



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.