



## New South Wales Police Force

# Protected Admissions *Young Offenders Act 1997*

Corporate Sponsor: Youth

## Protected Admissions – *Young Offenders Act 1997*

The objective of these procedures is to enable young offenders to avail themselves of a non-court outcome, where appropriate, whilst maintaining their right to silence in relation to admissions that can be used as evidence in court.

### Essential Summary

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A primary objective of the *Young Offenders Act 1997* is to divert young offenders from the court system, where appropriate, through youth justice conferences; cautions; and warnings. An impediment to police being able to give cautions or arranging a youth justice conference was found to be the reluctance of young offenders to make admissions to the offence, which is a precondition for police giving a caution or arranging a youth justice conference.

These procedures for the administration of Protected Admissions are designed to enable young offenders to make admissions to an offence whilst preserving their right not to provide self-incriminating evidence.

Where a young person does not admit an offence for which they would otherwise be considered for a Caution or youth justice conference, the police officer should:

- In the presence of a person responsible for the young person or an adult who is present with the consent of a person responsible for the young person (under 14 years of age), or an adult chosen by the young person (14 - 17 years of age), provide the young person with a Protected Admission Information Sheet
- Alternatively, the Protected Admission Information Sheet can be given to the young person's legal representative for consideration
- If the Young person is immediately agreeable to making a Protected Admission, fill in the relevant parts of the Protected Admission Form and have the young person and their adult support person sign it
- If at a later time the young person's legal representative or adult support person requests that the young person now wishes to make a Protected Admission, arrange to meet with the young person, in company with their adult support person and/or legal representative to sign the Protected Admission Form.

Proceed with the court alternative outcome as per the *Young Offenders Act 1997* policy and procedures.

## Document Control Sheet

### *Document Properties*

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### *Modification History*

Version #	Version approval date	Author/Position	Summary of changes
1.0	04 April 2014	Superintendent Dickson, Police Prosecutions Command	First release
2.0	22 July 2015	Superintendent Dickson, Police Prosecutions Command	Includes references youth justice conferences and providing PAS forms to YLOs for quality control.

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## 1. Message

The Protected Admissions scheme is a circuit breaker that permits police and a young person to come to an agreement about the young person's eligibility for a court alternative such as a caution or youth justice conference and the use of any admission. The lawyers advising the young person can provide advice to the young person to admit the offence in the confidence that they are acting in the best interests of the young person.

There are significant social policy and workload efficiency benefits expected to flow to the whole Criminal Justice System from this scheme, including:

- More young persons will be diverted from court giving effect to the primary object of the Young Offenders Act
- Police resources will not be wasted initiating criminal proceedings, thus allowing police to return to operational duties earlier instead of preparing criminal charges
- It will reduce the work of custody managers, Police Prosecutors and Court Process officers
- The number of cases taken on by various children's legal aid agencies will reduce
- Children's Court lists will not be clogged up with Magistrates unnecessary dealing with matters which end in a Court issued caution for the young person.

The Protected Admissions Scheme was endorsed by the Corporate Sponsor for Youth, Assistant Commissioner Loy on the 18 December 2013 and approved for implementation by Deputy Commissioner, Field Operations and Deputy Commissioner, Specialist Operations on 08 January 2014.

## 2. Scope

The investigation of an offence by the young person will not change, nor will the cautioning or youth justice conference schemes. The Protected Admission Scheme will only operate where the young person has declined to make an admission but a court alternative is appropriate. The scheme is designed to remove the apparent blockage to the cautioning or youth justice conference option.

## 3. Procedures

### 3.1 Context

To be read in conjunction with the following:

- *Young Offenders Act 1997*
- *Young Offenders (Amendment) Act 2002*
- *Children (Criminal Proceedings) Act 1987*
- NSW Police Force Handbook – “Young Offenders”
- Code of Practice CRIME – “Questioning Suspects”

### 3.2 Eligibility

Before starting criminal proceedings against a young person, take into account the requirements of the *Young Offenders Act 1997*.

It is not necessary to use the protected admission scheme where the young person voluntarily admits the offence.

**Section 8 of the Act details excluded offences.**

**Since December 2012, cautions can no longer be given for graffiti offences.**

The decision to offer the Protected Admission rests with the police officer investigating the offence as it is this officer who has the current authority to determine whether to arrange the young person be given a caution. A Specialist Youth Officer may recommend a youth justice conference.

Refer to the *Young Offenders Act* for your obligations.

Do not caution a young person unless you have been authorised in writing by the Commissioner to give cautions under the *Young Offenders Act, 1997*.

If you, as an authorised officer, believe a respected member of the community should give a caution, make the necessary arrangements for this to be done.

#### **Investigating officer**

If the young person has admitted an offence covered by the *Young Offenders Act* (in accordance with s10) you may arrange for a caution to be given. The young person must be eligible to receive a caution and must give consent.

When deciding whether to caution a young person, consider the following criteria:

- the young person has admitted the offence

- the offence is one which is able to be dealt with by way of caution (section 8 *Young Offenders Act*)
- the seriousness of the offence
- the degree of violence involved in the offence
- the harm caused to any victim
- the number and nature of any offences committed by the young person and the number of times the young person has been dealt with under the *Young Offenders Act*.
- any other matters you think appropriate.
- If the offence is one that cannot be dealt with by a caution, refer the matter to a Specialist Youth Officer to determine if it can be dealt with by holding a youth justice conference.

### **Limits to cautions**

The number of occasions where a young person can be dealt with for an offence by caution, under the *Young Offenders Act*, is limited to three.

If you do not believe a caution is appropriate, refer the matter to a Specialist Youth Officer who may authorise youth justice conference or charge.

If the young person fails to attend the caution after protected admissions are obtained, you should refer the matter to the YLO to consider another appointment for a caution. Failure to make contact may, with the approval of the SYO, result in the commencement of criminal proceedings.

What was said in the PAS interview does not form part of the consideration for charge options. You cannot use the PAS interview for any purpose other than considering a caution. You must have regard to all the information, including the first interview that was voluntarily made as if the PAS interview never occurred.

### **3.3 Protected Admissions Information Sheet**

The Protected Admission Information Sheet is a one page summary of the protected admissions scheme has been prepared to explain the operation of the scheme to the young person, their parents, legal representative, etc.

The Information Sheet should be handed to the young person to reinforce the explanation the investigating officer makes when offering a Protected Admission.

The Information Sheet should be attached to the Protected Admissions Form when offering a protected admission to a young person. The Forms are designed to be able to be attached to an email which can be forwarded to the young person's legal representative after hours. Contact with Legal Aid Hotline lawyers will facilitate a timely offer and acceptance of a Protected Admission.

See: Annexure 1 – Protected Admissions Information Sheet

### 3.4 Protected Admissions Form

The Protected Admissions Form can be used during an initial interview with the young person, in the presence of a person responsible for the young person or an adult (not the investigating police officer) who is present with the consent of a person responsible for the young person (children under 14 years of age), or an adult chosen by the young person (young persons 14 - 17 years of age).

Alternatively, it can be used in consultation with the young person's legal representative, by email at the time of the interview, or at a later time.

If signed by the young person, in the presence of their adult support person, the form should also be offered to the adult to witness.

If the Form is reviewed by the young person's legal representative, it can be signed by either the young person or the legal representative. Additionally, the legal representative can make a Protected Admission within the body of their reply to your email to them, on behalf of the young person.

See: Annexure 2 – Protected Admissions Form

### 3.5 Additional considerations

- The Specialist Youth Officer will play an important checking role for the Protected Admissions scheme in two respects as that officer must be consulted before commencing criminal proceedings against a young person. Firstly, they can ensure a 'protected admission' does not form part of the evidence to be used against the young person to commence criminal proceedings. Secondly, they can check that if the young person has not admitted the offence, consideration has been given to using the 'protected admissions' scheme. If the young person has admitted the offence, the Specialist Youth Officer may also consider a youth justice conference as an alternative to charging.



- The signing of the protected admission form may be all the investigating officer requires to offer the formal caution. The officer may elect to further question the young person about the offences listed in the protected admissions form.
- The whole of any conversation with the young person after a protected admission offer has been accepted may not be used in any criminal proceedings, in any court in any circumstance.
- The investigating officer is not bound to proceed with a caution or a referral to a youth justice conference after a protected admission offer is accepted, however it is agreed any conversation with the young person cannot be used.
- If the young person admits to additional offences during an interview and he or she is eligible for cautions for those offences, the Protected Admissions Scheme may be used for those additional offences.
- Alternatively, if during the interview the young person admits to additional, more serious crimes, Police may elect to suspend the interview and commence a separate interview to ask the young person about those crimes. If this occurs, police will make it clear to the young person that what they say in the new interview is not 'protected' and can be admissible in criminal proceedings. Nothing said during the initial 'protected' interview will be used in any proceedings for any offence.
- During the interview, if the young person indicates the involvement of another person in criminal activity, this cannot be used in proceedings against that other person. However, Police may (separately and following the protected interview) request the young person provide a statement about that other person's offending. If provided, that statement may be used in proceedings. The offer of a 'protected admission' will not only bind the police officer in the use that can be made of an admission, but may also enliven a legal discretion for a court to exclude the admission on the basis its use would be unfair (s90 *Evidence Act* 1997) or because of the circumstances in which the admission was made after an inducement (s85 *Evidence Act* 1997). At the end of the portion of an interview covered by the Protected Admissions Scheme, the investigator will indicate the conclusion of that part of the interview and determine whether the young person should be dealt with by caution or a youth justice conference. The Code of Practice: Crime has been updated so that the practice in relation to *induced statements does not* apply to a Protected Admission.

## Unrestricted

- Make a record of your actions in COPS including the offer and use of the protected admission scheme. Scan a copy of the Protected Admission Form into the Case on COPS.
- Provide a copy of the Protected Admission Form to the Youth Liaison Officer who will monitor the use of the Protected Admission Scheme in their Local Area Command.
- Attach a copy of the Protected Admissions Form to the relevant Juvenile Justice office as part of the Youth Justice Conference referral.

### 3.6 Compliance Requirements and Internal Controls

<b>Source</b>	<b>Compliance requirement</b>	<b>Internal controls</b>	<b>Frequency</b>	<b>Responsibility</b>
<i>Young Offenders Act 1997</i>	Section 7 (a) – (h) Section 8	Supervision of COPS Events and Custody Manager responsibilities	Each occasion	Local Area Commander and Police Prosecutions Command
Code of Practice CRIME	Section 13 Children (Criminal Proceedings) Act 1987 – Support persons and Doli Incapax	Custody Manager and COPS supervision	Each occasion	Custody Manager
NSW Police Handbook – Young Offenders	Warnings, cautions and Youth Justice Conference SOPs and SOPs for not proceeding with caution	Specialist Youth Officer/YLO	Each occasion	SYO/YLO

## 4. Misconduct prevention

### 4.1 Misconduct risks

When overseeing the operation of the Protected Admissions Scheme, supervisors and managers should be mindful of the following misconduct risks:

- Inappropriate use of non-court alternatives
  - Incompetent use/used when other action should be pursued
  - Unethical use/bribery/coercion – police obtain a benefit from not taking a more appropriate course of action
- Unethical behaviour towards a young person by misleading them, using the Protected Admissions Scheme, e.g. tricking a confession/admission
- Risk of allegations of improper actions by police

### 4.2 Risk controls

Where possible, consult the Youth Liaison Officer or supervisor/Duty Officer prior to your use the Protected Admissions Scheme.

Each use of the Protected Admissions Scheme should be reviewed by the Youth Liaison Officer to ensure it has been used appropriately.

Consider the role and activities of the YLO in regular oversight of the scheme

Appendix 1

Protected Admissions Information Sheet

(available on the NSWPF Intranet under the Forms icon)

**INFORMATION FOR YOUNG PERSON**

**WHAT IS THE PROTECTED ADMISSIONS SCHEME ?**

Before you can be dealt with by caution or youth justice conference, (see Your rights under the Young Offenders Act, given to you by police) you must first admit the offence.

If you have decided not to admit the offence and have exercised your right to silence, the police may offer you the opportunity to make a protected admission. The police may do this if they believe that the offence could appropriately be dealt with by giving you a caution or arranging a youth justice conference if you admit the offence.

If the police decide to caution you or arrange a youth justice conference for an offence it means that you will not have to go to court.

If you agree to make a protected admission the police will consider issuing you with a caution or arranging a youth justice conference. The police will promise not to use anything you say during the interview in any criminal proceedings for any offence under any circumstances. The police will give you a document which will contain this promise in writing.

**WHAT DO I NEED TO DO BEFORE I MAKE A PROTECTED ADMISSION ?**

You should always seek legal advice before making a protected admission. You can call the Legal Aid hotline, ALS or a solicitor of your choosing.

**HOW DO I MAKE A PROTECTED ADMISSION?**

The police may conduct a formal interview with you, during which you will admit your part in the offence. The police may be satisfied that the protected admissions form signed by you is sufficient to offer you a caution

**WHAT WILL HAPPEN DURING THE INTERVIEW?**

Before the interview the police will give you a document which will describe the offences for which you may be questioned about. They will not ask you about any other offences during the interview. If you provide details about other offences, the interview may be suspended but what you say in the interview will not be used in criminal proceedings against you.

The police will expect you to be honest about what happened and your role on the offence.

**WHAT WILL HAPPEN IF I DON'T AGREE TO MAKE A PROTECTED ADMISSION?**

If you do not make a protected admission the police may take criminal proceedings against you for the offence, if they believe there is enough evidence to do so. You may be required to go to court.

You will not be dealt with by caution or youth justice conference if you have not admitted the offence.

**WHY HAVE I BEEN OFFERED A PROTECTED ADMISSION ?**

The offence that you have committed falls under the Young Offenders Act. Taking into account the type of offence and your criminal history, the police have decided that if you make admissions to the offence you are eligible for a caution or youth justice conference.

**Legal Aid Hotline—Free Service  
1800 10 18 10  
Monday to Thursday 9am to Midnight Fridays,  
Saturdays, Sundays and Public Holidays -  
24hrs  
If you are Aboriginal/Torres Strait Islander  
you will have the opportunity to speak to an ALS  
lawyer on the telephone 24hours a day, 7 days a week.**

## Appendix 2

# Protected Admissions Form

(available on the NSWPF Intranet under the Forms icon)

<b>Protected Admissions Form</b>			
Young Offenders Act 1997			
<b>PART A - Details</b>			
Name of Child:			
Investigating police officer:			
Police email			
Phone		Fax	
Date		Police Station	
Offences:	1		
	2		
	3		
	4		
	5		
	6		
	7		
	8		
Note: Do not list more than eight offences on this form. Use a new form for additional offences.			
Brief description of offences:			
<b>PART B - Protected admission notice</b>			
I, _____ am the investigating police officer for the offences listed in this notice.			
I believe you have committed the offences listed in this notice. You have not admitted those offences. If you admit the offences listed in this notice, you can be given a caution or a youth justice conference. No other proceedings will be taken against you for these offences.			
1. You may make an admission to me in writing personally or through your lawyer.			
2. I may ask you questions when you make your admission, but only about offences listed in this notice.			
3. Anything you say during the interview will not be used in any criminal proceedings for any offences under any circumstances.			
<b>PART C - Admission by child</b>			
This Part should be completed and returned to the investigating police officer.			
<b>Child to complete</b>			
I, _____ am _____ years old. I have read this notice/had this notice explained to me. I admit that I am responsible for the offences listed in this notice.			
(Name)	Signature	Date	
<b>Parent or Guardian to witness (if present)</b>			
(Name)	Signature	Date	
<b>Legal representative to complete OR return to investigating police officer via email this endorsement</b>			
I, _____ am the legal representative of _____ . I have explained this notice to my client and am instructed to admit the offences listed in this notice on their behalf.			
(Name)	Signature	Date	
<b>Copy to be given to the Youth Liaison Officer</b>			

Appendix 3

Youth Caution/ Youth Justice Conference Flowchart

