

## **Explanatory note**

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

### Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Coroners Act 1980* in relation to the suspension and continuation of inquests and inquiries,
- (b) to amend the *Land and Environment Court Act 1979* in relation to privilege and conciliation conferences,
- (c) to amend the *Legal Profession Act 2004* in relation to a transitional matter,
- (d) to amend the *Young Offenders Act 1997* in relation to miscellaneous matters and to make consequential amendments to certain Regulations.

### 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 the date of assent, subject to specified exceptions.

**Clause 3** is a formal provision that gives effect to the amendments to the Acts and Regulations specified in Schedules 1–5 as set out in those Schedules.

**Clause 4** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

### **Schedule 1 Amendment of Coroners Act 1980 No 27**

Section 19 of the *Coroners Act 1980* requires an inquest or inquiry to be terminated in certain circumstances if a person is charged with an indictable offence or the coroner believes the evidence suggests a person would be convicted of an indictable offence concerning a death or suspected death or fire or explosion. Section 20 provides that an inquest or inquiry may be held notwithstanding that an inquest concerning the same death or suspected death or an inquiry concerning the same fire or explosion was earlier terminated under section 19. **Schedule 1 [4] and [5]** amend section 19 and substitute section 20 to make it clear that section 20 allows a coroner to continue an inquest or inquiry that was earlier terminated under section 19 (in order to overturn the decision of the Supreme Court in *Innes & 2 ors v NSW Senior Deputy State Coroner; Commissioner of Police v NSW Senior Deputy State Coroner* [2007] NSWSC 1209). The proposed changes replace references to the termination of an inquest or inquiry with references to the suspension of an inquest or inquiry and provide that an inquest or inquiry that was suspended, or not commenced, under section 19 may (on the coroner's own motion or on the application of a specified person) subsequently be resumed or commenced (as the case may be) or may be dispensed with. **Schedule 1 [5]** also makes provision for the State Coroner, or a coroner authorised by the State Coroner, to resume or commence, or to dispense with, a suspended inquest or inquiry if the coroner who adjourned, or did not commence, an inquest or inquiry is unavailable. **Schedule 1 [1]–[3] and [7]–[10]** contain consequential amendments.

**Schedule 1 [6]** substitutes section 22 (Finding of coroner or verdict of jury to be recorded) to clarify the operation of that section and make consequential amendments.

**Schedule 1 [11]** enables the making of regulations of a savings and transitional nature and **Schedule 1 [12]** contains a transitional provision.

### **Schedule 2 Amendment of Land and Environment Court Act 1979 No 204**

**Schedule 2** amends the *Land and Environment Court Act 1979* in order that the same privilege that applies to judicial proceedings with respect to defamation applies in relation to conciliation conferences and documents produced in relation to such conferences.

### **Schedule 3 Amendment of Legal Profession Act 2004 No 112**

Prior to the enactment of the *Legal Profession Act 2004*, persons who had completed the necessary legal studies and training were admitted by the Supreme Court as “legal practitioners” and issued with practising certificates by the Bar Association or Law Society. Since the enactment of that Act, those persons are admitted by the Supreme Court as “lawyers” (in an earlier change in terminology in 1993 those persons were admitted as “barristers” or “solicitors”). Clause 26 of Schedule 9 to the *Legal Profession Act 2004* contains provisions to enable earlier references in other Acts and statutory rules to various terms (such as barrister, solicitor, legal practitioner, lawyer, attorney and counsel) to be read as references to the appropriate new terms in order to preserve the operation of those Acts and rules, including a power to make further provision by regulation for the construction of references either generally or in a particular case.

**Schedule 3 [1]** inserts provision to allow former references to “legal practitioners” of a specified number of years’ standing to be read as a reference to a period since admission, subject to the ability of the regulations to make different provision in a particular case. **Schedule 3 [2]** extends the regulation-making power that enables earlier references to be construed in a particular case as references to persons holding practising certificates so that the references can be construed instead as references to persons who have been admitted as lawyers.

### **Schedule 4 Amendment of Young Offenders Act 1997 No 54**

#### **Aboriginal and Torres Strait Islander children**

**Schedule 4 [1]** amends section 3 of the *Young Offenders Act 1997* to provide that one of the objects of the Act is 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. **Schedule 4 [6]** makes a corresponding amendment to section 7 of the *Young Offenders Act 1997* to provide that this is one of the principles that underlies the diversionary scheme created by the Act.

#### **Meaning of “victim”**

**Schedule 4 [5]** amends section 5 of the *Young Offenders Act 1997* to expand the definition of *victim* for the purposes of the Act so that it includes people who, as the result of an act, suffer psychological harm (such as fear, humiliation, shame or stress) that does not amount to mental illness or nervous shock and people who suffer financial harm other than property loss. The current definition limits psychological harm to mental illness and nervous shock. It also limits financial loss to situations where the person’s property has been taken, destroyed or damaged.

#### **Application of Young Offenders Act 1997 to persons who are no longer children**

**Schedule 4 [7]** inserts a new section 7A in the *Young Offenders Act 1997* to provide that the Act applies (subject to certain exceptions) in relation to a person who:

(a) is or was a child when an offence covered by the 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 the Act.

The *Young Offenders Act 1997* currently provides that a person may be dealt with under the Act only if the person was a child when the relevant offence or alleged offence was committed and is still a child when he or she is being dealt with under the Act. Section 4 of the *Young Offenders Act 1997* defines *child* to mean a person who is of or over the age of 10 years and under the age of 18 years.

#### **Period for deciding whether to deal with child under Young Offenders Act 1997**

**Schedule 4 [8]** amends section 9 of the *Young Offenders Act 1997* to confirm that an investigating official has at least 14 days to consider whether a child should be dealt

with under Part 3 or 4 of the Act or referred to a specialist youth officer under Part 5 of the Act.

#### **Admission of offences**

**Schedule 4 [9]** amends section 10 of the *Young Offenders Act 1997* to provide that one of the circumstances in which an admission by a child of an offence is an admission for the purposes of the Act is if the child is aged 14 years or over and the admission takes place in the presence of an adult chosen by the child. Currently, section 10 provides that the child needs to be aged 16 years or over for this circumstance to apply.

#### **Warnings**

**Schedule 4 [10]** inserts a new section 16A in the *Young Offenders Act 1997* to enable an investigating official who gives a warning to a child, or a youth liaison officer, to give the parents of the child notice that a warning has been given to the child in respect of an offence committed by the child. However, the official or officer must not disclose that information if the official is of the opinion that the disclosure of the information would pose an unacceptable risk to the safety, welfare or well-being of the child. **Schedule 4 [4]** inserts a definition of **youth liaison officer** in section 4 of the *Young Offenders Act 1997*.

**Schedule 4 [11]** amends section 17 of the *Young Offenders Act 1997* to require the Commissioner of Police to ensure that a record of a warning made under the Act is destroyed or expunged once the person to whom the record relates reaches the age of 21 years.

#### **Cautions**

**Schedule 4 [12]** inserts a new section 24A in the *Young Offenders Act 1997* to enable a person arranging for a caution to be given to a child:

(a) to seek a written statement from any victim of the offence concerned that describes the harm occasioned to the victim by the offence, and

(b) to give guidance to any such victim as to the kind of matters that are appropriate for inclusion in the statement, and

(c) to provide any such statement received by the person to the person giving the caution to the child.

**Schedule 4 [14]**, among other things, makes a consequential amendment to section 29 of the Act to enable the person giving a warning to read out such a statement (or part of such a statement) if the person considers it appropriate to do so. In addition,

**Schedule 4 [15]** amends section 31 of the *Young Offenders Act 1997* to confer a comparable power on a court giving a caution under that section. It also amends section 31 to require a court that gives a caution under that section to dismiss the proceedings for the offence in respect of which the caution is given.

**Schedule 4 [13]** amends section 28 of the *Young Offenders Act 1997* to enable one student or probationary police officer to be present for training purposes when a caution is given to a child, but only if consent to the officer's presence has been given by the child and an adult who is present with the child.

**Schedule 4 [14]** also amends section 29 of the *Young Offenders Act 1997* to confirm that a person proposing to give a caution to a child under the Act may defer giving the caution if a person responsible for the child or an adult chosen by the child is not present or if the child's capacity to understand what is occurring is affected by alcohol or another drug.

**Schedule 4 [16]** inserts a new section 33A in the *Young Offenders Act 1997* to require the Commissioner of Police to ensure that any finger prints or palm prints obtained from, or photographs taken of, a child in connection with an offence are destroyed if a caution has been given under the Act in respect of the offence.

#### **Youth justice conferences**

**Schedule 4 [17]** amends section 42 of the *Young Offenders Act 1997* to make it clear that a conference administrator's obligation to appoint a conference convenor for a

youth justice conference only arises when the administrator is satisfied that a referral for that purpose has been made under Part 5 of the Act.

**Schedule 4 [18]** substitutes section 43 of the *Young Offenders Act 1997* with a new provision that provides that a youth justice conference must be convened within 28 days following a referral (instead of the current 21 days), unless the conference administrator reasonably considers that it is not practicable to do so.

**Schedule 4 [19]** amends section 45 to enable a conference administrator to carry out certain notice giving functions in relation to youth justice conferences as well as the conference convenor.

**Schedule 4 [20]** amends section 47 of the *Young Offenders Act 1997* to enable one police officer to be present during a youth justice conference for training purposes, but only if consent to the officer's presence has been given by the conference convenor, child, any victim and (if present) a person responsible for the child.

#### **Disclosure of records and criminal history**

**Schedule 4 [24] and [25]** amend section 66 of the *Young Offenders Act 1997* to enable records of, or relating to, cautions and conferences under the Act to be divulged to certain authorised officers of the Department of Juvenile Justice.

**Schedule 4 [24]** also amends section 66 to enable records of warnings to be divulged to youth liaison officers for the purpose of taking action under proposed section 16A.

**Schedule 4 [26]** amends section 68 of the *Young Offenders Act 1997* so that limitations on the need for a person to disclose warnings, cautions or conferences given or conducted under the Act in relation to the person that are set out in that section do not apply in relation to an application by a person for employment in child-related employment within the meaning of Part 7 of the *Commission for Children and Young People Act 1998*. The amendment will make the provisions of section 68 more consistent with those applying to spent convictions under the *Criminal Records Act 1991*.

#### **Delegation of functions of Director-General**

**Schedule 4 [23]** inserts a new section 62A in the *Young Offenders Act 1997* to enable the Director-General of the Department of Juvenile Justice to delegate his or her functions under the Act or the regulations to any of the following persons:

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

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

**Schedule 4 [27]** repeals section 70 of the *Young Offenders Act 1997*, which provides for the Youth Justice Advisory Committee to be constituted. **Schedule 4 [32]** inserts a provision in Schedule 3 to the *Young Offenders Act 1997* that abolishes the Committee on the day on which section 70 is repealed by the proposed Act.

#### **Amendments in the nature of statute law revision**

The proposed Act also makes the following amendments to the *Young Offenders Act 1997* in the nature of statute law revision:

- (a) **Schedule 4 [2]** amends section 4 to update a reference to the Director-General of the Department of Juvenile Justice.
- (b) **Schedule 4 [3]** amends section 4 to update a reference to the Police Service.
- (c) **Schedule 4 [21]** amends section 47 to confirm that a reference in that section to an order is a reference to an order made under section 33 of the *Children (Criminal Proceedings) Act 1987* for supervision of a child by the Department of Juvenile Justice,
- (d) **Schedule 4 [22]** amends section 57 to confirm that any dismissal of a charge referred to in that section is being made pursuant to a power conferred by that section rather than under any other law.
- (e) **Schedule 4 [28]** amends Schedule 1 to update a reference to the repealed *Public Sector Management Act 1988*.

**Savings and transitional provisions**

**Schedule 4 [30]** amends clause 1 of Schedule 3 to the *Young Offenders Act 1997* to enable the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

**Schedule 4 [32]** amends Schedule 3 to the *Young Offenders Act 1997* to insert a new Part that contains provisions of a savings or transitional nature consequent on the enactment of the proposed Act. **Schedule 4 [29] and [31]** make amendments to Schedule 3 that are consequential on the insertion of the new Part.

**Schedule 5 Consequential amendment of Regulations**

**Schedule 5** makes amendments to the *Freedom of Information Regulation 2005* and the *Young Offenders Regulation 2004* that are consequential on the abolition of the Youth Justice Advisory Committee by amendments made to the *Young Offenders Act 1997* in Schedule 4.