has suffered substantial harm or that the circumstances of the victim are such that it is appropriate to do so, refer the matter to a specialist youth officer to determine whether the matter should be dealt with under this Part or Part 5 even though the offence does not involve any degree of violence or is not of a serious nature.
- (5) A specialist youth officer to whom a matter is referred under subsection (4) may arrange for a caution to be given under this Part or take action under Part 5 and, in determining whether to do so, may take into account the fact that the victim has suffered substantial harm or the circumstances of the victim.
- (6) A child is not precluded from being given a caution merely because the child has previously committed offences or been dealt with under this Act.
- (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.

## **21 Determination by investigating official**

- (1) If an investigating official determines that a child should be dealt with under this Part, the investigating official must arrange for a caution to be given.
- (2) If an investigating official is of the opinion that it is not in the interests of justice for a matter to be dealt with by way of a caution, the investigating official must refer the



matter to a specialist youth officer to consider whether the child should be dealt with under Part 5.

## **22 Explanations to children**

- (1) Before an investigating official proceeds to arrange for a caution to be given under this Part, the investigating official must explain the following matters to the child concerned:
  - (a) the nature of the offence and the circumstances out of which it is alleged to arise,
  - (b) that the child is entitled to obtain legal advice and where that advice may be obtained,
  - (c) that the child is entitled to elect that the matter be dealt with by a court,
  - (d) the purpose, nature and effect of the caution.
- (2) An investigating official must, if practicable, ensure that an explanation takes place in the presence of:
  - (a) a person responsible for the child, or
  - (b) an adult (other than an investigating official) who is present with the consent of a person responsible for the child, or
  - (c) if the child is 14 years or over, an adult chosen by the child, or
  - (d) an Australian legal practitioner chosen by the child.

## **23 Referrals for cautions**

- (1) A child may be referred for a caution under this Part by the Director of Public Prosecutions if:
  - (a) the offence is one for which a caution may be given under this Part, and
  - (b) the child admits the offence, and
  - (c) the child consents to the giving of the caution.
- (2) In determining whether to refer a matter for a caution, the Director of Public Prosecutions is to take into account the following matters:
  - (a) the seriousness of the offence,
  - (b) the degree of violence involved in the offence,
  - (c) the harm caused to any victim,
  - (d) the number and nature of any offences committed by the child and the number of

times the child has been dealt with under this Act,

(e) any other matter the Director thinks appropriate in the circumstances.

- (3) The referral is to be made to a person authorised in writing by the Commissioner of Police for the purposes of this section.
- (4) The authorised person must arrange for a caution to be given to the child under this Part.
- (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.

#### **24 Notice of caution**

- (1) Before a caution is given to a child, the person arranging for the caution to be given must give a written notice to the child.
- (2) The notice must contain the following information:
  - (a) the offence in respect of which the caution is to be given,
  - (b) the persons who may be present when the caution is given,
  - (c) the purpose, nature and effect of the caution,
  - (d) the date, time and place at which the caution is to be given,
  - (e) the name of a police officer who is a contact officer concerning the caution,
  - (f) the consequences of failure to attend the giving of the caution,
  - (g) the right of the child to obtain legal advice and where that advice may be obtained,
  - (h) the right of the child to elect that the matter be dealt with by a court if the child does not wish to proceed with the caution.
- (3) The notice must be given in a form approved by the Commissioner of Police and be expressed in language readily capable of being understood by children.

#### **24A Written statements from victims**

- (1) Before a caution is given to a child, the person arranging for the caution to be given

may:

- (a) seek a written statement from any victim of the offence concerned that describes the harm occasioned to the victim by the offence, and
  - (b) give guidance to any such victim as to the kind of matters that are appropriate for inclusion in the statement, and
  - (c) provide any such statement received by the person to the person giving the caution to the child.
- (2) The regulations may make provision for or with respect to the content and form of written statements under subsection (1).

## **25 Right not to proceed**

- (1) A child may, at any time before a caution is given to the child, decide not to proceed with the caution and elect that the matter be dealt with by a court.
- (2) An investigating official who arranges for a caution to be given may, at any time before the caution is given, determine that it is not in the interests of justice for the matter to be dealt with by way of a caution and refer the matter to a specialist youth officer for consideration of whether action should be taken under Part 5.
- (3) The Director of Public Prosecutions may, at any time before a caution is given in respect of an offence referred by the Director under this Part, determine that it is not in the interests of justice for the matter to be dealt with by way of a caution and refer the matter to a conference administrator under Part 5 or commence proceedings.
- (4) An investigating official or the Director of Public Prosecutions must give written notice to the child concerned of any determination by the official or Director under this section.

## **26 Place and time of cautions**

- (1) A caution must, if practicable, be given not less than 10 days, and not more than 21 days, after notice of the caution is given under this Part.
- (2) A caution is to be given at a police station.
- (3) Despite subsection (2), a caution may be given at a place other than a police station, if the person giving the caution is of the opinion that it is appropriate in the circumstances to do so.

## **27 Persons who may give cautions**

- (1) A caution is to be given by a police officer or specialist youth officer authorised in writing by the Commissioner of Police to give cautions under this Act.

- (2) Despite subsection (1), a caution may be given by a respected member of the community at the request of any such officer, if the officer is of the opinion that it is appropriate in the circumstances to do so. For example, a caution may be given by a respected member of the Aboriginal community if the child is a member of that community.

## **28 Persons who may accompany child**

The following persons, but no other persons, may be present when a caution is given to a child:

- (a) the child and the person giving the caution,
- (b) a person responsible for the child,
- (c) members of the child's family or extended family,
- (d) an adult chosen by the child,
- (e) a respected member of the community chosen by the child, if the person arranging the caution is of the opinion that it is appropriate in the circumstances to do so,
- (f) an interpreter,
- (g) if the child has a communication or cognitive disability, an appropriately skilled person,
- (h) if the child is under care, a social worker or other health professional,
- (i) if the child is subject to probation or a community service order, the child's supervising officer,
- (j) if the investigating official is not giving the caution, the investigating official,
- (k) if the child and (if present) a person of the kind referred to in paragraph (b)–(d) who is an adult consent, one student or probationary police officer for the purpose of training the officer.

## **29 Giving of cautions**

- (1) A person who gives a caution to a child must take steps to ensure that the child understands the purpose, nature and effect of the caution.
- (2) If a child who is to be cautioned has a communication or cognitive disability, it is the duty of the person giving the caution, so far as practicable, to give the caution in the presence of an interpreter or other appropriately skilled person and, if necessary, to obtain the assistance of such a person in giving the caution.
- (2A) A person proposing to give a caution to a child may defer giving the caution:

- (a) if a person responsible for the child or the adult chosen by the child is not present—until a person responsible for the child or an adult chosen by the child is present, or
  - (b) if it appears to the person that the child is so affected by alcohol or another drug (or a combination of drugs) that the child's capacity to understand the purpose, nature or effect of the caution is impaired—until the person considers that the child has regained that capacity.
- (2B) A person who gives a caution to a child may, if the person considers it appropriate, read out some or all of a written statement from a victim that is provided to the person under section 24A when giving the caution.
- (3) It is the duty of the person giving the caution to ensure, so far as practicable, that a person responsible for the child or an adult chosen by the child is present when the caution is given.
  - (4) A person who gives a caution to a child may request the child being cautioned to provide a written apology to any victim of the alleged offence.
  - (5) A person who gives a caution to a child must not:
    - (a) attach any conditions to the giving of the caution, or
    - (b) impose any additional sanctions on the child, other than a request of the kind referred to in subsection (4).
  - (6) A caution may be given to more than one child at the same time and in respect of more than one offence alleged to have been committed by a child.

### **30 Caution notice**

- (1) A caution notice containing the following information must be given to a child after the child is cautioned and must be signed by the child:
  - (a) the child's name,
  - (b) the name and rank (if any) of the person who gave the caution,
  - (c) details of the offence concerned,
  - (d) the place, date and time of the caution,
  - (e) the persons present when the caution was given,
  - (f) the purpose, nature and effect of the caution.
- (2) The caution notice must be expressed in language readily capable of being understood by children.

## **Division 2 Cautions by courts**

### **31 Cautions by courts**

- (1) A child may be given a caution by a court if:
- (a) the offence is one for which a caution may be given under Division 1 or is a graffiti offence, and
  - (b) the child admits the offence.
- (1A) If a court gives a caution under this section, the court must dismiss the proceedings for the offence in respect of which the caution is given.
- (1B) A court giving a caution may:
- (a) allow any victim of the offence concerned to prepare a written statement that describes the harm occasioned to the victim by the offence, and
  - (b) if it considers it appropriate to do so, may permit all or part of the statement to be read to the child when giving the caution.
- (1C) The regulations may make provision for or with respect to the content and form of written statements under subsection (1B).
- (2) This Part (other than this section and sections 32 and 33) does not apply to a caution given by a court.
- (3) Nothing in this Part affects the power of a court to give a caution under section 33 of the *Children (Criminal Proceedings) Act 1987*.
- (4) A court that gives a caution under this section must notify, in writing, the Area Commander of the local police area in which the offence occurred of its decision to give the caution and must include the reasons why the caution was given.
- (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.

## **Division 3 Cautions generally**

### **32 Further proceedings**

If a caution is given to a child under this Part, no further proceedings may be taken

against the child for the offence in respect of which the caution is given or for any other offence in respect of which proceedings could not be commenced if the child had been convicted of the offence for which the caution was given.

### **33 Records of cautions**

- (1) A police officer, specialist youth officer or a court must make a record of any cautions given by the officer or court under this Part.
- (2) The record is to contain the matters prescribed by the regulations for the purposes of this section.

### **33A Destruction of finger prints, palm prints and photographs**

- (1) If a child is given a caution under this Part, the Commissioner of Police is to ensure that any finger prints or palm prints obtained from, or photographs taken of, the child in connection with the offence for which the caution is given (and any copies of them) are destroyed.

**Note—**

The Commissioner of Police may delegate this function. See section 31 of the *Police Act 1990*.

- (2) This section applies despite anything to the contrary in the *State Records Act 1998* or any other law.

## **Part 5 Youth justice conferences**

### **Division 1 Preliminary**

#### **34 Principles and purposes of conferencing**

- (1) The principles that are to guide the operation of this Part and persons exercising functions under this Part, are as follows:
  - (a) The principle that measures for dealing with children who are alleged to have committed offences are to be designed so as:
    - (i) to promote acceptance by the child concerned of responsibility for his or her own behaviour, and
    - (ii) to strengthen the family or family group of the child concerned, and
    - (iii) to provide the child concerned with developmental and support services that will enable the child to overcome the offending behaviour and become a fully autonomous individual, and
    - (iv) to enhance the rights and place of victims in the juvenile justice process, and
    - (v) to be culturally appropriate, wherever possible, and

- (vi) to have due regard to the interests of any victim.
- (b) The principle that sanctions imposed on children who commit offences are:
  - (i) to be of a kind most likely to promote the development of such children within their family or family group, and
  - (ii) to take the least restrictive form that is appropriate in the circumstances, and
  - (iii) to assist children to accept responsibility for offences.
- (c) The principle that any measures for dealing with, or sanctions imposed on, children who are alleged to have committed offences take into account:
  - (i) the age and level of development of any such children, and
  - (ii) the needs of any children who are disadvantaged or who are disconnected from their families, and
  - (iii) the needs of any children with disabilities, especially those with communication and cognitive difficulties, and
  - (iv) the gender, race and sexuality of any such children.
- (2) The purpose of a conference is to make decisions and recommendations about, and to determine an outcome plan in respect of, the child who is the subject of the conference.
- (3) In reaching decisions at a conference, the participants are to have regard to the principles set out in this section and the following matters:
  - (a) the need to deal with children in a way that reflects their rights, needs and abilities and provides opportunities for development,
  - (b) the need to hold children accountable for offending behaviour,
  - (c) the need to encourage children to accept responsibility for offending behaviour,
  - (d) the need to empower families and victims in making decisions about a child's offending behaviour,
  - (e) the need to make reparation to any victim.

### **35 Offences for which conferences may be held**

A conference may be held for an offence covered by this Act, other than an offence prescribed by the regulations for the purposes of this section.

**Note—**

Section 8 sets out offences covered by this Act.



### **36 Conditions required to be met before conference may be held**

A conference may be arranged and held in respect of a child who is alleged to have committed an offence, if:

- (a) the offence is one for which a conference may be held, and
- (b) the child admits the offence, and
- (c) the child consents to the holding of the conference, and
- (d) the child is entitled to be dealt with by holding a conference.

### **37 Entitlement to be dealt with by conference**

- (1) A child who is alleged to have committed an offence (other than a graffiti offence) for which a conference may be held is entitled to be dealt with by holding a conference if the investigating official determines that the matter is not appropriate for a caution.
- (2) Despite subsection (1), the child is not entitled to be dealt with by holding a conference if, in the opinion of the specialist youth officer to whom the matter is referred, it is more appropriate to deal with it by commencing proceedings against the child or by giving a caution because it is not in the interests of justice for the matter to be dealt with by holding a conference.

**Note—**

A matter is referred to a specialist youth officer by an investigating official if the investigating official is of the opinion that it is not in the interests of justice that a warning or caution be given (see sections 14 (4) and 21).

- (3) In considering whether it is appropriate to deal with a matter by conference, a specialist youth officer is to consider the following:
  - (a) the seriousness of the offence,
  - (b) the degree of violence involved in the offence,
  - (c) the harm caused to any victim,
  - (d) the number and nature of any offences committed by the child and the number of times the child has been dealt with under this Act,
  - (e) any other matter the official thinks appropriate in the circumstances.
- (4) A specialist youth officer must, not later than 14 days after receiving a referral under section 14 (4) or 21 (2), determine whether or not the child concerned is entitled to have the matter dealt with by holding a conference.
- (5) A child is not precluded from being dealt with by a conference merely because the child has previously committed offences or been dealt with under this Act in relation to

other matters.

- (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.

### **38 Determinations by specialist youth officers**

- (1) If a specialist youth officer determines that a conference should be held in respect of an alleged offence (other than a graffiti offence) committed by a child, the specialist youth officer must refer the matter to a conference administrator for a conference.
- (2) If a specialist youth officer is of the opinion that a matter can and should be dealt with by giving a caution and need not be dealt with by holding a conference, the specialist youth officer must refer the matter to a person authorised for the purposes of section 27 for a caution to be given under Part 4.

#### **Note—**

Graffiti offences cannot be dealt with by caution except by a court—see section 18.

- (3) If a specialist youth officer is of the opinion that a matter should be dealt with by commencing proceedings against the child, the specialist youth officer must refer the matter to an investigating official or other appropriate authority for the commencement of proceedings.
- (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.

### **39 Explanations to children**

- (1) Before a specialist youth officer proceeds to refer a matter for a conference under this Part, the specialist youth officer must explain the following matters to the child concerned:

- (a) the nature of the offence and the circumstances out of which it is alleged to have arisen,
  - (b) that the child is entitled to obtain legal advice and where that advice may be obtained,
  - (c) that the child is entitled to elect that the matter be dealt with by a court,
  - (d) what a conference is and the effect of the conference.
- (2) A specialist youth officer must, if practicable, ensure that an explanation takes place in the presence of:
- (a) a person responsible for the child, or
  - (b) an adult (other than an investigating official) who is present with the consent of a person responsible for the child, or
  - (c) if the child is 14 years or over, an adult chosen by the child, or
  - (d) an Australian legal practitioner chosen by the child.

#### **40 Referrals for conferences by DPP and courts**

- (1) The Director of Public Prosecutions may refer a matter involving a child who is alleged to have committed an offence to a conference administrator for a conference if:
- (a) the offence is one (other than a graffiti offence) for which a conference may be held, and
  - (b) the child admits the offence, and
  - (c) the child consents to the holding of the conference, and
  - (d) the Director is of the opinion that a conference should be held under this Part.
- (1A) A court may refer a matter involving a child who is alleged to have committed an offence to a conference administrator for a conference if:
- (a) the offence is one for which a conference may be held, and
  - (b) the child admits the offence, and
  - (c) the court is of the opinion that a conference should be held under this Part.
- (2) An offence may be referred under this section even though the offence was not dealt with by an investigating official.
- (3) A court may refer a matter at any stage in proceedings, including after a finding that a child is guilty of an offence.

- (4) The Director of Public Prosecutions or a court must notify the Commissioner of Police in writing of the particulars of any referral after making a referral under this section.
- (5) In determining whether to refer a matter for the holding of a conference, the Director of Public Prosecutions or a court is to take into account the following matters:
  - (a) the seriousness of the offence,
  - (b) the degree of violence involved in the offence,
  - (c) the harm caused to any victim,
  - (d) the number and nature of any offences committed by the child and the number of times the child has been dealt with under this Act,
  - (e) any other matter the Director or court thinks appropriate in the circumstances.
- (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.

#### **41 Conference administrator may refer matters to DPP**

- (1) 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 as to whether the matter should be dealt with by holding a conference if of the opinion that the matter should not be so dealt with, having regard to the following matters:
  - (a) the seriousness of the offence,
  - (b) the degree of violence involved in the offence,
  - (c) the harm caused to any victim,
  - (d) the number and nature of any offences committed by the child and the number of times the child has been dealt with under this Act.
- (2) If the conference administrator, specialist youth officer and investigating official, after consultation, fail to agree as to how a matter should be dealt with, the conference administrator must refer it to the Director of Public Prosecutions.
- (3) On referral of a matter, the Director of Public Prosecutions must, having regard to the matters set out in section 40 (5), determine whether the matter should be dealt with by giving a caution, by holding a conference or by commencing proceedings.
- (4) The Director of Public Prosecutions must, not later than 14 days after receiving a referral under this section, determine whether or not the child concerned is entitled to have the matter dealt with by holding a conference.

- (5) The Director of Public Prosecutions must notify the conference administrator of the Director's determination.
- (6) If the conference administrator, specialist youth officer and investigating official agree, or the Director of Public Prosecutions determines, that a matter should be dealt with by giving a caution, the conference administrator must refer the matter to a person authorised for the purposes of section 27 for a caution to be given under Part 4.
- (7) If the conference administrator, specialist youth officer and investigating official agree, or the Director of Public Prosecutions determines, that a matter should be dealt with by holding a conference, the conference administrator must appoint a conference convenor for the conference.
- (8) If the conference administrator, specialist youth officer and investigating official agree, or the Director of Public Prosecutions determines, that proceedings should be commenced, the conference administrator must refer the matter back to the specialist youth officer or other appropriate authority for the commencement of proceedings.
- (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.

## **Division 2 Conferences**

### **42 Appointment of conference convenor**

- (1) If a conference administrator is satisfied that a matter has been referred for a conference under this Part, the conference administrator must appoint a conference convenor for the conference.
- (2) This section does not apply if the conference administrator refers a matter to the Director of Public Prosecutions under section 41.

### **43 Time limit for holding conferences**

A conference should be held not later than 28 days after the referral for the conference is received by the conference administrator and not less than 10 days after notice is given to a child under section 45, unless the administrator reasonably considers that it is not practicable to do so.

#### **44 Right not to proceed**

- (1) A child may, at any time before a conference is held, decide not to proceed with the conference and elect that the matter be dealt with by a court.
- (2) A specialist youth officer who refers a matter for a conference may, at any time before the conference is held, determine:
  - (a) that it is not in the interests of justice for a matter to be dealt with by a conference and refer the matter to the investigating official or other appropriate authority for the commencement of proceedings, or
  - (b) that the matter need not be dealt with by holding a conference and arrange for a caution to be given under Part 4.
- (3) The Director of Public Prosecutions or a court may, at any time before a conference is held in relation to a matter referred by the Director or court, determine that the matter should not be dealt with by way of a conference.
- (4) A specialist youth officer, the Director of Public Prosecutions or a court must give written notice to the child of a determination made by the officer, Director or court under this section.
- (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.

#### **45 Preparation for conferences**

- (1) The conference convenor must determine:
  - (a) the date, time and place of the conference, and
  - (b) the persons who should be invited to attend.
- (2) A conference convenor must, if practicable, before determining the matters referred to in subsection (1):
  - (a) consult with the relevant conference administrator, the person or court that made the referral, the child who is the subject of the conference, a person responsible for the child and any victim, and
  - (b) advise any victim of the victim's right to attend and to be accompanied by a support person or persons or to be represented by a person chosen by the victim,

and

- (c) take into account the specific needs of the child and of any victim.
- (3) Before a conference is held, the conference convenor or conference administrator must give a written notice containing the following information to the child who is the subject of the conference:
- (a) the offence or offences in respect of which the conference is to be held,
  - (b) the child's right to have a person responsible for the child, or an adult chosen by the child, present at the conference,
  - (c) the date, time and place of the conference,
  - (d) the name of the conference convenor,
  - (e) any requirements to be met by the child,
  - (f) the consequences of failure to attend the conference,
  - (g) the right of the child to obtain legal advice and where that advice may be obtained,
  - (h) the right of the child to elect that the matter be dealt with by a court if the child does not wish to proceed with the conference.
- (4) Before a conference is held, the conference convenor must take all reasonable steps to notify any other persons who are entitled to attend, or who the convenor determines are to be invited to attend, of the date, time and place of the conference.
- (5) Before a conference is held, the conference convenor must take all reasonable steps to provide persons who are to attend the conference with information available to the convenor that, in the convenor's opinion, will be needed to reach a decision about the matter.
- (6) Before a conference is held, a conference convenor must ascertain, if practicable, the views about the matter of any persons who have been invited to attend but have advised that they will not be attending.

#### **46 Location of conferences**

- (1) A conference may be held at a location agreed by the participants and the conference convenor but may not be held at a police station, a court house or any office of that part of the Department of Justice comprising persons who are principally involved in the administration of the *Children (Detention Centres) Act 1987* or the *Children (Community Service Orders) Act 1987*.
- (2) Without limiting subsection (1), a conference may be held at a detention centre,

within the meaning of the *Children (Detention Centres) Act 1987*, if the child who is the subject of the conference is detained in the detention centre.

#### **47 Participants in conferences**

- (1) The following persons are entitled to attend a conference:
  - (a) the child the subject of the conference (whether or not the child is in custody),
  - (b) the conference convenor,
  - (c) a person responsible for the child,
  - (d) members of the child's family or extended family,
  - (e) an adult chosen by the child,
  - (f) an Australian legal practitioner advising the child,
  - (g) the investigating official,
  - (h) a specialist youth officer,
  - (i) any victim or a person chosen by the victim as a representative of the victim,
  - (j) a support person or persons for any victim,
  - (k) if the conference convenor, child, any victim and (if present) a person responsible for the child all consent, one police officer for the purpose of training the officer.
- (2) If the conference convenor is of the opinion that it is appropriate, the conference convenor may invite any of the following persons to attend a conference:
  - (a) a respected member of the community, for the purpose of advising conference participants about relevant issues,
  - (b) an interpreter,
  - (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,
  - (c) if the child has a communication or cognitive disability, an appropriately skilled person,
  - (d) if the child is under care, a social worker or other health professional,
  - (e) if the child is subject to the supervision of the Department of Justice pursuant to an order made under section 33 of the *Children (Criminal Proceedings) Act 1987*, the child's supervising officer,
  - (f) any other person requested by the child's family or extended family.



- (3) The conference convenor may permit a person to attend a conference for the purposes of carrying out research or evaluation that has been specifically approved by the Minister, but only with the consent of the child the subject of the conference and any victim. Any such person may not participate in the conference.

#### **48 Conduct of conferences**

- (1) A conference convenor must conduct a conference in a way that best assists the reaching of an agreement about an outcome plan in relation to the child and the offence concerned that complies with this Act and the regulations.
- (2) The participants at a conference may regulate the procedure at a conference as they think fit, subject to any guidelines prepared by the Secretary under section 49.
- (3) If the conference convenor is of the opinion that the presence of a person (other than the child or any victim) may frustrate the purpose or conduct of a conference, or is otherwise not in the best interests of the child, the convenor may, having regard to the views of the child, exclude that person from attending the conference at all or may, during the course of the conference, exclude the person from continuing to attend the conference.
- (4) A conference must not make any recommendations or decisions if the participants are unable to determine whether the child admits the offence.
- (5) The conference convenor must, at or before a conference, notify the participants of the views of any person invited to attend but unable to do so, if the convenor is aware of those views.
- (6) A conference may be adjourned:
  - (a) at any time with the consent of the participants, or
  - (b) at the request of the child, to allow discussions between the child and the child's family or the child and a person responsible for the child.
- (7) A conference must, if practicable, be concluded not later than 7 days after it is first convened.
- (8) A conference may be held in respect of more than one child at the same time and in respect of more than one offence alleged to have been committed by a child.

#### **49 Guidelines for conduct of conferences**

- (1) The Secretary may approve written guidelines for the conduct of conferences.
- (2) A conference convenor is to conduct a conference in accordance with any applicable guidelines approved under this section.

## **50 Representation at conferences**

- (1) Except as provided by subsection (2), a child who is the subject of a conference is entitled to be advised (but not represented) by an Australian legal practitioner at the conference.
- (2) The conference convenor may permit a child who is the subject of a conference to be represented by an Australian legal practitioner at the conference, either generally or subject to such conditions or limitations as may be imposed by the convenor.
- (3) A conference may be adjourned at any time for the purpose of allowing a child to obtain legal advice or representation by an Australian legal practitioner.

## **51 Non-attendance at conferences**

If a child fails, without a reasonable excuse, to attend a conference, the conference convenor must notify the relevant conference administrator who must refer the matter back to the person or body that referred the matter for a conference.

## **52 Outcomes of conferences**

- (1) The participants at a conference may agree to make such recommendations or decisions as they think fit. Any such decision that requires the compliance of the child is to be contained in the outcome plan agreed by the conference.
- (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.
- (5) Without limiting the kinds of decisions and recommendations that may be contained in an outcome plan, an outcome plan may provide for the following matters:
  - (a) the making of an oral or written apology, or both, to any victim,
  - (b) the making of reparation to any victim or the community,
  - (c) participation by the child in an appropriate program,
  - (d) the taking of actions directed towards the reintegration of the child into the community.

(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).

(6) An outcome plan must:

- (a) contain outcomes that are realistic and appropriate and sanctions that are not more severe than those that might have been imposed in court proceedings for the offence concerned, and
- (b) set out times (not exceeding any limits imposed by the regulations) for the implementation of the plan, and
- (c) not impose an obligation to do community service work that exceeds the period prescribed by the regulations for the purposes of this section, and
- (d) if appropriate, provide for its monitoring, and
- (e) comply with any requirements or limitations imposed on outcome plans by the regulations.

(7) A conference convenor must notify a conference administrator of any outcome plan determined by the participants at a conference.

### **53 Failure of conference to reach decision**

- (1) A conference convenor must notify the relevant conference administrator if the convenor is satisfied that the participants at a conference are unable to agree to an outcome plan or are unable to agree to an outcome plan that complies with this Act and the regulations 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.
- (2) On receiving notice under subsection (1), the conference administrator must refer the matter back to the person or body that referred the matter for a conference.

### **54 Matters referred by courts**

- (1) A conference convenor must refer any outcome plan agreed to at a conference to a

court, if the court referred the matter for a conference.

- (2) The court may approve the plan or, if it does not, may continue the proceedings.
- (3) A court that does not approve an outcome plan must notify the relevant conference administrator.

## **55 Reconvening of conferences**

- (1) A conference may be reconvened by the relevant conference administrator, on the conference administrator's initiative or at the request of more than one participant in the conference, for the purpose of reconsidering any aspect of the outcome plan or any recommendation agreed at a conference.
  - (1A) A conference administrator may appoint the same or a different conference convenor for a reconvened conference.
  - (2) In deciding whether to reconvene a conference, the conference administrator must consult with any victim.
  - (3) A conference administrator must not reconvene a conference unless the conference administrator is satisfied that:
    - (a) it is in the interests of justice to do so, or
    - (b) the outcome plan or any recommendation of an outcome plan has become unsuitable or unworkable.
  - (4) The participants at a reconvened conference may agree to vary or replace a previously agreed outcome plan.
  - (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.
  - (7) (Repealed)
  - (8) The conference convenor must notify a conference administrator of the result of a reconvened conference.
  - (9) This Part applies to a reconvened conference in the same way as it applies to any other conference.

## **56 Satisfactory completion of outcome plans**

- (1) A conference administrator is to supervise the monitoring and the implementation and completion of each outcome plan (including an outcome plan varied or replaced by a reconvened conference) and is to give written notice as to whether or not the outcome plan has been satisfactorily completed by the child.
- (2) The written notice under this section must be given to the child, any victim, the person or body that referred the matter for a conference, the Commissioner of Police (if the matter was referred by the Director of Public Prosecutions or a court) and any other person on whom the outcome plan imposed obligations.

## **57 Additional provisions relating to completion and non-completion of outcome plans**

- (1) A notice that a child has failed to satisfactorily complete an outcome plan given to the person or body that referred the matter for a conference is to be accompanied by a report from the conference convenor concerning the conference and may be accompanied by such other reports and recommendations as the conference administrator thinks fit.

### **Note—**

If the Children's Court releases a child on condition that the child complies with an outcome plan, and the child fails to comply with the outcome plan, an authorised justice may issue a summons or warrant for the arrest of the child (see section 41 of the *Children (Criminal Proceedings) Act 1987*). A person or body may continue or commence proceedings against a child if the child fails to satisfactorily complete an outcome plan (see section 64 of this Act).

- (2) A court that referred a matter for a conference without making a finding that the child concerned was guilty of an offence must dismiss under this subsection a charge against a child on receiving notice that an outcome plan relating to the offence concerned has been satisfactorily completed by the child.

## **58 Further proceedings**

If a child satisfactorily completes an outcome plan, no further criminal proceedings may be taken against the child for any offence in respect of which the conference was held or for any other offence in respect of which proceedings could not be commenced if the child had been convicted of the offence for which the conference was held.

## **59 Records of conferences**

- (1) A conference administrator must make a record of any conferences held under this Part and dealt with by the administrator.
- (2) The record is to contain the matters prescribed by the regulations for the purposes of this section.

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

### **60 Conference convenors**

- (1) The Secretary may appoint persons as conference convenors.
- (2) Schedule 1 has effect with respect to conference convenors.
- (3) A conference convenor has the following functions:
  - (a) to prepare for, and to hold, conferences referred to the convenor by a conference administrator,
  - (b) any other functions conferred or imposed on the convenor by or under this or any other Act.
- (4) Without limiting subsection (1), a police officer may be appointed as a conference convenor under this section in the police officer's private capacity.

### **61 Conference administrators**

Conference administrators may be employed under Part 4 of the [Government Sector Employment Act 2013](#) for the purpose of carrying out administrative functions related to this Act and any other functions conferred on conference administrators by or under this Act.

## **Part 6 Miscellaneous**

### **62 Act binds Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

### **62A Delegation of Secretary's functions**

The Secretary may delegate the exercise of any function of the Secretary under this Act or the regulations (other than this power of delegation) to any of the following persons:

- (a) a Deputy Secretary of the Department of Justice,
  - (a1) the Chief Executive of Juvenile Justice, Department of Justice or a Deputy Chief Executive of Juvenile Justice, Department of Justice,
- (b) any other person (or person belonging to a class of persons) prescribed by the regulations.

### **63 Proceedings for offences**

Proceedings for an offence under this Act or the regulations are to be dealt with summarily before the Local Court.

#### **64 Continuation or commencement of proceedings**

- (1) A person or body may continue or commence proceedings against a child in respect of an offence even though an applicable limitation period for those proceedings has expired if:
  - (a) a decision not to give a caution or hold a conference is made under this Act, or
  - (b) a child elects not to proceed with a caution or a conference or fails to attend a caution or conference, or
  - (c) a conference fails to reach agreement as to an outcome plan, or
  - (d) a child fails to satisfactorily complete an outcome plan.
- (2) Proceedings for the offence must be commenced not later than the expiry date of the applicable limitation period or not later than 3 months after the matter is referred back to the person or body under this section, whichever is the later.

#### **65 Publication and broadcasting of names**

- (1) The name of any child dealt with under this Act, or any information tending to identify any such child, must not be published or broadcast, whether before or after the matter involving the child is finally dealt with under this Act.
- (2) A person who publishes or broadcasts the name of any child or any information the publication or broadcasting of which is prohibited by subsection (1) is guilty of an offence.

Maximum penalty: 500 penalty units (in the case of a corporation) or 50 penalty units or imprisonment for 12 months, or both, in any other case.

- (3) Subsection (1) does not prohibit:
  - (a) the publication or broadcasting of an official report of the proceedings of a court that includes the name of any child or any information the publication or broadcasting of which would otherwise be prohibited by subsection (1), or
  - (b) the publication or broadcasting of the name of a child or any information about such a child who is over the age of 16 years at the time of publication or broadcasting with the consent of the child.
- (4) For the purposes of this section, a reference to the name of a child includes a reference to any information, picture or other material that identifies the child or is likely to lead to the identification of the child.

#### **66 Disclosure of records**

- (1) A person who acquires information or prepares a record in the exercise of functions

under this Act must not, directly or indirectly, divulge the information to another person except in the exercise of functions under this Act.

Maximum penalty: 500 penalty units (in the case of a corporation) or 50 penalty units or imprisonment for 12 months, or both, in any other case.

- (2) Despite subsection (1), information may be divulged in the following circumstances:
- (a) records of, or relating to, cautions and conferences may be divulged to the child, a person responsible for the child or a legal representative of the child,
  - (b) records of, or relating to, cautions and conferences under this Act may be divulged to an investigating official, specialist youth officer, conference convenor, conference administrator, the Director of Public Prosecutions or a court for the purpose of determining whether or not to take action under this Act,
  - (c) records of, or relating to, cautions and conferences under this Act may be divulged to the Children's Court for the purpose of making a decision concerning sentencing,
  - (d) records of, or relating to, warnings under this Act may be divulged to a youth liaison officer for the purpose of taking action under section 16A,
  - (e) records of, or relating to, cautions and conferences under this Act may (subject to any regulations made for the purposes of subsection (3)) be divulged to an authorised officer of the Department of Justice,
  - (f) records of, or relating to, warnings, cautions and conferences under this Act may (subject to any regulations made for the purposes of subsection (3)) be divulged to a person employed in the Bureau of Crime Statistics and Research,
  - (f1) records of, or relating to, warnings, cautions and conferences under this Act may (subject to any regulations made for the purposes of subsection (3)) be divulged to a person employed in the Australian Bureau of Statistics or the Australian Institute of Criminology, but only if the name and other information identifying a person to whom any such record relates have been removed,
  - (g) records of, or relating to, warnings, cautions and conferences under this Act may (subject to any regulations made for the purposes of subsection (3)) be divulged to an authorised officer of the Department of Justice for use in connection with the Department's Youth on Track scheme or such other early intervention or diversionary program administered by the Department that is prescribed by the regulations,
  - (h) any records divulged to an authorised officer of the Department of Justice under paragraph (g) may (subject to any regulations made for the purposes of subsection (3)) be divulged by an authorised officer of the Department to a non-



government organisation engaged by the Department to provide services in connection with the Department's Youth on Track scheme or such other early intervention or diversionary program administered by the Department that is prescribed by the regulations.

- (2A) Despite subsection (1), information (including records) referred to in that subsection may (subject to any regulations made for the purposes of subsection (3)) be divulged to the Ombudsman, or a person authorised by the Ombudsman, for the purposes of the exercise of any of the functions of the Ombudsman.
- (3) The regulations may make for provision for or with respect to the divulging of records in the circumstance referred to in subsection (2) (e)-(h) or (2A).
- (4) In this section:

***authorised officer of the Department of Justice*** means any of the following persons employed in the Department:

- (a) the Secretary,
- (b) a Deputy Secretary,
- (c) the Chief Executive of Juvenile Justice or a Deputy Chief Executive of Juvenile Justice,
- (d) a juvenile justice officer,
- (e) such other persons employed in the Department (or persons belonging to a class of employee) as may be prescribed by the regulations.

#### **67 Certain statements inadmissible**

- (1) Any statement, confession, admission or information made or given by a child during the giving of a caution or a conference under this Act is not to be admitted in evidence in any subsequent criminal or civil proceedings.
- (2) Despite subsection (1), an outcome plan agreed at a conference may be produced to a court if the court has referred a matter for a conference.

#### **68 Interventions not to be disclosed as criminal history**

- (1) If a person has been the subject of a warning, caution or conference under this Act:
- (a) the person is not required to disclose to any other person for any purpose information concerning the warning, caution or conference, and
- (b) a question concerning the person's criminal history is taken not to refer to any such warning, caution or conference, and

(c) in the application to the person of a provision of an Act or statutory instrument, a reference in the provision to the person's character or fitness is not to be interpreted as permitting or requiring account to be taken of any such warning, caution or conference.

(2) In so far as a caution or conference is concerned, subsection (1) does not apply in relation to:

(a) an application by a person for appointment or employment as a judge, magistrate, justice of the peace, police officer, prison officer, teacher or teachers aide, or

(b) an offence of arson or attempted arson if the person seeks to be appointed or employed in fire fighting or fire prevention, or

(c) proceedings before the Children's Court (including a decision concerning sentencing), or

(d) an application by a person for a working with children check clearance, the assessment of a person or an application under Part 4 of the *Child Protection (Working with Children) Act 2012*.

## **69 Investigating officials may act on other matters**

Nothing in this Act prevents an investigating official from acting on information obtained during the course of a caution or conference in relation to offences other than offences the subject of the conference.

## **70 (Repealed)**

## **71 Giving of notices**

If by or under this Act a document is required or permitted to be given to or served on a person, the document may be given or served:

(a) by delivering it personally to the person, or

(b) by leaving it at that person's usual or last known place of residence with a person apparently over the age of 16 years and apparently residing there, or

(c) by sending it by post addressed to the person at that person's usual or last known place of residence, or

(d) if a manner of service is prescribed by any other Act or law in relation to a person or class of persons, by being served in that manner.

## **72 Liability of officers under Act**

(1) Any matter or thing done by the Secretary, a conference administrator, a conference convenor, a person giving a caution (other than a police officer or specialist youth

officer) or a person acting under the direction of the Secretary, conference administrator or convenor does not subject the Secretary, conference administrator, conference convenor or person so acting personally to any action, liability, claim or demand if the matter or thing was done in good faith for the purpose of executing this or any other Act.

- (2) A person referred to in subsection (1) is not liable for an offence under section 316 (1) of the *Crimes Act 1900* in respect of information obtained by the person in the course of a conference.

### **73 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the following matters:
- (a) the content and keeping of records required to be made under this Act,
  - (b) notification of referrals of children for conferences,
  - (c) authorising the bringing of children or parents who are in custody to conferences and ensuring the dignity and full participation in conferences of persons brought from custody to conferences,
  - (d) outcome plans,
  - (e) the provision by the Secretary to the Commissioner of Police of information, records, or parts of records, relating to conferences held under this Act,
  - (f) the provision by the Secretary or the Commissioner of Police of information, records, or parts of records, relating to cautions and conferences under this Act, to persons for statistical or research purposes.
- (3) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

### **74 (Repealed)**

### **75 Savings and transitional provisions**

Schedule 3 has effect.

### **76 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those

objectives.

- (2) The review is to be undertaken as soon as possible after the period of 3 years from the date of commencement of this section.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

## **Schedule 1 Conference convenors**

(Section 60)

### **1 Term of office**

Subject to this Schedule, a conference convenor holds office for such period (not exceeding 3 years) as is specified in the convenor's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **2 Remuneration**

A conference convenor is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the conference convenor.

### **3 Vacancy in office**

- (1) The office of a conference convenor becomes vacant if the convenor:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Secretary, or
  - (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (e) becomes a mentally incapacitated person, or
  - (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Secretary may remove a conference convenor from office at any time.

### **4 Effect of certain other Acts**

- (1) The provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to a conference convenor.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a conference convenor or from accepting and retaining any remuneration payable to the person under this Act as a convenor.

(3) The office of a conference convenor is not, for the purposes of any Act, an office or place of profit under the Crown.

## **Schedule 2 (Repealed)**

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

(Section 75)

### **Part 1 General**

#### **1 Savings and transitional regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before its publication.

### **Part 2 Provisions consequent on enactment of this Act**

#### **2 Existing proceedings**

A court may take action under Part 4 or 5 in respect of criminal proceedings commenced, but not completed, before the commencement of this clause.

### 3 Early implementation of Act

- (1) Regulations under clause 1 may limit the application of provisions of this Act to offences occurring in a specified part or parts of New South Wales for a specified period or periods.
- (2) If a regulation is made under this clause, the application of the Act is limited as specified by the regulation even though the specified provisions of the Act have commenced.
- (3) A regulation made under this clause ceases to have effect on the date that is 12 months after the date of commencement of this clause.

## Part 3 Provisions consequent on enactment of **Courts and Other Legislation Amendment Act 2007**

### 4 Definition

In this Part:

**amending Act** means the *Courts and Other Legislation Amendment Act 2007*.

### 5 Application of amendments

- (1) Any amendment made to this Act by the amending Act relating to the conduct of youth justice conferences or the giving of cautions extends to any child:
  - (a) who committed or is alleged to have committed an offence covered by this Act before the commencement of the amendment, and
  - (b) in respect of whom it has been decided (whether before or after the commencement of the amendment) that the child should be dealt with under this Act by means of a youth justice conference or caution, but that conference or caution has not yet been conducted or given.
- (2) Section 7A (as inserted by the amending Act) and, accordingly, this Act extends in relation to any person:
  - (a) who committed or is alleged to have committed an offence covered by this Act before the commencement of that section, and
  - (b) was a child when the offence was committed or was alleged to have been committed, and
  - (c) who has not been previously dealt with under this Act in respect of the offence or alleged offence, and
  - (d) who is under the age of 21 years.

- (3) The amendment made to section 10 by the amending Act applies to admissions made on or after the commencement of the amendment.

## **6 Abolition of Youth Justice Advisory Committee**

- (1) The Youth Justice Advisory Committee established by section 70 of this Act is abolished on the day on which that section is repealed by the amending Act (the ***abolition day***).
- (2) A person who, immediately before the abolition day, held office as a member of the Youth Justice Advisory Committee:
  - (a) ceases to hold office on that day, and
  - (b) is not entitled to be paid any remuneration or compensation because of ceasing to hold that office.
- (3) Nothing in the clause prevents the Minister from convening one or more committees (including committees constituted with former members of the Youth Justice Advisory Committee) to advise the Minister in relation to matters arising under this Act.

## **Part 4 Provisions consequent on enactment of [Graffiti Legislation Amendment Act 2012](#)**

### **7 Application of amendments**

- (1) In this Part:

***amending Act*** means the [Graffiti Legislation Amendment Act 2012](#).
- (2) An amendment made to this Act by the amending Act relating to the giving of cautions or warnings with respect to an offence committed under the [Graffiti Control Act 2008](#) applies in respect of an offence committed after the commencement of the amendment.

## **Part 5 Provision consequent on enactment of [Crimes Legislation Amendment Act 2012](#)**

### **8 Destruction and disclosure of records**

- (1) Anything done or omitted to be done before the commencement of Schedule 3.5 to the [Crimes Legislation Amendment Act 2012](#) in relation to the destruction of records of warnings or the disclosure of records of, or relating to, warnings, cautions and conferences to the Bureau of Crime Statistics and Research that could have been validly done or omitted to be done if the amendments made to this Act by that Subschedule had been in force when it was done or omitted to be done, is taken to have been validly done or omitted to be done.

- (2) Section 17 (4), as inserted by Schedule 3.5 to the *Crimes Legislation Amendment Act 2012*, extends to records of warnings divulged to the Bureau of Crime Statistics and Research before the commencement of that Subschedule.

## **Part 6 Provision consequent on enactment of Crimes and Courts Legislation Amendment Act 2013**

### **9 Disclosure of records**

Anything done or omitted to be done before the amendments of sections 17 and 66 by the *Crimes and Courts Legislation Amendment Act 2013*, that could have been validly done or omitted to be done if the amendments had been in force when it was done or omitted to be done, is taken to have been validly done or omitted to be done.