

**PRE-TRIAL DIVERSION OF OFFENDERS ACT 1985—
REGULATION**

(Pre-Trial Diversion of Offenders Regulation 1995)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Pre-Trial Diversion of Offenders Act 1985, has been pleased to make the Regulation set forth hereunder.

J. W. SHAW, Q.C., M.L.C.,
Attorney General.

Citation

1. This Regulation may be cited as the Pre-Trial Diversion of Offenders Regulation 1995.

Commencement

2. This Regulation commences on 1 September 1995.

Definitions

3. In this Regulation:

“**Director**” means the person nominated by the Director-General of the Department of Health to be Director of the Program;

“**Program**” means the Pre-Trial Diversion of Offenders Program approved in accordance with Part 3A of the Act;

“**the Act**” means the Pre-Trial Diversion of Offenders Act 1985.

Maximum adjournment periods: secs. 9, 13, 17

4. (1) For the purposes of section 9 of the Act, 4 weeks is prescribed as the maximum period for which proceedings may be adjourned to allow a determination to be made as to whether a person is to be referred for assessment for suitability for participation in the Program.

(2) For the purposes of section 13 of the Act, 8 weeks is prescribed as the maximum period for which proceedings may be adjourned to allow such an assessment to be made.

(3) For the purposes of section 17 of the Act, 2 weeks is prescribed as the maximum period for which proceedings may be adjourned to allow the person charged to be given advice and information.

Prosecutor's guidelines: sec. 10

5. For the purposes of section 10 of the Act, the following guidelines are prescribed for consideration by the prosecutor in determining whether a person is to be referred for assessment:

GUIDELINES

1. A prosecutor should not refer a person for assessment:

- (a) if the child sexual assault offence with which the person is charged is alleged to have been accompanied by acts of violence towards the alleged victim or others; or
- (b) if the person is under 18 years of age; or
- (c) if the person has a prior conviction for a sexual offence, whether in New South Wales or elsewhere; or
- (d) if the alleged victim is 18 years of age or more when the person first appears before a Justice in relation to the offence; or
- (e) if the person has previously been requested under section 23 of the Act to give an undertaking in relation to any offence.

2 A prosecutor may take into account any other matter that the prosecutor considers relevant to the question of whether or not the person should be referred for assessment.

Assessment procedure: sec. 14

6. (1) Within one week after the prosecutor's decision to refer a person for an assessment of suitability for participation in the Program, the prosecutor must notify the Director in writing of that decision.

(2) Within one week after the assessment is carried out, the Director must notify the prosecutor of the results of the assessment and (if appropriate) the reasons why the person concerned is not suitable for participation in the Program.

(3) The assessment must be carried out by means of structured clinical interviews of:

- (a) the person referred for assessment; and
- (b) such other persons acquainted with the person referred for assessment as the Director may determine.

Repeal

7. (1) The Pre-Trial Diversion of Offenders Regulation 1989 is repealed.

(2) Any act, matter or thing that, immediately before the repeal of the Pre-Trial Diversion of Offenders Regulation 1989, had effect under that Regulation continues to have effect under this Regulation.

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EXPLANATORY NOTE

The object of this Regulation is to repeal and remake, with minor changes only, the provisions of the Pre-Trial Diversion of Offenders Regulation 1989. The new Regulation deals with the following matters:

- (a) the maximum periods for which proceedings to which the Pre-Trial Diversion of Offenders Act 1985 applies may be adjourned for the purposes of that Act (clause 4);
- (b) the guidelines to be observed by a prosecutor in deciding whether a person should be referred for assessment as to the person's suitability for participation in the pre-trial diversion of offenders program conducted under that Act (clause 5);
- (c) matters relating to the carrying out of such an assessment (clause 6);
- (d) other formal matters (clauses 1, 2, 3 and 7).

This Regulation comprises or relates to matters of a machinery nature.

This Regulation is made under the Pre-Trial Diversion of Offenders Act 1985, including section 34 (the general regulation making power) and sections 9, 10, 13, 14 and 17.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
