

First print



New South Wales

Young Offenders Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to establish a scheme that provides an alternative process to court proceedings for children alleged to have committed offences, through the use of youth justice conferences, formal cautions and warnings.

Outline of provisions

Part 1 Preliminary

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 a day or days to be appointed by proclamation.

Clause 3 sets out the objects of the proposed Act which are to establish a scheme that provides an alternative process to court proceedings for children alleged to have committed offences, through the use of youth justice conferences, formal cautions and warnings and to provide an efficient and direct response to the commission of certain offences by children.

Clause 4 defines certain words and expressions used in the proposed Act.

Clause 5 defines *victim* to mean a person who suffers harm as a direct result of an act committed, or apparently committed, by a child in the course of an offence. The harm covered includes physical harm and harm to property.

Clause 6 makes it clear that notes in the text do not form part of the proposed Act.

Part 2 General principles of scheme

Clause 7 sets out the general principles that are to guide the operation of the proposed Act and persons exercising functions under the proposed Act. They include the principle that the least restrictive form of sanctions are to be applied against a child who is alleged to have committed an offence and that criminal proceedings are not to be instituted against a child if there is an alternative and appropriate means of dealing with a matter.

Clause 8 sets out the offences to be covered by the proposed Act. The offences to be covered will be summary offences and certain indictable offences that may be dealt with summarily. It will not cover offences that are not investigated by an investigating official within the meaning of the proposed Act or in certain other circumstances.

Clause 9 sets out the procedures under the scheme. An investigating official dealing with a child who is alleged to have committed an offence covered by the proposed Act must consider whether the matter is to be dealt with by warning, caution or youth justice conference before commencing criminal proceedings.

Clause 10 requires any admissions made for the purposes of the proposed Act, if possible, to be in the presence of a person responsible for the child, an adult present with the consent of a person responsible for the child, an adult chosen by the child (over age 16) or a legal practitioner chosen by the child.

Clause 11 makes it clear that the proposed Act does not affect any jurisdiction of the Children's Court or limit the requirements of any law relating to evidence.

Clause 12 makes it clear that the proposed Act does not affect other functions relating to methods of dealing with offences not covered by the proposed Act.

Part 3 Warnings

Clause 13 states that warnings may be given for summary offences covered by the proposed Act but not for any prescribed offence.

Clause 14 confers on a child who has committed an offence for which a warning may be given an entitlement to be given a warning. However, this is to be subject to the circumstances not involving violence and any opinion of the investigating official that it is not in the interests of justice for the matter to be dealt with by warning. A child may be given a warning even though the child has previously committed offences.

Clause 15 provides that warnings may be given at any place and to more than one child at the same time.

Clause 16 requires an investigating official to take steps to ensure that a child understands the purpose, nature and effect of the warning.

Clause 17 requires an investigating official to record the fact that a warning has been given but not the name of the child warned.

Part 4 Cautions

Clause 18 states that cautions may be given for offences covered by the proposed Act, other than offences prescribed by the regulations.

Clause 19 sets out the conditions for giving a caution against further offending. They are that the child admits the offence, that the child consents to the giving of the caution and that the child is entitled to be given the caution.

Clause 20 confers on a child who has committed an offence for which a warning may not be given an entitlement to be given a caution. However, this is to be subject to any opinion of the investigating official that it is not in the interests of justice for the matter to be dealt with by warning. In forming such an opinion, the investigating official is to consider the seriousness of the offence, the degree of violence involved, the harm caused to the victim and any previous offences committed by the child and may consider any other matters. If the investigating official is concerned about harm caused to the victim even though other serious factors are not involved, the investigating official may refer the matter to a specialist youth officer to decide whether the matter is an appropriate one for a caution. A child may be given a caution even though the child has previously committed offences or been dealt with under the proposed Act.

Clause 21 requires an investigating official to arrange a caution if the official determines that a matter should be dealt with by caution and to refer a matter to a specialist youth officer if the official determines that it is not in the interests of justice for a matter to be dealt with by way of a warning or caution.

Clause 22 requires an investigating official to explain to the child certain matters relating to the offence, the child's right to obtain legal advice, the entitlement to have the matter dealt with by a court and the nature and effect of a caution. If possible, the explanation is to be in the presence of a person responsible for the child, an adult present with the consent of a person responsible for the child, an adult chosen by the child (over age 16) or a legal practitioner chosen by the child.

Clause 23 enables the Director of Public Prosecutions to refer children for cautions.

Clause 24 requires a written caution notice to be given to a child before the caution is given.

Clause 25 provides that a child may decide not to proceed with a caution and may elect to have a matter dealt with by a court. It also enables an investigating official to decide to proceed by court rather than by caution at any time before the caution is given.

Clause 26 requires cautions, if practicable, to be given not less than 10 days, and not more than 21 days, after notice is given of the caution. A caution must generally be given at a police station.

Clause 27 enables cautions to be given by police officers or specialist youth officers authorised by the Commissioner of Police. Any such authorised person may, if the person thinks it appropriate, arrange for a caution to be given by a respected member of the community.

Clause 28 sets out the persons who may be present when a caution is given. They include a person responsible for the child, members of the child's family or extended family, an adult chosen by the child, a respected member of the community, interpreters and other skilled persons in the case of a child who has a communication or cognitive disability or is subject to a probation or a community service order.

Clause 29 sets out conditions for giving cautions, including requirements that the person giving the caution must take steps to ensure that the child understands the purpose, nature and effect of the caution, the requirement to have the assistance of appropriately skilled persons where needed and the requirement to ensure, if possible, that a person responsible for the child or an adult chosen by the child is present. The person giving the caution may request the child to provide an apology to any victim but must not impose any other conditions on a caution.

Clause 30 provides that a caution notice must be given to a child who has been cautioned.

Clause 31 enables courts to give cautions if the offence is one for which a caution may be given under the proposed Part.

Clause 32 prohibits further criminal proceedings from being taken against a child in respect of an offence for which a caution has been given or an offence for which proceedings could not have been taken on a conviction of the child.

Clause 33 requires records to be kept of cautions.

Part 5 Youth justice conferences

Division 1 Preliminary

Clause 34 sets out the principles and purposes of youth justice conferences. The principles require measures and sanctions taken or imposed by conferences to promote acceptance by children of responsibility for offences and, among other things, to take the least restrictive form that is appropriate in the circumstances. The rights of victims are also to be enhanced. The purpose of a conference is to make decisions and recommendations about, and to determine outcome plans in respect of, children who commit offences. Participants at conferences are to take into account the need to hold children accountable for their behaviour, the need to encourage the acceptance of responsibility, the need to make reparation to victims and the needs of the children.

Clause 35 states that conferences may be held for offences covered by the proposed Act, other than offences prescribed by the regulations.

Clause 36 sets out the conditions for holding a conference. They are that the offence is one for which a conference may be held, that the child admits the offence, that the child consents to the conference and that the child is entitled to be the subject of a conference.

Clause 37 confers on a child who has committed an offence an entitlement to be dealt with by holding a conference. However, this is to be subject to any opinion of the investigating official that it is not in the interests of justice for the matter to be dealt with by conference. In forming such an opinion, the investigating official must consider the seriousness of the offence, the degree of violence involved, the harm caused to any victim and any previous offences committed by the child and may consider any other matters. A child may be given a warning even though the child has previously committed offences or been dealt with under the proposed Act.

Clause 38 provides for a specialist youth officer to refer a matter to a conference administrator if the officer determines that a conference should be held. If the specialist youth officer determines that the matter may be dealt with by warning or a caution, the officer is to make the appropriate arrangements. If the specialist youth officer determines that the matter should be dealt with by commencing proceedings, the officer must refer the matter to the investigating official or appropriate authority.

Clause 39 requires a specialist youth officer to explain to the child certain matters relating to the offence, the child's right to obtain legal advice, the entitlement to have the matter dealt with by a court and the nature and effect of a conference. If possible, the explanation is to be in the presence of a person responsible for the child, an adult present with the consent of a person responsible for the child, an adult chosen by the child (over age 16) or a legal practitioner chosen by the child.

Clause 40 enables a court or the Director of Public Prosecutions to refer matters to conference administrators for conferences. The matters must relate to offences for which conferences may be held and the children concerned must admit the relevant offences and consent to the conference being held.

Clause 41 enables a conference administrator to consult with a specialist youth officer as to whether a matter should be dealt with by caution or conference. If they fail to agree, the Director of Public Prosecutions is to determine how the matter is to be dealt with.

Division 2 Conferences

Clause 42 requires a conference administrator to appoint a conference convenor when a matter is referred for a conference.

Clause 43 requires a conference to be held not later than 21 days after a referral and not less than 10 days after notice is given to the child.

Clause 44 provides that a child may decide not to proceed with a conference and may elect to have a matter dealt with by a court. It also enables a specialist youth officer, the Director of Public Prosecutions or a court to decide to proceed by court proceedings rather than by conference at any time before the conference is held.

Clause 45 sets out the matters to be dealt with, and the steps to be taken, before a conference is held. They include setting a date, time and place for a conference, consulting with the person who referred the matter, the child, a person responsible for the child and any victim, giving written notice of the conference, providing information to those attending and obtaining the views of those unable to attend.

Clause 46 provides that conferences may be held at an agreed place, other than a police station, court house or office of the Department of Juvenile Justice.

Clause 47 sets out the persons who may be present when a conference is held. They include a person responsible for the child, members of the child's family or extended family, an adult chosen by the child, any victim or a representative of the victim, a support person for the victim, a respected member of the community, interpreters and other skilled persons in the case of a child who has a communication or cognitive disability or is subject to a probation or a community service order.

Clause 48 sets out conditions for the conduct of a conference by a conference convenor. The conference is to be conducted in a way that best assists the reaching of an agreement about an outcome plan and participants may, subject to any guidelines prepared by the Director-General of Juvenile Justice, regulate the procedure as they think fit. The convenor may exclude a person (other than the child or any victim) if the convenor feels that the presence of that person may frustrate the purpose or conduct of a conference. No recommendations can be made by a conference if the participants cannot determine whether the child admits the offence. Conferences may be adjourned and are, if practicable, to be finished not later than 7 days after they first start.

Clause 49 enables the Director-General to prepare written guidelines for the conduct of conferences and requires conference convenors to conduct conferences in accordance with them.

Clause 50 entitles a child to be advised, but not represented, by a legal practitioner at a conference. However, legal representation may be permitted by the conference convenor.

Clause 51 provides that a matter must be referred back to the person or body that referred it for a conference if a child fails, without reasonable cause, to attend a conference.

Clause 52 enables participants to agree to make such recommendations or decisions as they think fit, but only if the child and the victim (if personally present) agree. An outcome plan is, if possible, to be agreed by consensus. The kinds of matters that may be contained in an outcome plan include a requirement for an apology, the making of reparation to any victim or the community, participation by the child in an appropriate program and actions to reintegrate the child into the community. The proposed section also sets out limitations on outcome plans.

Clause 53 requires a conference convenor to refer a matter back to the person who referred the matter for a conference if the conference is unable to agree on an outcome plan. Proceedings may be commenced or continued against the child.

Clause 54 requires an outcome plan to be sent back to a court if the matter was referred for a conference by the court. The court may approve the plan or, if it does not, may continue the proceedings.

Clause 55 enables conferences to be reconvened at the request of more than one participant for the purpose of reconsidering any aspect of the outcome plan. An outcome plan may be varied or replaced at a reconvened conference.

Clause 56 confers on conference administrators the function of supervising and monitoring the implementation of outcome plans and requires written notice to be given as to whether or not outcome plans have been satisfactorily completed by the child.

Clause 57 provides for notice that an outcome plan has not been satisfactorily completed to be accompanied by reports and recommendations by the conference convenor.

Clause 58 prohibits further criminal proceedings from being taken against a child who has satisfactorily completed an outcome plan.

Clause 59 requires records to be kept of conferences.

Division 3 Co-ordination of conferences

Clause 60 provides for the appointment of conference convenors.

Clause 61 provides for the appointment of conference administrators.

Part 6 Miscellaneous

Clause 62 provides that the proposed Act binds the Crown.

Clause 63 provides that proceedings for offences under the proposed Act or regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Clause 64 provides for the commencement or continuation of proceedings against a child when a decision is made not to give a caution or hold a conference or when a child elects not to proceed with a caution or conference or fails to attend a conference or fails to satisfactorily complete an outcome plan or a conference fails to reach an agreement.

Clause 65 makes it an offence to publish or broadcast the name of any child dealt with under the proposed Act, or any information tending to identify the child. The maximum penalty for the offence is to be \$50,000 for a corporation or \$5,000 for an individual.

Clause 66 prohibits the disclosure of information acquired, or records made, under the proposed Act, except to a child, a person responsible for a child or a legal adviser of the child, or for the purpose of determining whether to take action under the proposed Act or to a court for the purpose of making a decision concerning sentencing. The maximum penalty for the offence is to be \$50,000 for a corporation or \$5,000 for an individual.

Clause 67 prevents statements, confessions or information made or given by a child during a warning, caution or conference from being admissible as evidence against the child in criminal proceedings.

Clause 68 makes it clear that a person need not disclose, for the purposes of revealing the person's criminal history, that the person has received a warning or caution, or has been dealt with by a conference, under the proposed Act.

Clause 69 makes it clear that an investigating official may act on information obtained during the course of a warning, caution or conference in relation to offences other than offences the subject of the warning, caution or conference.

Clause 70 sets out how notices under the proposed Act may be given.

Clause 71 provides that the Director-General, a conference administrator, a conference convenor or a person acting under their direction, are not personally liable for matters or things done in good faith for the purpose of executing the proposed Act or any other Act. The proposed section also excludes such persons for being liable for an offence relating to disclosure of information about crimes.

Clause 72 sets out the regulation making power.

Clause 73 gives effect to the amendments to the *Children (Criminal Proceedings) Act 1987*.

Clause 74 gives effect to the Schedule containing savings and transitional provisions.

Clause 75 provides that the Act is to be reviewed by the Minister as soon as possible after 3 years from the date of commencement of the proposed section.

Schedule 1 Conference convenors

The proposed Schedule sets out provisions relating to the appointment and employment of conference convenors.

Schedule 2 Amendment of Children (Criminal Proceedings) Act 1987

The proposed Schedule amends the *Children (Criminal Proceedings) Act 1987* to make it clear that previous actions, such as warnings, cautions and youth justice conferences, are not to be disclosed in evidence in criminal proceedings relating to other offences. The amendments also enable the Children's Court to make an order releasing a person on condition that a person comply with an outcome plan determined by a youth justice conference.

Schedule 3 Savings and transitional provisions

The proposed Schedule contains savings and transitional provisions.



New South Wales

Young Offenders Bill 1997

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New South Wales

Young Offenders Bill 1997

No , 1997

A Bill for

An Act to establish procedures for dealing with children who commit certain offences through the use of youth justice conferences, cautions and warnings instead of court proceedings; and for other purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Young Offenders Act 1997*.

2 Commencement

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This Act commences on a day or days to be appointed by proclamation.

3 Objects of Act

The objects of this Act are:

- (a) to establish a scheme that provides an alternative process to court proceedings for dealing with children who commit certain offences through the use of youth justice conferences, cautions and warnings, and 10
- (b) to establish a scheme for the purpose of providing an efficient and direct response to the commission by children of certain offences, and 15
- (c) to establish and use youth justice conferences to deal with alleged offenders in a way that:
 - (i) enables a community based negotiated response to offences involving all the affected parties, and 20
 - (ii) emphasizes restitution by the offender and the acceptance of responsibility by the offender for his or her behaviour, and
 - (iii) meets the needs of victims and offenders.

4 Definitions

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In this Act:

adult means a person who is of or over the age of 18 years.

caution means a formal police caution relating to an offence given under Part 4.

child means a person who is of or over the age of 10 years and under the age of 18 years.

conference means a youth justice conference convened or proposed to be convened under Part 5.

conference administrator means a person appointed as a conference administrator as referred to in section 61. 5

conference convenor means a person appointed as a conference convenor under section 60.

Director-General means the Director-General of Juvenile Justice. 10

exercise a function includes perform a duty.

function includes a power, authority or duty.

investigating official means:

- (a) a police officer, or
- (b) a person appointed by or under an Act and whose functions include functions in respect of the prevention or investigation of offences, prescribed by the regulations for the purposes of this definition. 15

parent of a child includes:

- (a) a guardian of the child, and 20
- (b) a person who has the lawful custody of the child,

but does not include the father or mother of the child if the father or mother, as the case may be, has neither guardianship nor custody of the child.

person responsible for a child means: 25

- (a) a parent of the child, or
- (b) a person who has the care of the child (whether or not the person has the custody of the child).

specialist youth officer means a member of the Police Service appointed as a specialist youth officer for the purposes of this Act by the Commissioner of Police. 30

traffic offence has the same meaning as it has in the *Children (Criminal Proceedings) Act 1987*.

victim has the meaning given by section 5.

5 Meaning of "victim"

- (1) For the purposes of this Act, a victim means a person who suffers harm as a direct result of an act committed, or apparently committed, by a child in the course of a criminal offence. 5
- (2) A person suffers harm if, as a result of such an act:
 - (a) the person suffers actual physical bodily harm, mental illness or nervous shock, or 10
 - (b) the person's property is deliberately taken, destroyed or damaged.
- (3) For the purposes of this Act, a victim that is an organisation or a Government authority may be represented by an officer of, or other person nominated by, the organisation or authority. 15

6 Notes

Notes in the text of this Act do not form part of this Act.

Part 2 General principles of scheme

7 Principles of scheme

The principles that are to guide the operation of this Act, and persons exercising functions under this Act, are as follows:

- (a) The principle that the least restrictive form of sanction is to be applied against a child who is alleged to have committed an offence, having regard to matters required to be considered under this Act. 5
- (b) The principle that criminal proceedings are not to be instituted against a child if there is an alternative and appropriate means of dealing with the matter. 10
- (c) The principle that criminal proceedings are not to be instituted against a child solely in order to provide any assistance or services needed to advance the welfare of the child or his or her family or family group. 15
- (d) The principle that, if it is appropriate in the circumstances, children who are alleged to have committed an offence should be dealt with in their communities in order to assist their reintegration and to sustain family and community ties. 20
- (e) The principle that children who are alleged to have committed an offence are entitled to be informed about their right to obtain legal advice and to have an opportunity to obtain that advice.

8 Offences covered by Act 25

- (1) The offences covered by this Act are, except as provided by this Act:
 - (a) summary offences, and
 - (b) indictable offences that may be dealt with summarily under Part 9A of the *Criminal Procedure Act 1986* or another prescribed law, 30

committed, or alleged to have been committed, by children.

- (2) Despite subsection (1), an offence is not covered by this Act if:
- (a) the principal person who investigates the offence is not an investigating official within the meaning of this Act, or
 - (b) the offence is a traffic offence committed by a child who was, when the alleged offence occurred, old enough to obtain a licence or permit under the *Traffic Act 1909* to drive the motor vehicle to which the offence relates, or 5
 - (c) the offence results in the death of any person, or
 - (d) the offence is an offence under section 61L, 61N, 61O (1), (1A) or (2), 78Q, 80, 81A or 81B of the *Crimes Act 1900*, or 10
 - (e) the offence is an offence under Part 15A (Apprehended violence) of the *Crimes Act 1900*, or
 - (f) the offence is an offence under the *Drug Misuse and Trafficking Act 1985* (other than an offence under section 23 (1) (a) or (c) of that Act that, in the opinion of the investigating official or prosecuting authority, involves not more than the small quantity applicable to the prohibited plant within the meaning of that Act, or an offence under section 27 or 28 of that Act of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence under section 23 (1) (a) or (c)), or 15 20
 - (g) the offence is prescribed by the regulations for the purposes of this section. 25

9 Procedures under scheme

- (1) The procedures available under this Act for dealing with children who have committed, or are alleged to have committed, offences to which the relevant procedures apply are as follows:
- (a) a warning may be given under Part 3, 30
 - (b) a caution may be given under Part 4,
 - (c) a youth justice conference may be held under Part 5.
- (2) An investigating official dealing with a child who has committed, or is alleged to have committed, an offence must, before issuing a summons or attendance notice or otherwise commencing criminal proceedings against the child, determine: 35

-
- (a) whether the offence is one covered by this Act, and
 - (b) in the case of such an offence, whether the child should be dealt with under Part 3 or 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. 5
- (3) An investigating official may, at any time after commencing proceedings and before the proceedings are heard, decide to deal with a child alleged to have committed an offence under Part 4 or consider whether the matter should be referred to a specialist youth officer under Part 5, if the investigating official forms the opinion that the child is entitled to be dealt with under Part 4 or Part 5. 10

10 Admission of offences

An admission by a child of an offence is not an admission for the purposes of this Act unless it takes place in the presence of: 15

- (a) a person responsible for the child, or
- (b) an adult (other than an investigating official) who is present with the consent of a person responsible for the child, or 20
- (c) if the child is 16 years or over, an adult chosen by the child, or
- (d) a legal practitioner chosen by the child.

11 Relationship with other legislation

- (1) This Act does not affect any jurisdiction conferred on the Children's Court under the *Children (Criminal Proceedings) Act 1987* or on any other court under any other law. 25
- (2) This Act is in addition to, and does not limit, the requirements of any law relating to evidence.

12 Relationship with other procedures

This Act does not affect the functions of any person dealing with an offence or alleged offence, to give a warning for, or take any other action in relation to, an offence or alleged offence if: 30

- (a) the person is not an investigating official, or
- (b) the offence is not an offence covered by this Act, whether or not the person is an investigating official. 35

Part 3 Warnings

13 Offences for which warnings may be given

A warning may be given for a summary offence covered by this Act, other than an offence prescribed by the regulations for the purposes of this section. 5

Note. Section 8 sets out offences covered by this Act.

14 Entitlement to be dealt with by warning

- (1) A child who has committed or is alleged to have committed an offence in respect of which a warning may be given is entitled to be dealt with by warning. 10
- (2) Despite subsection (1), the child is not entitled to be dealt with by warning if:
 - (a) the circumstances of the offence involve violence, or
 - (b) in the opinion of the investigating official, it is more appropriate to deal with it by another means because it is not in the interests of justice for the matter to be dealt with by warning. 15
- (3) A child is not precluded from being given a warning merely because the child has previously committed offences or been dealt with under this Act. 20
- (4) If an investigating official is of the opinion that it is not in the interests of justice to deal with a matter by warning a child and that it is appropriate to deal with it by other means, the investigating official must consider whether to deal with the matter under Part 4 or to refer it to a specialist youth officer under section 21 (2) for consideration of whether action should be taken under Part 5. 25

15 Giving of warnings

- (1) A warning is to be given by the investigating official and may be given at any place, including a place where the child is found. 30

- (2) An investigating official who gives a warning to a child must not:
 - (a) attach any conditions to the giving of a warning, or
 - (b) impose any additional sanctions on a child to whom a warning is given.

- (3) A warning may be given to more than one child at the same time.

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16 Explanation of warnings

An investigating official who gives a warning to a child must take steps to ensure that the child understands the purpose, nature and effect of the warning.

17 Records of warnings

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An investigating official must make a record of any warnings given by the official under this Part but must not record the name of the child concerned.

Part 4 Cautions

18 Offences for which cautions may be given

A caution may be given for an offence covered by this Act, other than an offence prescribed by the regulations for the purposes of this section.

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Note. Section 8 sets out offences covered by this Act.

19 Conditions required to be able to give caution

A formal police caution against further offending may be arranged and given in relation to an offence to a child who is alleged to have committed the offence, if:

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- (a) the offence is one for which a caution may be given, and
- (b) the child admits the offence, and
- (c) the child consents to the giving of the caution, and
- (d) the child is entitled to be given a caution.

20 Entitlement to be dealt with by caution

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- (1) A child who is alleged to have committed an offence for which a caution may be given is entitled to be dealt with by caution if the investigating official determines that the matter is not appropriate for a warning or the offence is one for which a warning may not be given.

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- (2) Despite subsection (1), the child is not entitled to be dealt with by caution if, in the opinion of the investigating official, it is more appropriate to deal with it by other means because it is not in the interests of justice for the matter to be dealt with by giving a caution.

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- (3) In considering whether it is appropriate to deal with a matter by caution, an investigating official is to consider the following:

- (a) the seriousness of the offence,
- (b) the degree of violence involved in the offence,
- (c) the harm caused to any victim,

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- (d) any previous offences committed by the child and the number of times the child has been dealt with under this Act,
- (e) any other matter the official thinks appropriate in the circumstances. 5
- (4) Despite subsection (1), an investigating official may, if of the opinion that the victim has suffered substantial harm or that the circumstances of the victim are such that it is appropriate to do so, refer the matter to a specialist youth officer to determine whether the matter should be dealt with under this Part or Part 5 even though the offence does not involve any degree of violence or is not of a serious nature. 10
- (5) A specialist youth officer to whom a matter is referred under subsection (4) may arrange for a caution to be given under this Part or take action under Part 5 and, in determining whether to do so, may take into account the fact that the victim has suffered substantial harm or the circumstances of the victim. 15
- (6) A child is not precluded from being given a caution merely because the child has previously committed offences or been dealt with under this Act. 20

21 Determination by investigating official

- (1) If an investigating official determines that a child should be dealt with under this Part, the investigating official must arrange for a caution to be given.
- (2) If an investigating official is of the opinion that it is not in the interests of justice for a matter to be dealt with by way of a caution, the investigating official must refer the matter to a specialist youth officer to consider whether the child should be dealt with under Part 5. 25

22 Explanations to children

- (1) Before an investigating official proceeds to arrange for a caution to be given under this Part, the investigating official must explain the following matters to the child concerned: 30
- (a) the nature of the offence and the circumstances out of which it is alleged to arise, 35

- (b) that the child is entitled to obtain legal advice,
- (c) that the child is entitled to elect that the matter be dealt with by a court,
- (d) the purpose, nature and effect of the caution.
- (2) An investigating official must, if practicable, ensure that an explanation takes place in the presence of: 5
 - (a) a person responsible for the child, or
 - (b) an adult (other than an investigating official) who is present with the consent of a person responsible for the child, or 10
 - (c) if the child is 16 years or over, an adult chosen by the child, or
 - (d) a legal practitioner chosen by the child.

23 Referrals for cautions

- (1) A child may be referred for a caution under this Part by the Director of Public Prosecutions if: 15
 - (a) the offence is one for which a caution may be given under this Part, and
 - (b) the child admits the offence, and
 - (c) the child consents to the giving of the caution. 20
- (2) In determining whether to refer a matter for a caution, the Director of Public Prosecutions is to take into account the following matters:
 - (a) the seriousness of the offence,
 - (b) the degree of violence involved in the offence, 25
 - (c) the harm caused to any victim,
 - (d) any previous offences committed by the child and the number of times the child has been dealt with under this Act,
 - (e) any other matter the Director thinks appropriate in the circumstances. 30
- (3) The referral is to be made to a person authorised in writing by the Commissioner of Police for the purposes of this section.
- (4) The authorised person must arrange for a caution to be given to the child under this Part. 35

24 Notice of caution

- (1) Before a caution is given to a child, the person arranging for the caution to be given must give a written notice to the child.
- (2) The notice must contain the following information:
 - (a) the offence in respect of which the caution is to be given, 5
 - (b) the persons who may be present when the caution is given,
 - (c) the purpose, nature and effect of the caution,
 - (d) the date, time and place at which the caution is to be given,
 - (e) the name of a police officer who is a contact officer concerning the caution, 10
 - (f) the consequences of failure to attend the giving of the caution,
 - (g) the right of the child to obtain legal advice,
 - (h) the right of the child to elect that the matter be dealt with by a court if the child does not wish to proceed with the caution. 15
- (3) The notice must be given in a form approved by the Commissioner of Police and be expressed in language readily capable of being understood by children.

25 Right not to proceed

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- (1) A child may, at any time before a caution is given to the child, decide not to proceed with the caution and elect that the matter be dealt with by a court.
- (2) An investigating official who arranges for a caution to be given may, at any time before the caution is given, determine that it is not in the interests of justice for the matter to be dealt with by way of a caution and refer the matter to a specialist youth officer for consideration of whether action should be taken under Part 5. 25
- (3) The Director of Public Prosecutions may, at any time before a caution is given in respect of an offence referred by the Director under this Part, determine that it is not in the interests of justice for the matter to be dealt with by way of a caution and refer the matter to a conference administrator under Part 5 or commence proceedings. 30

- (4) An investigating official or the Director of Public Prosecutions must give written notice to the child concerned of any determination by the official or Director under this section.

26 Place and time of cautions

- (1) A caution must, if practicable, be given not less than 10 days, and not more than 21 days, after notice of the caution is given under this Part. 5
- (2) A caution is to be given at a police station.
- (3) Despite subsection (2), a caution may be given at a place other than a police station, if the person giving the caution is of the opinion that it is appropriate in the circumstances to do so. 10

27 Persons who may give cautions

- (1) A caution is to be given by a police officer or specialist youth officer authorised in writing by the Commissioner of Police to give cautions under this Act. 15
- (2) Despite subsection (1), a caution may be given by a respected member of the community at the request of any such officer, if the officer is of the opinion that it is appropriate in the circumstances to do so. For example, a caution may be given by a respected member of the Aboriginal community if the child is a member of that community. 20

28 Persons who may accompany child

The following persons, but no other persons, may be present when a caution is given to a child:

- (a) the child and the person giving the caution, 25
- (b) a person responsible for the child,
- (c) members of the child's family or extended family,
- (d) an adult chosen by the child,
- (e) a respected member of the community chosen by the child, if the person arranging the caution is of the opinion that it is appropriate in the circumstances to do so, 30
- (f) an interpreter,

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- (g) if the child has a communication or cognitive disability, an appropriately skilled person,
 - (h) if the child is under care, a social worker or other health professional,
 - (i) if the child is subject to probation or a community service order, the child's supervising officer, 5
 - (j) if the investigating official is not giving the caution, the investigating official.

29 Giving of cautions

- (1) A person who gives a caution to a child must take steps to ensure that the child understands the purpose, nature and effect of the caution. 10
- (2) If a child who is to be cautioned has a communication or cognitive disability, it is the duty of the person giving the caution, so far as practicable, to give the caution in the presence of an interpreter or other appropriately skilled person and, if necessary, to obtain the assistance of such a person in giving the caution. 15
- (3) It is the duty of the person giving the caution to ensure, so far as practicable, that a person responsible for the child or an adult chosen by the child is present when the caution is given. 20
- (4) A person who gives a caution to a child may request the child being cautioned to provide an apology to any victim of the alleged offence.
- (5) A person who gives a caution to a child must not:
 - (a) attach any conditions to the giving of the caution, or 25
 - (b) impose any additional sanctions on the child, other than a request of the kind referred to in subsection (4).
- (6) A caution may be given to more than one child at the same time and in respect of more than one offence alleged to have been committed by a child. 30

30 Caution notice

- (1) A caution notice containing the following information must be given to a child after the child is cautioned and must be signed by the child:
 - (a) the child's name, 35

- (b) the name and rank (if any) of the person who gave the caution,
 - (c) details of the offence concerned,
 - (d) the place, date and time of the caution,
 - (e) the persons present when the caution was given, 5
 - (f) the purpose, nature and effect of the caution.
- (2) The caution notice must be expressed in language readily capable of being understood by children.

31 Cautions by courts

- (1) A child may be given a caution by a court if: 10
 - (a) the offence is one for which a caution may be given under this Part, and
 - (b) the child admits the offence.
- (2) This Part (other than this section and sections 32 and 33) does not apply to a caution given by a court. 15
- (3) Nothing in this Part affects the power of a court to give a caution under section 33 of the *Children (Criminal Proceedings) Act 1987*.

32 Further proceedings

If a caution is given to a child under this Part, no further proceedings may be taken against the child for the offence in respect of which the caution is given or for any other offence in respect of which proceedings could not be commenced if the child had been convicted of the offence for which the caution was given. 20
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33 Records of cautions

- (1) A police officer, specialist youth officer or a court must make a record of any cautions given by the officer or court under this Part.
- (2) The record is to contain the matters prescribed by the regulations for the purposes of this section. 30

Part 5 Youth justice conferences

Division 1 Preliminary

34 Principles and purposes of conferencing

- (1) The principles that are to guide the operation of this Part and persons exercising functions under this Part, are as follows: 5
- (a) The principle that measures for dealing with children who are alleged to have committed offences are to be designed so as:
- (i) to promote acceptance by the child concerned of responsibility for his or her own behaviour, and 10
 - (ii) to strengthen the family or family group of the child concerned, and
 - (iii) to provide the child concerned with developmental and support services that will enable the child to overcome the offending behaviour and become a fully autonomous individual, and 15
 - (iv) to enhance the rights and place of victims in the juvenile justice process, and
 - (v) to be culturally appropriate, wherever possible, and
 - (vi) to have due regard to the interests of any victim. 20
- (b) The principle that sanctions imposed on children who commit offences are:
- (i) to be of a kind most likely to promote the development of such children within their family or family group, and 25
 - (ii) to take the least restrictive form that is appropriate in the circumstances, and
 - (iii) to assist children to accept responsibility for offences.

- (c) The principle that any measures for dealing with, or sanctions imposed on, children who are alleged to have committed offences take into account:
 - (i) the age and level of development of any such children, and 5
 - (ii) the needs of any children who are disadvantaged or who are disconnected from their families, and
 - (iii) the needs of any children with disabilities, especially those with communication and cognitive difficulties.
- (2) The purpose of a conference is to make decisions and recommendations about, and to determine an outcome plan in respect of, the child who is the subject of the conference. 10
- (3) In reaching decisions at a conference, the participants are to have regard to the principles set out in this section and the following matters: 15
 - (a) the need to hold children accountable for offending behaviour,
 - (b) the need to encourage children to accept responsibility for offending behaviour,
 - (c) the need to empower families and victims in making decisions about a child's offending behaviour, 20
 - (d) the need to make reparation to any victim,
 - (e) the need to deal with children in a way that reflects their rights, needs and abilities and provides opportunities for development. 25

35 Offences for which conferences may be held

A conference may be held for an offence covered by this Act, other than an offence prescribed by the regulations for the purposes of this section.

Note. Section 8 sets out offences covered by this Act. 30

36 Conditions required to be met before conference may be held

A conference may be arranged and held in respect of a child who is alleged to have committed an offence, if:

- (a) the offence is one for which a conference may be held, and
- (b) the child admits the offence, and
- (c) the child consents to the holding of the conference, and
- (d) the child is entitled to be dealt with by holding a conference.

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37 Entitlement to be dealt with by conference

- (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 the investigating official determines that the matter is not appropriate for a caution.

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- (2) Despite subsection (1), the child is not entitled to be dealt with by holding a conference if, in the opinion of the specialist youth officer to whom the matter is referred, it is more appropriate to deal with it by commencing proceedings against the child or by giving a caution because it is not in the interests of justice for the matter to be dealt with by holding a conference.

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Note. A matter is referred to a specialist youth officer by an investigating official if the investigating official is of the opinion that it is not in the interests of justice that a warning or caution be given (see sections 14 (4) and 21).

- (3) In considering whether it is appropriate to deal with a matter by conference, a specialist youth officer is to consider the following:

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- (a) the seriousness of the offence,
- (b) the degree of violence involved in the offence,
- (c) the harm caused to any victim,
- (d) any previous offences committed by the child and the number of times the child has been dealt with under this Act,
- (e) any other matter the official thinks appropriate in the circumstances.

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- (4) A specialist youth officer must, not later than 14 days after receiving a referral under section 14 (4) or 21 (2), determine whether or not the child concerned is entitled to have the matter dealt with by holding a conference.

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- (5) A child is not precluded from being dealt with by a conference merely because the child has previously committed offences or been dealt with under this Act in relation to other matters.

38 Determinations by specialist youth officers

- (1) If a specialist youth officer determines that a conference should be held in respect of an alleged offence committed by a child, the specialist youth officer must refer the matter to a conference administrator for a conference. 5
- (2) If a specialist youth officer is of the opinion that a matter should be dealt with by giving a caution and need not be dealt with by holding a conference, the specialist youth officer must refer the matter to a person authorised for the purposes of section 27 for a caution to be given under Part 4. 10
- (3) If a specialist youth officer is of the opinion that a matter should be dealt with by commencing proceedings against the child, the specialist youth officer must refer the matter to an investigating official or other appropriate authority for the commencement of proceedings. 15

39 Explanations to children

- (1) Before a specialist youth officer proceeds to refer a matter for a conference under this Part, the specialist youth officer must explain the following matters to the child concerned: 20
- (a) the nature of the offence and the circumstances out of which it is alleged to have arisen,
- (b) that the child is entitled to obtain legal advice, 25
- (c) that the child is entitled to elect that the matter be dealt with by a court,
- (d) what a conference is and the effect of the conference.
- (2) A specialist youth officer must, if practicable, ensure that an explanation takes place in the presence of: 30
- (a) a person responsible for the child, or
- (b) an adult (other than an investigating official) who is present with the consent of a person responsible for the child, or

- (c) if the child is 16 years or over, an adult chosen by the child, or
- (d) a legal practitioner chosen by the child.

40 Referrals for conferences by DPP and courts

- (1) The Director of Public Prosecutions or a court may refer a matter involving a child who is alleged to have committed an offence to a conference administrator for a conference if:
 - (a) the offence is one for which a conference may be held, and
 - (b) the child admits the offence, and
 - (c) in the case of a referral by the Director of Public Prosecutions, the child consents to the holding of the conference, and
 - (d) the Director or court is of the opinion that a conference should be held under this Part.
- (2) An offence may be referred under this section even though the offence was not dealt with by an investigating official.
- (3) A court may refer a matter at any stage in proceedings, including after a finding that a child is guilty of an offence.
- (4) The Director of Public Prosecutions or a court must notify the Commissioner of Police in writing of the particulars of any referral after making a referral under this section.
- (5) In determining whether to refer a matter for the holding of a conference, the Director of Public Prosecutions or a court is to take into account the following matters:
 - (a) the seriousness of the offence,
 - (b) the degree of violence involved in the offence,
 - (c) the harm caused to any victim,
 - (d) any previous offences committed by the child and the number of times the child has been dealt with under this Act,
 - (e) any other matter the Director or court thinks appropriate in the circumstances.

41 Conference administrator may refer matters to DPP

- (1) On referral of a matter by a specialist youth officer for a conference under this Part, a conference administrator may consult with the specialist youth officer as to whether the matter should be dealt with by holding a conference if of the opinion that the matter should not be so dealt with, having regard to the following matters: 5
- (a) the seriousness of the offence,
 - (b) the degree of violence involved in the offence,
 - (c) the harm caused to any victim, 10
 - (d) any previous offences committed by the child and the number of times the child has been dealt with under this Act.
- (2) If the conference administrator and the specialist youth officer, after consultation, fail to agree as to how a matter should be dealt with, the conference administrator must refer it to the Director of Public Prosecutions. 15
- (3) On referral of a matter, the Director of Public Prosecutions must, having regard to the matters set out in section 40 (5), determine whether the matter should be dealt with by giving a caution, by holding a conference or by commencing proceedings. 20
- (4) The Director of Public Prosecutions must notify the conference administrator of the Director's determination.
- (5) If the conference administrator and the specialist youth officer agree, or the Director of Public Prosecutions determines, that a matter should be dealt with by giving a caution, the conference administrator must refer the matter to a person authorised for the purposes of section 27 for a caution to be given under Part 4. 25
- (6) If the conference administrator and the specialist youth officer agree, or the Director of Public Prosecutions determines, that a matter should be dealt with by holding a conference, the conference administrator must appoint a conference convenor for the conference. 30

- (7) If the conference administrator and the specialist youth officer agree, or the Director of Public Prosecutions determines, that proceedings should be commenced, the conference administrator must refer the matter back to the specialist youth officer or other appropriate authority for the commencement of proceedings.

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Division 2 Conferences

42 Appointment of conference convenor

- (1) On referral of a matter for a conference under this Part, the conference administrator must appoint a conference convenor for the conference.
- (2) This section does not apply if the conference administrator refers a matter to the Director of Public Prosecutions under section 41.

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43 Time limit for holding conferences

A conference must, if practicable, be held not later than 21 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.

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44 Right not to proceed

- (1) A child may, at any time before a conference is held, decide not to proceed with the conference and elect that the matter be dealt with by a court.
- (2) A specialist youth officer who refers a matter for a conference may, at any time before the conference is held, determine:
- (a) 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, or
- (b) that the matter need not be dealt with by holding a conference and arrange for a caution to be given under Part 4.

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- (3) The Director of Public Prosecutions or a court may, at any time before a conference is held in relation to a matter referred by the Director or court, determine that the matter should not be dealt with by way of a conference.
- (4) A specialist youth officer, the Director of Public Prosecutions or a court must give written notice to the child of a determination made by the officer, Director or court under this section. 5

45 Preparation for conferences

- (1) The conference convenor must determine:
 - (a) the date, time and place of the conference, and 10
 - (b) the persons who should be invited to attend.
- (2) A conference convenor must, if practicable, before determining the matters referred to in subsection (1):
 - (a) consult with the person or court that made the referral, the child who is the subject of the conference, a person responsible for the child and any victim, and 15
 - (b) advise any victim of the victim's right to attend and to be accompanied by a support person or persons or to be represented by a person chosen by the victim, and
 - (c) take into account the specific needs of any victim. 20
- (3) Before a conference is held, the conference convenor must give a written notice containing the following information to the child who is the subject of the conference:
 - (a) the offence or offences in respect of which the conference is to be held, 25
 - (b) the child's right to have a person responsible for the child, or an adult chosen by the child, present at the conference,
 - (c) the date, time and place of the conference,
 - (d) the name of the conference convenor,
 - (e) any requirements to be met by the child, 30
 - (f) the consequences of failure to attend the conference,
 - (g) the right of the child to obtain legal advice,

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- (h) the right of the child to elect that the matter be dealt with by a court if the child does not wish to proceed with the conference.
- (4) Before a conference is held, the conference convenor must take all reasonable steps to notify any other persons who are entitled to attend, or who the convenor determines are to be invited to attend, of the date, time and place of the conference. 5
- (5) Before a conference is held, the conference convenor must take all reasonable steps to provide persons who are to attend the conference with information available to the convenor that, in the convenor's opinion, will be needed to reach a decision about the matter. 10
- (6) Before a conference is held, a conference convenor must ascertain, if practicable, the views about the matter of any persons who have been invited to attend but have advised that they will not be attending. 15

46 Location of conferences

A conference may be held at a location agreed by the participants and the conference convenor but may not be held at a police station, a court house or any office of the Department of Juvenile Justice. 20

47 Participants in conferences

- (1) The following persons are entitled to attend a conference:
- (a) the child the subject of the conference (whether or not the child is in custody), 25
- (b) the conference convenor,
- (c) a person responsible for the child,
- (d) members of the child's family or extended family,
- (e) an adult chosen by the child,
- (f) a legal practitioner advising the child, 30
- (g) the investigating official,
- (h) a specialist youth officer,
- (i) any victim or a person chosen by the victim as a representative of the victim,
- (j) a support person or persons for any victim. 35

- (2) If the conference convenor is of the opinion that it is appropriate, the conference convenor may invite any of the following persons to attend a conference:
- (a) a respected member of the community, for the purpose of advising conference participants about relevant issues, 5
 - (b) an interpreter,
 - (c) if the child has a communication or cognitive disability, an appropriately skilled person,
 - (d) if the child is under care, a social worker or other health professional, 10
 - (e) if the child is subject to probation or a community service order, the child's supervising officer,
 - (f) any other person requested by the child's family or extended family.

48 Conduct of conferences 15

- (1) A conference convenor must conduct a conference in a way that best assists the reaching of an agreement about an outcome plan in relation to the child and the offence concerned that complies with this Act and the regulations.
- (2) The participants at a conference may regulate the procedure at a conference as they think fit, subject to any guidelines prepared by the Director-General under section 49. 20
- (3) If the conference convenor is of the opinion that the presence of a person (other than the child or any victim) may frustrate the purpose or conduct of a conference, or is otherwise not in the best interests of the child, the convenor may, having regard to the views of the child, exclude that person from attending the conference at all or may, during the course of the conference, exclude the person from continuing to attend the conference. 25
- (4) A conference must not make any recommendations or decisions if the participants are unable to determine whether the child admits the offence. 30
- (5) The conference convenor must, at or before a conference, notify the participants of the views of any person invited to attend but unable to do so, if the convenor is aware of those views. 35

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- (6) A conference may be adjourned:
- (a) at any time with the consent of the participants, or
 - (b) at the request of the child, to allow discussions between the child and the child's family or the child and a person responsible for the child. 5
- (7) A conference must, if practicable, be concluded not later than 7 days after it is first convened.
- (8) A conference may be held in respect of more than one child at the same time and in respect of more than one offence alleged to have been committed by a child. 10

49 Guidelines for conduct of conferences

- (1) The Director-General may approve written guidelines for the conduct of conferences.
- (2) A conference convenor is to conduct a conference in accordance with any applicable guidelines approved under this section. 15

50 Representation at conferences

- (1) Except as provided by subsection (2), a child who is the subject of a conference is entitled to be advised (but not represented) by a legal practitioner at the conference.
- (2) The conference convenor may permit a child who is the subject of a conference to be represented by a legal practitioner at the conference, either generally or subject to such conditions or limitations as may be imposed by the convenor. 20
- (3) A conference may be adjourned at any time for the purpose of allowing a child to obtain legal advice or representation by a legal practitioner. 25

51 Non-attendance at conferences

- If a child fails, without a reasonable excuse, to attend a conference, the conference convenor must refer the matter back to the person or body that referred the matter for a conference. 30

52 Outcomes of conferences

- (1) The participants at a conference may agree to make such recommendations or decisions as they think fit. Any such decision that requires the compliance of the child is to be contained in the outcome plan agreed by the conference. 5
- (2) An outcome plan is, if possible, to be determined by consensus of the participants.
- (3) Despite subsection (2), an outcome plan may be agreed to by a conference even though it is not agreed to by all the participants but has no effect unless it is agreed to by the child and any victim of the offence or, if there are 2 victims, both victims and, in any other case, by more than half the victims. 10
- (4) The agreement of any victim is not required if the victim does not personally attend the conference.
- (5) Without limiting the kinds of decisions and recommendations that may be contained in an outcome plan, an outcome plan may provide for the following matters: 15
 - (a) the making of an oral or written apology, or both, to any victim,
 - (b) the making of reparation to any victim or the community, 20
 - (c) participation by the child in an appropriate program,
 - (d) the taking of actions directed towards the reintegration of the child into the community.
- (6) An outcome plan must:
 - (a) contain outcomes that are realistic and appropriate and sanctions that are not more severe than those that might have been imposed in court proceedings for the offence concerned, and 25
 - (b) set out times (not exceeding any limits imposed by the regulations) for the implementation of the plan, and 30
 - (c) not impose an obligation to do community service work that exceeds the period prescribed by the regulations for the purposes of this section, and
 - (d) if appropriate, provide for its monitoring, and
 - (e) comply with any requirements or limitations imposed on outcome plans by the regulations. 35

- (7) A conference convenor must notify a conference administrator of any outcome plan determined by the participants at a conference.

53 Failure of conference to reach decision

A conference convenor must refer a matter back to the person or body that referred the matter for a conference if the convenor is satisfied that the participants at a conference are unable to agree to an outcome plan or are unable to agree to an outcome plan that complies with this Act and the regulations.

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54 Matters referred by courts

- (1) A conference convenor must refer any outcome plan agreed to at a conference to a court, if the court referred the matter for a conference.
- (2) The court may approve the plan or, if it does not, may continue the proceedings.
- (3) A court that does not approve an outcome plan must notify the conference convenor and the relevant conference administrator.

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55 Reconvening of conferences

- (1) A conference may be reconvened by the conference convenor, on the convenor's initiative or at the request of more than one participant in the conference, for the purpose of reconsidering any aspect of the outcome plan or any recommendation agreed at a conference.
- (2) In deciding whether to reconvene a conference, the conference convenor must consult with any victim.
- (3) The participants at a reconvened conference may agree to vary or replace a previously agreed outcome plan.
- (4) A variation or replacement is, if possible, to be determined by consensus of the participants.
- (5) Despite subsection (4), an outcome plan may be varied or replaced even though it is not agreed to by all the participants but any such variation or replacement has no effect unless it is agreed to by the child and any victim of the offence or, if there are 2 victims, both victims and, in any other case, by more than half the victims.

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- (6) The agreement of any victim is not required if the victim does not personally attend the reconvened conference.
- (7) The conference convenor must notify a conference administrator of the result of a reconvened conference.
- (8) This Part applies to a reconvened conference in the same way as it applies to any other conference. 5

56 Satisfactory completion of outcome plans

- (1) A conference administrator is to supervise the monitoring and the implementation and completion of each outcome plan (including an outcome plan varied or replaced by a reconvened conference) and is to give written notice as to whether or not the outcome plan has been satisfactorily completed by the child. 10
- (2) The written notice under this section must be given to the child, any victim, the person or body that referred the matter for a conference, the Commissioner of Police (if the matter was referred by the Director of Public Prosecutions or a court) and any other person on whom the outcome plan imposed obligations. 15

57 Failure to complete outcome plans

- (1) A notice that a child has failed to satisfactorily complete an outcome plan given to the person or body that referred the matter for a conference is to be accompanied by a report from the conference convenor concerning the conference and may be accompanied by such other reports and recommendations as the conference administrator thinks fit. 20
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Note. Proceedings may be continued if an outcome plan is not satisfactorily completed (see section 64).
- (2) A court that referred a matter for a conference without making a finding that the child concerned was guilty of an offence must dismiss a charge against a child on receiving notice that an outcome plan relating to the offence concerned has been satisfactorily completed by the child. 30

58 Further proceedings

If a child satisfactorily completes an outcome plan, no further criminal proceedings may be taken against the child for any offence in respect of which the conference was held or for any 35

other offence in respect of which proceedings could not be commenced if the child had been convicted of the offence for which the conference was held.

59 Records of conferences

- (1) A conference administrator must make a record of any conferences held under this Part and dealt with by the administrator. 5
- (2) The record is to contain the matters prescribed by the regulations for the purposes of this section.

Division 3 Co-ordination of conferences

10

60 Conference convenors

- (1) The Director-General may appoint persons as conference convenors.
- (2) Schedule 1 has effect with respect to conference convenors.
- (3) A conference convenor has the following functions: 15
 - (a) to prepare for, and to hold, conferences referred to the convenor by a conference administrator or specialist youth officer,
 - (b) any other functions conferred or imposed on the convenor by or under this or any other Act. 20

61 Conference administrators

Conference administrators may be appointed under Part 2 of the *Public Sector Management Act 1988* for the purpose of carrying out administrative functions related to this Act.

Part 6 Miscellaneous

62 Act binds Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

5

63 Proceedings for offences

Proceedings for an offence under this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

64 Continuation or commencement of proceedings

10

- (1) A person or body may continue or commence proceedings against a child in respect of an offence even though an applicable limitation period for those proceedings has expired if:

(a) a decision not to give a caution or hold a conference is made under this Act, or

15

(b) a child elects not to proceed with a caution or a conference or fails to attend a caution or conference, or

(c) a child fails to satisfactorily complete an outcome plan, or

(d) a conference fails to reach agreement as to an outcome plan.

20

- (2) Proceedings for the offence must be commenced not later than the expiry date of the applicable limitation period or not later than 3 months after the matter is referred back to the person or body under this section, whichever is the later.

65 Publication and broadcasting of names

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- (1) The name of any child dealt with under this Act, or any information tending to identify any such child, must not be published or broadcast, whether before or after the matter involving the child is finally dealt with under this Act.

- (2) A person who publishes or broadcasts the name of any child or any information the publication or broadcasting of which is prohibited by subsection (1) is guilty of an offence.

30

Maximum penalty: 500 penalty units (in the case of a corporation) or 50 penalty units or imprisonment for 12 months, or both, in any other case.

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-
- (3) Subsection (1) does not prohibit:
- (a) the publication or broadcasting of an official report of the proceedings of a court that includes the name of any child or any information the publication or broadcasting of which would otherwise be prohibited by subsection (1), or 5
 - (b) the publication or broadcasting of the name of a child or any information about such a child who is over the age of 16 years at the time of publication or broadcasting with the consent of the child.
- (4) For the purposes of this section, a reference to the name of a child includes a reference to any information, picture or other material that identifies the child or is likely to lead to the identification of the child. 10

66 Disclosure of records

- (1) A person who acquires information or prepares a record in the exercise of functions under this Act must not, directly or indirectly, divulge the information to another person except in the exercise of functions under this Act. 15
- Maximum penalty: 500 penalty units (in the case of a corporation) or 50 penalty units or imprisonment for 12 months, or both, in any other case. 20
- (2) Despite subsection (1), information may be divulged in the following circumstances:
- (a) records of, or relating to, cautions and conferences may be divulged to the child, a person responsible for the child or a legal representative of the child, 25
 - (b) records of, or relating to, cautions and conferences under this Act may be divulged to an investigating official, specialist youth officer, conference convenor, conference administrator, the Director of Public Prosecutions or a court for the purpose of determining whether or not to take action under this Act, 30
 - (c) records of, or relating to, cautions and conferences under this Act may be divulged to the Children's Court for the purpose of making a decision concerning sentencing. 35

67 Certain statements not admissible

- (1) Any statement, confession, admission or information made or given by a child during the giving of a caution or a conference under this Act is not to be admitted in evidence in any subsequent criminal proceedings against that child or any other child the subject of the caution or conference for any offence. 5
- (2) Despite subsection (1), an outcome plan agreed at a conference may be produced to a court if the court has referred a matter for a conference.

68 Interventions not to be disclosed as criminal history 10

- (1) If a person has been the subject of a caution or conference under this Act:
 - (a) the person is not required to disclose to any other person for any purpose information concerning the caution or conference, and 15
 - (b) a question concerning the person's criminal history is taken not to refer to any such caution or conference, and
 - (c) in the application to the person of a provision of an Act or statutory instrument, a reference in the provision to the person's character or fitness is not to be interpreted as permitting or requiring account to be taken of any such warning, caution or conference. 20
- (2) Subsection (1) does not apply in relation to:
 - (a) an application by a person for appointment or employment as a judge, magistrate, justice of the peace, police officer, prison officer, teacher, teachers aide or a provider of child care services under Part 3 of the *Children (Care and Protection) Act 1987*, or 25
 - (b) an offence of arson or attempted arson if the person seeks to be appointed or employed in fire fighting or fire prevention, or 30
 - (c) proceedings before the Children's Court (including a decision concerning sentencing).

69 Investigating officials may act on other matters

Nothing in this Act prevents an investigating official from acting on information obtained during the course of a caution or conference in relation to offences other than offences the subject of the conference.

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70 Giving of notices

If by or under this Act a document is required or permitted to be given to or served on a person, the document may be given or served:

- (a) by delivering it personally to the person, or 10
- (b) by leaving it at that person's usual or last known place of residence with a person apparently over the age of 16 years and apparently residing there, or
- (c) by sending it by post addressed to the person at that person's usual or last known place of residence, or 15
- (d) if a manner of service is prescribed by any other Act or law in relation to a person or class of persons, by being served in that manner.

71 Liability of officers under Act

- (1) Any matter or thing done by the Director-General, a conference administrator, a conference convenor, a person giving a caution (other than a police officer or specialist youth officer) or a person acting under the direction of the Director-General, conference administrator or convenor does not subject the Director-General, conference administrator, conference convenor or person so acting personally to any action, liability, claim or demand if the matter or thing was done in good faith for the purpose of executing this or any other Act. 20 25
- (2) A person referred to in subsection (1) is not liable for an offence under section 316 (1) of the *Crimes Act 1900* in respect of information obtained by the person in the course of a conference. 30

72 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 35

- (2) In particular, the regulations may make provision for or with respect to the following matters:
- (a) the content and keeping of records required to be made under this Act,
 - (b) notification of referrals of children for conferences, 5
 - (c) authorising the bringing of children who are in custody to conferences,
 - (d) outcome plans,
 - (e) the provision by the Director-General to the Commissioner of Police of information, records, or parts of records, relating to conferences held under this Act, 10
 - (f) the provision by the Director-General or the Commissioner of Police of information, records, or parts of records, relating to cautions and conferences under this Act, to persons for statistical or research purposes. 15
- (3) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

73 Amendment of Children (Criminal Proceedings) Act 1987 No 55

The *Children (Criminal Proceedings) Act 1987* is amended as set out in Schedule 2. 20

74 Savings and transitional provisions

Schedule 3 has effect.

75 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. 25
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the date of commencement of this section.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years. 30

Schedule 1 Conference convenors

(Section 60)

1 Term of office

Subject to this Schedule, a conference convenor holds office for such period (not exceeding 3 years) as is specified in the convenor's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment. 5

2 Remuneration

A conference convenor is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the conference convenor. 10

3 Vacancy in office

- (1) The office of a conference convenor becomes vacant if the convenor: 15
- (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Director-General, or
 - (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or 20
 - (e) becomes a mentally incapacitated person, or
 - (f) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable. 25
- (2) The Director-General may remove a conference convenor from office at any time. 30

4 Effect of certain other Acts

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a conference convenor.
- (2) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or 5
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a conference convenor or from accepting and retaining any remuneration payable to the person under this Act as a convenor. 10
- (3) The office of a conference convenor is not, for the purposes of any Act, an office or place of profit under the Crown. 15

Schedule 2 Amendment of Children (Criminal Proceedings) Act 1987

(Section 73)

[1] Section 15 Evidence of prior offences and other matters not admissible in certain criminal proceedings

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Insert “or (3)” after “subsection (1)” in section 15 (2).

[2] Section 15 (3)

Omit the subsection. Insert instead:

- (3) The fact that a person has been dealt with by a warning, caution or youth justice conference under the *Young Offenders Act 1997* (being in respect of an alleged offence committed when the person was a child) is not to be admitted in evidence (whether as to guilt or the imposition of any penalty) in any criminal proceedings subsequently taken against the person in respect of any other offence.

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15

[3] Section 33 Penalties

Insert after section 33 (1) (c):

- (c1) it may make an order releasing the person on condition that the person complies with an outcome plan determined at a conference held under the *Young Offenders Act 1997*,

20

Schedule 3 Savings and transitional provisions

(Section 74)

1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act. 5
- (2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as: 10
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before its publication. 15

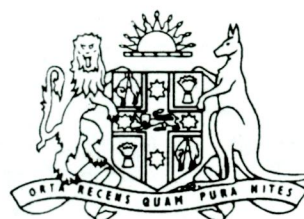
2 Existing proceedings

A court may take action under Part 4 or 5 in respect of criminal proceedings commenced, but not completed, before the commencement of this clause. 20

3 Early implementation of Act

- (1) Regulations under clause 1 may limit the application of provisions of this Act to offences occurring in a specified part or parts of New South Wales for a specified period or periods.
- (2) If a regulation is made under this clause, the application of the Act is limited as specified by the regulation even though the specified provisions of the Act have commenced. 25

- (3) A regulation made under this clause ceases to have effect on the date that is 12 months after the date of commencement of this clause.



New South Wales

Young Offenders Bill 1997

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

Legislative Council

Clerk of the Parliaments



New South Wales

Young Offenders Bill 1997

Act No , 1997

An Act to establish procedures for dealing with children who commit certain offences through the use of youth justice conferences, cautions and warnings instead of court proceedings; and for other purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Young Offenders Act 1997*.

2 Commencement

5

This Act commences on a day or days to be appointed by proclamation.

3 Objects of Act

The objects of this Act are:

- (a) to establish a scheme that provides an alternative process to court proceedings for dealing with children who commit certain offences through the use of youth justice conferences, cautions and warnings, and 10
- (b) to establish a scheme for the purpose of providing an efficient and direct response to the commission by children of certain offences, and 15
- (c) to establish and use youth justice conferences to deal with alleged offenders in a way that:
 - (i) enables a community based negotiated response to offences involving all the affected parties, and 20
 - (ii) emphasizes restitution by the offender and the acceptance of responsibility by the offender for his or her behaviour, and
 - (iii) meets the needs of victims and offenders.

4 Definitions

25

In this Act:

adult means a person who is of or over the age of 18 years.

broadcast includes broadcast by radio, television or any on-line service.

caution means a formal police caution relating to an offence given under Part 4. 30

child means a person who is of or over the age of 10 years and under the age of 18 years.

conference means a youth justice conference convened or proposed to be convened under Part 5.

conference administrator means a person appointed as a conference administrator as referred to in section 61. 5

conference convenor means a person appointed as a conference convenor under section 60.

Director-General means the Director-General of Juvenile Justice. 10

exercise a function includes perform a duty.

function includes a power, authority or duty.

investigating official means:

- (a) a police officer, or
- (b) a person appointed by or under an Act and whose functions include functions in respect of the prevention or investigation of offences, prescribed by the regulations for the purposes of this definition. 15

on-line service means a service provided by or through the facilities of a computer communication system and access through a telecommunications network that allows for: 20

- (a) the input, output or examination of computer data or computer programs, or
- (b) the transmission of computer data.

parent of a child includes: 25

- (a) a guardian of the child, and
- (b) a person who has the lawful custody of the child,

but does not include the father or mother of the child if the father or mother, as the case may be, has neither guardianship nor custody of the child. 30

person responsible for a child means:

- (a) a parent of the child, or
- (b) a person who has the care of the child (whether or not the person has the custody of the child).

specialist youth officer means a member of the Police Service appointed as a specialist youth officer for the purposes of this Act by the Commissioner of Police.

traffic offence has the same meaning as it has in the *Children (Criminal Proceedings) Act 1987*.

5

victim has the meaning given by section 5.

5 Meaning of "victim"

- (1) For the purposes of this Act, a victim means a person who suffers harm as a direct result of an act committed, or apparently committed, by a child in the course of a criminal offence. 10
- (2) A person suffers harm if, as a result of such an act:
 - (a) the person suffers actual physical bodily harm, mental illness or nervous shock, or
 - (b) the person's property is deliberately taken, destroyed or damaged. 15
- (3) For the purposes of this Act, a victim that is an organisation or a Government authority may be represented by an officer of, or other person nominated by, the organisation or authority.

6 Notes

Notes in the text of this Act do not form part of this Act. 20

Part 2 General principles of scheme

7 Principles of scheme

The principles that are to guide the operation of this Act, and persons exercising functions under this Act, are as follows:

- (a) The principle that the least restrictive form of sanction is to be applied against a child who is alleged to have committed an offence, having regard to matters required to be considered under this Act. 5
- (b) The principle that children who are alleged to have committed an offence are entitled to be informed about their right to obtain legal advice and to have an opportunity to obtain that advice. 10
- (c) The principle that criminal proceedings are not to be instituted against a child if there is an alternative and appropriate means of dealing with the matter. 15
- (d) The principle that criminal proceedings are not to be instituted against a child solely in order to provide any assistance or services needed to advance the welfare of the child or his or her family or family group.
- (e) The principle that, if it is appropriate in the circumstances, children who are alleged to have committed an offence should be dealt with in their communities in order to assist their reintegration and to sustain family and community ties. 20
- (f) The principle that parents are to be recognised and included in justice processes involving children and that parents are to be recognised as being primarily responsible for the development of children. 25
- (g) The principle that victims are entitled to receive information about their potential involvement in, and the progress of, action taken under this Act. 30

8 Offences covered by Act

- (1) The offences covered by this Act are, except as provided by this Act:
 - (a) summary offences, and 35

- (b) indictable offences that may be dealt with summarily under Part 9A of the *Criminal Procedure Act 1986* or another prescribed law,

committed, or alleged to have been committed, by children.

- (2) Despite subsection (1), an offence is not covered by this Act if: 5
- (a) the principal person who investigates the offence is not an investigating official within the meaning of this Act, or
 - (b) the offence is a traffic offence committed by a child who was, when the alleged offence occurred, old enough to obtain a licence or permit under the *Traffic Act 1909* to drive the motor vehicle to which the offence relates, or 10
 - (c) the offence results in the death of any person, or
 - (d) the offence is an offence under section 61E, 61L, 61M, 61N, 61O (1), (1A) or (2), 66C, 66D, 78Q, 80, 81A or 81B of the *Crimes Act 1900*, or 15
 - (e) the offence is an offence under Part 15A (Apprehended violence) of the *Crimes Act 1900*, or
 - (f) the offence is an offence under the *Drug Misuse and Trafficking Act 1985* (other than an offence under section 23 (1) (a) or (c) of that Act that, in the opinion of the investigating official or prosecuting authority, involves not more than the small quantity applicable to the prohibited plant within the meaning of that Act, or an offence under section 27 or 28 of that Act of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence under section 23 (1) (a) or (c)), or 20
 - (g) the offence is prescribed by the regulations for the purposes of this section. 25

9 Procedures under scheme

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- (1) The procedures available for dealing with children who have committed, or are alleged to have committed, offences covered by this Act are as follows:
- (a) a warning may be given, including a warning in accordance with Part 3, 35

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- (b) a caution may be given, but only if it is a caution given in accordance with Part 4,
 - (c) a conference may be held, but only if it is a youth justice conference held in accordance with Part 5.
 - (2) An investigating official dealing with a child who has committed, or is alleged to have committed, an offence must, before issuing a summons or attendance notice or otherwise commencing criminal proceedings against the child, determine:
 - (a) whether the offence is one covered by this Act, and
 - (b) in the case of such an offence, whether the child should be dealt with under Part 3 or 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.
 - (3) An investigating official may, at any time after commencing proceedings and before the proceedings are heard, decide to deal with a child alleged to have committed an offence under Part 4 or consider whether the matter should be referred to a specialist youth officer under Part 5, if the investigating official forms the opinion that the child is entitled to be dealt with under Part 4 or Part 5.

10 Admission of offences

An admission by a child of an offence is not an admission for the purposes of this Act unless it takes place in the presence of:

- (a) a person responsible for the child, or
- (b) an adult (other than an investigating official) who is present with the consent of a person responsible for the child, or
- (c) if the child is 16 years or over, an adult chosen by the child, or
- (d) a legal practitioner chosen by the child.

11 Relationship with other legislation

- (1) This Act does not affect any jurisdiction conferred on the Children's Court under the *Children (Criminal Proceedings) Act 1987* or on any other court under any other law.

Clause 11 Young Offenders Bill 1997

Part 2 General principles of scheme

- (2) This Act is in addition to, and does not limit, the requirements of any law relating to evidence.

12 Relationship with other procedures

This Act does not affect the functions of any person dealing with an offence or alleged offence, to give a warning for, or take any other action in relation to, an offence or alleged offence if: 5

- (a) the person is not an investigating official, or
- (b) the offence is not an offence covered by this Act, whether or not the person is an investigating official.

Part 3 Warnings

13 Offences for which warnings may be given

A warning may be given for a summary offence covered by this Act, other than an offence prescribed by the regulations for the purposes of this section.

5

Note. Section 8 sets out offences covered by this Act.

14 Entitlement to be dealt with by warning

- (1) A child who has committed or is alleged to have committed an offence in respect of which a warning may be given is entitled to be dealt with by warning. 10
- (2) Despite subsection (1), the child is not entitled to be dealt with by warning if:
 - (a) the circumstances of the offence involve violence, or
 - (b) in the opinion of the investigating official, it is more appropriate to deal with it by another means because it is not in the interests of justice for the matter to be dealt with by warning. 15
- (3) A child is not precluded from being given a warning merely because the child has previously committed offences or been dealt with under this Act. 20
- (4) If an investigating official is of the opinion that it is not in the interests of justice to deal with a matter by warning a child and that it is appropriate to deal with it by other means, the investigating official must consider whether to deal with the matter under Part 4 or to refer it to a specialist youth officer under section 21 (2) for consideration of whether action should be taken under Part 5. 25

15 Giving of warnings

- (1) A warning is to be given by the investigating official and may be given at any place, including a place where the child is found. 30

- (2) An investigating official who gives a warning to a child must not:
 - (a) attach any conditions to the giving of a warning, or
 - (b) impose any additional sanctions on a child to whom a warning is given.
- (3) A warning may be given to more than one child at the same time. 5

16 Explanation of warnings

An investigating official who gives a warning to a child must take steps to ensure that the child understands the purpose, nature and effect of the warning.

17 Records of warnings 10

An investigating official must make a record of any warnings given by the official under this Part but must not record the name of the child concerned or any information that might identify the child other than information relating to age, gender or racial background. 15

Part 4 Cautions

18 Offences for which cautions may be given

A caution may be given for an offence covered by this Act, other than an offence prescribed by the regulations for the purposes of this section.

5

Note. Section 8 sets out offences covered by this Act.

19 Conditions required to be able to give caution

A formal police caution against further offending may be arranged and given in relation to an offence to a child who is alleged to have committed the offence, if:

10

- (a) the offence is one for which a caution may be given, and
- (b) the child admits the offence, and
- (c) the child consents to the giving of the caution, and
- (d) the child is entitled to be given a caution.

20 Entitlement to be dealt with by caution

15

- (1) A child who is alleged to have committed an offence for which a caution may be given is entitled to be dealt with by caution if the investigating official determines that the matter is not appropriate for a warning or the offence is one for which a warning may not be given.

20

- (2) Despite subsection (1), the child is not entitled to be dealt with by caution if, in the opinion of the investigating official, it is more appropriate to deal with it by other means because it is not in the interests of justice for the matter to be dealt with by giving a caution.

25

- (3) In considering whether it is appropriate to deal with a matter by caution, an investigating official is to consider the following:

- (a) the seriousness of the offence,
- (b) the degree of violence involved in the offence,
- (c) the harm caused to any victim,
- (d) the number and nature of any offences committed by the child and the number of times the child has been dealt with under this Act,

30

- (e) any other matter the official thinks appropriate in the circumstances.
- (4) Despite subsection (1), an investigating official may, if of the opinion that the victim has suffered substantial harm or that the circumstances of the victim are such that it is appropriate to do so, refer the matter to a specialist youth officer to determine whether the matter should be dealt with under this Part or Part 5 even though the offence does not involve any degree of violence or is not of a serious nature. 5
- (5) A specialist youth officer to whom a matter is referred under subsection (4) may arrange for a caution to be given under this Part or take action under Part 5 and, in determining whether to do so, may take into account the fact that the victim has suffered substantial harm or the circumstances of the victim. 10
- (6) A child is not precluded from being given a caution merely because the child has previously committed offences or been dealt with under this Act. 15

21 Determination by investigating official

- (1) If an investigating official determines that a child should be dealt with under this Part, the investigating official must arrange for a caution to be given. 20
- (2) If an investigating official is of the opinion that it is not in the interests of justice for a matter to be dealt with by way of a caution, the investigating official must refer the matter to a specialist youth officer to consider whether the child should be dealt with under Part 5. 25

22 Explanations to children

- (1) Before an investigating official proceeds to arrange for a caution to be given under this Part, the investigating official must explain the following matters to the child concerned: 30
 - (a) the nature of the offence and the circumstances out of which it is alleged to arise,
 - (b) that the child is entitled to obtain legal advice and where that advice may be obtained,

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- (c) that the child is entitled to elect that the matter be dealt with by a court,
 - (d) the purpose, nature and effect of the caution.
 - (2) An investigating official must, if practicable, ensure that an explanation takes place in the presence of: 5
 - (a) a person responsible for the child, or
 - (b) an adult (other than an investigating official) who is present with the consent of a person responsible for the child, or
 - (c) if the child is 16 years or over, an adult chosen by the child, or 10
 - (d) a legal practitioner chosen by the child.

23 Referrals for cautions

- (1) A child may be referred for a caution under this Part by the Director of Public Prosecutions if: 15
 - (a) the offence is one for which a caution may be given under this Part, and
 - (b) the child admits the offence, and
 - (c) the child consents to the giving of the caution.
- (2) In determining whether to refer a matter for a caution, the Director of Public Prosecutions is to take into account the following matters: 20
 - (a) the seriousness of the offence,
 - (b) the degree of violence involved in the offence,
 - (c) the harm caused to any victim, 25
 - (d) the number and nature of any offences committed by the child and the number of times the child has been dealt with under this Act,
 - (e) any other matter the Director thinks appropriate in the circumstances. 30
- (3) The referral is to be made to a person authorised in writing by the Commissioner of Police for the purposes of this section.

- (4) The authorised person must arrange for a caution to be given to the child under this Part.

24 Notice of caution

- (1) Before a caution is given to a child, the person arranging for the caution to be given must give a written notice to the child. 5
- (2) The notice must contain the following information:
- (a) the offence in respect of which the caution is to be given,
 - (b) the persons who may be present when the caution is given,
 - (c) the purpose, nature and effect of the caution,
 - (d) the date, time and place at which the caution is to be given, 10
 - (e) the name of a police officer who is a contact officer concerning the caution,
 - (f) the consequences of failure to attend the giving of the caution,
 - (g) the right of the child to obtain legal advice and where that advice may be obtained, 15
 - (h) the right of the child to elect that the matter be dealt with by a court if the child does not wish to proceed with the caution.
- (3) The notice must be given in a form approved by the Commissioner of Police and be expressed in language readily capable of being understood by children. 20

25 Right not to proceed

- (1) A child may, at any time before a caution is given to the child, decide not to proceed with the caution and elect that the matter be dealt with by a court. 25
- (2) An investigating official who arranges for a caution to be given may, at any time before the caution is given, determine that it is not in the interests of justice for the matter to be dealt with by way of a caution and refer the matter to a specialist youth officer for consideration of whether action should be taken under Part 5. 30

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- (3) The Director of Public Prosecutions may, at any time before a caution is given in respect of an offence referred by the Director under this Part, determine that it is not in the interests of justice for the matter to be dealt with by way of a caution and refer the matter to a conference administrator under Part 5 or commence proceedings. 5
- (4) An investigating official or the Director of Public Prosecutions must give written notice to the child concerned of any determination by the official or Director under this section.

26 Place and time of cautions 10

- (1) A caution must, if practicable, be given not less than 10 days, and not more than 21 days, after notice of the caution is given under this Part.
- (2) A caution is to be given at a police station.
- (3) Despite subsection (2), a caution may be given at a place other than a police station, if the person giving the caution is of the opinion that it is appropriate in the circumstances to do so. 15

27 Persons who may give cautions

- (1) A caution is to be given by a police officer or specialist youth officer authorised in writing by the Commissioner of Police to give cautions under this Act. 20
- (2) Despite subsection (1), a caution may be given by a respected member of the community at the request of any such officer, if the officer is of the opinion that it is appropriate in the circumstances to do so. For example, a caution may be given by a respected member of the Aboriginal community if the child is a member of that community. 25

28 Persons who may accompany child

The following persons, but no other persons, may be present when a caution is given to a child: 30

- (a) the child and the person giving the caution,
- (b) a person responsible for the child,
- (c) members of the child's family or extended family,
- (d) an adult chosen by the child,

- (e) a respected member of the community chosen by the child, if the person arranging the caution is of the opinion that it is appropriate in the circumstances to do so,
- (f) an interpreter,
- (g) if the child has a communication or cognitive disability, an appropriately skilled person, 5
- (h) if the child is under care, a social worker or other health professional,
- (i) if the child is subject to probation or a community service order, the child's supervising officer, 10
- (j) if the investigating official is not giving the caution, the investigating official.

29 Giving of cautions

- (1) A person who gives a caution to a child must take steps to ensure that the child understands the purpose, nature and effect of the caution. 15
- (2) If a child who is to be cautioned has a communication or cognitive disability, it is the duty of the person giving the caution, so far as practicable, to give the caution in the presence of an interpreter or other appropriately skilled person and, if necessary, to obtain the assistance of such a person in giving the caution. 20
- (3) It is the duty of the person giving the caution to ensure, so far as practicable, that a person responsible for the child or an adult chosen by the child is present when the caution is given.
- (4) A person who gives a caution to a child may request the child being cautioned to provide a written apology to any victim of the alleged offence. 25
- (5) A person who gives a caution to a child must not:
 - (a) attach any conditions to the giving of the caution, or
 - (b) impose any additional sanctions on the child, other than a request of the kind referred to in subsection (4). 30
- (6) A caution may be given to more than one child at the same time and in respect of more than one offence alleged to have been committed by a child.

30 Caution notice

- (1) A caution notice containing the following information must be given to a child after the child is cautioned and must be signed by the child:
- (a) the child's name, 5
 - (b) the name and rank (if any) of the person who gave the caution,
 - (c) details of the offence concerned,
 - (d) the place, date and time of the caution,
 - (e) the persons present when the caution was given, 10
 - (f) the purpose, nature and effect of the caution.
- (2) The caution notice must be expressed in language readily capable of being understood by children.

31 Cautions by courts

- (1) A child may be given a caution by a court if: 15
- (a) the offence is one for which a caution may be given under this Part, and
 - (b) the child admits the offence.
- (2) This Part (other than this section and sections 32 and 33) does not apply to a caution given by a court. 20
- (3) Nothing in this Part affects the power of a court to give a caution under section 33 of the *Children (Criminal Proceedings) Act 1987*.

32 Further proceedings

If a caution is given to a child under this Part, no further proceedings may be taken against the child for the offence in respect of which the caution is given or for any other offence in respect of which proceedings could not be commenced if the child had been convicted of the offence for which the caution was given. 25

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Clause 33 Young Offenders Bill 1997

Part 4 Cautions

33 Records of cautions

- (1) A police officer, specialist youth officer or a court must make a record of any cautions given by the officer or court under this Part.
- (2) The record is to contain the matters prescribed by the regulations 5
for the purposes of this section.

Part 5 Youth justice conferences

Division 1 Preliminary

34 Principles and purposes of conferencing

- (1) The principles that are to guide the operation of this Part and persons exercising functions under this Part, are as follows: 5
- (a) The principle that measures for dealing with children who are alleged to have committed offences are to be designed so as:
- (i) to promote acceptance by the child concerned of responsibility for his or her own behaviour, and 10
- (ii) to strengthen the family or family group of the child concerned, and
- (iii) to provide the child concerned with developmental and support services that will enable the child to overcome the offending behaviour and become a fully autonomous individual, and 15
- (iv) to enhance the rights and place of victims in the juvenile justice process, and
- (v) to be culturally appropriate, wherever possible, and
- (vi) to have due regard to the interests of any victim. 20
- (b) The principle that sanctions imposed on children who commit offences are:
- (i) to be of a kind most likely to promote the development of such children within their family or family group, and 25
- (ii) to take the least restrictive form that is appropriate in the circumstances, and
- (iii) to assist children to accept responsibility for offences.

- (c) The principle that any measures for dealing with, or sanctions imposed on, children who are alleged to have committed offences take into account:
 - (i) the age and level of development of any such children, and 5
 - (ii) the needs of any children who are disadvantaged or who are disconnected from their families, and
 - (iii) the needs of any children with disabilities, especially those with communication and cognitive difficulties, and 10
 - (iv) the gender, race and sexuality of any such children.
- (2) The purpose of a conference is to make decisions and recommendations about, and to determine an outcome plan in respect of, the child who is the subject of the conference.
- (3) In reaching decisions at a conference, the participants are to have regard to the principles set out in this section and the following matters: 15
 - (a) the need to deal with children in a way that reflects their rights, needs and abilities and provides opportunities for development, 20
 - (b) the need to hold children accountable for offending behaviour,
 - (c) the need to encourage children to accept responsibility for offending behaviour,
 - (d) the need to empower families and victims in making decisions about a child's offending behaviour, 25
 - (e) the need to make reparation to any victim.

35 Offences for which conferences may be held

A conference may be held for an offence covered by this Act, other than an offence prescribed by the regulations for the purposes of this section. 30

Note. Section 8 sets out offences covered by this Act.

36 Conditions required to be met before conference may be held

A conference may be arranged and held in respect of a child who is alleged to have committed an offence, if: 35

- (a) the offence is one for which a conference may be held, and
- (b) the child admits the offence, and
- (c) the child consents to the holding of the conference, and
- (d) the child is entitled to be dealt with by holding a conference.

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37 Entitlement to be dealt with by conference

- (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 the investigating official determines that the matter is not appropriate for a caution.

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- (2) Despite subsection (1), the child is not entitled to be dealt with by holding a conference if, in the opinion of the specialist youth officer to whom the matter is referred, it is more appropriate to deal with it by commencing proceedings against the child or by giving a caution because it is not in the interests of justice for the matter to be dealt with by holding a conference.

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Note. A matter is referred to a specialist youth officer by an investigating official if the investigating official is of the opinion that it is not in the interests of justice that a warning or caution be given (see sections 14 (4) and 21).

- (3) In considering whether it is appropriate to deal with a matter by conference, a specialist youth officer is to consider the following:

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- (a) the seriousness of the offence,
- (b) the degree of violence involved in the offence,
- (c) the harm caused to any victim,
- (d) the number and nature of any offences committed by the child and the number of times the child has been dealt with under this Act,
- (e) any other matter the official thinks appropriate in the circumstances.

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- (4) A specialist youth officer must, not later than 14 days after receiving a referral under section 14 (4) or 21 (2), determine whether or not the child concerned is entitled to have the matter dealt with by holding a conference.

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- (5) A child is not precluded from being dealt with by a conference merely because the child has previously committed offences or been dealt with under this Act in relation to other matters.

38 Determinations by specialist youth officers

- (1) If a specialist youth officer determines that a conference should be held in respect of an alleged offence committed by a child, the specialist youth officer must refer the matter to a conference administrator for a conference. 5
- (2) If a specialist youth officer is of the opinion that a matter should be dealt with by giving a caution and need not be dealt with by holding a conference, the specialist youth officer must refer the matter to a person authorised for the purposes of section 27 for a caution to be given under Part 4. 10
- (3) If a specialist youth officer is of the opinion that a matter should be dealt with by commencing proceedings against the child, the specialist youth officer must refer the matter to an investigating official or other appropriate authority for the commencement of proceedings. 15

39 Explanations to children

- (1) Before a specialist youth officer proceeds to refer a matter for a conference under this Part, the specialist youth officer must explain the following matters to the child concerned: 20
- (a) the nature of the offence and the circumstances out of which it is alleged to have arisen,
 - (b) that the child is entitled to obtain legal advice and where that advice may be obtained, 25
 - (c) that the child is entitled to elect that the matter be dealt with by a court,
 - (d) what a conference is and the effect of the conference.
- (2) A specialist youth officer must, if practicable, ensure that an explanation takes place in the presence of: 30
- (a) a person responsible for the child, or

- (b) an adult (other than an investigating official) who is present with the consent of a person responsible for the child, or
- (c) if the child is 16 years or over, an adult chosen by the child, or
- (d) a legal practitioner chosen by the child.

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40 Referrals for conferences by DPP and courts

- (1) The Director of Public Prosecutions or a court may refer a matter involving a child who is alleged to have committed an offence to a conference administrator for a conference if:
 - (a) the offence is one for which a conference may be held, and
 - (b) the child admits the offence, and
 - (c) in the case of a referral by the Director of Public Prosecutions, the child consents to the holding of the conference, and
 - (d) the Director or court is of the opinion that a conference should be held under this Part.
- (2) An offence may be referred under this section even though the offence was not dealt with by an investigating official.
- (3) A court may refer a matter at any stage in proceedings, including after a finding that a child is guilty of an offence.
- (4) The Director of Public Prosecutions or a court must notify the Commissioner of Police in writing of the particulars of any referral after making a referral under this section.
- (5) In determining whether to refer a matter for the holding of a conference, the Director of Public Prosecutions or a court is to take into account the following matters:
 - (a) the seriousness of the offence,
 - (b) the degree of violence involved in the offence,
 - (c) the harm caused to any victim,
 - (d) the number and nature of any offences committed by the child and the number of times the child has been dealt with under this Act,
 - (e) any other matter the Director or court thinks appropriate in the circumstances.

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41 Conference administrator may refer matters to DPP

- (1) On referral of a matter by a specialist youth officer for a conference under this Part, a conference administrator may consult with the specialist youth officer as to whether the matter should be dealt with by holding a conference if of the opinion that the matter should not be so dealt with, having regard to the following matters:
 - (a) the seriousness of the offence,
 - (b) the degree of violence involved in the offence,
 - (c) the harm caused to any victim,
 - (d) the number and nature of any offences committed by the child and the number of times the child has been dealt with under this Act.
- (2) If the conference administrator and the specialist youth officer, after consultation, fail to agree as to how a matter should be dealt with, the conference administrator must refer it to the Director of Public Prosecutions.
- (3) On referral of a matter, the Director of Public Prosecutions must, having regard to the matters set out in section 40 (5), determine whether the matter should be dealt with by giving a caution, by holding a conference or by commencing proceedings.
- (4) The Director of Public Prosecutions must, not later than 14 days after receiving a referral under this section, determine whether or not the child concerned is entitled to have the matter dealt with by holding a conference.
- (5) The Director of Public Prosecutions must notify the conference administrator of the Director's determination.
- (6) If the conference administrator and the specialist youth officer agree, or the Director of Public Prosecutions determines, that a matter should be dealt with by giving a caution, the conference administrator must refer the matter to a person authorised for the purposes of section 27 for a caution to be given under Part 4.
- (7) If the conference administrator and the specialist youth officer agree, or the Director of Public Prosecutions determines, that a matter should be dealt with by holding a conference, the conference administrator must appoint a conference convenor for the conference.

- (8) If the conference administrator and the specialist youth officer agree, or the Director of Public Prosecutions determines, that proceedings should be commenced, the conference administrator must refer the matter back to the specialist youth officer or other appropriate authority for the commencement of proceedings.

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Division 2 Conferences

42 Appointment of conference convenor

- (1) On referral of a matter for a conference under this Part, the conference administrator must appoint a conference convenor for the conference.
- (2) This section does not apply if the conference administrator refers a matter to the Director of Public Prosecutions under section 41.

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43 Time limit for holding conferences

A conference must, if practicable, be held not later than 21 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.

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44 Right not to proceed

- (1) A child may, at any time before a conference is held, decide not to proceed with the conference and elect that the matter be dealt with by a court.
- (2) A specialist youth officer who refers a matter for a conference may, at any time before the conference is held, determine:
- (a) 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, or
- (b) that the matter need not be dealt with by holding a conference and arrange for a caution to be given under Part 4.

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- (3) The Director of Public Prosecutions or a court may, at any time before a conference is held in relation to a matter referred by the Director or court, determine that the matter should not be dealt with by way of a conference.
- (4) A specialist youth officer, the Director of Public Prosecutions or a court must give written notice to the child of a determination made by the officer, Director or court under this section. 5

45 Preparation for conferences

- (1) The conference convenor must determine:
- (a) the date, time and place of the conference, and 10
- (b) the persons who should be invited to attend.
- (2) A conference convenor must, if practicable, before determining the matters referred to in subsection (1):
- (a) consult with the person or court that made the referral, the child who is the subject of the conference, a person responsible for the child and any victim, and 15
- (b) advise any victim of the victim's right to attend and to be accompanied by a support person or persons or to be represented by a person chosen by the victim, and
- (c) take into account the specific needs of the child and of any victim. 20
- (3) Before a conference is held, the conference convenor must give a written notice containing the following information to the child who is the subject of the conference:
- (a) the offence or offences in respect of which the conference is to be held, 25
- (b) the child's right to have a person responsible for the child, or an adult chosen by the child, present at the conference,
- (c) the date, time and place of the conference,
- (d) the name of the conference convenor, 30
- (e) any requirements to be met by the child,
- (f) the consequences of failure to attend the conference,
- (g) the right of the child to obtain legal advice and where that advice may be obtained,

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- (h) the right of the child to elect that the matter be dealt with by a court if the child does not wish to proceed with the conference.
- (4) Before a conference is held, the conference convenor must take all reasonable steps to notify any other persons who are entitled to attend, or who the convenor determines are to be invited to attend, of the date, time and place of the conference. 5
- (5) Before a conference is held, the conference convenor must take all reasonable steps to provide persons who are to attend the conference with information available to the convenor that, in the convenor's opinion, will be needed to reach a decision about the matter. 10
- (6) Before a conference is held, a conference convenor must ascertain, if practicable, the views about the matter of any persons who have been invited to attend but have advised that they will not be attending. 15

46 Location of conferences

A conference may be held at a location agreed by the participants and the conference convenor but may not be held at a police station, a court house or any office of the Department of Juvenile Justice. 20

47 Participants in conferences

- (1) The following persons are entitled to attend a conference:
- (a) the child the subject of the conference (whether or not the child is in custody), 25
- (b) the conference convenor,
- (c) a person responsible for the child,
- (d) members of the child's family or extended family,
- (e) an adult chosen by the child,
- (f) a legal practitioner advising the child, 30
- (g) the investigating official,
- (h) a specialist youth officer,
- (i) any victim or a person chosen by the victim as a representative of the victim,
- (j) a support person or persons for any victim. 35

- (2) If the conference convenor is of the opinion that it is appropriate, the conference convenor may invite any of the following persons to attend a conference:
- (a) a respected member of the community, for the purpose of advising conference participants about relevant issues, 5
 - (b) an interpreter,
 - (c) if the child has a communication or cognitive disability, an appropriately skilled person,
 - (d) if the child is under care, a social worker or other health professional, 10
 - (e) if the child is subject to probation or a community service order, the child's supervising officer,
 - (f) any other person requested by the child's family or extended family.
- (3) The conference convenor may permit a person to attend a conference for the purposes of carrying out research or evaluation that has been specifically approved by the Minister, but only with the consent of the child the subject of the conference and any victim. Any such person may not participate in the conference. 15 20

48 Conduct of conferences

- (1) A conference convenor must conduct a conference in a way that best assists the reaching of an agreement about an outcome plan in relation to the child and the offence concerned that complies with this Act and the regulations. 25
- (2) The participants at a conference may regulate the procedure at a conference as they think fit, subject to any guidelines prepared by the Director-General under section 49.
- (3) If the conference convenor is of the opinion that the presence of a person (other than the child or any victim) may frustrate the purpose or conduct of a conference, or is otherwise not in the best interests of the child, the convenor may, having regard to the views of the child, exclude that person from attending the conference at all or may, during the course of the conference, exclude the person from continuing to attend the conference. 30 35

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- (4) A conference must not make any recommendations or decisions if the participants are unable to determine whether the child admits the offence.
- (5) The conference convenor must, at or before a conference, notify the participants of the views of any person invited to attend but unable to do so, if the convenor is aware of those views. 5
- (6) A conference may be adjourned:
- (a) at any time with the consent of the participants, or
 - (b) at the request of the child, to allow discussions between the child and the child's family or the child and a person responsible for the child. 10
- (7) A conference must, if practicable, be concluded not later than 7 days after it is first convened.
- (8) A conference may be held in respect of more than one child at the same time and in respect of more than one offence alleged to have been committed by a child. 15

49 Guidelines for conduct of conferences

- (1) The Director-General may approve written guidelines for the conduct of conferences.
- (2) A conference convenor is to conduct a conference in accordance with any applicable guidelines approved under this section. 20

50 Representation at conferences

- (1) Except as provided by subsection (2), a child who is the subject of a conference is entitled to be advised (but not represented) by a legal practitioner at the conference. 25
- (2) The conference convenor may permit a child who is the subject of a conference to be represented by a legal practitioner at the conference, either generally or subject to such conditions or limitations as may be imposed by the convenor.
- (3) A conference may be adjourned at any time for the purpose of allowing a child to obtain legal advice or representation by a legal practitioner. 30

51 Non-attendance at conferences

If a child fails, without a reasonable excuse, to attend a conference, the conference convenor must refer the matter back to the person or body that referred the matter for a conference.

52 Outcomes of conferences

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- (1) The participants at a conference may agree to make such recommendations or decisions as they think fit. Any such decision that requires the compliance of the child is to be contained in the outcome plan agreed by the conference.
- (2) An outcome plan is, if possible, to be determined by consensus of the participants. 10
- (3) Despite subsection (2), an outcome plan may be agreed to by a conference even though it is not agreed to by all the participants but has no effect unless it is agreed to by the child and any victim of the offence or, if there are 2 victims, both victims and, in any other case, by more than half the victims. 15
- (4) The agreement of any victim is not required if the victim does not personally attend the conference.
- (5) Without limiting the kinds of decisions and recommendations that may be contained in an outcome plan, an outcome plan may provide for the following matters: 20
 - (a) the making of an oral or written apology, or both, to any victim,
 - (b) the making of reparation to any victim or the community,
 - (c) participation by the child in an appropriate program, 25
 - (d) the taking of actions directed towards the reintegration of the child into the community.
- (6) An outcome plan must:
 - (a) contain outcomes that are realistic and appropriate and sanctions that are not more severe than those that might have been imposed in court proceedings for the offence concerned, and 30
 - (b) set out times (not exceeding any limits imposed by the regulations) for the implementation of the plan, and

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- (c) not impose an obligation to do community service work that exceeds the period prescribed by the regulations for the purposes of this section, and
 - (d) if appropriate, provide for its monitoring, and
 - (e) comply with any requirements or limitations imposed on outcome plans by the regulations. 5
- (7) A conference convenor must notify a conference administrator of any outcome plan determined by the participants at a conference.

53 Failure of conference to reach decision

A conference convenor must refer a matter back to the person or body that referred the matter for a conference if the convenor is satisfied that the participants at a conference are unable to agree to an outcome plan or are unable to agree to an outcome plan that complies with this Act and the regulations. 10

54 Matters referred by courts

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- (1) A conference convenor must refer any outcome plan agreed to at a conference to a court, if the court referred the matter for a conference.
 - (2) The court may approve the plan or, if it does not, may continue the proceedings. 20
 - (3) A court that does not approve an outcome plan must notify the conference convenor and the relevant conference administrator.

55 Reconvening of conferences

- (1) A conference may be reconvened by the conference convenor, on the convenor's initiative or at the request of more than one participant in the conference, for the purpose of reconsidering any aspect of the outcome plan or any recommendation agreed at a conference. 25
- (2) In deciding whether to reconvene a conference, the conference convenor must consult with any victim. 30
- (3) A conference convenor must not reconvene a conference unless the conference convenor is satisfied that:
 - (a) it is in the interests of justice to do so, or
 - (b) the outcome plan or any recommendation of an outcome plan has become unsuitable or unworkable. 35

- (4) The participants at a reconvened conference may agree to vary or replace a previously agreed outcome plan.
- (5) A variation or replacement is, if possible, to be determined by consensus of the participants.
- (6) Despite subsection (5), an outcome plan may be varied or replaced even though it is not agreed to by all the participants but any such variation or replacement has no effect unless it is agreed to by the child and any victim of the offence or, if there are 2 victims, both victims and, in any other case, by more than half the victims. 5
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- (7) The agreement of any victim is not required if the victim does not personally attend the reconvened conference.
- (8) The conference convenor must notify a conference administrator of the result of a reconvened conference.
- (9) This Part applies to a reconvened conference in the same way as it applies to any other conference. 15

56 Satisfactory completion of outcome plans

- (1) A conference administrator is to supervise the monitoring and the implementation and completion of each outcome plan (including an outcome plan varied or replaced by a reconvened conference) and is to give written notice as to whether or not the outcome plan has been satisfactorily completed by the child. 20
- (2) The written notice under this section must be given to the child, any victim, the person or body that referred the matter for a conference, the Commissioner of Police (if the matter was referred by the Director of Public Prosecutions or a court) and any other person on whom the outcome plan imposed obligations. 25

57 Failure to complete outcome plans

- (1) A notice that a child has failed to satisfactorily complete an outcome plan given to the person or body that referred the matter for a conference is to be accompanied by a report from the conference convenor concerning the conference and may be accompanied by such other reports and recommendations as the conference administrator thinks fit. 30
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Note. Proceedings may be continued if an outcome plan is not satisfactorily completed (see section 64).

- (2) A court that referred a matter for a conference without making a finding that the child concerned was guilty of an offence must dismiss a charge against a child on receiving notice that an outcome plan relating to the offence concerned has been satisfactorily completed by the child.

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58 Further proceedings

If a child satisfactorily completes an outcome plan, no further criminal proceedings may be taken against the child for any offence in respect of which the conference was held or for any other offence in respect of which proceedings could not be commenced if the child had been convicted of the offence for which the conference was held.

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59 Records of conferences

- (1) A conference administrator must make a record of any conferences held under this Part and dealt with by the administrator.
- (2) The record is to contain the matters prescribed by the regulations for the purposes of this section.

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Division 3 Co-ordination of conferences**60 Conference convenors**

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- (1) The Director-General may appoint persons as conference convenors.
- (2) Schedule 1 has effect with respect to conference convenors.
- (3) A conference convenor has the following functions:
- (a) to prepare for, and to hold, conferences referred to the convenor by a conference administrator or specialist youth officer,
 - (b) any other functions conferred or imposed on the convenor by or under this or any other Act.
- (4) Without limiting subsection (1), a police officer may be appointed as a conference convenor under this section in the police officer's private capacity.

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Clause 61 Young Offenders Bill 1997

Part 5 Youth justice conferences
Division 3

61 Conference administrators

Conference administrators may be appointed under Part 2 of the *Public Sector Management Act 1988* for the purpose of carrying out administrative functions related to this Act.

Part 6 Miscellaneous

62 Act binds Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

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63 Proceedings for offences

Proceedings for an offence under this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

64 Continuation or commencement of proceedings

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- (1) A person or body may continue or commence proceedings against a child in respect of an offence even though an applicable limitation period for those proceedings has expired if:

(a) a decision not to give a caution or hold a conference is made under this Act, or

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(b) a child elects not to proceed with a caution or a conference or fails to attend a caution or conference, or

(c) a conference fails to reach agreement as to an outcome plan, or

(d) a child fails to satisfactorily complete an outcome plan.

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- (2) Proceedings for the offence must be commenced not later than the expiry date of the applicable limitation period or not later than 3 months after the matter is referred back to the person or body under this section, whichever is the later.

65 Publication and broadcasting of names

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- (1) The name of any child dealt with under this Act, or any information tending to identify any such child, must not be published or broadcast, whether before or after the matter involving the child is finally dealt with under this Act.

- (2) A person who publishes or broadcasts the name of any child or any information the publication or broadcasting of which is prohibited by subsection (1) is guilty of an offence.
- Maximum penalty: 500 penalty units (in the case of a corporation) or 50 penalty units or imprisonment for 12 months, or both, in any other case. 5
- (3) Subsection (1) does not prohibit:
- (a) the publication or broadcasting of an official report of the proceedings of a court that includes the name of any child or any information the publication or broadcasting of which would otherwise be prohibited by subsection (1), or 10
- (b) the publication or broadcasting of the name of a child or any information about such a child who is over the age of 16 years at the time of publication or broadcasting with the consent of the child. 15
- (4) For the purposes of this section, a reference to the name of a child includes a reference to any information, picture or other material that identifies the child or is likely to lead to the identification of the child.

66 Disclosure of records 20

- (1) A person who acquires information or prepares a record in the exercise of functions under this Act must not, directly or indirectly, divulge the information to another person except in the exercise of functions under this Act.
- Maximum penalty: 500 penalty units (in the case of a corporation) or 50 penalty units or imprisonment for 12 months, or both, in any other case. 25
- (2) Despite subsection (1), information may be divulged in the following circumstances:
- (a) records of, or relating to, cautions and conferences may be divulged to the child, a person responsible for the child or a legal representative of the child, 30
- (b) records of, or relating to, cautions and conferences under this Act may be divulged to an investigating official, specialist youth officer, conference convenor, conference 35

administrator, the Director of Public Prosecutions or a court for the purpose of determining whether or not to take action under this Act,

- (c) records of, or relating to, cautions and conferences under this Act may be divulged to the Children's Court for the purpose of making a decision concerning sentencing. 5

67 Certain statements not admissible

- (1) Any statement, confession, admission or information made or given by a child during the giving of a caution or a conference under this Act is not to be admitted in evidence in any subsequent criminal proceedings. 10
- (2) Despite subsection (1), an outcome plan agreed at a conference may be produced to a court if the court has referred a matter for a conference.

68 Interventions not to be disclosed as criminal history 15

- (1) If a person has been the subject of a caution or conference under this Act:
- (a) the person is not required to disclose to any other person for any purpose information concerning the caution or conference, and 20
- (b) a question concerning the person's criminal history is taken not to refer to any such caution or conference, and
- (c) in the application to the person of a provision of an Act or statutory instrument, a reference in the provision to the person's character or fitness is not to be interpreted as permitting or requiring account to be taken of any such warning, caution or conference. 25
- (2) Subsection (1) does not apply in relation to:
- (a) an application by a person for appointment or employment as a judge, magistrate, justice of the peace, police officer, prison officer, teacher, teachers aide or a provider of child care services under Part 3 of the *Children (Care and Protection) Act 1987*, or 30

- (b) an offence of arson or attempted arson if the person seeks to be appointed or employed in fire fighting or fire prevention, or
- (c) proceedings before the Children's Court (including a decision concerning sentencing). 5

69 Investigating officials may act on other matters

Nothing in this Act prevents an investigating official from acting on information obtained during the course of a caution or conference in relation to offences other than offences the subject of the conference. 10

70 Youth Justice Advisory Committee

- (1) There is to be a Youth Justice Advisory Committee consisting of the following members:
 - (a) a person appointed by the Minister to be the chairperson of the Committee, being a person who, in the opinion of the Minister, possesses qualifications and experience that are relevant to the Committee's functions and who is not a public servant, 15
 - (b) a representative nominated by the Juvenile Justice Advisory Council, 20
 - (c) a representative nominated by the Juvenile Crime Prevention Advisory Committee,
 - (d) the Director-General of the Attorney General's Department or a nominee of the Director-General,
 - (e) the Director-General of Juvenile Justice or a nominee of the Director-General, 25
 - (f) the Commissioner of Police or a nominee of the Commissioner of Police,
 - (g) the Director of the Office of Children and Young Persons in the Cabinet Office or a nominee of the Director, 30
 - (h) a person representing the interests of victims, appointed by the Minister,
 - (i) a person representing the interests of children and young people, appointed by the Minister,

-
- (j) such other persons as are determined in accordance with the regulations.
 - (2) The Youth Justice Advisory Committee has the function of advising the Minister and the Director-General on the following:
 - (a) the making of regulations, 5
 - (b) the preparation of guidelines for conferences,
 - (c) the selection criteria for, appointment of and training of conference convenors,
 - (d) the conduct of the review under section 76,
 - (e) the performance of monitoring and evaluation of the Act, 10 whether or not required by the Act,
 - (f) any other matter relevant to the administration of Part 5 or any other provisions of the Act.
 - (3) The regulations may make provision for or with respect to the procedure, nomination of members, terms of members and remuneration of members of the Youth Justice Advisory Committee. 15

71 Giving of notices

- If by or under this Act a document is required or permitted to be given to or served on a person, the document may be given or served: 20
- (a) by delivering it personally to the person, or
 - (b) by leaving it at that person's usual or last known place of residence with a person apparently over the age of 16 years and apparently residing there, or 25
 - (c) by sending it by post addressed to the person at that person's usual or last known place of residence, or
 - (d) if a manner of service is prescribed by any other Act or law in relation to a person or class of persons, by being served in that manner. 30

72 Liability of officers under Act

- (1) Any matter or thing done by the Director-General, a conference administrator, a conference convenor, a person giving a caution (other than a police officer or specialist youth officer) or a person acting under the direction of the Director-General, conference 35

administrator or convenor does not subject the Director-General, conference administrator, conference convenor or person so acting personally to any action, liability, claim or demand if the matter or thing was done in good faith for the purpose of executing this or any other Act.

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- (2) A person referred to in subsection (1) is not liable for an offence under section 316 (1) of the *Crimes Act 1900* in respect of information obtained by the person in the course of a conference.

73 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 10
- (2) In particular, the regulations may make provision for or with respect to the following matters: 15
- (a) the content and keeping of records required to be made under this Act,
 - (b) notification of referrals of children for conferences,
 - (c) authorising the bringing of children or parents who are in custody to conferences and ensuring the dignity and full participation in conferences of persons brought from custody to conferences, 20
 - (d) outcome plans,
 - (e) the provision by the Director-General to the Commissioner of Police of information, records, or parts of records, relating to conferences held under this Act, 25
 - (f) the provision by the Director-General or the Commissioner of Police of information, records, or parts of records, relating to cautions and conferences under this Act, to persons for statistical or research purposes. 30
- (3) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

74 Amendment of Children (Criminal Proceedings) Act 1987 No 55

The *Children (Criminal Proceedings) Act 1987* is amended as set out in Schedule 2.

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75 Savings and transitional provisions

Schedule 3 has effect.

76 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. 5
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the date of commencement of this section.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years. 10

Schedule 1 Conference convenors

(Section 60)

1 Term of office

Subject to this Schedule, a conference convenor holds office for such period (not exceeding 3 years) as is specified in the convenor's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment. 5

2 Remuneration

A conference convenor is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the conference convenor. 10

3 Vacancy in office

- (1) The office of a conference convenor becomes vacant if the convenor: 15
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Director-General, or
 - (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or 20
 - (e) becomes a mentally incapacitated person, or
 - (f) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable. 25
- (2) The Director-General may remove a conference convenor from office at any time. 30

4 Effect of certain other Acts

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a conference convenor.
- (2) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or 5
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a conference convenor or from accepting and retaining any remuneration payable to the person under this Act as a convenor. 10
- (3) The office of a conference convenor is not, for the purposes of any Act, an office or place of profit under the Crown. 15

Schedule 2 Amendment of Children (Criminal Proceedings) Act 1987

(Section 74)

[1] Section 15 Evidence of prior offences and other matters not admissible in certain criminal proceedings

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Insert "or (3)" after "subsection (1)" in section 15 (2).

[2] Section 15 (3)

Omit the subsection. Insert instead:

- (3) The fact that a person has been dealt with by a warning, caution or youth justice conference under the *Young Offenders Act 1997* (being in respect of an alleged offence committed when the person was a child) is not to be admitted in evidence (whether as to guilt or the imposition of any penalty) in any criminal proceedings subsequently taken against the person in respect of any other offence.

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[3] Section 33 Penalties

Insert after section 33 (1) (c):

- (c1) it may make an order releasing the person on condition that the person complies with an outcome plan determined at a conference held under the *Young Offenders Act 1997*,

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Schedule 3 Savings and transitional provisions

(Section 75)

1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act. 5
- (2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as: 10
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before its publication. 15

2 Existing proceedings

A court may take action under Part 4 or 5 in respect of criminal proceedings commenced, but not completed, before the commencement of this clause. 20

3 Early implementation of Act

- (1) Regulations under clause 1 may limit the application of provisions of this Act to offences occurring in a specified part or parts of New South Wales for a specified period or periods.
- (2) If a regulation is made under this clause, the application of the Act is limited as specified by the regulation even though the specified provisions of the Act have commenced. 25

Young Offenders Bill 1997

Schedule 3 Savings and transitional provisions

- (3) A regulation made under this clause ceases to have effect on the date that is 12 months after the date of commencement of this clause.



New South Wales

Young Offenders Act 1997 No 54

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New South Wales

Young Offenders Act 1997 No 54

Act No 54, 1997

An Act to establish procedures for dealing with children who commit certain offences through the use of youth justice conferences, cautions and warnings instead of court proceedings; and for other purposes. [Assented to 2 July 1997]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Young Offenders Act 1997*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Objects of Act

The objects of this Act are:

- (a) to establish a scheme that provides an alternative process to court proceedings for dealing with children who commit certain offences through the use of youth justice conferences, cautions and warnings, and
- (b) to establish a scheme for the purpose of providing an efficient and direct response to the commission by children of certain offences, and
- (c) to establish and use youth justice conferences to deal with alleged offenders in a way that:
 - (i) enables a community based negotiated response to offences involving all the affected parties, and
 - (ii) emphasizes restitution by the offender and the acceptance of responsibility by the offender for his or her behaviour, and
 - (iii) meets the needs of victims and offenders.

4 Definitions

In this Act:

adult means a person who is of or over the age of 18 years.

broadcast includes broadcast by radio, television or any on-line service.

caution means a formal police caution relating to an offence given under Part 4.

child means a person who is of or over the age of 10 years and under the age of 18 years.

conference means a youth justice conference convened or proposed to be convened under Part 5.

conference administrator means a person appointed as a conference administrator as referred to in section 61.

conference convenor means a person appointed as a conference convenor under section 60.

Director-General means the Director-General of Juvenile Justice.

exercise a function includes perform a duty.

function includes a power, authority or duty.

investigating official means:

- (a) a police officer, or
- (b) a person appointed by or under an Act and whose functions include functions in respect of the prevention or investigation of offences, prescribed by the regulations for the purposes of this definition.

on-line service means a service provided by or through the facilities of a computer communication system and access through a telecommunications network that allows for:

- (a) the input, output or examination of computer data or computer programs, or
- (b) the transmission of computer data.

parent of a child includes:

- (a) a guardian of the child, and
- (b) a person who has the lawful custody of the child,

but does not include the father or mother of the child if the father or mother, as the case may be, has neither guardianship nor custody of the child.

person responsible for a child means:

- (a) a parent of the child, or
- (b) a person who has the care of the child (whether or not the person has the custody of the child).

specialist youth officer means a member of the Police Service appointed as a specialist youth officer for the purposes of this Act by the Commissioner of Police.

traffic offence has the same meaning as it has in the *Children (Criminal Proceedings) Act 1987*.

victim has the meaning given by section 5.

5 Meaning of “victim”

- (1) For the purposes of this Act, a victim means a person who suffers harm as a direct result of an act committed, or apparently committed, by a child in the course of a criminal offence.
- (2) A person suffers harm if, as a result of such an act:
 - (a) the person suffers actual physical bodily harm, mental illness or nervous shock, or
 - (b) the person's property is deliberately taken, destroyed or damaged.
- (3) For the purposes of this Act, a victim that is an organisation or a Government authority may be represented by an officer of, or other person nominated by, the organisation or authority.

6 Notes

Notes in the text of this Act do not form part of this Act.

Part 2 General principles of scheme

7 Principles of scheme

The principles that are to guide the operation of this Act, and persons exercising functions under this Act, are as follows:

- (a) The principle that the least restrictive form of sanction is to be applied against a child who is alleged to have committed an offence, having regard to matters required to be considered under this Act.
- (b) The principle that children who are alleged to have committed an offence are entitled to be informed about their right to obtain legal advice and to have an opportunity to obtain that advice.
- (c) The principle that criminal proceedings are not to be instituted against a child if there is an alternative and appropriate means of dealing with the matter.
- (d) The principle that criminal proceedings are not to be instituted against a child solely in order to provide any assistance or services needed to advance the welfare of the child or his or her family or family group.
- (e) The principle that, if it is appropriate in the circumstances, children who are alleged to have committed an offence should be dealt with in their communities in order to assist their reintegration and to sustain family and community ties.
- (f) The principle that parents are to be recognised and included in justice processes involving children and that parents are to be recognised as being primarily responsible for the development of children.
- (g) The principle that victims are entitled to receive information about their potential involvement in, and the progress of, action taken under this Act.

8 Offences covered by Act

- (1) The offences covered by this Act are, except as provided by this Act:
 - (a) summary offences, and

- (b) indictable offences that may be dealt with summarily under Part 9A of the *Criminal Procedure Act 1986* or another prescribed law,

committed, or alleged to have been committed, by children.

- (2) Despite subsection (1), an offence is not covered by this Act if:

- (a) the principal person who investigates the offence is not an investigating official within the meaning of this Act, or
- (b) the offence is a traffic offence committed by a child who was, when the alleged offence occurred, old enough to obtain a licence or permit under the *Traffic Act 1909* to drive the motor vehicle to which the offence relates, or
- (c) the offence results in the death of any person, or
- (d) the offence is an offence under section 61E, 61L, 61M, 61N, 61O (1), (1A) or (2), 66C, 66D, 78Q, 80, 81A or 81B of the *Crimes Act 1900*, or
- (e) the offence is an offence under Part 15A (Apprehended violence) of the *Crimes Act 1900*, or
- (f) the offence is an offence under the *Drug Misuse and Trafficking Act 1985* (other than an offence under section 23 (1) (a) or (c) of that Act that, in the opinion of the investigating official or prosecuting authority, involves not more than the small quantity applicable to the prohibited plant within the meaning of that Act, or an offence under section 27 or 28 of that Act of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence under section 23 (1) (a) or (c)), or
- (g) the offence is prescribed by the regulations for the purposes of this section.

9 Procedures under scheme

- (1) The procedures available for dealing with children who have committed, or are alleged to have committed, offences covered by this Act are as follows:
 - (a) a warning may be given, including a warning in accordance with Part 3,

- (b) a caution may be given, but only if it is a caution given in accordance with Part 4,
 - (c) a conference may be held, but only if it is a youth justice conference held in accordance with Part 5.
- (2) An investigating official dealing with a child who has committed, or is alleged to have committed, an offence must, before issuing a summons or attendance notice or otherwise commencing criminal proceedings against the child, determine:
 - (a) whether the offence is one covered by this Act, and
 - (b) in the case of such an offence, whether the child should be dealt with under Part 3 or 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.
- (3) An investigating official may, at any time after commencing proceedings and before the proceedings are heard, decide to deal with a child alleged to have committed an offence under Part 4 or consider whether the matter should be referred to a specialist youth officer under Part 5, if the investigating official forms the opinion that the child is entitled to be dealt with under Part 4 or Part 5.

10 Admission of offences

An admission by a child of an offence is not an admission for the purposes of this Act unless it takes place in the presence of:

- (a) a person responsible for the child, or
- (b) an adult (other than an investigating official) who is present with the consent of a person responsible for the child, or
- (c) if the child is 16 years or over, an adult chosen by the child, or
- (d) a legal practitioner chosen by the child.

11 Relationship with other legislation

- (1) This Act does not affect any jurisdiction conferred on the Children's Court under the *Children (Criminal Proceedings) Act 1987* or on any other court under any other law.

- (2) This Act is in addition to, and does not limit, the requirements of any law relating to evidence.

12 Relationship with other procedures

This Act does not affect the functions of any person dealing with an offence or alleged offence, to give a warning for, or take any other action in relation to, an offence or alleged offence if:

- (a) the person is not an investigating official, or
- (b) the offence is not an offence covered by this Act, whether or not the person is an investigating official.

Part 3 Warnings

13 Offences for which warnings may be given

A warning may be given for a summary offence covered by this Act, other than an offence prescribed by the regulations for the purposes of this section.

Note. Section 8 sets out offences covered by this Act.

14 Entitlement to be dealt with by warning

- (1) A child who has committed or is alleged to have committed an offence in respect of which a warning may be given is entitled to be dealt with by warning.
- (2) Despite subsection (1), the child is not entitled to be dealt with by warning if:
 - (a) the circumstances of the offence involve violence, or
 - (b) in the opinion of the investigating official, it is more appropriate to deal with it by another means because it is not in the interests of justice for the matter to be dealt with by warning.
- (3) A child is not precluded from being given a warning merely because the child has previously committed offences or been dealt with under this Act.
- (4) If an investigating official is of the opinion that it is not in the interests of justice to deal with a matter by warning a child and that it is appropriate to deal with it by other means, the investigating official must consider whether to deal with the matter under Part 4 or to refer it to a specialist youth officer under section 21 (2) for consideration of whether action should be taken under Part 5.

15 Giving of warnings

- (1) A warning is to be given by the investigating official and may be given at any place, including a place where the child is found.

- (2) An investigating official who gives a warning to a child must not:
 - (a) attach any conditions to the giving of a warning, or
 - (b) impose any additional sanctions on a child to whom a warning is given.
- (3) A warning may be given to more than one child at the same time.

16 Explanation of warnings

An investigating official who gives a warning to a child must take steps to ensure that the child understands the purpose, nature and effect of the warning.

17 Records of warnings

An investigating official must make a record of any warnings given by the official under this Part but must not record the name of the child concerned or any information that might identify the child other than information relating to age, gender or racial background.

Part 4 Cautions

18 Offences for which cautions may be given

A caution may be given for an offence covered by this Act, other than an offence prescribed by the regulations for the purposes of this section.

Note. Section 8 sets out offences covered by this Act.

19 Conditions required to be able to give caution

A formal police caution against further offending may be arranged and given in relation to an offence to a child who is alleged to have committed the offence, if:

- (a) the offence is one for which a caution may be given, and
- (b) the child admits the offence, and
- (c) the child consents to the giving of the caution, and
- (d) the child is entitled to be given a caution.

20 Entitlement to be dealt with by caution

- (1) A child who is alleged to have committed an offence for which a caution may be given is entitled to be dealt with by caution if the investigating official determines that the matter is not appropriate for a warning or the offence is one for which a warning may not be given.
- (2) Despite subsection (1), the child is not entitled to be dealt with by caution if, in the opinion of the investigating official, it is more appropriate to deal with it by other means because it is not in the interests of justice for the matter to be dealt with by giving a caution.
- (3) In considering whether it is appropriate to deal with a matter by caution, an investigating official is to consider the following:
 - (a) the seriousness of the offence,
 - (b) the degree of violence involved in the offence,
 - (c) the harm caused to any victim,
 - (d) the number and nature of any offences committed by the child and the number of times the child has been dealt with under this Act,

- (e) any other matter the official thinks appropriate in the circumstances.
- (4) Despite subsection (1), an investigating official may, if of the opinion that the victim has suffered substantial harm or that the circumstances of the victim are such that it is appropriate to do so, refer the matter to a specialist youth officer to determine whether the matter should be dealt with under this Part or Part 5 even though the offence does not involve any degree of violence or is not of a serious nature.
- (5) A specialist youth officer to whom a matter is referred under subsection (4) may arrange for a caution to be given under this Part or take action under Part 5 and, in determining whether to do so, may take into account the fact that the victim has suffered substantial harm or the circumstances of the victim.
- (6) A child is not precluded from being given a caution merely because the child has previously committed offences or been dealt with under this Act.

21 Determination by investigating official

- (1) If an investigating official determines that a child should be dealt with under this Part, the investigating official must arrange for a caution to be given.
- (2) If an investigating official is of the opinion that it is not in the interests of justice for a matter to be dealt with by way of a caution, the investigating official must refer the matter to a specialist youth officer to consider whether the child should be dealt with under Part 5.

22 Explanations to children

- (1) Before an investigating official proceeds to arrange for a caution to be given under this Part, the investigating official must explain the following matters to the child concerned:
 - (a) the nature of the offence and the circumstances out of which it is alleged to arise,
 - (b) that the child is entitled to obtain legal advice and where that advice may be obtained,

- (c) that the child is entitled to elect that the matter be dealt with by a court,
 - (d) the purpose, nature and effect of the caution.
- (2) An investigating official must, if practicable, ensure that an explanation takes place in the presence of:
 - (a) a person responsible for the child, or
 - (b) an adult (other than an investigating official) who is present with the consent of a person responsible for the child, or
 - (c) if the child is 16 years or over, an adult chosen by the child, or
 - (d) a legal practitioner chosen by the child.

23 Referrals for cautions

- (1) A child may be referred for a caution under this Part by the Director of Public Prosecutions if:
 - (a) the offence is one for which a caution may be given under this Part, and
 - (b) the child admits the offence, and
 - (c) the child consents to the giving of the caution.
- (2) In determining whether to refer a matter for a caution, the Director of Public Prosecutions is to take into account the following matters:
 - (a) the seriousness of the offence,
 - (b) the degree of violence involved in the offence,
 - (c) the harm caused to any victim,
 - (d) the number and nature of any offences committed by the child and the number of times the child has been dealt with under this Act,
 - (e) any other matter the Director thinks appropriate in the circumstances.
- (3) The referral is to be made to a person authorised in writing by the Commissioner of Police for the purposes of this section.

- (4) The authorised person must arrange for a caution to be given to the child under this Part.

24 Notice of caution

- (1) Before a caution is given to a child, the person arranging for the caution to be given must give a written notice to the child.
- (2) The notice must contain the following information:
- (a) the offence in respect of which the caution is to be given,
 - (b) the persons who may be present when the caution is given,
 - (c) the purpose, nature and effect of the caution,
 - (d) the date, time and place at which the caution is to be given,
 - (e) the name of a police officer who is a contact officer concerning the caution,
 - (f) the consequences of failure to attend the giving of the caution,
 - (g) the right of the child to obtain legal advice and where that advice may be obtained,
 - (h) the right of the child to elect that the matter be dealt with by a court if the child does not wish to proceed with the caution.
- (3) The notice must be given in a form approved by the Commissioner of Police and be expressed in language readily capable of being understood by children.

25 Right not to proceed

- (1) A child may, at any time before a caution is given to the child, decide not to proceed with the caution and elect that the matter be dealt with by a court.
- (2) An investigating official who arranges for a caution to be given may, at any time before the caution is given, determine that it is not in the interests of justice for the matter to be dealt with by way of a caution and refer the matter to a specialist youth officer for consideration of whether action should be taken under Part 5.

- (3) The Director of Public Prosecutions may, at any time before a caution is given in respect of an offence referred by the Director under this Part, determine that it is not in the interests of justice for the matter to be dealt with by way of a caution and refer the matter to a conference administrator under Part 5 or commence proceedings.
- (4) An investigating official or the Director of Public Prosecutions must give written notice to the child concerned of any determination by the official or Director under this section.

26 Place and time of cautions

- (1) A caution must, if practicable, be given not less than 10 days, and not more than 21 days, after notice of the caution is given under this Part.
- (2) A caution is to be given at a police station.
- (3) Despite subsection (2), a caution may be given at a place other than a police station, if the person giving the caution is of the opinion that it is appropriate in the circumstances to do so.

27 Persons who may give cautions

- (1) A caution is to be given by a police officer or specialist youth officer authorised in writing by the Commissioner of Police to give cautions under this Act.
- (2) Despite subsection (1), a caution may be given by a respected member of the community at the request of any such officer, if the officer is of the opinion that it is appropriate in the circumstances to do so. For example, a caution may be given by a respected member of the Aboriginal community if the child is a member of that community.

28 Persons who may accompany child

The following persons, but no other persons, may be present when a caution is given to a child:

- (a) the child and the person giving the caution,
- (b) a person responsible for the child,
- (c) members of the child's family or extended family,
- (d) an adult chosen by the child,

- (e) a respected member of the community chosen by the child, if the person arranging the caution is of the opinion that it is appropriate in the circumstances to do so,
- (f) an interpreter,
- (g) if the child has a communication or cognitive disability, an appropriately skilled person,
- (h) if the child is under care, a social worker or other health professional,
- (i) if the child is subject to probation or a community service order, the child's supervising officer,
- (j) if the investigating official is not giving the caution, the investigating official.

29 Giving of cautions

- (1) A person who gives a caution to a child must take steps to ensure that the child understands the purpose, nature and effect of the caution.
- (2) If a child who is to be cautioned has a communication or cognitive disability, it is the duty of the person giving the caution, so far as practicable, to give the caution in the presence of an interpreter or other appropriately skilled person and, if necessary, to obtain the assistance of such a person in giving the caution.
- (3) It is the duty of the person giving the caution to ensure, so far as practicable, that a person responsible for the child or an adult chosen by the child is present when the caution is given.
- (4) A person who gives a caution to a child may request the child being cautioned to provide a written apology to any victim of the alleged offence.
- (5) A person who gives a caution to a child must not:
 - (a) attach any conditions to the giving of the caution, or
 - (b) impose any additional sanctions on the child, other than a request of the kind referred to in subsection (4).
- (6) A caution may be given to more than one child at the same time and in respect of more than one offence alleged to have been committed by a child.

30 Caution notice

- (1) A caution notice containing the following information must be given to a child after the child is cautioned and must be signed by the child:
 - (a) the child's name,
 - (b) the name and rank (if any) of the person who gave the caution,
 - (c) details of the offence concerned,
 - (d) the place, date and time of the caution,
 - (e) the persons present when the caution was given,
 - (f) the purpose, nature and effect of the caution.
- (2) The caution notice must be expressed in language readily capable of being understood by children.

31 Cautions by courts

- (1) A child may be given a caution by a court if:
 - (a) the offence is one for which a caution may be given under this Part, and
 - (b) the child admits the offence.
- (2) This Part (other than this section and sections 32 and 33) does not apply to a caution given by a court.
- (3) Nothing in this Part affects the power of a court to give a caution under section 33 of the *Children (Criminal Proceedings) Act 1987*.

32 Further proceedings

If a caution is given to a child under this Part, no further proceedings may be taken against the child for the offence in respect of which the caution is given or for any other offence in respect of which proceedings could not be commenced if the child had been convicted of the offence for which the caution was given.

33 Records of cautions

- (1) A police officer, specialist youth officer or a court must make a record of any cautions given by the officer or court under this Part.
- (2) The record is to contain the matters prescribed by the regulations for the purposes of this section.

Part 5 Youth justice conferences

Division 1 Preliminary

34 Principles and purposes of conferencing

- (1) The principles that are to guide the operation of this Part and persons exercising functions under this Part, are as follows:
 - (a) The principle that measures for dealing with children who are alleged to have committed offences are to be designed so as:
 - (i) to promote acceptance by the child concerned of responsibility for his or her own behaviour, and
 - (ii) to strengthen the family or family group of the child concerned, and
 - (iii) to provide the child concerned with developmental and support services that will enable the child to overcome the offending behaviour and become a fully autonomous individual, and
 - (iv) to enhance the rights and place of victims in the juvenile justice process, and
 - (v) to be culturally appropriate, wherever possible, and
 - (vi) to have due regard to the interests of any victim.
 - (b) The principle that sanctions imposed on children who commit offences are:
 - (i) to be of a kind most likely to promote the development of such children within their family or family group, and
 - (ii) to take the least restrictive form that is appropriate in the circumstances, and
 - (iii) to assist children to accept responsibility for offences.

- (c) The principle that any measures for dealing with, or sanctions imposed on, children who are alleged to have committed offences take into account:
 - (i) the age and level of development of any such children, and
 - (ii) the needs of any children who are disadvantaged or who are disconnected from their families, and
 - (iii) the needs of any children with disabilities, especially those with communication and cognitive difficulties, and
 - (iv) the gender, race and sexuality of any such children.
- (2) The purpose of a conference is to make decisions and recommendations about, and to determine an outcome plan in respect of, the child who is the subject of the conference.
- (3) In reaching decisions at a conference, the participants are to have regard to the principles set out in this section and the following matters:
 - (a) the need to deal with children in a way that reflects their rights, needs and abilities and provides opportunities for development,
 - (b) the need to hold children accountable for offending behaviour,
 - (c) the need to encourage children to accept responsibility for offending behaviour,
 - (d) the need to empower families and victims in making decisions about a child's offending behaviour,
 - (e) the need to make reparation to any victim.

35 Offences for which conferences may be held

A conference may be held for an offence covered by this Act, other than an offence prescribed by the regulations for the purposes of this section.

Note. Section 8 sets out offences covered by this Act.

36 Conditions required to be met before conference may be held

A conference may be arranged and held in respect of a child who is alleged to have committed an offence, if:

- (a) the offence is one for which a conference may be held, and
- (b) the child admits the offence, and
- (c) the child consents to the holding of the conference, and
- (d) the child is entitled to be dealt with by holding a conference.

37 Entitlement to be dealt with by conference

- (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 the investigating official determines that the matter is not appropriate for a caution.
- (2) Despite subsection (1), the child is not entitled to be dealt with by holding a conference if, in the opinion of the specialist youth officer to whom the matter is referred, it is more appropriate to deal with it by commencing proceedings against the child or by giving a caution because it is not in the interests of justice for the matter to be dealt with by holding a conference.

Note. A matter is referred to a specialist youth officer by an investigating official if the investigating official is of the opinion that it is not in the interests of justice that a warning or caution be given (see sections 14 (4) and 21).

- (3) In considering whether it is appropriate to deal with a matter by conference, a specialist youth officer is to consider the following:
 - (a) the seriousness of the offence,
 - (b) the degree of violence involved in the offence,
 - (c) the harm caused to any victim,
 - (d) the number and nature of any offences committed by the child and the number of times the child has been dealt with under this Act,
 - (e) any other matter the official thinks appropriate in the circumstances.
- (4) A specialist youth officer must, not later than 14 days after receiving a referral under section 14 (4) or 21 (2), determine whether or not the child concerned is entitled to have the matter dealt with by holding a conference.

- (5) A child is not precluded from being dealt with by a conference merely because the child has previously committed offences or been dealt with under this Act in relation to other matters.

38 Determinations by specialist youth officers

- (1) If a specialist youth officer determines that a conference should be held in respect of an alleged offence committed by a child, the specialist youth officer must refer the matter to a conference administrator for a conference.
- (2) If a specialist youth officer is of the opinion that a matter should be dealt with by giving a caution and need not be dealt with by holding a conference, the specialist youth officer must refer the matter to a person authorised for the purposes of section 27 for a caution to be given under Part 4.
- (3) If a specialist youth officer is of the opinion that a matter should be dealt with by commencing proceedings against the child, the specialist youth officer must refer the matter to an investigating official or other appropriate authority for the commencement of proceedings.

39 Explanations to children

- (1) Before a specialist youth officer proceeds to refer a matter for a conference under this Part, the specialist youth officer must explain the following matters to the child concerned:
 - (a) the nature of the offence and the circumstances out of which it is alleged to have arisen,
 - (b) that the child is entitled to obtain legal advice and where that advice may be obtained,
 - (c) that the child is entitled to elect that the matter be dealt with by a court,
 - (d) what a conference is and the effect of the conference.
- (2) A specialist youth officer must, if practicable, ensure that an explanation takes place in the presence of:
 - (a) a person responsible for the child, or

- (b) an adult (other than an investigating official) who is present with the consent of a person responsible for the child, or
- (c) if the child is 16 years or over, an adult chosen by the child, or
- (d) a legal practitioner chosen by the child.

40 Referrals for conferences by DPP and courts

- (1) The Director of Public Prosecutions or a court may refer a matter involving a child who is alleged to have committed an offence to a conference administrator for a conference if:
 - (a) the offence is one for which a conference may be held, and
 - (b) the child admits the offence, and
 - (c) in the case of a referral by the Director of Public Prosecutions, the child consents to the holding of the conference, and
 - (d) the Director or court is of the opinion that a conference should be held under this Part.
- (2) An offence may be referred under this section even though the offence was not dealt with by an investigating official.
- (3) A court may refer a matter at any stage in proceedings, including after a finding that a child is guilty of an offence.
- (4) The Director of Public Prosecutions or a court must notify the Commissioner of Police in writing of the particulars of any referral after making a referral under this section.
- (5) In determining whether to refer a matter for the holding of a conference, the Director of Public Prosecutions or a court is to take into account the following matters:
 - (a) the seriousness of the offence,
 - (b) the degree of violence involved in the offence,
 - (c) the harm caused to any victim,
 - (d) the number and nature of any offences committed by the child and the number of times the child has been dealt with under this Act,
 - (e) any other matter the Director or court thinks appropriate in the circumstances.

41 Conference administrator may refer matters to DPP

- (1) On referral of a matter by a specialist youth officer for a conference under this Part, a conference administrator may consult with the specialist youth officer as to whether the matter should be dealt with by holding a conference if of the opinion that the matter should not be so dealt with, having regard to the following matters:
 - (a) the seriousness of the offence,
 - (b) the degree of violence involved in the offence,
 - (c) the harm caused to any victim,
 - (d) the number and nature of any offences committed by the child and the number of times the child has been dealt with under this Act.
- (2) If the conference administrator and the specialist youth officer, after consultation, fail to agree as to how a matter should be dealt with, the conference administrator must refer it to the Director of Public Prosecutions.
- (3) On referral of a matter, the Director of Public Prosecutions must, having regard to the matters set out in section 40 (5), determine whether the matter should be dealt with by giving a caution, by holding a conference or by commencing proceedings.
- (4) The Director of Public Prosecutions must, not later than 14 days after receiving a referral under this section, determine whether or not the child concerned is entitled to have the matter dealt with by holding a conference.
- (5) The Director of Public Prosecutions must notify the conference administrator of the Director's determination.
- (6) If the conference administrator and the specialist youth officer agree, or the Director of Public Prosecutions determines, that a matter should be dealt with by giving a caution, the conference administrator must refer the matter to a person authorised for the purposes of section 27 for a caution to be given under Part 4.
- (7) If the conference administrator and the specialist youth officer agree, or the Director of Public Prosecutions determines, that a matter should be dealt with by holding a conference, the conference administrator must appoint a conference convenor for the conference.

- (8) If the conference administrator and the specialist youth officer agree, or the Director of Public Prosecutions determines, that proceedings should be commenced, the conference administrator must refer the matter back to the specialist youth officer or other appropriate authority for the commencement of proceedings.

Division 2 Conferences

42 Appointment of conference convenor

- (1) On referral of a matter for a conference under this Part, the conference administrator must appoint a conference convenor for the conference.
- (2) This section does not apply if the conference administrator refers a matter to the Director of Public Prosecutions under section 41.

43 Time limit for holding conferences

A conference must, if practicable, be held not later than 21 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.

44 Right not to proceed

- (1) A child may, at any time before a conference is held, decide not to proceed with the conference and elect that the matter be dealt with by a court.
- (2) A specialist youth officer who refers a matter for a conference may, at any time before the conference is held, determine:
- (a) 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, or
 - (b) that the matter need not be dealt with by holding a conference and arrange for a caution to be given under Part 4.

- (3) The Director of Public Prosecutions or a court may, at any time before a conference is held in relation to a matter referred by the Director or court, determine that the matter should not be dealt with by way of a conference.
- (4) A specialist youth officer, the Director of Public Prosecutions or a court must give written notice to the child of a determination made by the officer, Director or court under this section.

45 Preparation for conferences

- (1) The conference convenor must determine:
 - (a) the date, time and place of the conference, and
 - (b) the persons who should be invited to attend.
- (2) A conference convenor must, if practicable, before determining the matters referred to in subsection (1):
 - (a) consult with the person or court that made the referral, the child who is the subject of the conference, a person responsible for the child and any victim, and
 - (b) advise any victim of the victim's right to attend and to be accompanied by a support person or persons or to be represented by a person chosen by the victim, and
 - (c) take into account the specific needs of the child and of any victim.
- (3) Before a conference is held, the conference convenor must give a written notice containing the following information to the child who is the subject of the conference:
 - (a) the offence or offences in respect of which the conference is to be held,
 - (b) the child's right to have a person responsible for the child, or an adult chosen by the child, present at the conference,
 - (c) the date, time and place of the conference,
 - (d) the name of the conference convenor,
 - (e) any requirements to be met by the child,
 - (f) the consequences of failure to attend the conference,
 - (g) the right of the child to obtain legal advice and where that advice may be obtained,

- (h) the right of the child to elect that the matter be dealt with by a court if the child does not wish to proceed with the conference.
- (4) Before a conference is held, the conference convenor must take all reasonable steps to notify any other persons who are entitled to attend, or who the convenor determines are to be invited to attend, of the date, time and place of the conference.
- (5) Before a conference is held, the conference convenor must take all reasonable steps to provide persons who are to attend the conference with information available to the convenor that, in the convenor's opinion, will be needed to reach a decision about the matter.
- (6) Before a conference is held, a conference convenor must ascertain, if practicable, the views about the matter of any persons who have been invited to attend but have advised that they will not be attending.

46 Location of conferences

A conference may be held at a location agreed by the participants and the conference convenor but may not be held at a police station, a court house or any office of the Department of Juvenile Justice.

47 Participants in conferences

- (1) The following persons are entitled to attend a conference:
 - (a) the child the subject of the conference (whether or not the child is in custody),
 - (b) the conference convenor,
 - (c) a person responsible for the child,
 - (d) members of the child's family or extended family,
 - (e) an adult chosen by the child,
 - (f) a legal practitioner advising the child,
 - (g) the investigating official,
 - (h) a specialist youth officer,
 - (i) any victim or a person chosen by the victim as a representative of the victim,
 - (j) a support person or persons for any victim.

- (2) If the conference convenor is of the opinion that it is appropriate, the conference convenor may invite any of the following persons to attend a conference:
 - (a) a respected member of the community, for the purpose of advising conference participants about relevant issues,
 - (b) an interpreter,
 - (c) if the child has a communication or cognitive disability, an appropriately skilled person,
 - (d) if the child is under care, a social worker or other health professional,
 - (e) if the child is subject to probation or a community service order, the child's supervising officer,
 - (f) any other person requested by the child's family or extended family.
- (3) The conference convenor may permit a person to attend a conference for the purposes of carrying out research or evaluation that has been specifically approved by the Minister, but only with the consent of the child the subject of the conference and any victim. Any such person may not participate in the conference.

48 Conduct of conferences

- (1) A conference convenor must conduct a conference in a way that best assists the reaching of an agreement about an outcome plan in relation to the child and the offence concerned that complies with this Act and the regulations.
- (2) The participants at a conference may regulate the procedure at a conference as they think fit, subject to any guidelines prepared by the Director-General under section 49.
- (3) If the conference convenor is of the opinion that the presence of a person (other than the child or any victim) may frustrate the purpose or conduct of a conference, or is otherwise not in the best interests of the child, the convenor may, having regard to the views of the child, exclude that person from attending the conference at all or may, during the course of the conference, exclude the person from continuing to attend the conference.

- (4) A conference must not make any recommendations or decisions if the participants are unable to determine whether the child admits the offence.
- (5) The conference convenor must, at or before a conference, notify the participants of the views of any person invited to attend but unable to do so, if the convenor is aware of those views.
- (6) A conference may be adjourned:
 - (a) at any time with the consent of the participants, or
 - (b) at the request of the child, to allow discussions between the child and the child's family or the child and a person responsible for the child.
- (7) A conference must, if practicable, be concluded not later than 7 days after it is first convened.
- (8) A conference may be held in respect of more than one child at the same time and in respect of more than one offence alleged to have been committed by a child.

49 Guidelines for conduct of conferences

- (1) The Director-General may approve written guidelines for the conduct of conferences.
- (2) A conference convenor is to conduct a conference in accordance with any applicable guidelines approved under this section.

50 Representation at conferences

- (1) Except as provided by subsection (2), a child who is the subject of a conference is entitled to be advised (but not represented) by a legal practitioner at the conference.
- (2) The conference convenor may permit a child who is the subject of a conference to be represented by a legal practitioner at the conference, either generally or subject to such conditions or limitations as may be imposed by the convenor.
- (3) A conference may be adjourned at any time for the purpose of allowing a child to obtain legal advice or representation by a legal practitioner.

51 Non-attendance at conferences

If a child fails, without a reasonable excuse, to attend a conference, the conference convenor must refer the matter back to the person or body that referred the matter for a conference.

52 Outcomes of conferences

- (1) The participants at a conference may agree to make such recommendations or decisions as they think fit. Any such decision that requires the compliance of the child is to be contained in the outcome plan agreed by the conference.
- (2) An outcome plan is, if possible, to be determined by consensus of the participants.
- (3) Despite subsection (2), an outcome plan may be agreed to by a conference even though it is not agreed to by all the participants but has no effect unless it is agreed to by the child and any victim of the offence or, if there are 2 victims, both victims and, in any other case, by more than half the victims.
- (4) The agreement of any victim is not required if the victim does not personally attend the conference.
- (5) Without limiting the kinds of decisions and recommendations that may be contained in an outcome plan, an outcome plan may provide for the following matters:
 - (a) the making of an oral or written apology, or both, to any victim,
 - (b) the making of reparation to any victim or the community,
 - (c) participation by the child in an appropriate program,
 - (d) the taking of actions directed towards the reintegration of the child into the community.
- (6) An outcome plan must:
 - (a) contain outcomes that are realistic and appropriate and sanctions that are not more severe than those that might have been imposed in court proceedings for the offence concerned, and
 - (b) set out times (not exceeding any limits imposed by the regulations) for the implementation of the plan, and

- (c) not impose an obligation to do community service work that exceeds the period prescribed by the regulations for the purposes of this section, and
 - (d) if appropriate, provide for its monitoring, and
 - (e) comply with any requirements or limitations imposed on outcome plans by the regulations.
- (7) A conference convenor must notify a conference administrator of any outcome plan determined by the participants at a conference.

53 Failure of conference to reach decision

A conference convenor must refer a matter back to the person or body that referred the matter for a conference if the convenor is satisfied that the participants at a conference are unable to agree to an outcome plan or are unable to agree to an outcome plan that complies with this Act and the regulations.

54 Matters referred by courts

- (1) A conference convenor must refer any outcome plan agreed to at a conference to a court, if the court referred the matter for a conference.
- (2) The court may approve the plan or, if it does not, may continue the proceedings.
- (3) A court that does not approve an outcome plan must notify the conference convenor and the relevant conference administrator.

55 Reconvening of conferences

- (1) A conference may be reconvened by the conference convenor, on the convenor's initiative or at the request of more than one participant in the conference, for the purpose of reconsidering any aspect of the outcome plan or any recommendation agreed at a conference.
- (2) In deciding whether to reconvene a conference, the conference convenor must consult with any victim.
- (3) A conference convenor must not reconvene a conference unless the conference convenor is satisfied that:
 - (a) it is in the interests of justice to do so, or
 - (b) the outcome plan or any recommendation of an outcome plan has become unsuitable or unworkable.

- (4) The participants at a reconvened conference may agree to vary or replace a previously agreed outcome plan.
- (5) A variation or replacement is, if possible, to be determined by consensus of the participants.
- (6) Despite subsection (5), an outcome plan may be varied or replaced even though it is not agreed to by all the participants but any such variation or replacement has no effect unless it is agreed to by the child and any victim of the offence or, if there are 2 victims, both victims and, in any other case, by more than half the victims.
- (7) The agreement of any victim is not required if the victim does not personally attend the reconvened conference.
- (8) The conference convenor must notify a conference administrator of the result of a reconvened conference.
- (9) This Part applies to a reconvened conference in the same way as it applies to any other conference.

56 Satisfactory completion of outcome plans

- (1) A conference administrator is to supervise the monitoring and the implementation and completion of each outcome plan (including an outcome plan varied or replaced by a reconvened conference) and is to give written notice as to whether or not the outcome plan has been satisfactorily completed by the child.
- (2) The written notice under this section must be given to the child, any victim, the person or body that referred the matter for a conference, the Commissioner of Police (if the matter was referred by the Director of Public Prosecutions or a court) and any other person on whom the outcome plan imposed obligations.

57 Failure to complete outcome plans

- (1) A notice that a child has failed to satisfactorily complete an outcome plan given to the person or body that referred the matter for a conference is to be accompanied by a report from the conference convenor concerning the conference and may be accompanied by such other reports and recommendations as the conference administrator thinks fit.

Note. Proceedings may be continued if an outcome plan is not satisfactorily completed (see section 64).

- (2) A court that referred a matter for a conference without making a finding that the child concerned was guilty of an offence must dismiss a charge against a child on receiving notice that an outcome plan relating to the offence concerned has been satisfactorily completed by the child.

58 Further proceedings

If a child satisfactorily completes an outcome plan, no further criminal proceedings may be taken against the child for any offence in respect of which the conference was held or for any other offence in respect of which proceedings could not be commenced if the child had been convicted of the offence for which the conference was held.

59 Records of conferences

- (1) A conference administrator must make a record of any conferences held under this Part and dealt with by the administrator.
- (2) The record is to contain the matters prescribed by the regulations for the purposes of this section.

Division 3 Co-ordination of conferences

60 Conference convenors

- (1) The Director-General may appoint persons as conference convenors.
- (2) Schedule 1 has effect with respect to conference convenors.
- (3) A conference convenor has the following functions:
- (a) to prepare for, and to hold, conferences referred to the convenor by a conference administrator or specialist youth officer,
 - (b) any other functions conferred or imposed on the convenor by or under this or any other Act.
- (4) Without limiting subsection (1), a police officer may be appointed as a conference convenor under this section in the police officer's private capacity.

61 Conference administrators

Conference administrators may be appointed under Part 2 of the *Public Sector Management Act 1988* for the purpose of carrying out administrative functions related to this Act.

Part 6 Miscellaneous

62 Act binds Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

63 Proceedings for offences

Proceedings for an offence under this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

64 Continuation or commencement of proceedings

- (1) A person or body may continue or commence proceedings against a child in respect of an offence even though an applicable limitation period for those proceedings has expired if:
 - (a) a decision not to give a caution or hold a conference is made under this Act, or
 - (b) a child elects not to proceed with a caution or a conference or fails to attend a caution or conference, or
 - (c) a conference fails to reach agreement as to an outcome plan, or
 - (d) a child fails to satisfactorily complete an outcome plan.
- (2) Proceedings for the offence must be commenced not later than the expiry date of the applicable limitation period or not later than 3 months after the matter is referred back to the person or body under this section, whichever is the later.

65 Publication and broadcasting of names

- (1) The name of any child dealt with under this Act, or any information tending to identify any such child, must not be published or broadcast, whether before or after the matter involving the child is finally dealt with under this Act.

- (2) A person who publishes or broadcasts the name of any child or any information the publication or broadcasting of which is prohibited by subsection (1) is guilty of an offence.

Maximum penalty: 500 penalty units (in the case of a corporation) or 50 penalty units or imprisonment for 12 months, or both, in any other case.

- (3) Subsection (1) does not prohibit:
- (a) the publication or broadcasting of an official report of the proceedings of a court that includes the name of any child or any information the publication or broadcasting of which would otherwise be prohibited by subsection (1), or
 - (b) the publication or broadcasting of the name of a child or any information about such a child who is over the age of 16 years at the time of publication or broadcasting with the consent of the child.
- (4) For the purposes of this section, a reference to the name of a child includes a reference to any information, picture or other material that identifies the child or is likely to lead to the identification of the child.

66 Disclosure of records

- (1) A person who acquires information or prepares a record in the exercise of functions under this Act must not, directly or indirectly, divulge the information to another person except in the exercise of functions under this Act.

Maximum penalty: 500 penalty units (in the case of a corporation) or 50 penalty units or imprisonment for 12 months, or both, in any other case.

- (2) Despite subsection (1), information may be divulged in the following circumstances:
- (a) records of, or relating to, cautions and conferences may be divulged to the child, a person responsible for the child or a legal representative of the child,
 - (b) records of, or relating to, cautions and conferences under this Act may be divulged to an investigating official, specialist youth officer, conference convenor, conference

administrator, the Director of Public Prosecutions or a court for the purpose of determining whether or not to take action under this Act,

- (c) records of, or relating to, cautions and conferences under this Act may be divulged to the Children's Court for the purpose of making a decision concerning sentencing.

67 Certain statements not admissible

- (1) Any statement, confession, admission or information made or given by a child during the giving of a caution or a conference under this Act is not to be admitted in evidence in any subsequent criminal proceedings.
- (2) Despite subsection (1), an outcome plan agreed at a conference may be produced to a court if the court has referred a matter for a conference.

68 Interventions not to be disclosed as criminal history

- (1) If a person has been the subject of a caution or conference under this Act:
 - (a) the person is not required to disclose to any other person for any purpose information concerning the caution or conference, and
 - (b) a question concerning the person's criminal history is taken not to refer to any such caution or conference, and
 - (c) in the application to the person of a provision of an Act or statutory instrument, a reference in the provision to the person's character or fitness is not to be interpreted as permitting or requiring account to be taken of any such warning, caution or conference.
- (2) Subsection (1) does not apply in relation to:
 - (a) an application by a person for appointment or employment as a judge, magistrate, justice of the peace, police officer, prison officer, teacher, teachers aide or a provider of child care services under Part 3 of the *Children (Care and Protection) Act 1987*, or

- (b) an offence of arson or attempted arson if the person seeks to be appointed or employed in fire fighting or fire prevention, or
- (c) proceedings before the Children's Court (including a decision concerning sentencing).

69 Investigating officials may act on other matters

Nothing in this Act prevents an investigating official from acting on information obtained during the course of a caution or conference in relation to offences other than offences the subject of the conference.

70 Youth Justice Advisory Committee

- (1) There is to be a Youth Justice Advisory Committee consisting of the following members:
 - (a) a person appointed by the Minister to be the chairperson of the Committee, being a person who, in the opinion of the Minister, possesses qualifications and experience that are relevant to the Committee's functions and who is not a public servant,
 - (b) a representative nominated by the Juvenile Justice Advisory Council,
 - (c) a representative nominated by the Juvenile Crime Prevention Advisory Committee,
 - (d) the Director-General of the Attorney General's Department or a nominee of the Director-General,
 - (e) the Director-General of Juvenile Justice or a nominee of the Director-General,
 - (f) the Commissioner of Police or a nominee of the Commissioner of Police,
 - (g) the Director of the Office of Children and Young Persons in the Cabinet Office or a nominee of the Director,
 - (h) a person representing the interests of victims, appointed by the Minister,
 - (i) a person representing the interests of children and young people, appointed by the Minister,

- (j) such other persons as are determined in accordance with the regulations.
- (2) The Youth Justice Advisory Committee has the function of advising the Minister and the Director-General on the following:
 - (a) the making of regulations,
 - (b) the preparation of guidelines for conferences,
 - (c) the selection criteria for, appointment of and training of conference convenors,
 - (d) the conduct of the review under section 76,
 - (e) the performance of monitoring and evaluation of the Act, whether or not required by the Act,
 - (f) any other matter relevant to the administration of Part 5 or any other provisions of the Act.
- (3) The regulations may make provision for or with respect to the procedure, nomination of members, terms of members and remuneration of members of the Youth Justice Advisory Committee.

71 Giving of notices

If by or under this Act a document is required or permitted to be given to or served on a person, the document may be given or served:

- (a) by delivering it personally to the person, or
- (b) by leaving it at that person's usual or last known place of residence with a person apparently over the age of 16 years and apparently residing there, or
- (c) by sending it by post addressed to the person at that person's usual or last known place of residence, or
- (d) if a manner of service is prescribed by any other Act or law in relation to a person or class of persons, by being served in that manner.

72 Liability of officers under Act

- (1) Any matter or thing done by the Director-General, a conference administrator, a conference convenor, a person giving a caution (other than a police officer or specialist youth officer) or a person acting under the direction of the Director-General, conference

administrator or convenor does not subject the Director-General, conference administrator, conference convenor or person so acting personally to any action, liability, claim or demand if the matter or thing was done in good faith for the purpose of executing this or any other Act.

- (2) A person referred to in subsection (1) is not liable for an offence under section 316 (1) of the *Crimes Act 1900* in respect of information obtained by the person in the course of a conference.

73 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the following matters:
- (a) the content and keeping of records required to be made under this Act,
 - (b) notification of referrals of children for conferences,
 - (c) authorising the bringing of children or parents who are in custody to conferences and ensuring the dignity and full participation in conferences of persons brought from custody to conferences,
 - (d) outcome plans,
 - (e) the provision by the Director-General to the Commissioner of Police of information, records, or parts of records, relating to conferences held under this Act,
 - (f) the provision by the Director-General or the Commissioner of Police of information, records, or parts of records, relating to cautions and conferences under this Act, to persons for statistical or research purposes.
- (3) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

74 Amendment of Children (Criminal Proceedings) Act 1987 No 55

The *Children (Criminal Proceedings) Act 1987* is amended as set out in Schedule 2.

75 Savings and transitional provisions

Schedule 3 has effect.

76 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the date of commencement of this section.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

Schedule 1 Conference convenors

(Section 60)

1 Term of office

Subject to this Schedule, a conference convenor holds office for such period (not exceeding 3 years) as is specified in the convenor's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

2 Remuneration

A conference convenor is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the conference convenor.

3 Vacancy in office

- (1) The office of a conference convenor becomes vacant if the convenor:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Director-General, or
 - (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (e) becomes a mentally incapacitated person, or
 - (f) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.
- (2) The Director-General may remove a conference convenor from office at any time.

4 Effect of certain other Acts

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a conference convenor.
- (2) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,the provision does not operate to disqualify the person from holding that office and also the office of a conference convenor or from accepting and retaining any remuneration payable to the person under this Act as a convenor.
- (3) The office of a conference convenor is not, for the purposes of any Act, an office or place of profit under the Crown.

Schedule 2 Amendment of Children (Criminal Proceedings) Act 1987

(Section 74)

[1] Section 15 Evidence of prior offences and other matters not admissible in certain criminal proceedings

Insert "or (3)" after "subsection (1)" in section 15 (2).

[2] Section 15 (3)

Omit the subsection. Insert instead:

- (3) The fact that a person has been dealt with by a warning, caution or youth justice conference under the *Young Offenders Act 1997* (being in respect of an alleged offence committed when the person was a child) is not to be admitted in evidence (whether as to guilt or the imposition of any penalty) in any criminal proceedings subsequently taken against the person in respect of any other offence.

[3] Section 33 Penalties

Insert after section 33 (1) (c):

- (c1) it may make an order releasing the person on condition that the person complies with an outcome plan determined at a conference held under the *Young Offenders Act 1997*,

Schedule 3 Savings and transitional provisions

(Section 75)

1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before its publication.

2 Existing proceedings

A court may take action under Part 4 or 5 in respect of criminal proceedings commenced, but not completed, before the commencement of this clause.

3 Early implementation of Act

- (1) Regulations under clause 1 may limit the application of provisions of this Act to offences occurring in a specified part or parts of New South Wales for a specified period or periods.
- (2) If a regulation is made under this clause, the application of the Act is limited as specified by the regulation even though the specified provisions of the Act have commenced.

- (3) A regulation made under this clause ceases to have effect on the date that is 12 months after the date of commencement of this clause.

[Minister's second reading speech made in—

Legislative Council on 21 May 1997

Legislative Assembly on 26 June 1997 a.m.]

BY AUTHORITY