

Passed by both Houses



New South Wales

Courts and Other Legislation Amendment Bill 2007

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2007*



New South Wales

Courts and Other Legislation Amendment Bill 2007

Act No , 2007

An Act to amend certain Acts with respect to coronial inquests and inquiries, court procedure, young offenders and other matters.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Courts and Other Legislation Amendment Act 2007*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as specified in subsection (2).
- (2) Schedules 2, 4 and 5 commence on a day or days to be appointed by proclamation.

3 Amendments

The Acts and Regulations specified in Schedules 1–5 are amended as set out in those Schedules.

4 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Coroners Act 1980 No 27

(Section 3)

[1] Section 12A Obligation to report death

Omit “termination” from section 12A (3A). Insert instead “suspension”.

[2] Section 14B General cases in which inquest required to be held

Omit “terminated or continued” from section 14B (1) (d).

Insert instead “suspended or continued”.

[3] Sections 16A (2) and 34 (6)

Omit “terminates” wherever occurring. Insert instead “suspends”.

[4] Section 19 Procedure at inquest or inquiry involving indictable offence

Omit “terminate” wherever occurring in section 19 (1A), (1B) (b) and (1C) (b).

Insert instead “suspend”.

[5] Section 20

Omit the section. Insert instead:

20 Procedure following suspension of inquest or inquiry under section 19

- (1) A coroner who has suspended, or not commenced, an inquest or inquiry under section 19 may make an order, subject to subsections (2) and (3):
 - (a) that the inquest or inquiry is to resume or commence (as the case may be), or
 - (b) to dispense with the resumption or holding of the inquest or inquiry.
- (2) If a person has been charged with an indictable offence in which the question of whether the person caused a death or suspected death or a fire or explosion is in issue, an inquest or inquiry that has been suspended, or that has not commenced, under section 19 may not be resumed or commenced (as the case may be), until the charge is finally determined.
- (3) If the coroner has suspended an inquest or inquiry after coming to the opinion referred to in section 19 (1) (b) (and a person has not been charged as referred to in subsection (2) in relation to an indictable offence), the suspended inquest or inquiry may not be

resumed until the Attorney General or the Director of Public Prosecutions advises that no proceedings will be taken against the known person (as referred to in section 19 (1) (b)) in relation to the indictable offence.

- (4) An order under subsection (1) may be made on a coroner's own motion or on the application of a person who has been granted leave to appear or to be represented at the inquest or inquiry.
- (5) If the coroner who suspended, or did not commence, an inquest or inquiry under section 19 is not available to resume, commence or dispense with the inquest or inquiry for any reason, the State Coroner or a coroner authorised by the State Coroner, may resume, commence or dispense with the inquest or inquiry in accordance with this section.
- (6) For the purposes of subsection (2), a charge is taken to be finally determined if:
 - (a) the person has been discharged from proceedings with respect to the offence to which the charge relates, or
 - (b) no further appeal can be made in proceedings in respect of the charge without an extension of time being granted, or
 - (c) the Attorney General or the Director of Public Prosecutions directs that no further proceedings be taken against the person in respect of the charge.

[6] Section 22

Omit the section. Insert instead:

22 Finding of coroner or verdict of jury to be recorded

- (1) The coroner holding an inquest concerning the death or suspected death of a person must, at its conclusion or on its suspension, record in writing his or her findings or, if there is a jury, the jury's verdict, as to whether the person died and, if so:
 - (a) the person's identity, and
 - (b) the date and place of the person's death, and
 - (c) in the case of an inquest that is being concluded—the manner and cause of the person's death.
- (2) The coroner holding an inquiry concerning a fire or explosion must, at its conclusion or on its suspension, record in writing his or her findings or, in the case of an inquiry held before a jury, the jury's verdict:
 - (a) as to the date and place of the fire or explosion, and

-
- (b) in the case of an inquiry that is being concluded—as to the circumstances of the fire or explosion.
- (3) Any record made under subsection (1) or (2) must not indicate or in any way suggest that an offence has been committed by any person.
- [7] Section 23A Duty to hold fresh inquest or inquiry—new facts or evidence**
Insert “or suspension” after “termination” in section 23A (5).
- [8] Section 47 Powers of Supreme Court to order inquest or inquiry**
Insert “or suspended” after “terminated” in section 47 (1).
- [9] Section 53 Warrant for exhumation of body**
Omit “terminated under section 19 or 21” from section 53 (1) (b) (i).
Insert instead “suspended under section 19 or terminated under section 21”.
- [10] Section 53 (2)**
Omit the subsection. Insert instead:
- (2) Where an inquest concerning the death or suspected death of a person has been suspended under section 19 or terminated under section 21, a coroner is not to exercise his or her powers under subsection (1) with respect to the remains of that person unless an inquest or a fresh inquest concerning the death of that person may be resumed or held as referred to in section 20, 23 or 23A or pursuant to section 47.
- [11] Schedule 3 Savings and transitional provisions**
Insert at the end of clause 1A (1):
- Courts and Other Legislation Amendment Act 2007*, but only to the extent that it amends this Act
- [12] Schedule 3, clause 16**
Insert at the end of the Schedule:
- 16 Courts and Other Legislation Amendment Act 2007**
The amendments made to this Act by the *Courts and Other Legislation Amendment Act 2007* extend to an inquest or inquiry that has been commenced, but not completed, before the commencement of those amendments.

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

(Section 3)

Section 34 Conciliation conferences (as substituted by Courts Legislation Amendment Act 2007)

Insert after section 34 (10):

- (10A) The same privilege with respect to defamation as exists with respect to judicial proceedings and a document produced in judicial proceedings exists with respect to:
 - (a) a conciliation conference, and
 - (b) a document or other material sent to or produced to a Commissioner, or sent to or produced at the Court or the registry of the Court, for the purpose of enabling a conciliation conference to be arranged.

- (10B) The privilege conferred by subsection (10A) extends only to a publication made:
 - (a) at a conciliation conference, or
 - (b) in a document or other material sent to or produced to a Commissioner, or sent to or produced at the Court or the registry of the Court, for the purpose of enabling a conciliation conference to be arranged.

Schedule 3 Amendment of Legal Profession Act 2004 No 112

(Section 3)

[1] Schedule 9 Savings, transitional and other provisions

Insert at the end of clause 26 (1) (c):

and

- (d) a legal practitioner (where the term is not so expressed) of a specified period of standing is to be read as a reference to an Australian lawyer of that period of standing,

[2] Schedule 9, clause 26 (2)

Insert “or Australian lawyer” after “Australian legal practitioner” wherever occurring.

Schedule 4 Amendment of Young Offenders Act 1997 No 54

(Section 3)

[1] Section 3 Objects of Act

Insert at the end of section 3 (c):

, 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.

[2] Section 4 Definitions

Insert “the Department of” after “of” in the definition of *Director-General*.

[3] Section 4, definition of “specialist youth officer”

Omit “Police Service”. Insert instead “NSW Police Force”.

[4] Section 4, definition of “youth liaison officer”

Insert in alphabetical order:

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] Section 5 Meaning of “victim”

Omit section 5 (2). Insert instead:

- (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.

[6] Section 7 Principles of scheme

Insert after section 7 (g):

- (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.

[7] Section 7A

Insert after section 7:

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] Section 9 Procedures under scheme

Insert after section 9 (2A):

- (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.

[9] Section 10 Admission of offences

Omit “16 years” from section 10 (c). Insert instead “14 years”.

[10] Section 16A

Insert after section 16:

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.

[11] Section 17 Records of warnings

Insert after section 17 (2):

- (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*.

[12] Section 24A

Insert after section 24:

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).

[13] Section 28 Persons who may accompany child

Insert after section 28 (j):

- (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.

[14] Section 29 Giving of cautions

Insert after section 29 (2):

- (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.

[15] Section 31 Cautions by courts

Insert after section 31 (1):

- (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).

[16] Section 33A

Insert after section 33:

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.

[17] Section 42 Appointment of conference convenor

Omit “On referral of a matter for a conference under this Part,” from section 42 (1).

Insert instead “If a conference administrator is satisfied that a matter has been referred for a conference under this Part,”.

[18] Section 43

Omit the section. Insert instead:

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.

[19] Section 45 Preparation for conferences

Insert “or conference administrator” after “conference convenor” where firstly occurring in section 45 (3).

[20] Section 47 Participants in conferences

Insert after section 47 (1) (j):

- (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.

[21] Section 47 (2) (e)

Omit the paragraph. Insert instead:

- (e) if the child is subject to the supervision of the Department of Juvenile Justice pursuant to an order made under section 33 of the *Children (Criminal Proceedings) Act 1987*, the child's supervising officer,

[22] Section 57 Additional provisions relating to completion and non-completion of outcome plans

Insert "under this subsection" after "dismiss" in section 57 (2).

[23] Section 62A

Insert after section 62:

62A Delegation of Director-General's functions

The Director-General may delegate the exercise of any function of the Director-General under this Act or the regulations (other than this power of delegation) 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.

[24] Section 66 Disclosure of records

Insert after section 66 (2) (c):

- (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 Juvenile Justice.

[25] Section 66 (3) and (4)

Insert after section 66 (2):

- (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).
- (4) In this section:
authorised officer of the Department of Juvenile Justice means any of the following officers of the Department:
 - (a) the Director-General,
 - (b) a Deputy Director-General,
 - (c) a juvenile justice officer,
 - (d) such other member of staff (or member of staff belonging to a class of members of staff) of the Department as may be prescribed by the regulations.

[26] Section 68 Interventions not to be disclosed as criminal history

Insert at the end of section 68 (2) (c):

, or

- (d) 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*.

[27] Section 70 Youth Justice Advisory Committee

Omit the section.

[28] Schedule 1 Conference convenors

Omit “Part 2 of the *Public Sector Management Act 1988*” from clause 4 (1).

Insert instead “Chapter 2 of the *Public Sector Employment and Management Act 2002*”.

[29] Schedule 3 Savings and transitional provisions

Insert before clause 1:

Part 1 General

[30] Schedule 3, clause 1

Insert at the end of clause 1 (1):

Courts and Other Legislation Amendment Act 2007, to the extent that it amends this Act and the Regulations set out in Schedule 5 to the 2007 Act

[31] Schedule 3, Part 2, heading

Insert after clause 1:

Part 2 Provisions consequent on enactment of this Act

[32] Schedule 3, Part 3

Insert after clause 3:

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.

Schedule 5 Consequential amendment of Regulations

(Section 3)

5.1 Freedom of Information Regulation 2005

Schedule 3 Public authorities

Omit the matter relating to the Youth Justice Advisory Committee from Part 3.

5.2 Young Offenders Regulation 2004

[1] Clause 3 Definitions and notes

Omit the definitions of *appointed member*, *Committee*, *member* and *nominated member* from clause 3 (1).

[2] Part 2 Youth Justice Advisory Committee

Omit the Part.