



New South Wales

Young Offenders Amendment (Reform of Cautioning and Warning) Bill 2006

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, and
- (v) removing the requirement that a child must consent to the giving of a formal caution by a police officer or the Director of Public Prosecutions.

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.

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 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], [7], [8], [9] and [13] 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 [19] 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.

Consent of child to caution

Schedule 1 [6] removes the requirement that a child must consent to the giving of a formal caution by a police officer.

Schedule 1 [11] and [12] remove the requirement that a child must consent to the giving of a formal caution by the Director of Public Prosecutions.

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 [14] 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 [18] (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 [15] (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 [10] and [22] 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 [16] and [17] 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 [26] 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 [20], [21], [23] and [25] 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 [24] is a consequential amendment.

Savings and transitional provisions

Schedule 1 [28] 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 [29] amends Schedule 3 so as to enact savings provisions in connection with the proposed Act.

Schedule 1 [27] is a consequential amendment.



New South Wales

Young Offenders Amendment (Reform of Cautioning and Warning) Bill 2006

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New South Wales

Young Offenders Amendment (Reform of Cautioning and Warning) Bill 2006

No. , 2006

A Bill for

An Act to amend the *Young Offenders Act 1997* to reform the cautioning and warning system under that Act; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Young Offenders Amendment (Reform of Cautioning and Warning) Act 2006</i> .	3 4
2 Commencement	5
This Act commences on the date of assent.	6
3 Amendment of Young Offenders Act 1997 No 54	7
The <i>Young Offenders Act 1997</i> is amended as set out in Schedule 1.	8
4 Repeal of Act	9
(1) This Act is repealed on the day following the day on which this Act commences.	10 11
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	12 13

Schedule 1 Amendments

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[7] Section 20 Entitlement to be dealt with by caution	1
Omit section 20 (2). Insert instead:	2
(2) Despite subsection (1), the child is not entitled to be dealt with by caution if:	3
(a) in the opinion of the investigating official, it is more appropriate to deal with the matter by another means because it is not in the interests of justice for it to be dealt with by giving a caution, or	4
(b) the child has previously been convicted or found guilty of an offence by a court, or	5
(c) the child has previously been dealt with under this Act.	6
(2A) Despite any other provision of this section, a child may be dealt with by caution if:	7
(a) the child has previously been dealt with under this Act only once and was given a warning, and	8
(b) the investigating official is of the opinion that it is appropriate to deal with the matter by caution.	9
[8] Section 20 (3) (d)	10
Omit the paragraph.	11
[9] Section 20 (6)	12
Omit the subsection.	13
[10] Section 22 Explanations to children	14
Insert at the end of section 22 (2) (d):	15
, or	16
(e) a respected member of the community chosen by the investigating official.	17
(3) A person referred to in subsection (2) (e) may be chosen only if the investigating official is satisfied that none of the persons referred to in subsection (2) (a), (b), (c) or (d) will be present.	18
[11] Section 23 Referrals for cautions	19
Omit “offence, and” from section 23 (1) (b). Insert instead “offence.”	20
[12] Section 23 (1) (c)	21
Omit the paragraph.	22

[13] Section 23 (2) (d)	1
Omit the paragraph.	2
[14] Section 24 Notice of caution	3
Insert “and a parent of the child” after “notice to the child” in section 24 (1).	4
[15] Section 26 Place and time of cautions	5
Omit section 26 (1). Insert instead:	6
(1) A caution must, if practicable, be given not more than 7 days after notice of the caution is given under section 24 (1).	7 8
[16] Section 28 Persons who may accompany child	9
Omit section 28 (e). Insert instead:	10
(e) a respected member of the community (whether chosen by the child or by the person giving the caution),	11 12
[17] Section 29 Giving of cautions	13
Omit “an adult chosen by the child” from section 29 (3).	14
Insert instead “a respected member of the community (whether chosen by the child or by the person giving the caution)”.	15 16
[18] Section 30 Caution notice	17
Insert after section 30 (2):	18
(3) A copy of the caution notice signed by the child must be given to a parent of the child.	19 20
[19] Section 37 Entitlement to be dealt with by conference	21
Omit section 37 (1). Insert instead:	22
(1) A child who is alleged to have committed an offence for which a conference may be held is entitled to be dealt with by holding a conference if:	23 24 25
(a) the offence is one for which neither a warning nor a caution may be given, or	26 27
(b) the offence is an offence for which a child may be dealt with under section 20 (2A) and the investigating official determines that it is not appropriate to do so, or	28 29 30
(c) in the case of any other offence, the investigating official determines that the matter is not appropriate for a caution.	31 32

[20] Section 37 (2)	1
Omit “or by giving a caution”.	2
[21] Section 38 Determinations by specialist youth officers	3
Omit section 38 (2) and (5).	4
[22] Section 39 Explanations to children	5
Insert at the end of section 39 (2) (d):	6
, or	7
(e) a respected member of the community chosen by the specialist youth officer.	8
	9
(3) A person referred to in subsection (2) (e) may be chosen only if the specialist youth officer is satisfied that none of the persons referred to in subsection (2) (a), (b), (c) or (d) will be present.	10
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[23] Section 41 Conference administrator may refer matters to DPP	13
Omit the section.	14
[24] Section 42 Appointment of conference convenor	15
Omit section 42 (2).	16
[25] Section 44 Right not to proceed	17
Omit section 44 (2). Insert instead:	18
(2) A specialist youth officer who refers a matter for a conference may, at any time before the conference is held, determine that it is not in the interests of justice for a matter to be dealt with by a conference and refer the matter to the investigating official or other appropriate authority for the commencement of proceedings.	19
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[26] Section 47 Participants in conferences	25
Omit “for the purpose of advising conference participants about relevant issues,” from section 47 (2) (a).	26
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[27] Schedule 3 Savings and transitional provisions	28
Insert before clause 1:	29
Part 1 General	30

[28] Schedule 3, clause 1	1
Insert at the end of clause 1 (1):	2
<i>Young Offenders Amendment (Reform of Cautioning and Warning) Act 2006</i>	3
	4
[29] Schedule 3, Part 2	5
Insert after clause 3:	6
Part 2 Provisions consequent on enactment of Young Offenders Amendment (Reform of Cautioning and Warning) Act 2006	7
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4 Savings	10
This Act, as in force immediately before the date of commencement of the <i>Young Offenders Amendment (Reform of Cautioning and Warning) Act 2006</i> , continues to apply to and in respect of matters arising before the commencement date.	11
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5 Application of amendments	15
The amendments made by the <i>Young Offenders Amendment (Reform of Cautioning and Warning) Act 2006</i> apply only to and in respect of offences committed on or after the commencement of that Act.	16
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