



New South Wales

Young Offenders Regulation 2004

under the

Young Offenders Act 1997

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Young Offenders Act 1997*.

BOB DEBUS, M.P.,
Attorney General

Explanatory note

The object of this Regulation is to remake the provisions of the *Young Offenders Regulation 1997*. The *Young Offenders Regulation 1997* is due to be repealed on 1 September 2004 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation:

- (a) provides for the appointment, terms and remuneration of members of the Youth Justice Advisory Committee and for the procedures of that Committee, and
- (b) specifies the particulars to be included in records of warnings and cautions given under the *Young Offenders Act 1997 (the Act)*, and
- (c) provides that a caution may not be given under the Act for the offence under the *Drug Misuse and Trafficking Act 1985* of possessing more than half of the small quantity of cannabis leaf within the meaning of that Act, unless certain exceptional circumstances apply, and
- (d) provides for the following matters in connection with youth justice conferences:
 - (i) the notification of local police commanders about referrals of matters for conferences,
 - (ii) the maximum time for implementation of any outcome plan resulting from a conference,
 - (iii) the maximum period of community service work that may be required under an outcome plan,
 - (iv) outcome plans for juvenile bush fire or arson offenders,

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- (v) the matters to be included in records of youth justice conferences, and
- (e) prescribes certain offences for the purposes of requiring an investigating official, before issuing a penalty notice for any such offence, to consider whether:
 - (i) the offence is covered by the Act, and
 - (ii) the child alleged to have committed the offence should be given a warning or a caution or referred to a specialist youth officer to determine whether a youth justice conference should be held.

Parts 1, 2 and 5 of this Regulation relate to matters of a machinery nature.

This Regulation is made under the *Young Offenders Act 1997*, including section 73 (the general regulation-making power) and sections 9 (2A), 17 (2), 18, 33 (2), 52 (6) (b), (c) and (e), 59 (2), 70 (1) (j) and (3) and 75 and clause 1 (1) of Schedule 3.

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Clause 1 Young Offenders Regulation 2004

Part 1 Preliminary

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Young Offenders Regulation 2004*.

2 Commencement

This Regulation commences on 1 September 2004.

Note. This Regulation replaces the *Young Offenders Regulation 1997*, which is repealed on 1 September 2004 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions and notes

(1) In this Regulation:

appointed member means a member appointed by the Minister.

Committee means the Youth Justice Advisory Committee constituted under section 70 of the Act.

member means a member of the Committee.

nominated member means a member referred to in section 70 (1) (b) or (c) of the Act or in clause 4 (b) of this Regulation.

the Act means the *Young Offenders Act 1997*.

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

Part 2 Youth Justice Advisory Committee

4 Additional members

For the purposes of section 70 (1) (j) of the Act, the additional members of the Committee are as follows:

- (a) the Director-General of the Department of Aboriginal Affairs or a nominee of the Director-General,
- (b) a representative nominated by the Aboriginal Justice Advisory Council,
- (c) a person who has qualifications or experience in the field of youth conferencing, appointed by the Minister,
- (d) the Chief Executive Officer of the Legal Aid Commission or a nominee of the Chief Executive Officer,
- (e) a Magistrate nominated by the Chief Magistrate of the Local Courts,
- (f) the Chairperson of the Community Relations Commission or a nominee of the Chairperson.

5 Terms of office

Subject to this Part:

- (a) an appointed member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, and
- (b) a nominated member holds office for such period (not exceeding 3 years) as is specified in the instrument nominating the member,

but the member is eligible (if otherwise qualified) for re-appointment or to be re-nominated.

6 Remuneration

An appointed member or a nominated member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

7 Deputies

- (1) The Minister may, from time to time, appoint a person to be the deputy of an appointed member.

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Part 2 Youth Justice Advisory Committee

- (2) The body that nominated a nominated member may, from time to time, nominate a person to be the deputy of the nominated member.
- (3) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (4) While acting in the place of a member, a person:
 - (a) has all the functions of the member and is taken to be a member, and
 - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (5) For the purposes of this clause, the absence of a member includes a vacancy in the office of a member.
- (6) Clauses 5 and 8 (other than clause 8 (1) (f)) apply to the deputy of a member in the same way as they apply to the member.
- (7) This clause does not operate to confer on a deputy of the member who is the chairperson of the Committee or deputy chairperson of the Committee the member's functions as chairperson or deputy chairperson.

8 Vacancy in office of members

- (1) The office of an appointed member or a nominated member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed or re-nominated, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) in the case of an appointed member, is removed from office by the Minister under this clause, or
 - (e) in the case of a nominated member, is removed from office under this clause by the body that nominated the member, or
 - (f) is absent from 4 consecutive meetings of the Committee of which reasonable notice has been given to the member personally or by post, except on leave granted by the Committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Committee for having been absent from those meetings, or

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- (g) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove an appointed member from office for any reason.
 - (3) The body that nominated a nominated member may remove the member from office for any reason.

9 Nomination of person as member

A nomination of a person to be a nominated member or a deputy of a nominated member must be in writing addressed to the Minister and delivered to the Minister's official address.

10 General procedure

The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings is, subject to the Act and this Regulation, to be as determined by the Committee.

11 Quorum

The quorum for a meeting of the Committee is a majority of its members for the time being.

12 Presiding member

- (1) A meeting of the Committee is to be presided over by:
 - (a) the chairperson of the Committee, or
 - (b) in the absence of the chairperson, the deputy chairperson of the Committee, or
 - (c) in the absence of both the chairperson and the deputy chairperson of the Committee, another member elected to chair the meeting by the members present.
- (2) The person presiding at any meeting of the Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

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Part 2 Youth Justice Advisory Committee

13 Voting

A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present is the decision of the Committee.

Part 3 Warnings and cautions

14 Records of warnings

- (1) A record of a warning given to a child that is made for the purposes of section 17 of the Act must contain the following matters:
 - (a) the time the offence occurred,
 - (b) the place where the offence occurred,
 - (c) the nature of the offence,
 - (d) the name of the child,
 - (e) the gender of the child.
- (2) The record is to be kept on the COPS (Computerised Operational Policing) computer system maintained by NSW Police.

15 Records of cautions

- (1) A record of a caution given to a child that is made for the purposes of section 33 of the Act must contain the following matters:
 - (a) the name and address of the child,
 - (b) the date of birth of the child,
 - (c) the gender of the child,
 - (d) the cultural or ethnic background of the child,
 - (e) the name and rank (if any) of the person who gave the caution,
 - (f) the nature of the offence,
 - (g) the place, date and time of the caution,
 - (h) the persons present when the caution was given.
- (2) The record is to be kept on the COPS (Computerised Operational Policing) computer system maintained by NSW Police.

16 Offence for which caution may not be given

- (1) For the purposes of section 18 of the Act, a caution may not be given for an offence under section 10 of the *Drug Misuse and Trafficking Act 1985* that, in the opinion of the investigating official or prosecuting authority, involves more than half of the small quantity of cannabis leaf within the meaning of that Act.

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Part 3 Warnings and cautions

- (2) This clause does not apply if, in the opinion of the investigating official or prosecuting authority, there are exceptional circumstances in that it would be in the interests of rehabilitation, and appropriate in all the circumstances, to deal with the matter by giving a caution.

Note. The *Young Offenders Act 1997 (the Act)* applies to an offence under section 10 of the *Drug Misuse and Trafficking Act 1985* that involves no more than the small quantity of cannabis leaf.

The effect of this clause is to provide that, despite the general application of the Act to the offence, a caution may not (other than in exceptional circumstances) be given under the Act for the offence if it involves more than half of the small quantity of cannabis leaf.

Part 4 Youth justice conferences

17 Notification of referrals

- (1) The Director of Public Prosecutions or a court must notify, in writing, the Area Commander of the local police area in which an offence occurred of any referral, by the Director or court, of the offence to a conference administrator for a conference.
- (2) A notification is to include the reasons why the referral is being made and state how those reasons relate to the matters set out in section 40 (5) of the Act.

18 Times for outcome plans

For the purposes of section 52 (6) (b) of the Act, the maximum time for the implementation of any outcome plan is 6 months or such further time as the Director-General may approve in any particular case.

19 Maximum period of community service work

For the purposes of section 52 (6) (c) of the Act, the period of community service work imposed by an outcome plan must not exceed the maximum amount of hours that may be imposed in respect of the same offence under the *Children (Community Service Orders) Act 1987*.

20 Outcome plans for bush fire/arson juvenile offenders

- (1) This clause applies to a child who admits to an offence covered by the Act that consists of:
 - (a) the lighting of a bush fire, or
 - (b) the destruction or damage of property by means of fire.
- (2) For the purposes of section 52 (6) (e) of the Act, an outcome plan for a child to whom this clause applies must provide for the following:
 - (a) attendance by the child:
 - (i) at a burns unit or ward of a hospital that agrees to participate in the youth justice conference scheme, or
 - (ii) at a screening of a film or video designed to provide education as to the harmful effects of fire,

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Part 4 Youth justice conferences

- (b) the making of reparation for the offence, such as:
 - (i) assistance in clean-up operations and in treatment of injured animals, and
 - (ii) the payment of compensation (not exceeding the amount that a court may impose on conviction for the offence).
- (3) This clause does not limit any other matter for which an outcome plan may provide.
- (4) This clause does not affect the requirements of the Act relating to the agreement of the child and victims of the offence to the outcome plan.

21 Records of conferences

For the purposes of section 59 of the Act, a record is to contain the following matters:

- (a) the name and address of the child,
- (b) the date of birth of the child,
- (c) the gender of the child,
- (d) the cultural or ethnic background of the child,
- (e) the nature of the offence,
- (f) the date the referral for a conference was received,
- (g) the name of the conference convenor,
- (h) the name of the conference administrator concerned,
- (i) the date when, and place where, the conference was held,
- (j) the persons who attended the conference and the capacity in which they attended,
- (k) particulars of the outcome plan of the conference,
- (l) the person responsible for the outcome plan,
- (m) whether the outcome plan was completed,
- (n) any other matters the conference administrator thinks relevant.

Part 5 Miscellaneous

22 Penalty notice offences subject to young offenders scheme

For the purposes of section 9 (2A) of the Act, the following offences are prescribed as offences in respect of which an investigating official must consider the matters referred to in section 199 (2) (a) and (b) of the Act before issuing a penalty notice:

- (a) offences under section 11C of the *Summary Offences Act 1988*,
- (b) offences under section 28F of the *Summary Offences Act 1988* or, after the repeal of that section, under section 199 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

23 Limit on number of cautions

A caution given before 15 November 2002 (being the date of commencement of the *Young Offenders Amendment Act 2002*) is to be disregarded for the purposes of sections 20 (7), 23 (5), 31 (5), 37 (6), 38 (5), 41 (9) and 44 (5) of the Act.

24 Saving relating to repeal of Young Offenders Regulation 1997

Any act, matter or thing that, immediately before the repeal of the *Young Offenders Regulation 1997*, had effect under that Regulation continues to have effect under this Regulation.