



New South Wales

Criminal Case Conferencing Trial Regulation 2008

under the

Criminal Case Conferencing Trial Act 2008

The Administrator, with the advice of the Executive Council, has made the following Regulation under the *Criminal Case Conferencing Trial Act 2008*.

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Attorney General

Explanatory note

The object of this Regulation is to prescribe the form of a statement that must be given by a Magistrate to an accused person when the Magistrate sets a timeframe for the holding of a compulsory conference under the *Criminal Case Conferencing Trial Act 2008* in relation to an indictable offence alleged to have been committed by the person. The statement is to describe the effect of the compulsory conference and sentence discounting provisions of that Act and the accused person's rights under those provisions.

The Regulation also prescribes certain offences that are to be excluded from the compulsory conference provisions of that Act and prescribes the time at which a notice excluding an offence from the sentence discounting provisions of that Act must be tendered by the prosecution in cases where no compulsory conference is required to be held.

This Regulation is made under the *Criminal Case Conferencing Trial Act 2008*, including sections 6 (1) (a) (ii), 10 (2) and 22 (the general regulation-making power).

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

2008 No 117

Criminal Case Conferencing Trial Regulation 2008

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Criminal Case Conferencing Trial Act 2008

1 Name of Regulation

This Regulation is the *Criminal Case Conferencing Trial Regulation 2008*.

2 Definitions

- (1) In this Regulation:
the Act means the *Criminal Case Conferencing Trial Act 2008*.
- (2) Notes included in this Regulation do not form part of this Regulation.

3 Exclusion of offences from compulsory conferencing provisions

For the purposes of section 6 (1) (a) (ii), the following offences are prescribed:

- (a) an offence that is being heard together with an offence against a law of the Commonwealth,
- (b) an offence being prosecuted by a member of staff of the Office of the Director of Public Prosecutions of the Commonwealth.

4 Statement to be given by Magistrate

For the purposes of section 10 (2) of the Act, the form of words for the statement to be given by a Magistrate to an accused person is set out in Schedule 1.

5 Time for excluding offences under section 18 of the Act

- (1) For the purposes of section 18 (2) of the Act, the prosecutor may exclude an offence from the operation of section 16 of the Act by notice in writing tendered at the next appearance before the court by the prosecutor and the accused person (or the accused person's legal representative) after the service on the accused person of a copy of the brief of evidence.
- (2) This clause applies only in cases where there is no pre-conference disclosure certificate filed.

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Schedule 1 Statement of effect of legislation and accused person's rights

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(Clause 4)

Statement

Compulsory conferences

A compulsory conference is to be held in relation to the offence with which you have been charged.

Purpose of compulsory conference

The purpose of the compulsory conference is to determine whether there is any offence or are any offences to which you are prepared to plead guilty and whether you and the prosecution can reach agreement on certain other matters, such as the details of the agreed facts and facts in dispute in relation to any offence to which you have offered to plead guilty.

Who must attend the compulsory conference

Your legal representative and an officer from the Office of the Director of Public Prosecutions representing the prosecution are to attend the compulsory conference.

Documents to be provided to your legal representative

The prosecution must give a brief of evidence and then a pre-conference disclosure certificate to your legal representative before the holding of the compulsory conference. Those documents will outline the offence or offences with which you have been charged and the prosecution's case in relation to those offences.

Holding of compulsory conference

If you don't plead guilty, the pre-conference disclosure certificate will then be filed and the compulsory conference will be held.

If you plead guilty before the filing of the pre-conference disclosure certificate, the compulsory conference will not be held.

Outcome of compulsory conference

The prosecution and your legal representative will sign a compulsory conference certificate after the holding of the compulsory conference and that document will be filed with the court. The certificate will set out the offence or offences with which you have been charged and other matters arising from the compulsory conference, such as whether you offered to plead guilty to any offences and whether you or the prosecution rejected any such offers. It may also include whether you consider the brief of evidence to have been inadequate.

The compulsory conference certificate can only be used by a sentencing court for limited purposes.

Disclosing any information in a compulsory conference does not count as a pre-trial disclosure for the purposes of any additional sentence discounts.

Sentence discounts

Maximum sentence discount for guilty plea before committal for trial

If you plead guilty before being committed for trial, you are entitled to a 25% discount on your sentence for the guilty plea.

Maximum sentence discount for guilty plea after committal for trial

If you plead guilty at any time after being committed for trial, a court may discount your sentence by up to 12.5% for the guilty plea depending on how much of a benefit will result from you pleading guilty at that stage of the proceedings. If the court considers there is no benefit gained from the guilty plea at that stage, no discount for the guilty plea will be allowed.

In certain exceptional circumstances, you may be allowed a sentence discount of up to 25%.

Prosecutor may exclude offences

The prosecution may exclude any offence from the operation of the sentence discounting provisions by a notice in writing filed with the court at the same time as the pre-conference disclosure certificate. The prosecution can only exclude an offence if the prosecutor is satisfied that the case in question is an extreme case and there is a high probability of conviction.