



New South Wales

Young Offenders Amendment Bill 2002

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Young Offenders Act 1997* so as:

- (a) to limit to 3 the number of occasions on which a child can be dealt with for an offence by caution under that Act, and
- (b) to ensure that the police officer or other investigating official who initially deals with a child in relation to the commission or alleged commission of an offence is consulted, whenever practicable, on any decision as to the action to be taken under that Act in relation to the offence, and
- (c) to provide that a youth justice conference with respect to a child can be attended by a representative from the child's school, and
- (d) to require particular consideration to be given by the participants in a youth justice conference with respect to a child to the desirability of the child's participation in an appropriate counselling, rehabilitation, educational or other program, and

- (e) to ensure that the victim of an offence committed or alleged to have been committed by a child has a right of veto as to any outcome plan proposed at a youth justice conference conducted or reconvened with respect to the offence, and
- (f) to illustrate the kinds of program that may be appropriate to be contained in an outcome plan proposed at a youth justice conference.

Outline of provisions

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.

Clause 3 is a formal provision giving effect to the amendments to the *Young Offenders Act 1997* set out in Schedule 1.

Schedule 1 Amendments

Limit on number of cautions

Schedule 1 [1], [2], [3], [4], [5], [9] and [10] amend sections 20, 23, 31, 37, 38 (proposed subsection (5)), 41 and 44 of the Principal Act so as to give effect to the object referred to in paragraph (a) above.

Consultation with police officer or other official as to proposed action

Schedule 1 [5], [6], [7] and [8] amend sections 38 (proposed subsection (4)), 40 and 41 of the Principal Act so as to give effect to the object referred to in paragraph (b) above.

Attendance by school representative at youth justice conference

Schedule 1 [11] amends section 47 of the Principal Act so as to give effect to the object referred to in paragraph (c) above.

Consideration of appropriate program for child

Schedule 1 [12] amends section 52 (proposed subsection (2)) of the Principal Act so as to give effect to the object referred to in paragraph (d) above.

Victim's right of veto of outcome plan

Schedule 1 [12], [14] and [15] amend sections 52 (proposed subsections (3) and (4)), 53 and 55 (proposed subsections (5) and (6)) of the Principal Act so as to give effect to the object referred to in paragraph (e) above.

Illustration of programs appropriate to an outcome plan

Schedule 1 [13] amends section 52 (proposed subsection (5A)) of the Principal Act so as to give effect to the object referred to in paragraph (f) above.

Miscellaneous

Schedule 1 [16] amends Schedule 3 (Savings and transitional provisions) so as to enable the regulations to make provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

First print



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Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Young Offenders Act 1997 No 54	2
Schedule 1 Amendments	3



New South Wales

Young Offenders Amendment Bill 2002

No. , 2002

A Bill for

An Act to amend the *Young Offenders Act 1997* with respect to cautions and youth justice conferences; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Young Offenders Amendment Act 2002</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Young Offenders Act 1997 No 54	7
The <i>Young Offenders Act 1997</i> is amended as set out in Schedule 1.	8

Schedule 1 Amendments

1

(Section 3)

2

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

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Insert after section 20 (6):

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(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:

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(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

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(b) whether for offences of the same or of a different kind.

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[2] Section 23 Referrals for cautions

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Insert after section 23 (4):

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(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:

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(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

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(b) whether for offences of the same or of a different kind.

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[3] Section 31 Cautions by courts

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Insert after section 31 (4):

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(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:

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(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

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(b) whether for offences of the same or of a different kind.

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[4] Section 37 Entitlement to be dealt with by conference	1
Insert after section 37 (5):	2
(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:	3 4 5 6
(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	7 8 9
(b) whether for offences of the same or of a different kind.	10
[5] Section 38 Determinations by specialist youth officers	11
Insert after section 38 (3):	12
(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.	13 14 15
(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:	16 17 18 19
(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	20 21 22
(b) whether for offences of the same or of a different kind.	23
[6] Section 40 Referrals for conferences by DPP and courts	24
Insert after section 40 (5):	25
(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.	26 27 28 29

[7] Section 41 Conference administrator may refer matters to DPP	1
Omit “On referral of a matter by a specialist youth officer for a conference under this Part, a conference administrator may consult with the specialist youth officer” from section 41 (1).	2 3 4
Insert instead “Unless it is impracticable to do so, a conference administrator must, on referral of a matter by a specialist youth officer for a conference under this Part, consult with both the specialist youth officer and the investigating official”.	5 6 7 8
[8] Section 41 (2), (6), (7) and (8)	9
Omit “and the specialist youth officer” wherever occurring.	10
Insert instead “, specialist youth officer and investigating official”.	11
[9] Section 41 (9)	12
Insert after section 41 (8):	13
(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:	14 15 16
(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	17 18 19
(b) whether for offences of the same or of a different kind.	20
[10] Section 44 Right not to proceed	21
Insert after section 44 (4):	22
(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:	23 24 25
(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	26 27 28
(b) whether for offences of the same or of a different kind.	29

[11] Section 47 Participants in conferences	1
Insert after section 47 (2) (b):	2
(b1) if the child attends a government or non-government school (within the meaning of the <i>Education Act 1990</i>) as a student, a representative of the school,	3 4 5
[12] Section 52 Outcomes of conferences	6
Omit section 52 (2), (3) and (4). Insert instead:	7
(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).	8 9 10 11
(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.	12 13 14 15
(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.	16 17 18 19 20
[13] Section 52 (5A)	21
Insert after section 52 (5):	22
(5A) The kinds of program that may be appropriate to be contained in an outcome plan include the following:	23 24
(a) counselling programs,	25
(b) drug and alcohol rehabilitation programs,	26
(c) educational programs,	27
(d) other programs aimed at improving a child's prospects,	28
whether conducted by a government agency, an educational institution or a community organisation (such as a Police and Community Youth Club).	29 30 31

[14] Section 53 Failure of conference to reach decision	1
Insert “or if the child or any victim of the offence who has personally attended the conference has exercised his or her right of veto with respect to an outcome plan” after “regulations” in section 53 (1).	2 3 4
[15] Section 55 Reconvening of conferences	5
Omit section 55 (5), (6) and (7). Insert instead:	6
(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.	7 8 9 10 11
(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.	12 13 14 15 16 17
[16] Schedule 3 Savings and transitional provisions	18
Insert at the end of clause 1 (1):	19
<i>Young Offenders Amendment Act 2002</i>	20