

Regulatory Impact Statement

Young Offenders Regulation 2016



TITLE OF REGULATORY PROPOSAL: Young Offenders Regulation 2016

PROPONENT: Department of Justice

RESPONSIBLE MINISTER: Gabrielle Upton
Attorney General

RELEVANT ACT: Young Offenders Act 1997

1. INTRODUCTION

1.1 What is a Regulatory Impact Statement (RIS)?

The preparation of a RIS is required under the *Subordinate Legislation Act 1989*. This Act provides for regulations to have a limited life.

In most cases, regulations are automatically repealed 5 years after they are made. When a regulation is due for repeal, the responsible agency must review the regulation, its social and economic impacts, and the need for the regulation, and make a decision about whether the regulation should be remade. The results of this review are required to be published in a RIS and submissions invited from the public.

The *Subordinate Legislation Act 1989* does not require a RIS to be prepared where the regulation deals with matters that are machinery in nature, and not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

1.2 The Young Offenders Regulation 2009

The *Young Offenders Regulation 2009 (YO Regulation)* is scheduled for staged repeal on 1 September 2016.

This RIS is concerned only with clauses 8 and 9 of the proposed Regulation. Clause 8 deals with outcome plans for young offenders who admit to bushfire or arson offences while Clause 9 deals with outcome plans for young offenders who admit to graffiti offences.

The NSW Parliamentary Counsel's Office has advised that all other provisions in the proposed Regulation relate to matters that are machinery in nature or matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public. Therefore a RIS is not required in respect of these parts of the proposed Regulation.

The RIS proposes that the YO Regulation be remade under the *Young Offenders Act 1997 (YO Act)*.

1.3 Submissions

Submissions are invited on clauses 8 and 9 of the proposed Regulation.

The final date for receipt of submissions is **Friday, 8 July 2016**.

Submissions can be forwarded in any of the following ways:

Post

Young Offenders Regulation Consultation
Executive Director
Justice Strategy and Policy Division
NSW Department of Justice
GPO Box 31
Sydney NSW 2001

Email

jsp.enquiries@justice.nsw.gov.au

Hand delivery

Level 3, Henry Deane Building
20 Lee Street
Sydney NSW 2000

1.4 Additional Information

Copies of the *Young Offenders Act 1997* and the *Young Offenders Regulation 2009* are available online at www.legislation.nsw.gov.au

2. THE REGULATORY PROPOSAL

2.1 Background: The Young Offenders Act 1997

The YO Act establishes a scheme that provides for a hierarchy of four different levels of intervention into juvenile offending, beginning with police warnings and cautions and graduating to conferencing and, finally, attendance at court.

A young person is entitled to have a matter dealt with by way of a warning, caution or conference provided the matter meets the relevant criteria. How a matter is dealt with depends on the type of offence that has been committed, how serious it is, the amount of violence involved, and the harm caused to any victim.

The YO Act recognises that:

- Underlying social factors contribute to juvenile offending;
- Children require different treatment in the justice system to adults;
- Children should generally only be imprisoned as a measure of last resort; and
- Children who commit offences should bear responsibility for their actions, but require guidance and assistance because of their state of dependency and immaturity.

The YO Regulation is made under the YO Act (in particular, section 73 of the YO Act).

2.2 Mechanical updates to the YO Regulation

The proposed Regulation repeals and remakes, without substantial alteration, the YO Regulation. Minor mechanical changes to update references to names and titles will be included. However, this aspect of the Regulation does not require a RIS.

Proposed changes:

- Replace 'Director General' with 'Secretary' (cl 5, 6,14, 16)
- Replace 'Department of Attorney General and Justice' with 'Department of Justice' (cl14, 15, 16)
- Include reference to the Executive Director of Juvenile Justice, in addition to a Regional Director (cl 14)
- Remove reference to 'Assistant Regional Director' (cl 16(b1))
- Limit on number of cautions: Clause 17 of the Young Offenders Act is no longer relevant. Any person given a Caution under the Act before 15 November 2002 would be at least 23 years of age by 15 November 2015, and therefore not eligible to be dealt with under the YO Act.

2.3 Objects of clauses 8 and 9 of the YO Regulation

The object of clause 8 of the proposed Regulation is to set out the specific requirements for an outcome plan for children who admit to offences under the YO Act that consist of:

- (a) lighting a bush fire; or
- (b) the destruction or damage of property by means of fire.

The object of clause 9 of the proposed Regulation is to set out the specific requirements for an outcome plan for children who admit to offences under the YO Act that consist of:

- (a) section 5 or 6 of the *Graffiti Control Act 2008* or another crime involving graffiti; or
- (b) damage to property by means of any graffiti implement (within the meaning of the *Graffiti Control Act 2008*).

It is intended to ensure that outcome plans for children who admit to these offences help the child understand the harm caused by their offence, and require the child to make some form of reparation for their offence.

2.4 Consultation to be undertaken

In accordance with section 5(2) of the *Subordinate Legislation Act 1989*, an advertisement will appear in the Government Gazette and the Sydney Morning Herald announcing the intention to make the proposed Regulation.

The RIS and the proposed Regulation will also be circulated to the people, agencies and organisations listed in Appendix 1 that have an identifiable interest in the proposed Regulation.

3. DISCUSSION

3.1 Options for remaking the YO Regulation

There are three options for the remaking of the YO Regulation:

- 1) Do nothing. This would mean that no new Regulation is made when the Regulation is repealed;
- 2) Remake the existing Regulation without change; and
- 3) Remake the existing Regulation with amendment.

These options are discussed separately below in relation to clauses 8 and 9 of the YO Regulation.

3.2 Clause 8 of the YO Regulation - Outcome plans for bush fire/arson juvenile offenders

Clause 8 of the YO Regulation provides for the making of outcome plans where a child admits to an offence covered by the Act that consists of lighting a bushfire, or the destruction or damage of property by means of fire.

For these offences, outcome plans must provide for the following:

- (1) Attendance by the child at a screening of a film or video designed to provide education as to the harmful effects of fire.
- (2) The making of reparation for the offence, such as:
 - (a) Assistance in clean-up operations and in treatment of injured animals or, if such work is not available, community service work comparable to the performance of such work; and
 - (b) The payment of compensation (not exceeding the amount that a court may impose on conviction for the offence).

3.2.1 Option 1- Do nothing

If this clause of the YO Regulation is permitted to lapse, the outcomes plans for offenders who admit to offences that consist of lighting a bushfire or destruction or damage of property by fire would no longer have a mandatory requirement to include the actions specified in clause 8 of the existing YO Regulation. However, it would still be open to young offenders and victims (where the victim attends the conference) to agree to include these actions in the outcome plan.

Cost: There is a risk that the outcome plan may not educate the child about the harmful effects of fire, or require the making of reparation that is linked to the impact of the offence. Thus, the outcome plan may fail to reflect the seriousness of the offence and the particular dangers fire poses to life and property.

Benefit: Generally, the content of outcome plans is a matter left to the conferencing process and decided by way of agreement between the young offender and the victim (where the victim attends the conference). This approach is consistent with the premise that a conference is a community-negotiated response to the child's offending behaviour. Conference participants are strongly encouraged to consider tasks that directly relate to the repair of the harm caused by the offence, or to the (re)integration of the child into their community. Allowing clause 8 to lapse (so that conference attendees agree upon the specific content of the outcome plan) may ensure that outcome plans for these young offenders are more appropriately tailored to the circumstances of the case.

3.2.2 Option 2 – Remake the existing clause without amendment

Cost: The primary costs arising from this course are those associated with the supervision and implementation of the specific measures that must be included in the outcome plan.

Benefit: The continuation of the existing clause in its current form will ensure that all children who admit to bush fire or arson offences will be required to undertake specified actions that aim to provide education as the harmful effects of fire. It will also ensure that outcome plans for these children include the making of reparation for the offence that is linked to the impact of the offence.

3.2.3 Option 3 – Remake the existing clause with amendment

Another option is to remake the existing clause with amendment. This amendment could modify the measures that must be included in an outcome plan to ensure that the young offender understood the harmful effects of fire and made reparation for his or her offence. In particular, it could remove the provision for the child to attend the treatment of injured animals. In practice, this option for reparation is not commonly used.

Cost: The primary costs arising from this course are those associated with the supervision and implementation of the measures specified in the outcome plan. There is no identified cost associated with the removal of the provision for a child to attend the treatment of injured animals.

Benefit: The other provisions in clause 8 of the regulation will ensure that children who admit to these offences are educated about the harmful effects of fire, particularly the physical, financial and psychological effects on victims.

3.2.4 Conclusion

On balance, it is considered that the option of remaking clause 8 without amendment will involve the greatest benefit and the least cost to the community. This option will ensure that outcome plans for these young offenders will continue to recognise the particular nature of the offence and the potential for widespread damage to life and property if the young person re-offends. In particular, the mandatory provision for the young person to watch an educational video will help ensure that the child understands the harm caused by his or her actions and takes responsibility for what they have done. There will also be a continuing requirement for reparation, which can assist victims and the community.

It is therefore proposed that the Regulation be remade with the mechanical amendments, but with no change to clause 8.

3.3 Clause 9 of the YO Regulation - Outcome plans for graffiti juvenile offenders

Clause 9 of the YO Regulation provides for the making of outcome plans where a child admits to an offence covered by the Act that consists of section 5 or 6 of the *Graffiti Control Act 2008* or another crime involving graffiti, or damage to property by means of any graffiti implement (within the meaning of the *Graffiti Control Act 2008*).

For these offences, outcome plans must provide for at least one of the following:

- (1) The making of reparation for the offence, such as:
 - (a) the performance of graffiti removal work or, if such work is not available, community service work comparable to the performance of such work; or
 - (b) the payment of compensation (not exceeding the amount that a court may impose on conviction for the offence).
- (2) Participation in a personal development, educational or other program.
- (3) The fulfilment of any other obligation on the child:
 - (a) that is suggested by any victim of the offence who personally attends the conference; and
 - (b) that is consistent with the objects of the Act.

3.1.1 Option 1- Do nothing

If this clause of the YO Regulation is permitted to lapse, the outcome plans for offenders who admit to offences that consist of damage to property by means of any graffiti implement; possess any graffiti implement with the intention to damage or deface premises or other property; or affix a placard or paper on any premises; or intentionally mark, by means of chalk, paint or other material, any premises without prior consent, would no longer have a mandatory requirement to include at least one of the actions specified in clause 9 of the existing YO Regulation. However, it would still be open to young offenders and victims (where the victim attends the conference) to agree to include these actions in the outcome plan.

Cost: There is a risk that the outcome plan may not require the making of reparation that is linked to the impact of the offence, or educate the child about the costly and damaging effects of graffiti. Thus, the outcome plan may fail to reflect the seriousness of the offence and the particular cost and damage that graffiti causes for property owners.

Benefit: Generally, the content of outcome plans is a matter left to the conferencing process and decided by way of agreement between the young offender and the victim (where the victim attends the conference). This approach is consistent with the premise that a conference is a community-negotiated response to the child's offending behaviour. Conference participants are strongly encouraged to consider tasks that directly relate to the repair of the damage caused by the offence, or to the

(re)integration of the child into their community. Allowing clause 9 to lapse (so that conference attendees agree upon the specific content of the outcome plan) may ensure that outcome plans for these young offenders are more appropriately tailored to the circumstances of the case.

3.1.2 Option 2 – Remake the existing clause without amendment

Cost: The primary costs arising from this course are those associated with the supervision and implementation of the specific measures that must be included in the outcome plan.

Benefit: The continuation of the existing clause in its current form will ensure that all children who admit to graffiti offences will be required to undertake at least one specified action that aims to ensure reparation for the offence, educate the child about the offence, or highlight the awareness of the offence on the victim.

3.1.3 Option 3 – Remake the existing clause with amendment

There is currently no proposal to amend the existing clause in any way.

3.1.4 Conclusion

On balance, it is considered that the option of remaking the existing clause without amendment will involve the greatest benefit and the least cost to the community. This option will ensure that a child who admits to graffiti-related offences will be required to undertake at least one specified action that aims to ensure reparation for the offence, educate the child about the offence, or highlight the awareness of the offence on the victim.

It is therefore proposed that the Regulation be remade with the mechanical amendments, but with no change to clause 9.

1. APPENDIX

Copies of the proposed Regulation and this RIS will be forwarded to the following people, agencies and organisations:

- Aboriginal Affairs NSW
- Children's Court
- Department of Family and Community Services
 - NSW Advocate for Children and Young People
- Department of Justice
 - Juvenile Justice
 - Victims Services
 - Office for Police
- Inspector of Custodial Services
- Law Society of NSW
- Legal Aid NSW
- NSW Bar Association
- NSW Fire and Rescue
- NSW Health
- NSW Police Force
- NSW Rural Fire Service
- Public Defenders
- Young Offenders Advisory Council.