Youth Justice Reforms

Children (Criminal Proceedings) and Young Offenders Legislation Amendment Act 2025 (NSW)

Part 2: Changes to the *Young Offenders Act 1997* (NSW) and the *Young Offenders Regulation 2016* (NSW)

Introduction

The *Children (Criminal Proceedings) and Young Offenders Legislation Amendment Act 2025* (NSW) (**Amendment Act**) makes significant amendments to the *Children (Criminal Proceedings) Act 1987* (NSW) (**CCPA**), the *Young Offenders Act 1997* (NSW) (**YOA**) and the *Young Offenders Regulation 2016* (NSW) (**YOR**).

Part 1 highlighted the changes made to the CCPA in relation to doli incapax. These changes commenced on 1 March 2026.

This document, Part 2, highlights the changes made to the YOA and YOR which commenced on **1 July 2026.**

This document is intended for general information purposes only and does not purport to summarise all changes made by the Amendment Act. The document highlights key changes brought about by the new legislation and does not replace a thorough reading of the legislation. Practitioners are encouraged to read the relevant legislation in full.

Amendment to the *Young Offenders Act 1997* (NSW)

Principles of the scheme

The Amendment Act inserts two additional principles to section 7, which sets out the principles guiding the operation of the YOA:

i. The principle that children have rights and freedoms before the law equal to the rights and freedoms enjoyed by adults and, in particular, a right to be heard and a right to participate in the processes that lead to decisions that affect them.

j. The principle that children who commit offences bear responsibility for their actions but, because of their state of dependency and immaturity, require guidance and assistance.

Non-denial statement

The Amendment Act replaces section 10 ‘Admission of offences’ with ‘Non-denial statements’.

Previously a child had to “admit” the alleged offence to be entitled to diversion under the YOA. The new section 10 allows the child to make a non-denial statement that either does not deny, or admits, the allegation. A non-denial statement includes not denying, or admitting, the elements of the offence and the time and place of the offence: section 10(1). Put simply, a young person does not have to say they “did it” to be eligible for diversion but cannot say they “didn’t do it”.

A non-denial statement must, if practicable, be made in the standard written form approved by the Secretary of the Department of Communities and Justice: section 10(4). A formal guilty plea made by a child before a court is taken to be a non-denial statement: section 10(5).

Similar to the previous section 10 in relation to admissions, new section 10(2) explains when a non-denial statement will not be valid:

> A non-denial statement is not valid unless it is made by a child 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 14 years of age or more—an adult chosen by the child, or
>
> (d) an Australian legal practitioner chosen by the child.

Expanded offences eligible for diversion under the YOA

1. Stalking/Intimidation and Breach of Apprehended Violence Order (AVO) offences contrary to the *Crimes (Domestic and Personal Violence) Act 2007* (NSW)

The Amendment Act amends section 8(2)(e) to make offences contrary to section 13 (**Stalking/Intimidation**) and section 14 (**Breach of AVO**) of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) eligible for diversion under the YOA by way of either caution or Youth Justice Conferencing.

However, the Amendment Act also inserts section 8(4), which has the effect that for an offence against section 14 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) which involves **the commission of a personal violence offence**,[1] a young person can only receive a caution from the court (section 31), or be referred to Youth Justice conferencing by the court (section 40(1A)) or the Director of Public Prosecutions (section 40(1)). They cannot receive a caution or be referred to Youth Justice Conferencing by police.

2. *Drug Misuse and Trafficking Act 1985* (NSW)

The Amendment Act updates section 8(2A) of the YOA to more clearly identify when summary drug offences will be covered by the Act. Section 8(2A) states:

> An offence under the *Drug Misuse and Trafficking Act 1985*, Part 2, Division 1 is covered by this Act if, in the opinion of the investigating official or prosecuting authority—
>
> (a) for an offence relating to a prohibited drug within the meaning of that Act—the offence involves not more than the small quantity applicable to the drug under that Act, or
>
> (b) it is an offence against that Act, section 11 or 12.

[1] See *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 4 for definition of "personal violence offence".

3. Graffiti offences

Graffiti offences contrary to the *Graffiti Control Act 2008* (NSW) are now eligible for diversion under the YOA by way of warning (section 13), caution (section 18) or referral to Youth Justice Conferencing (sections 37, 38 and 40).

4. Larceny offences

A warning can now be given for a larceny offence contrary to section 117 of the *Crimes Act 1900* (NSW) if, were the offence committed by an adult, a penalty notice could be issued under Chapter 7, Part 3 of the *Criminal Procedure Act 1986* (NSW) for the offence: section 13(2).

Changes to Cautions

The Amendment Act inserts section 4(2), which clarifies that the time that a child is dealt with by caution in relation to an offence is the **time the caution is given** under section 29 or 31 of the YOA.

Section 20(7) has been amended so that the maximum number of occasions a young person can be cautioned is three occasions over a three year period. This allows police and courts the opportunity to refer a young person to a YOA caution so long as the young person has not been cautioned on more than three occasions in the three years prior to the date of the delivery of the caution. Section 20(7) states:

> Despite any other provision of this section, a child is not entitled to be dealt with by caution in relation to an offence if the child has been dealt with by caution on 3 or more occasions **during the previous 3 years**:

Corresponding amendments have also been made to cautions by the Court: section 31(5).[2]

Changes to Youth Justice Conferencing

The Amendment Act amends section 34 'Principles and purposes of conferencing' to insert section (3)(f):

> In reaching decisions at a conference, the participants are to have regard to the principles set out in this section and the following matters—
>
> …
>
> (f) for Aboriginal or Torres Strait Islander children and children from multicultural backgrounds—the cultural needs of the children.

The Amendment Act also amends the time limit for holding a conference from 28 days after the referral is received by the conference administrator to 42 days: section 43.

The Amendment Act has made changes to better facilitate consideration of the safety, welfare or well-being of a conference participant. Section 43A states:

1. If, after a conference convenor has been appointed for a conference, but before the conference is held, it is a conference administrator's opinion that it is not in the interests of the safety, welfare or well-being of a conference participant that the conference proceed, the conference administrator may notify the person or court that referred the matter for conference of the opinion.

[2] See also corresponding amendments to YOA ss 41(9) and 44(5).

2. A conference administrator may only notify a person or court of an opinion under this section if the opinion is based on information that was not provided to the conference administrator at the time of the referral.

Similarly, the Amendment Act inserts section 44(2)(a1), which enables a specialist youth officer who refers a matter for a conference to, at any time before the conference is held, determine:

> (a1) that it is not in the interests of the safety, welfare or well-being of a conference participant that the conference proceed and refer the matter to the investigating official or other appropriate authority for the commencement of proceedings.

Previously, a conference could not make a recommendation or decision if participants "are unable to determine whether the child admits the offence". The Amendment Act has amended section 48(4) to clarify:

> A conference must not make a recommendation or decision if the child denies committing the offence **during the conference**.

The Amendment Act amends section 56(2) by clarifying persons who must be given written notice of whether or not the outcome plan has been satisfactorily completed by the child.

Inadmissibility of non-denial statements

The Amendment Act also introduces section 67A. This section permits investigating officials to offer a child an opportunity to make a non-denial statement for the offence if they believe the child could be dealt with by way of a caution or conference.

Section 67A(3) outlines the process the investigating official must follow before offering the child an opportunity to make a non-denial statement:

> Before offering a child an opportunity to make a non-denial statement under this section, the investigating official must explain the following to the child—
>
> (a) The nature of the offence and the circumstances out of which the offence is alleged to have arisen,
>
> (b) That it appears to the investigating official that the child could be dealt with by way of a caution or conference if the child makes a non-denial statement,
>
> (c) That if the child makes the non-denial statement, the investigating official will make a determination as to whether the child should be dealt with by way of a caution under Part 4 or the matter should be referred to a specialist youth officer under Part 5 to determine whether a youth justice conference should be held,
>
> (d) That if the child makes a non-denial statement under this section, the statement cannot be admitted as evidence in subsequent civil or criminal proceedings.

In alignment with section 67A(3)(d), section 67A(4) makes clear that a non-denial statement must not be admitted in evidence in any subsequent criminal or civil proceedings. Additionally, section 67A(6) states that section 67A(4) applies even if the investigating official failed to comply with the procedural requirements set out in section 67A(3).

Amendment to the *Young Offenders Regulation 2016* (NSW)

Outcome plans

The Amendment Act amends clause 7 of the YOR to clarify that the maximum period of community service work that may be imposed in an outcome plan is 35 hours.

Clauses 8 and 9 have also been amended by the Amendment Act in relation to what *may* (rather than must) be included in an action plan for bush fire, arson and graffiti offences.