



New South Wales

Criminal Procedure Amendment (Committals and Guilty Pleas) Regulation 2018

under the

Criminal Procedure Act 1986

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Criminal Procedure Act 1986*.

MARK SPEAKMAN, MP
Attorney General

Explanatory note

The object of this Regulation is to amend the *Criminal Procedure Regulation 2017* as follows:

- (a) to prescribe the forms of written and oral explanations to be given to accused persons by Magistrates in committal proceedings,
- (b) to prescribe the form for a charge certificate and a case conference certificate in committal proceedings,
- (c) to set out the requirements relating to the availability of accused persons for the purposes of case conferences in committal proceedings,
- (d) to provide for requirements for witness statements in committal proceedings, including requirements relating to endorsements, disclosures of identifying information, signing and evidentiary presumptions,
- (e) to prescribe additional officers who may exercise functions relating to case conferences and charge certificates in committal proceedings,
- (f) to provide for further transitional arrangements for existing proceedings.

This Regulation is made under the *Criminal Procedure Act 1986*, including sections 4 (the general regulation-making power), 59 (3), 65 (d), 66 (1), 71 (4), 75 (1), 283B (3) and 283H and clause 1 of Schedule 2.

Criminal Procedure Amendment (Committals and Guilty Pleas) Regulation 2018

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1 Name of Regulation

This Regulation is the *Criminal Procedure Amendment (Committals and Guilty Pleas) Regulation 2018*.

2 Commencement

This Regulation commences on 30 April 2018 and is required to be published on the NSW legislation website.

Schedule 1 **Amendment of Criminal Procedure Regulation 2017**

[1] Part 2A

Insert after Part 2:

Part 2A Committal proceedings

Division 1 Committal process

9A Oral explanation of committal process

For the purposes of section 59 (3) of the Act, the oral explanation of the committal process is to be in or to the effect of the following (as applicable to the accused person):

Charge certificate

The prosecutor has given you or your lawyer a charge certificate. The charge certificate shows all the offences that the prosecutor intends to proceed with if your case goes to trial in the District Court/Supreme Court [*specify correct court*].

Case conference (if accused has legal representation)

[*Include only if the accused person is represented by a legal practitioner*]

Your case will now be adjourned so that your lawyer and the prosecutor can discuss your case at a case conference. The case conference is to help you decide whether to plead guilty or not guilty to the charges against you and to discuss any offers that may be made.

You must be available to give your lawyer instructions during the case conference and your lawyer will arrange this.

After the case conference, a certificate will be prepared by the prosecutor and your lawyer as a record of the conference. What is in the case conference certificate is confidential.

After the case conference you will come back before a Magistrate.

What happens next (if accused has no legal representation)

[*Include only if the accused person is not represented by a legal practitioner*]

Your case will now be adjourned so that you can decide if you want to plead guilty or not guilty to the offences on the charge certificate. If you wish to contact the prosecutor about the offences listed in the charge certificate, you can do so in writing.

You may wish to get legal representation or legal advice about your case while your case is adjourned. This may be available from Legal Aid NSW.

After the adjournment you will come back before a Magistrate.

Committal for trial or sentence

The Magistrate will ask you whether you plead guilty or not guilty to each offence proceeding.

If you plead guilty, the Magistrate will send your case to the District Court/Supreme Court [*specify correct court*] to decide your sentence. If you plead not guilty, the Magistrate will send your case to the District Court/Supreme Court [*specify correct court*] for trial.

Statutory sentencing discount for guilty pleas

[Include if the accused person is an offender to whom the discount scheme under Division 1A of Part 3 of the Crimes (Sentencing Procedure) Act 1999 applies]

If you plead guilty to an indictable offence, you may get a discount on your sentence. The amount of the discount depends on when you plead guilty and you should seek legal advice about it.

You will be given some written information with more details about the committal process and the sentencing discounts that may be available.

9B Written explanation of committal process

For the purposes of section 59 (3) of the Act, the written explanation of the committal process is to be in or to the effect of the following (as applicable to the accused person):

Purpose of committal proceedings

This explanation is being given to you because you are facing criminal charges at a committal proceeding. The purposes of the committal proceeding are:

- (i) for the prosecutor to decide which criminal charges against you are proceeding, and
- (ii) for you to decide whether to plead guilty or not guilty to those offences.

At the end of the committal proceeding your case will be sent to the District Court or Supreme Court for trial if you plead not guilty or to decide your sentence if you plead guilty.

Charge certificate

The prosecutor has given you or your lawyer a charge certificate. The charge certificate shows all the offences the prosecutor intends to proceed with if your case goes to trial in the District Court or Supreme Court.

Case conference (if accused has legal representation)

Your case will be adjourned so that your lawyer and the prosecutor can discuss your case at a case conference. Your lawyer will arrange the case conference. The case conference is to help you decide whether to plead guilty or not guilty to the charges against you and to discuss any offers that may be made. At the case conference other issues that relate to your case can also be discussed.

You must be available to give your lawyer instructions during the case conference and your lawyer will arrange this.

If the prosecutor and your lawyer agree, you may be present at the conference.

After the case conference, a case conference certificate will be prepared and signed by the prosecutor and your lawyer. The certificate will show any offers made by you to plead guilty to an offence and whether the offers were accepted. The certificate will also show any offers made by the prosecutor to accept a guilty plea to another offence. It will also show any agreed facts (if a guilty plea offer is accepted).

Your lawyer must explain the statutory sentencing scheme for guilty pleas to you if it applies to your case. You may also be asked to sign the certificate.

What is in the case conference certificate is confidential. It is an offence to publish any information in the certificate.

However, if you are found guilty of an offence the court that decides your sentence will be given the case conference certificate. What is said in the certificate can affect whether you get a sentence discount. The court may use your certificate when deciding your sentence. You should ask your lawyer if you have any questions about this.

After the case conference you will come back before a Magistrate.

What happens next (if accused has no legal representation)

Your case will now be adjourned so that you can seek legal advice and decide if you want to plead guilty or not guilty to the offences on the charge certificate. If you wish to contact the prosecutor about the offences listed in the charge certificate, you can do so in writing.

You may wish to get legal representation or legal advice about your case while your case is adjourned. This may be available from Legal Aid NSW.

After the adjournment you will come back before a Magistrate.

Examination of prosecution witnesses

At any time after you or your lawyer is given the charge certificate, you can ask a Magistrate to direct that one or more of the prosecution witnesses come to court to give evidence in the committal proceedings. The Magistrate will apply certain tests to determine whether to grant the request. If the Magistrate refuses, the Magistrate will give reasons for the refusal.

The Magistrate must give the direction if the prosecutor agrees to your request. However, if the witness is the alleged victim of an offence involving violence, the Magistrate may give the direction only if the Magistrate believes there are special reasons why, in the interests of justice, the witness should attend.

Some alleged victims of child sexual offences or other sexual offences cannot be asked to come to court to give evidence.

Committal for trial or sentence

A Magistrate will ask you whether you plead guilty or not guilty to each offence on the charge certificate. You can also plead guilty at any other time.

If you plead guilty, the Magistrate will send your case to the District Court or Supreme Court to decide your sentence. This is called committal for sentence.

If you plead not guilty, the Magistrate will send your case to the District Court or Supreme Court for trial. This is called committal for trial.

Statutory sentencing discount for guilty pleas (if the discount scheme under Division 1A of Part 3 of the Crimes (Sentencing Procedure) Act 1999 applies)

If you plead guilty to an indictable offence, you may get a discount on your sentence. The amount of discount depends on when you plead guilty.

If you plead guilty before the end of the committal proceedings in the Local Court, that discount may be 25%.

If you plead guilty after you are committed for trial and at least 14 days before the date your matter is first listed for trial, that discount may be 10%. This includes if you plead guilty in court or give the prosecutor a written offer to plead guilty.

If you plead guilty after 14 days before the date your matter is first listed for trial, that discount may be 5%.

The discount scheme does not apply to Commonwealth offences and serious children's indictable offences, and you should ask your lawyer for advice or get legal advice about this.

9C Prosecutors who may exercise charge certificate and case conference functions

For the purposes of section 65 (d) of the Act, the following persons may exercise the functions of a prosecutor under Divisions 4 and 5 of Part 2 of Chapter 3 of the Act:

- (a) a person referred to in section 65 (b) of the Act, in the case of a committal proceeding for a State offence,
- (b) a person appointed by the Commonwealth Director of Public Prosecutions to exercise any of the Director's functions under Divisions 4 and 5 of Part 2 of Chapter 3 of the Act,
- (c) a legal representative of a person referred to in paragraph (a) or (b).

9D Charge certificates

For the purposes of section 66 (1) of the Act, a charge certificate must be in Form 1A.

9E Availability of accused persons to give instructions for purposes of case conference

- (1) An accused person is to be available to give instructions to the accused person's legal representative during a case conference.
- (2) The legal representative of an accused person must, if appropriate to assist the accused person, ensure that a support person or an interpreter is available when the accused person is giving instructions to the accused person's legal representative during a case conference.
- (3) The legal representative of an accused person, and any person in whose custody any such accused person is kept, has a duty to ensure, so far as is reasonably practicable, that the accused person is available to give instructions during a case conference.
- (4) An accused person who is not in custody is taken to be available to give instructions if the person is able to give instructions in person or, if that is not reasonably practicable or is not appropriate for any reason, by audio visual link or telephone.
- (5) An accused person who is in custody is taken to be available to give instructions if the person is able to give instructions in person or by audio visual link or, if that is not reasonably practicable, by telephone.
- (6) A failure by a person to comply with this clause does not affect the validity of anything done or omitted to be done in or for the purposes of the committal proceedings.

9F Attendance of accused persons at case conferences

- (1) An accused person may attend part or all of the discussions between the prosecutor and the accused's legal representative at a case conference in person, by audio visual link or by telephone, if the prosecutor and the accused person's legal representative consent.
- (2) The legal representative of an accused person who so attends part or all of a case conference must, if appropriate to assist the accused person, ensure that a support person or an interpreter attends the case conference.

- (3) A failure by a person to comply with this clause does not affect the validity of anything done or omitted to be done in or for the purposes of the committal proceedings.

9G Case conference certificates

- (1) For the purposes of section 75 (1) of the Act, a case conference certificate must be in Form 1B.
- (2) Any matters set out in the form that are in addition to the matters specified in section 75 (1) of the Act are prescribed for the purposes of section 75 (1) (j) of the Act.

Division 2 Witness statements in committal proceedings

9H Application of Division

This Division applies to a statement to which Part 3A of Chapter 6 of the Act applies.

9I Endorsement of written statements

- (1) For the purposes of section 283B (3) of the Act, a written statement must be endorsed as follows:

This statement made by me accurately sets out the evidence that I would be prepared, if necessary, to give in court as a witness. The statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I will be liable to prosecution if I have wilfully stated in it anything that I know to be false or do not believe to be true.

- (2) In the case of a person who is under the age of 18 years, or an adult who is apparently of appreciably below average intelligence, it is sufficient if the endorsement includes:
 - (a) words to the effect that the statement is true, or
 - (b) words to the effect that the statement contains no lies.
- (3) A written statement that is in a language other than English and has a document purporting to contain an English translation of the statement or part annexed to it in accordance with section 283B (5) of the Act must also have annexed to it a certificate by the translator stating his or her qualifications and certifying that the translation is a correct translation of the document.

9J Addresses, dates of birth and phone numbers not to be disclosed on written statements

- (1) A copy of a written statement served on an accused person must not disclose the address, date of birth or telephone number of the person who made the statement or of any other living person, unless:
 - (a) the address, date of birth or telephone number is a materially relevant part of the evidence, or
 - (b) a Magistrate makes an order permitting the disclosure in the statement.
- (2) An application for an order permitting the disclosure may be made by the accused person or the prosecutor.
- (3) The Magistrate must not make the order unless satisfied that the disclosure is not likely to present a reasonably ascertainable risk to the welfare or protection of any person or that the interests of justice (including the accused person's

right to prepare properly for the hearing of the evidence for the prosecution) outweigh any such risk.

- (4) This clause does not prevent the disclosure of an address in a written statement if the statement does not identify it as a particular person's address, or it could not reasonably be inferred from the statement that it is a particular person's address.
- (5) An address, date of birth or telephone number that must not be disclosed may, without reference to the person who made the written statement, be deleted from the statement, or rendered illegible, before the statement is served on the accused person.
- (6) In this clause, *address* includes residential address, business address, email address and web-based address.

9K Signing of written statements by maker or another person on the maker's behalf

- (1) A written statement must be signed by the person who made the statement.
- (2) If the person is unable to sign the written statement, the statement may be signed by another person with the consent of and in the presence of the person who made the statement.
- (3) The other person must sign an endorsement on the statement to the effect that the person signed the statement on behalf of, with the consent of and in the presence of the person who made the statement.
- (4) A written statement must also be signed, as a witness, by a person who witnessed the signing of the statement by the person who made the statement or by another person signing on the maker's behalf (if applicable).

9L Presumptions about age and language

- (1) In any proceedings it is presumed, if there is no evidence to the contrary, that the age specified in a statement is in fact the age of the person who made the statement at the time the statement was made.
- (2) In any proceedings it is presumed, if there is no evidence to the contrary, that the language in which a written statement or an endorsement is written is a language of which the person who made the statement or endorsement has a reasonable understanding.
- (3) In any proceedings it is presumed, if there is no evidence to the contrary, that the English translation of a statement or part statement is an accurate translation of the statement or part.

9M Presumptions about signatures on written statements

- (1) In any proceedings it is presumed, if there is no evidence to the contrary, that a signature on a written statement purporting or appearing to be the signature of the person who made it, or a person who signed on behalf of the maker, or a witness to the signing of the statement, is the signature of the person concerned.
- (2) In any proceedings it is presumed, if there is no evidence to the contrary, that a statement purporting or appearing to be signed by another person on behalf of the person who made the statement in accordance with this Division has been so signed.

[2] Clause 119A

Insert after clause 119:

119A Transitional provision relating to committal proceedings procedures

The Act, as in force before its amendment by the *Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017*, continues to apply to committal proceedings that deal with one or more offences if proceedings for any of those offences commenced before the amendments made to Part 3 of the Act by that amending Act commenced.

[3] Schedule 1 Forms

Insert before Form 1:

Form 1A

Charge certificate

(*Criminal Procedure Act 1986*; section 66 (1))

Case name:

Case number:

Prosecutor's reference number:

Part 1 Offences

The following offences are to proceed as set out below (court attendance notices for each offence are attached):

Offences				
Reference number	Offence details (legislation reference/common law)	Law part code	Description (sufficient for indictment or averment) and date of offence	How offence will proceed (indicate if for committal/back up or related offence/withdrawn/summary offence)

Part 2 Declarations by prosecutor

This is to certify that:

- (a) the evidence available is capable of establishing each element of the offences that are to be the subject of the proceedings against the accused person, and
- (b) *[if the offence is not an offence under the law of the Commonwealth]* a certificate under section 15A of the *Director of Public Prosecutions Act 1986* relating to the offence has been received and considered.

Signature:

Title of prosecutor:

Location of office of prosecutor:

Date:

Form 1B

Case conference certificate

(*Criminal Procedure Act 1986*; section 75))

Case name:

Case number:

Prosecutor's reference number:

Title of prosecutor attending:

Defence reference number:

Name, title and firm/organisation of accused person's legal representative:

Name and date of birth of accused person:

Date/s of case conference/s:

Part 1 Offences shown in charge certificate

The following offences are as shown in the charge certificate (court attendance notices for each offence are attached):

Charge certificate offences				
Reference number	Offence details (legislation reference/common law)	Law part code	Description (sufficient for indictment or averment) and date of offence	How offence will proceed (indicate if for committal/back up or related offence/withdrawn/summary offence)

Part 2 Offers by accused person and prosecutor

The following offers have been made to or by the accused person and the prosecutor (and are listed in chronological order of the making of the offers):

Offers made by accused person or prosecutor			
Offer made by	Details of offer	Acceptance/Rejection	Date of acceptance/rejection

Part 3 Offences

The offences that are being proceeded with are set out below (court attendance notices for each offence are attached), as well as the offences that have been withdrawn:

Offences					
Reference number	Offence details (legislation reference/common law)	Law part code	Description (sufficient for indictment or averment) and date of offence	How offence will proceed (indicate if for committal/back up or related offence/withdrawn/summary offence)	Type of committal (trial or sentence)

Part 4 Agreed facts for offences

Where guilty plea accepted

The facts on the basis of which the accused person is pleading guilty are agreed and attached/The agreed facts on the basis of which the accused person is pleading guilty are attached with the disputed facts identified. *[delete the statement that is not applicable]*

Part 5 Declaration by prosecutor

[Not to be completed for offences against a law of the Commonwealth or other offences to which the sentencing discount under Division 1A of Part 3 of the Crimes (Sentencing Procedure) Act 1999 does not apply]

I, *[insert title]*, have not notified the accused person that it is intended to make a submission to the sentencing court that the discount for a guilty plea should not apply or should be reduced in relation to the following offence or offences:

[delete if not applicable]

I, *[insert title]*, have notified the accused person that it is intended to make a submission to the sentencing court that the discount for a guilty plea should not apply or should be reduced in relation to the following offence or offences:

[delete if not applicable]

Signature:

Date and place:

Part 6 Declaration by legal representative of accused person

[Not to be completed for offences against a law of the Commonwealth or other offences to which the sentencing discount under Division 1A of Part 3 of the Crimes (Sentencing Procedure) Act 1999 does not apply]

I, *[insert name]*, the legal representative of the accused person, have explained to the accused person the matters specified in section 72 (2) of the *Criminal Procedure Act 1986*, that is, the following:

The effect of the scheme for the sentencing discount applied under Part 3 of the *Crimes (Sentencing Procedure) Act 1999* for a plea of guilty to an offence.

The penalties that apply to the offences that are proceeding and for any extra offences about which the accused person made offers or the prosecutor made offers for guilty pleas.

The effect on the penalty for an offence if the accused person pleads guilty to the offence at different stages of proceedings for the offence.

Signature:

Date and place:

Part 7 Declaration by accused person

[Only to be completed if the accused person does not intend to plead guilty to an offence, the case is to be committed for trial and the matter involves offences to which the sentencing discount under Division 1A of Part 3 of the Crimes (Sentencing Procedure) Act 1999 applies]

I intend to plead not guilty to some/all of the offences that I have been charged with. I understand that my case will be sent to the District Court/Supreme Court *[specify correct court]* for trial for those offences.

My legal representative has explained to me the matters specified in section 72 (2) of the *Criminal Procedure Act 1986*, that is, the following:

The effect of the scheme for the sentencing discount applied under Part 3 of the *Crimes (Sentencing Procedure) Act 1999* for a plea of guilty to an offence.

The penalties that apply to the offences that are proceeding and for any extra offences about which I made offers or the prosecutor made offers for guilty pleas.

The effect on the penalty for an offence if I plead guilty to the offence at different stages of proceedings for the offence.

I understand and acknowledge the effect of the matters set out above in my case.

Signature:

Date and place:

Part 8 Obligations relating to confidentiality

The matters specified in this certificate must be treated as confidential (see section 79 of the *Criminal Procedure Act 1986*).

It is an offence to publish, or permit another person to publish, this certificate or evidence of anything said during a case conference or during subsequent negotiations relating to plea offers (see section 80 of the *Criminal Procedure Act 1986*). This certificate and evidence of

those things cannot be used in court proceedings, other than relevant sentencing or appeal proceedings or disciplinary proceedings against a lawyer (see section 78 of the *Criminal Procedure Act 1986*).

Part 9 Signatures of prosecutor and legal representative of accused

This case conference certificate was signed by the prosecutor and the legal representative of the accused.

Prosecutor

Signature:

Title of prosecutor:

Location of office of prosecutor:

Date and place:

Legal representative of accused person

Signature:

Name of legal representative:

Date and place: