



New South Wales

Children (Criminal Proceedings) and Young Offenders Legislation Amendment Bill 2025

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 *Children (Criminal Proceedings) Act 1987* in relation to the age of criminal responsibility of children between 10 years of age and 14 years of age,
- (b) to make miscellaneous amendments to the *Young Offenders Act 1997* and the *Young Offenders Regulation 2016*.

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.

Schedule 1 Amendment of Children (Criminal Proceedings) Act 1987 No 55

Schedule 1[1] substitutes section 5 to codify that it is presumed that a child who, at the time of the alleged commission of an offence, is 10, 11, 12 or 13 years of age cannot be guilty of the offence. The presumption is rebutted only if the prosecution proves beyond reasonable doubt that the child knew at the time of the alleged commission of the offence that the child's conduct was seriously wrong.

The proposed section also provides that—

- (a) whether a child knew that the child's conduct was seriously wrong—

- (i) is a question of fact, and
 - (ii) must not be inferred merely from the fact that the child engaged in the conduct which constituted the offence, and
 - (iii) refers to the child's knowledge that it was seriously wrong in a moral sense to engage in the act or acts which constituted the alleged offence, and
- (b) in determining whether the presumption has been rebutted, a court must have regard to the following matters, if known to the court—
- (i) the conduct that constitutes the alleged offence,
 - (ii) the circumstances surrounding the commission of the alleged offence,
 - (iii) the child's intellectual and moral development and education,
 - (iv) the environment in which the child was raised.

Schedule 1[2] inserts a savings and transitional provision and a review provision.

Schedule 2 Amendment of Young Offenders Act 1997 No 54

Schedule 2[2] and [38] amends the *Young Offenders Act 1997 (the YO Act)* to provide that a victim may personally attend a youth justice conference physically, via audio visual link or by other electronic means approved by the Secretary of the Department of Communities and Justice. **Schedule 2[1] and [3]** make consequential amendments.

Schedule 2[4] amends the principles guiding the operation of the YO Act to include the principle that children have rights and freedoms equal to those enjoyed by adults, including the right to be heard and the right to participate in decisions that affect them, and the principle that children who commit offences bear responsibility for their actions but require guidance and assistance.

Schedule 2[6]–[8] deal with the offences covered by the YO Act. Schedule 2[6] enables the offences under the *Crimes (Domestic and Personal Violence) Act 2007*, sections 13 and 14 to be dealt with under the YO Act in certain circumstances. Schedule 2[8] makes clear that an offence under the *Crimes (Domestic and Personal Violence) Act 2007*, section 14 that involves a personal violence offence cannot be dealt with under the YO Act except in certain circumstances. Schedule 2[7] provides that summary offences under the *Drug Misuse and Trafficking Act 1985*, Part 2, Division 1 may be dealt with under the YO Act in certain circumstances.

Schedule 2[5], [9], [12], [14], [17], [20], [27] and [35] provide that, for the YO Act, a child is not required to admit to an offence but must instead make a non-denial statement. A non-denial statement is a statement that the child does not deny or admits to allegations against the child in relation to the elements of the offence and the time and place of the commission of the offence. The amendments set out the requirements for a statement to be valid, the form a statement must be made in and that a formal guilty plea made by a child is to be taken as a statement for the YO Act. **Schedule 2[39]** inserts proposed section 67A which provides for an investigating officer to offer a child an opportunity to make a non-denial statement in certain circumstances and clarifies that a non-denial statement is generally inadmissible in subsequent criminal or civil proceedings.

Schedule 2[10] substitutes section 13 to update the offences for which warnings may be given by removing references to graffiti offences and including certain larceny offences.

Schedule 2[11] substitutes section 18 to update the offences for which cautions may be given by removing references to graffiti offences.

Schedule 2[13], [15], [18], [22], [25], [29] and [33] provide that a child cannot be dealt with, referred for or given a caution if the child has previously been dealt with by caution on 3 or more occasions within the previous 3 years.

Schedule 2[16] amends a provision dealing with cautions given by courts by removing the reference to graffiti offences and inserting a reference to offences against the *Crimes (Domestic and Personal Violence) Act 2007*, section 14.

Schedule 2[19] provides that youth justice conference participants must have regard to the cultural needs of Aboriginal or Torres Strait Islander children and children from multicultural backgrounds.

Schedule 2[21], [23], [24] and [26] update the offences for which youth justice conferences may be held by removing references to graffiti offences. Schedule 2[2] makes a consequential amendment.

Schedule 2[28] inserts a note to clarify that, under proposed section 8(4)(b), an offence under the *Crimes (Domestic and Personal Violence) Act 2007*, section 14 involving a personal violence offence can be referred for a youth justice conference by the Director of Public Prosecutions or a court and dealt with under the YO Act, Part 5.

Schedule 2[30]–[32] and [34] contain amendments, including proposed section 43A, in relation to the holding of youth justice conferences, including the time limit for holding a conference after receiving a referral, the consideration of the safety, welfare and well-being of conference participants before a conference is held and the circumstances for a member of staff of Youth Justice NSW or another conference convenor to be present in a conference for their training.

Schedule 2[36] enables the regulations to prescribe matters that may be included in a youth justice conference's outcome plan. **Schedule 2[37]** amends the persons and bodies that a written notice must be provided to regarding whether the child has satisfactorily completed an outcome plan.

Schedule 3 Amendment of Young Offenders Regulation 2016

Schedule 3[1] substitutes clause 7 to provide that the maximum period of community service work that a youth justice conference outcome plan may impose is 35 hours.

Schedule 3[2] and [3] deal with provisions relating to youth justice conference outcome plans in relation to bush fire or arson offences or graffiti offences. The proposed amendments provide that the prescribed requirements or limitations imposed by outcome plans by the regulations are discretionary rather than mandatory.



New South Wales

Children (Criminal Proceedings) and Young Offenders Legislation Amendment Bill 2025

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This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Legislative Assembly

Clerk of the Legislative Assembly



New South Wales

Children (Criminal Proceedings) and Young Offenders Legislation Amendment Bill 2025

No , 2025

A Bill for

An Act to amend the *Children (Criminal Proceedings) Act 1987* to make further provision about the age of criminal responsibility of children between 10 years of age and 14 years of age; to make miscellaneous amendments to the *Young Offenders Act 1997* and *Young Offenders Regulation 2016*; and for other purposes.

The LEGISLATIVE COUNCIL has this day agreed to this Bill with/without amendment.

Legislative Council

Clerk of the Parliaments

Tabling copy

The Legislature of New South Wales enacts—	1
1 Name of Act	2
This Act is the <i>Children (Criminal Proceedings) and Young Offenders Legislation Amendment Act 2025</i> .	3
	4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6

Schedule 1 Amendment of Children (Criminal Proceedings) Act 1987 No 55

[1] Section 5

Omit the section. Insert instead—

5 Age of criminal responsibility

- (1) It is conclusively presumed that a child who, at the time of the alleged commission of an offence, is under 10 years of age cannot be guilty of the offence.
- (2) It is presumed that a child who, at the time of the alleged commission of an offence, is 10, 11, 12 or 13 years of age cannot be guilty of the offence.
- (3) The presumption in subsection (2) is rebutted only if the prosecution proves beyond reasonable doubt that the child knew at the time of the alleged commission of the offence that the child's conduct was seriously wrong.
- (4) Whether a child knew that the child's conduct was seriously wrong—
 - (a) is a question of fact, and
 - (b) must not be inferred merely from the fact that the child engaged in the act or acts which constituted the alleged offence, and
 - (c) refers to the child's knowledge that it was seriously wrong in a moral sense to engage in the act or acts which constituted the alleged offence.
- (5) In determining whether the presumption has been rebutted, a court must have regard to the following matters, if known to the court—
 - (a) the conduct that constitutes the alleged offence,
 - (b) the circumstances surrounding the commission of the alleged offence,
Example of circumstances surrounding commission of alleged offence—
the child taking steps to plan the conduct, including equipping themselves for the conduct or to avoid detection
 - (c) the child's intellectual and moral development and education,
 - (d) the environment in which the child was raised.
- (6) Subsection (5) does not limit other matters to which a court may have regard.
- (7) To avoid doubt—
 - (a) a court may determine that the presumption has been rebutted based on evidence of the conduct that constitutes the alleged offence and the circumstances surrounding the commission of the alleged offence, and
 - (b) the determination may be made without or despite other evidence of the child's intellectual and moral development if the court is satisfied that evidence of the conduct that constitutes the alleged offence and the circumstances surrounding the commission of the alleged offence is sufficient to satisfy the requirement set out in subsection (3).
- (8) Despite subsections (5) and (6), a court must not have regard to the following occurring under the *Young Offenders Act 1997*—
 - (a) the child being given a caution or being a participant in a youth justice conference,
 - (b) an admission or non-denial statement made by the child in order to be eligible for a caution or youth justice conference, other than a formal guilty plea referred to in the *Young Offenders Act 1997*, section 10(5),

(c)	an admission, statement, confession made, or information given, by the child during the giving of a caution or a youth justice conference.	1 2
[2]	Schedule 2 Savings and transitional provisions	3
	Insert at the end of the schedule, with appropriate part and clause numbering—	4
Part	Provisions consequent on enactment of Children (Criminal Proceedings) and Young Offenders Legislation Amendment Act 2025	5 6 7
	Application of amendments to proceedings	8
	An amendment made to this Act by the <i>Children (Criminal Proceedings) and Young Offenders Legislation Amendment Act 2025</i> applies only to proceedings commenced after the commencement of the amendment.	9 10 11
	Review of amendments	12
(1)	The Attorney General must review the amendments made to this Act by the <i>Children (Criminal Proceedings) and Young Offenders Legislation Amendment Act 2025</i> to determine whether—	13 14 15
(a)	the policy objectives of the amendments remain valid, and	16
(b)	the terms of the Act remain appropriate for securing the objectives.	17
(2)	The review must be undertaken as soon as practicable after the period of 18 months from the commencement of the amendments.	18 19
(3)	A report on the outcome of the review must be tabled in each House of Parliament within 12 months after the end of the period of 18 months.	20 21

Schedule 2 Amendment of Young Offenders Act 1997 No 54

[1] Section 4, heading	2
Omit the heading. Insert instead—	3
4 Interpretation	4
[2] Section 4	5
Omit the definition of <i>graffiti offence</i> .	6
Insert in alphabetical order—	7
<i>member of staff of Youth Justice NSW</i> means a person employed in the Youth Justice NSW branch of the Department of Communities and Justice.	8
<i>non-denial statement</i> —see section 10.	9
<i>personal violence offence</i> means an offence within the meaning of the <i>Crimes (Domestic and Personal Violence) Act 2007</i> , section 4, other than an offence against that Act, section 14.	10
<i>personally attends</i> includes the following—	11
(a) physical attendance,	12
(b) attendance via audio visual link,	13
(c) attendance by other electronic means approved by the Secretary under section 62B.	14
[3] Section 4(2)	15
Insert at the end of section 4—	16
(2) For the following provisions, the time that a child is dealt with by caution in relation to an offence is the time the caution is given under section 29 or 31—	17
(a) section 20(7),	18
(b) section 23(5),	19
(c) section 31(5),	20
(d) section 37(6),	21
(e) section 38(5),	22
(f) section 41(9),	23
(g) section 44(5).	24
[4] Section 7 Principles of scheme	25
Insert after section 7(h)—	26
(i) The principle that children have rights and freedoms before the law equal to the rights and freedoms enjoyed by adults and, in particular, a right to be heard and a right to participate in the processes that lead to decisions that affect them.	27
(j) The principle that children who commit offences bear responsibility for their actions but, because of their state of dependency and immaturity, require guidance and assistance.	28
[5] Section 7A Persons in relation to whom Act applies	29
Omit section 7A(3)(a). Insert instead—	30

	(a) section 10(2), which relates to who must be present with a child when the child makes a non-denial statement for this Act,	1 2
[6]	Section 8 Offences covered by Act	3
	Insert “, other than an offence under section 13 or 14” after “ <i>Crimes (Domestic and Personal Violence) Act 2007</i> ” in section 8(2)(e).	4 5
[7]	Section 8(2A)	6
	Omit the subsection. Insert instead—	7
	(2A) An offence under the <i>Drug Misuse and Trafficking Act 1985</i> , Part 2, Division 1 is covered by this Act if, in the opinion of the investigating official or prosecuting authority—	8 9 10
	(a) for an offence relating to a prohibited drug within the meaning of that Act—the offence involves not more than the small quantity applicable to the drug under that Act, or	11 12 13
	(b) it is an offence against that Act, section 11 or 12.	14
[8]	Section 8(4)	15
	Insert after section 8(3)—	16
	(4) Despite subsections (1) and (2)(e), an offence under the <i>Crimes (Domestic and Personal Violence) Act 2007</i> , section 14 that involves the commission of a personal violence offence is not covered by this Act, other than for the following provisions—	17 18 19 20
	(a) section 31,	21
	(b) Part 5, in relation to a matter referred or to be referred under section 40(1) or (1A).	22 23
[9]	Section 10	24
	Omit the section. Insert instead—	25
	10 Non-denial statements	26
	(1) A non-denial statement , in relation to an offence, is a statement made by a child that the child does not deny or admits the following allegations against the child about the offence—	27 28 29
	(a) the elements of the offence,	30
	(b) the time and place of the commission of the offence.	31
	(2) A non-denial statement is not valid unless it is made by a child in the presence of—	32 33
	(a) a person responsible for the child, or	34
	(b) an adult, other than an investigating official, who is present with the consent of a person responsible for the child, or	35 36
	(c) if the child is 14 years of age or more—an adult chosen by the child, or	37
	(d) an Australian legal practitioner chosen by the child.	38
	(3) The Secretary must approve a standard written form of a non-denial statement.	39
	(4) A non-denial statement must, if practicable, be made in the standard written form approved by the Secretary.	40 41

(5)	A formal guilty plea made by a child before a court in relation to an offence is taken for this Act to be a non-denial statement made in relation to the offence.	1 2
(6)	To avoid doubt, for subsection (1)(a), the reference to the elements of the offence does not include that the child knew, at the time of the offence, that it was seriously wrong to engage in the conduct constituting the offence.	3 4 5
[10]	Section 13	6
	Omit the section. Insert instead—	7
	13 Offences for which warnings may be given	8
(1)	A warning may be given for a summary offence covered by this Act, other than an offence prescribed by the regulations.	9 10
(2)	A warning may be given for an offence against the <i>Crimes Act 1900</i> , section 117, if, were the offence committed by an adult, a penalty notice could be issued under the <i>Criminal Procedure Act 1986</i> , Chapter 7, Part 3 for the offence.	11 12 13 14
	Note— Under the <i>Criminal Procedure Regulation 2017</i> , Schedule 4, a penalty notice may be issued to an adult for an offence against the <i>Crimes Act 1900</i> , section 117 if the value of property or amount is not more than \$300.	15 16 17
[11]	Section 18	18
	Omit the section. Insert instead—	19
	18 Offences for which cautions may be given	20
	A caution may be given for an offence covered by this Act, other than an offence prescribed by the regulations.	21 22
	Note— Section 8 sets out offences covered by this Act. Under section 31, a court may give a caution for an offence against the <i>Crimes (Domestic and Personal Violence) Act 2007</i> , section 14, that involves the commission of a personal violence offence.	23 24 25
[12]	Section 19 Conditions required to be able to give caution	26
	Omit “admits the offence” from section 19(b).	27
	Insert instead “makes a non-denial statement in relation to the offence”.	28
[13]	Section 20 Entitlement to be dealt with by caution	29
	Insert “during the previous 3 years” after “occasions” in section 20(7).	30
[14]	Section 23 Referrals for cautions	31
	Omit “admits the offence” from section 23(1)(b).	32
	Insert instead “makes a non-denial statement in relation to the offence”.	33
[15]	Section 23(5)	34
	Insert “during the previous 3 years” after “occasions”.	35
[16]	Section 31 Cautions by courts	36
	Omit section 31(1)(a). Insert instead—	37
	(a) the offence is—	38
	(i) an offence for which a caution may be given under Division 1, or	39

	(ii) an offence against the <i>Crimes (Domestic and Personal Violence) Act 2007</i> , section 14, that involves the commission of a personal violence offence, and	1 2 3
[17]	Section 31(1)(b) Omit “admits the offence”. Insert instead “makes a non-denial statement in relation to the offence”.	4 5 6
[18]	Section 31(5) Insert “during the previous 3 years” after “occasions”.	7 8
[19]	Section 34 Principles and purposes of conferencing Omit “victim.” from section 34(3)(e). Insert instead— victim, (f) for Aboriginal or Torres Strait Islander children and children from multicultural backgrounds—the cultural needs of the children.	9 10 11 12 13
[20]	Section 36 Conditions required to be met before conference may be held Omit “admits the offence” from section 36(b). Insert instead “makes a non-denial statement in relation to the offence”.	14 15 16
[21]	Section 37 Entitlement to be dealt with by conference Omit “(other than a graffiti offence)” from section 37(1).	17 18
[22]	Section 37(6) Insert “during the previous 3 years” after “occasions”.	19 20
[23]	Section 38 Determinations by specialist youth officers Omit “(other than a graffiti offence)” from section 38(1).	21 22
[24]	Section 38(2), note Omit the note.	23 24
[25]	Section 38(5) Insert “during the previous 3 years” after “occasions”.	25 26
[26]	Section 40 Referrals for conferences by DPP and courts Omit “(other than a graffiti offence)” from section 40(1)(a).	27 28
[27]	Section 40(1)(b) and (1A)(b) Omit “admits the offence” wherever occurring. Insert instead “makes a non-denial statement in relation to the offence”.	29 30 31
[28]	Section 40(1A)(a), note Insert at the end of section 40(1A)(a)— Note— Under section 8(4)(b), an offence under the <i>Crimes (Domestic and Personal Violence) Act 2007</i> , section 14 that involves the commission of a personal violence offence may be referred for a conference by the Director of Public Prosecutions or a court and dealt with under this part.	32 33 34 35 36 37

[29] Section 41 Conference administrator may refer matters to DPP	1
Insert “during the previous 3 years” after “occasions” in section 41(9).	2
[30] Section 43 Time limit for holding conferences	3
Omit “28 days”. Insert instead “42 days”.	4
[31] Section 43A	5
Insert after section 43—	6
43A Consideration of decision to hold conference in certain circumstances	7
(1) If, after a conference convenor has been appointed for a conference, but before the conference is held, it is a conference administrator’s opinion that it is not in the interests of the safety, welfare or well-being of a conference participant that the conference proceed, the conference administrator may notify the person or court that referred the matter for conference of the opinion.	8 9 10 11 12
Note— See section 44(2)(a1) and (3) for the ability of persons and courts to determine that a conference not proceed.	13 14
(2) A conference administrator may only notify a person or court of an opinion under this section if the opinion is based on information that was not provided to the conference administrator at the time of the referral.	15 16 17
[32] Section 44 Right not to proceed	18
Insert after section 44(2)(a)—	19
(a1) that it is not in the interests of the safety, welfare or well-being of a conference participant that the conference proceed and refer the matter to the investigating official or other appropriate authority for the commencement of proceedings, or	20 21 22 23
[33] Section 44(5)	24
Insert “during the previous 3 years” after “occasions”.	25
[34] Section 47 Participants in conferences	26
Omit “officer.” from section 47(1)(k). Insert instead—	27
officer,	28
(l) if the conference convenor, child, any victim and, if present, a person responsible for the child all consent—a member of staff of Youth Justice NSW or another conference convenor for the purpose of training the member of staff or conference convenor.	29 30 31 32
[35] Section 48 Conduct of conferences	33
Omit section 48(4). Insert instead—	34
(4) A conference must not make a recommendation or decision if the child denies committing the offence during the conference.	35 36
[36] Section 52 Outcomes of conferences	37
Omit “community.” from section 52(5)(d). Insert instead—	38
community,	39
(e) matters of a kind prescribed by the regulations.	40

[37] Section 56 Satisfactory completion of outcome plans	1
Omit section 56(2). Insert instead—	2
(2) The written notice under this section must be given to the following persons or bodies—	3
(a) the child,	4
(b) each victim who personally attended the conference,	5
(c) each victim who did not personally attend the conference, but requested notice under this section,	6
(d) the person or body that referred the matter for a conference,	7
(e) the Commissioner of Police, if the matter was referred by the Director of Public Prosecutions or a court,	8
Note— The Commissioner of Police may delegate the function of receiving the written notice to another member of the NSW Police Force. See the <i>Police Act 1990</i> , section 31.	9
(f) other persons on whom the outcome plan imposed obligations, if any.	10
[38] Section 62B	11
Insert after section 62A—	12
62B Approval of other electronic means of personal attendance	13
The Secretary may, by written order published in the Gazette, approve of other electronic means of personal attendance.	14
[39] Section 67A	15
Insert after section 67—	16
67A Making of certain non-denial statements inadmissible	17
(1) This section applies if—	18
(a) a child has not made a non-denial statement for an offence, and	19
(b) an investigating official believes the child could be dealt with by way of a caution or conference for the offence if the child makes a non-denial statement.	20
(2) The investigating official may offer the child an opportunity to make a non-denial statement for the offence.	21
(3) Before offering a child an opportunity to make a non-denial statement under this section, the investigating official must explain the following to the child—	22
(a) the nature of the offence and the circumstances out of which the offence is alleged to have arisen,	23
(b) that it appears to the investigating official that the child could be dealt with by way of a caution or conference if the child makes a non-denial statement,	24
(c) that if the child makes the non-denial statement, the investigating official will make a determination as to whether the child should be dealt with by way of a caution under Part 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,	25

(d)	that if the child makes a non-denial statement under this section, the statement cannot be admitted as evidence in subsequent civil or criminal proceedings.	1 2 3
(4)	A non-denial statement made by the child after an offer under this section must not be admitted in evidence in any subsequent criminal or civil proceedings.	4 5
(5)	To avoid doubt, subsection (4)—	6
(a)	applies to a non-denial statement whether made in the standard written form approved by the Secretary under section 10(3) or otherwise, but	7 8
(b)	does not apply to a formal guilty plea referred to in section 10(5).	9
(6)	Subsection (4) applies even if the investigating official failed to comply with subsection (3).	10 11

Schedule 3	Amendment of Young Offenders Regulation 2016	1
[1] Clause 7		2
Omit the clause. Insert instead—		3
7 Maximum period of community service work		4
For the Act, section 52(6)(c), the maximum period of community service work that may be imposed by an outcome plan is 35 hours.		5 6
[2] Clause 8 Outcome plans in respect of bush fire or arson offences		7
Omit the following from clause 8(2)—		8
For the purposes of section 52 (6) (e) of the Act, an outcome plan for a child to whom this clause applies must provide for—		9 10
Insert instead—		11
For the Act, section 52(5)(e), an outcome plan for a child to whom this clause applies may provide for—		12 13
[3] Clause 9 Outcome plans in respect of graffiti offences		14
Omit the following from clause 9(2)—		15
For the purposes of section 52 (6) (e) of the Act, an outcome plan for a child to whom this clause applies must provide for at least one of the following—		16 17
Insert instead—		18
For the Act, section 52(5)(e), an outcome plan for a child to whom this clause applies may provide for the following—		19 20