



New South Wales

Children (Criminal Proceedings) Regulation 2005

under the

Children (Criminal Proceedings) Act 1987

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

BOB DEBUS, M.P.,
Attorney General

Explanatory note

The object of this Regulation is to remake, without any changes in substance, the provisions of the *Children (Criminal Proceedings) Regulation 2000*, which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

The new Regulation deals with the following matters:

- (a) prescribing offences that are to be treated as serious children's indictable offences for the purposes of the *Children (Criminal Proceedings) Act 1987* (**the Act**) (clause 4),
- (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 5),
- (c) the content of background reports required to be provided under the Act in relation to the commission of offences (clause 6),
- (d) the conditions that may be imposed on certain orders under the Act (clause 7),
- (e) the furnishing of explanatory material to children who are the subject of orders under the Act (clause 8),
- (f) prescribing certain officers to be authorised officers for the purposes of performing certain functions under the Act (clause 9),
- (g) formal matters relating to parole orders and warrants of commitment (clauses 10–12).

This Regulation is made under the *Children (Criminal Proceedings) Act 1987*, including section 51 (the general regulation-making power).

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

Contents

	Page
1 Name of Regulation	3
2 Commencement	3
3 Definitions	3
4 Serious children's indictable offences	3
5 Lists of adults willing to attend interviews	4
6 Background reports	4
7 Conditions that may be imposed on certain orders	4
8 Attorney General to furnish explanatory material	5
9 Authorised officers	5
10 Consultation required before conditions as to residence or treatment imposed on parole	6
11 Parole orders	6
12 Warrants of commitment	7
13 Savings provision	7

Children (Criminal Proceedings) Regulation 2005

under the

Children (Criminal Proceedings) Act 1987

1 Name of Regulation

This Regulation is the *Children (Criminal Proceedings) Regulation 2005*.

2 Commencement

This Regulation commences on 1 September 2005.

Note. This Regulation replaces the *Children (Criminal Proceedings) Regulation 2000* which is repealed on 1 September 2005 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.

juvenile justice officer means a juvenile justice officer employed within the Department of Juvenile Justice.

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*.

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

4 Serious children's indictable offences

The following offences are prescribed as serious children's indictable offences for the purposes of the Act, as referred to in the definition of **serious children's indictable offence** in section 3 (1) (e) of the Act:

- (a) an offence arising under section 78I of the *Crimes Act 1900*,
 - (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.
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2005 No 422

Clause 5 Children (Criminal Proceedings) Regulation 2005

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 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.

6 Background reports

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.

7 Conditions that may be imposed on certain orders

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.

8 Attorney General to furnish explanatory material

- (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.

9 Authorised officers

- (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 Assistant Director, Operations,
 - (c) the Regional Directors and Assistant Regional Directors,

2005 No 422

Clause 10 Children (Criminal Proceedings) Regulation 2005

- (d) Managers, Juvenile Justice Community Services,
 - (e) Assistant Managers, Juvenile Justice Community Services,
 - (f) Managers, Intensive Programs Units,
 - (g) Director, Psychological and Specialist Programs,
 - (h) Senior Counsellors, Intensive Programs Units,
 - (i) Juvenile Justice Officers,
 - (j) Juvenile Justice Counsellors,
 - (k) Specialist Services Coordinators,
 - (l) Conference Administrators,
 - (m) the Assistant Director, Psychological and Specialist Services.
- (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.

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 offender'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 offender or a juvenile justice officer, it must obtain the consent of the person to the specification of those terms and conditions in so far as they require the person's co-operation.

11 Parole orders

- (1) A parole order made by the Children's Court must be reduced to writing using the approved form.
- (2) A copy of the order must be given to the offender, and further copies are to be sent to the following persons:
- (a) the centre manager of the detention centre in which the offender is to be kept,
 - (b) the Director-General of the Department of Juvenile Justice.

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- (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 is to be in the approved form.

13 Savings provision

Any act, matter or thing that, immediately before the repeal of the *Children (Criminal Proceedings) Regulation 2000*, had effect under that Regulation continues to have effect under this Regulation.