

## **Young Offenders Amendment (Reform of Cautioning and Warning) Bill 2003**

### **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 (the Act)* so as:

(a) to provide that young offenders who have previously been convicted or found guilty of an offence by a court or who have previously been dealt with under the Act are not entitled to be warned or cautioned under the Act, and

(b) to require that a parent of a young offender be given notice when the offender is warned under Part 3, or cautioned under Part 4, of the Act, and

(c) to provide for a more expeditious application of the scheme established by the Act by:

(i) requiring that a warning, caution or conference be given or held as close as possible to the date when the offence to which it relates was committed, and

(ii) depriving the child, or a person responsible for the child, of the opportunity to delay the matter by refusing to choose an adult to be present at the time of admission, caution, giving of explanation or conference, and

(iii) giving the investigating official, person giving the caution, specialist youth officer or conference convenor the power to appoint a respected member of the community to be present at the times referred to in the preceding subparagraph if the child, or a person responsible for the child, refuses to choose an adult or if the investigating official or specialist youth officer is satisfied that no other person will be present, and

(iv) removing the discretion of specialist youth officers, conference administrators and the Director of Public Prosecutions to overturn referrals for conferences in favour of cautions.

#### 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.

**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**

##### **Repeat offenders—entitlement to be dealt with by conference**

Currently, a child is not precluded from being given a warning or a caution merely because the child has previously committed offences or has previously been dealt with under the Act.

**Schedule 1 [3], [4], [6], [7], [8] and [10]** make amendments to preclude a child from being given a warning or caution if the child has previously been convicted or found guilty of an offence by a court or been dealt with under the Act. An exception is provided in the case of the right to be given a caution where an investigating official determines it is an appropriate case and the child has been previously given one warning.

**Schedule 1 [16]** provides that a child is entitled to be dealt with by conference if the offence is one for which neither a warning nor a caution may be given.

##### **Notice to parents**

**Schedule 1 [5]** (proposed section 17A) requires an investigating official to give

written notice of the giving of a warning to a parent of the child.

**Schedule 1 [11]** amends section 24 (1) to require a person arranging a caution to give notice to a parent of the child to be cautioned.

**Schedule 1 [15]** (proposed section 30 (3)) requires that a copy of the caution notice be given to a parent of the child.

#### **Expeditious application of scheme**

**Schedule 1 [1]** (proposed section 7 (h)) provides that persons exercising functions under the Act should do so expeditiously and that a warning, caution or youth justice conference be given or held as close as possible to the date when the offence to which it relates was committed.

**Schedule 1 [12]** (proposed section 26 (1)) provides for a shorter period within which a caution must be given.

#### **Participation of respected member of the community**

At present, it is possible for a child, or a person responsible for the child, to delay the application of the scheme by refusing to choose an adult to be present at the time of admission, caution, conference or giving of explanation. The following amendments allow a respected member of the community to be present at those times.

**Schedule 1 [2]** amends section 10 to allow an admission by a child of an offence to take place in the presence of a respected member of the community chosen by the investigating official.

**Schedule 1 [9] and [19]** amend sections 22 (2) and 39 (2) to allow, in certain cases, explanations to children in relation to cautions and conferences to be made in the presence of a respected member of the community chosen by the investigating official or specialist youth officer.

**Schedule 1 [13] and [14]** amend sections 28 and 29 to allow a respected member of the community chosen by a person giving a caution to be present when the caution is given to the child.

**Schedule 1 [23]** removes the limitation on the role played at a conference by a respected member of the community chosen by the conference convenor.

#### **Removal of discretion to overturn referrals**

**Schedule 1 [17], [18], [20] and [22]** remove the discretion of specialist youth officers, conference administrators and the Director of Public Prosecutions to overturn referrals for conferences in favour of cautions.

**Schedule 1 [21]** is a consequential amendment.

#### **Savings and transitional provisions**

**Schedule 1 [25]** amends Schedule 3 so as to enable regulations of a savings or transitional nature to be made in connection with the proposed Act.

**Schedule 1 [26]** amends Schedule 3 so as to enact savings provisions in connection with the proposed Act.

**Schedule 1 [24]** is a consequential amendment.