

1995—No. 457

**CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987—
REGULATION**

(Children (Criminal Proceedings) Regulation 1995)

NEW SOUTH WALES



[Published in Gazette No. 105 of 1 September 1995]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Children (Criminal Proceedings) Act 1987, has been pleased to make the Regulation set forth hereunder.

JEFFREY SHAW, Q.C., M.L.C.,
Attorney General.

Citation

1. This Regulation may be cited as the Children (Criminal Proceedings) Regulation 1995.

Commencement

2. This Regulation commences on 1 September 1995.

Definition

3. In this Regulation:

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

Notes in this Regulation

4. Notes appearing in this Regulation are explanatory only and do not form part of this Regulation.

Serious indictable offences: sec 3

5. The following offences are prescribed as serious indictable offences for the purposes of the Act, as referred to in the definition of “serious indictable offence” in section 3 (1) of the Act:

- (a) an offence arising under section 66A, 66B or 78I of the Crimes Act 1900; and
- (b) an offence arising under section 80A of that Act, but only if the victim of the offence was under the age of 10 years when the offence occurred.

Commissioner of Police may maintain lists of adults willing to attend interviews: sec 13

6. The Commissioner of Police may manage 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 referred to in section 13 of the Act.

Note: Section 13 of the Act requires that an adult be present when a child is making or giving any statement, confession or admission referred to in that section, except in certain specified circumstances. The adult must be a person responsible for the child, or some other person who is present with the consent of the person responsible for the child or (in the case of a child who is of or above the age of 16 years) with the consent of the child.

Background reports: sec 25

7. For the purposes of section 25 (2) (a) of the Act, a background report must be in such form as the Attorney General may from time to time approve and must deal with such of the following matters as are relevant to the circumstances surrounding the commission of the offence concerned:

- (a) the person’s family background;
- (b) the person’s employment;
- (c) the person’s education;
- (d) the person’s friends and associates;
- (e) the nature and extent of the person’s participation in the life of the community;

- (f) the person's disabilities;
- (g) the person's antecedents;
- (h) such other matters as the Children's Court may require;
- (i) such other matters as the prosecutor considers appropriate to include in the report.

Conditions that may be imposed on certain orders: sec 33

8. The kinds of conditions that may be imposed in relation to an order made in respect of a child under section 33 (1) (b) or (e) of the Act 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 paragraph (a)–(g);
- (i) conditions relating to such other matters as the court considers appropriate in relation to the child.

Attorney General to furnish explanatory material: sec 33

9. (1) The Attorney General 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 the following, in relation to any particular order:

- (a) a description of the requirements imposed by the order;
- (b) a description of the consequences that may follow if those requirements are not observed;

- (c) a description of the rights of appeal that exist in relation to the order;
- (d) a description of the rights (if any) that exist in relation to the variation of the order;
- (e) a description of the grounds on which an application for such 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.

Authorised officers under Division 5 of Part 3 of the Act: sec 39

10. (1) The following officers of the Department of Juvenile Justice are declared to be authorised officers for the purposes of Division 5 of Part 3 of the Act:

- (a) the Director-General;
- (b) the Deputy Director-General;
- (c) the Executive Director (Community);
- (d) Area Managers, Juvenile Justice Community Services;
- (e) Managers, Juvenile Justice Community Services;
- (f) Assistant Managers, Juvenile Justice Community Services;
- (g) Managers, Community Youth Centres;
- (h) Juvenile Justice Counsellors;
- (i) Juvenile Justice Officers.

(2) Probation officers employed in the Department of Corrective Services are declared to be authorised officers for the purposes of Division 5 of Part 3 of the Act.

Repeal

11. (1) The Children (Criminal Proceedings) Regulation 1988 is repealed.

(2) Any act, matter or thing that, immediately before the repeal of the Children (Criminal Proceedings) Regulation 1988, had effect under that Regulation continues to have effect under this Regulation.

NOTES**TABLE OF PROVISIONS**

1. Citation
2. Commencement
3. Definition
4. Notes in this Regulation
5. Serious indictable offences: sec 3
6. Commissioner of Police may maintain lists of adults willing to attend interviews: sec 13
7. Background reports: sec 25
8. Conditions that may be imposed on certain orders: sec 33
9. Attorney General to furnish explanatory material: sec 33
10. Authorised officers under Division 5 of Part 3 of the Act: sec 39
11. Repeal

EXPLANATORY NOTE

The object of this Regulation is to repeal and replace the Children (Criminal Proceedings) Regulation 1988 with no change in matters of substance. The Regulation deals with the following matters:

- (a) prescribing offences that are to be treated as serious indictable offences for the purposes of the Children (Criminal Proceedings) Act 1987 (clause 5);
- (b) the preparation of lists of persons willing to be present when a child is giving a statement, confession, admission or information under the Act (clause 6);
- (c) the content of background reports required to be provided under the Act in relation to the commission of offences (clause 7);
- (d) the conditions that may be imposed on certain orders under the Act (clause 8);
- (e) the furnishing of explanatory material to children the subject of orders under the Act (clause 9);
- (f) the prescription of certain officers to be authorised officers for the purposes of the performance of certain functions under the Act (clause 10);
- (g) formal matters (clauses 1–4 and 11).

This Regulation is made under the Children (Criminal Proceedings) Act 1987, including section 51 (the general regulation making power) and various other sections referred to in the Regulation.

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