



New South Wales

Children (Criminal Proceedings) Regulation 2016

under the

Children (Criminal Proceedings) Act 1987

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Children (Criminal Proceedings) Act 1987*.

GABRIELLE UPTON, MP
Attorney General

Explanatory note

The object of this Regulation is to remake, with some amendments, the provisions of the *Children (Criminal Proceedings) Regulation 2011*, which is repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*. The main amendment made is to remove Part 2 of the previous Regulation, which related to youth conduct orders. The youth conduct order scheme, established under Part 4A of the *Children (Criminal Proceedings) Act 1987*, was discontinued on 1 September 2014. Other minor amendments made include updating references to the Department of Justice and employees of the Department.

The Regulation makes provision with respect to the following:

- (a) prescribing an offence relating to sexual assault as a serious children's indictable offence,
- (b) the contents of the background report to be prepared for the purposes of sentencing a child,
- (c) the conditions that may be imposed under good behaviour bonds and probation orders,
- (d) the explanatory material to be provided to children when they are sentenced,
- (e) the officers employed in Juvenile Justice, Department of Justice who are authorised officers for the purposes of certain provisions of the Act relating to good behaviour bonds and probation orders,
- (f) formal matters relating to parole orders and warrants of commitment,
- (g) other miscellaneous matters.

This Regulation is made under the *Children (Criminal Proceedings) Act 1987*, including sections 3 (1) (definition of **serious children's indictable offence**), 25 (2) (a), 39 (definition of **authorised officer**) and 51 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature.

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1 Name of Regulation

This Regulation is the *Children (Criminal Proceedings) Regulation 2016*.

2 Commencement

This Regulation commences on 1 September 2016 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Children (Criminal Proceedings) Regulation 2011*, which is repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

applied Act means the *Crimes (Sentencing Procedure) Act 1999*, as applied by section 33C of the *Children (Criminal Proceedings) Act 1987*.

approved form means a form approved by the Minister.

parole order means an order, whether made under the applied Act or otherwise, directing the release of a detainee from a detention centre on parole.

the Act means the *Children (Criminal Proceedings) Act 1987*.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Serious children's indictable offence

An offence arising under section 80A of the *Crimes Act 1900* in which the victim of the offence was under the age of 10 years when the offence occurred is prescribed as a serious children's indictable offence.

5 Lists of adults willing to attend interviews

The Commissioner of Police may arrange for the preparation and maintenance of lists of adults who are willing to be called on to be present when a child is making or giving any statement, confession, admission or information as referred to in section 13 of the Act.

6 Background reports

For the purposes of section 25 (2) (a) of the Act, a background report must be in the approved form and must deal with such of the following matters as are relevant to the circumstances surrounding the commission of the offence concerned:

- (a) the child's family background,
- (b) the child's employment,

- (c) the child's education,
- (d) the child's friends and associates,
- (e) the nature and extent of the child's participation in the life of the community,
- (f) the child's disabilities (if any),
- (g) the child's antecedents,
- (h) any other matters that the Children's Court may require,
- (i) any other matters that the prosecutor considers appropriate to include in the report.

7 Conditions that may be imposed by certain orders

- (1) The kinds of conditions that may be imposed by an order made in respect of a child under section 33 (1) of the Act that provides for the child to enter into a good behaviour bond or releases the child on probation include the following:
 - (a) conditions requiring the child to attend school regularly,
 - (b) conditions relating to the child's employment,
 - (c) conditions aimed at preventing the child from committing further offences,
 - (d) conditions relating to the child's place of residence,
 - (e) conditions requiring the child to undergo counselling or medical treatment,
 - (f) conditions limiting or prohibiting the child from associating with specified persons,
 - (g) conditions limiting or prohibiting the child from frequenting specified premises,
 - (h) conditions requiring the child to comply with the directions of a specified person in relation to any matter referred to in paragraphs (a)–(g),
 - (i) conditions relating to such other matters as the court considers appropriate in relation to the child.
- (2) If the Children's Court makes an order releasing a child on probation under section 33 (1) (e) of the Act and also makes an order requiring the child to perform community service work under section 33 (1) (f) of the Act, the order releasing the child on probation may include a condition that requires the child to comply with the community service work order.

8 Explanatory material for orders

- (1) The Minister is to arrange for the preparation and maintenance of material to be given to children the subject of orders under section 33 (1) of the Act.
- (2) The material must be expressed in language readily capable of being understood by children and must include a description of the following, in relation to any particular order:
 - (a) the requirements imposed by the order,
 - (b) the consequences that may follow if those requirements are not observed,
 - (c) the rights of appeal that exist in relation to the order,
 - (d) the rights (if any) that exist in relation to the variation of the order,
 - (e) the grounds on which an application for a variation may be made.
- (3) The person responsible for supplying the material to a particular child must make all reasonable efforts to explain the material orally to the child.

9 Authorised officers

The persons employed in the Department of Justice who are assigned to any of the following roles are declared to be authorised officers for the purposes of Division 5 of Part 3 of the Act:

- (a) Executive Director, Juvenile Justice,
- (b) Director, Operational Standards and Compliance, Juvenile Justice,
- (c) Regional Directors, Juvenile Justice,
- (d) Area Managers, Juvenile Justice Community Offices,
- (e) Managers, Juvenile Justice Community Offices,
- (f) Assistant Managers, Juvenile Justice Community Offices,
- (g) Principal Psychologist, Juvenile Justice,
- (h) Juvenile Justice Officers,
- (i) Juvenile Justice Counsellors,
- (j) Juvenile Justice Professional Development Officers.

10 Consultation required before conditions as to residence or treatment imposed on parole

- (1) Before the Children's Court makes a parole order containing terms or conditions relating to residence or treatment, the court:
 - (a) must consider a report from a juvenile justice officer as to the detainee's circumstances, and
 - (b) must satisfy itself, having regard to the juvenile justice officer's report, that it is feasible to secure compliance with the terms or conditions.
- (2) Before the Children's Court makes a parole order containing terms or conditions requiring the co-operation of a person other than the detainee or a juvenile justice officer, the consent of the person to the specification of those terms and conditions in so far as they require the person's co-operation must be obtained.

11 Parole orders

- (1) A parole order made by the Children's Court must be in the approved form.
- (2) A copy of the order must be given to the detainee, and further copies are to be sent to the following persons:
 - (a) the centre manager of the detention centre in which the detainee is to be kept,
 - (b) the Executive Director, Juvenile Justice, Department Justice.
- (3) Copies of the order sent to the centre manager of the detention centre are, if practicable, to be sent so as to arrive at the detention centre at or before the time the detainee arrives.

12 Warrants of commitment

A warrant of commitment referred to in section 62 of the applied Act must be in the approved form.

13 Savings

Any act, matter or thing that, immediately before the repeal of the *Children (Criminal Proceedings) Regulation 2011*, had effect under that Regulation continues to have effect under this Regulation.