



New South Wales

# Children (Criminal Proceedings) Regulation 2021

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*.

MARK SPEAKMAN, MP

Attorney General, and Minister for Prevention of Domestic and Sexual Violence

## Explanatory note

The object of this Regulation is to repeal and remake, with minor changes, the *Children (Criminal Proceedings) Regulation 2016*, which would otherwise be repealed on 1 September 2021 by the *Subordinate Legislation Act 1989*, section 10(2).

The Regulation provides for the following matters—

- (a) prescribing an offence relating to sexual assault as a serious children's indictable offence,
- (b) the preparation of lists of adults willing to be called on to be present when a child is making or giving certain statements, confessions, admissions or information,
- (c) the contents of the background report to be prepared for the purposes of sentencing a child,
- (d) the form of oral and written explanations to be given to accused persons in committal proceedings,
- (e) the conditions that may be imposed under good behaviour bonds and probation orders,
- (f) the explanatory material to be provided to children when they are sentenced,
- (g) the officers employed in Youth Justice, Department of Communities and Justice who are authorised officers for the purposes of certain provisions of the Act relating to good behaviour bonds and probation orders,
- (h) formal matters relating to parole orders and warrants of commitment.

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely matters of a machinery nature.

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## Children (Criminal Proceedings) Regulation 2021

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Children (Criminal Proceedings) Act 1987

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Children (Criminal Proceedings) Regulation 2021*.

#### 2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

**Note.** This Regulation repeals and replaces the *Children (Criminal Proceedings) Regulation 2016*, which would otherwise be repealed on 1 September 2021 by the *Subordinate Legislation Act 1989*, section 10(2).

#### 3 Definitions

In this Regulation—

***applied Act*** means the *Crimes (Sentencing Procedure) Act 1999*, as applied by the *Children (Criminal Proceedings) Act 1987*, section 33C.

***approved form*** means a form approved by the Minister.

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

**Note.** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

#### 4 Serious children's indictable offence

For the purposes of the Act, section 3(1), definition of ***serious children's indictable offence***, paragraph (e), an offence under the *Crimes Act 1900*, section 80A in which the victim of the offence was under the age of 10 years when the offence occurred is prescribed.

#### 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 a statement, confession, admission or information as referred to in the Act, section 13.

#### 6 Background reports

For the purposes of the Act, section 25(2)(a), a background report must—

- (a) be in the approved form, and
- (b) include details of any of the following matters relevant to the circumstances surrounding the commission of the offence—
  - (i) the child's family background,

- (ii) the child's employment,
- (iii) the child's education,
- (iv) the child's friends and associates,
- (v) the nature and extent of the child's participation in community life,
- (vi) the child's disabilities,
- (vii) the child's antecedents,
- (viii) other relevant matters requested by the Children's Court,
- (ix) other matters the prosecutor considers appropriate to include in the report.

## 7 Explanations to accused persons in committal proceedings

For the purposes of the Act, section 31L, before the commencement of committal proceedings under the Act, Part 3, Division 3A the Magistrate must give the accused person—

- (a) an oral explanation in or to the effect of the form set out in Schedule 1, clause 1, and
- (b) a written explanation in or to the effect of the form set out in Schedule 1, clause 2.

## 8 Conditions that may be imposed by certain orders

- (1) For the purposes of the Act, section 51(1)(a), the kinds of conditions that may be imposed in relation to an order made under the Act, section 33(1) that provides for the child to enter into a good behaviour bond or releases the child on probation 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 a matter referred to in paragraphs (a)–(g),
  - (i) conditions relating to other matters the court considers appropriate in relation to the child.
- (2) For the purposes of the Act, section 51(1)(a), if the Children's Court makes an order releasing a child on probation under the Act, section 33(1)(e) (the **probation order**) and makes an order requiring the child to perform community service work under the Act, section 33(1)(f) (the **community service work order**), the probation order may include a condition requiring the child to comply with the community service work order.

## 9 Explanatory material for orders

- (1) The Minister is to arrange for the preparation and maintenance of material to be given to children the subject of orders under the Act, section 33(1).

- (2) The material must be expressed in language readily capable of being understood by children and must include a description of the following in relation to a particular order—
  - (a) the requirements imposed by the order,
  - (b) the consequences that may follow if the requirements are not observed,
  - (c) the rights of appeal in relation to the order,
  - (d) the rights in relation to the variation of the order,
  - (e) the grounds on which an application for 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.

#### **10 Authorised officers**

For the purposes of the Act, section 39, definition of *authorised officer*, the persons employed in the Department of Communities and Justice who are assigned to the following roles are declared to be authorised officers—

- (a) Executive Director, Youth Justice,
- (b) Director, Operational Standards and Compliance, Youth Justice,
- (c) Regional Director, Youth Justice,
- (d) Area Manager, Youth Justice Community Offices,
- (e) Manager, Youth Justice Community Offices,
- (f) Assistant Manager, Youth Justice Community Offices,
- (g) Principal Psychologist, Youth Justice,
- (h) Youth Justice Officer,
- (i) Youth Justice Counsellor,
- (j) Youth Justice Professional Development Officer.

#### **11 Consultation required before conditions as to residence or treatment imposed on parole**

For the purposes of the Act, section 51(1), before the Children’s Court imposes a condition relating to residence or treatment on a parole order, the court must—

- (a) consider a report from a youth justice officer about the detainee’s circumstances, and
- (b) satisfy itself, having regard to the youth justice officer’s report, that it is feasible to secure compliance with the condition, and
- (c) for a condition requiring the co-operation of a person other than the detainee or a youth justice officer—obtain the consent of the person to the imposition of the condition, to the extent the condition requires the person’s co-operation.

#### **12 Parole orders**

- (1) For the purposes of the Act, section 51(1), a parole order made by the Children’s Court must be in the approved form.
- (2) A copy of the order must be—
  - (a) given to the detainee, and
  - (b) sent to the following persons—
    - (i) the centre manager of the detention centre in which the detainee is to be kept,

- (ii) the Executive Director, Youth Justice, Department of Communities and Justice.
- (3) Copies of the order sent to the centre manager of the detention centre are, if practicable, to be sent so the copies arrive at the detention centre at or before the time the detainee arrives.

**13 Warrants of commitment**

A warrant of commitment referred to in the applied Act, section 62 must be in the approved form.

**14 Repeal and savings**

- (1) The *Children (Criminal Proceedings) Regulation 2016* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Children (Criminal Proceedings) Regulation 2016*, had effect under that Regulation continues to have effect under this Regulation.

## **Schedule 1 Explanations to accused persons in committal proceedings**

section 7

### **1 Form of oral explanation**

#### **Purpose of proceedings**

All the evidence against you has now been presented by the prosecution. I now have to decide if your case is to go to trial or not. I decide this by looking at all the evidence.

I am now going to explain the next steps in the process. You will also be given a written explanation with more details about this process and you can talk to your lawyer before you make any decisions.

#### **Next steps**

##### **Step 1**

You can ask me to call any of the witnesses who gave a written statement to come to court to give their evidence. If you do not ask for a witness to come to court to give evidence, their written statement will be their only evidence and I will consider the statement when I make my decision.

##### **Step 2**

You can also give your own evidence to the court or call your own witnesses. But you do not have to say anything or call your own witnesses unless you want to. However, if you do, it may be recorded and used against you if your case goes to trial.

You should talk to your lawyer about what to do. Is there anything I have said you do not understand?

Do you want to speak to your lawyer before I go ahead?

Do you want to ask me to call any of the witnesses who gave a written statement to come to court to give their evidence?

Do you want to give any evidence or call your own witnesses in relation to the charge?

##### **If accused person not represented by legal practitioner**

You have the right to get legal representation or legal advice about your case, or both.

This is available from Legal Aid NSW. I can grant you an adjournment to find out more about this.

Do you wish to ask me any questions about anything I have said?

Do you want me to adjourn the case so you can ask for help from Legal Aid NSW or another lawyer?

### **2 Form of written explanation**

#### **Purpose of proceedings**

This form has been given to you because you are facing criminal charges in a committal proceeding. A committal proceeding is when a Magistrate decides if the prosecution has enough evidence for your case to go to trial before a jury in another court.

All the evidence against you has now been presented by the prosecution.

A Magistrate now has to decide if your case should go to trial or should not go ahead. The Magistrate will decide this by looking at all the evidence heard in court and in witness statements.

## **Next steps**

### **Step 1**

You can ask a Magistrate to call any of the witnesses who gave a written statement to come to court to give evidence in the committal proceedings.

If you ask for this, there may be a hearing to decide if this should happen. You may need to tell the Magistrate why this should happen.

If the Magistrate calls a witness to come to court to give evidence, you can ask the witness questions about what they said in their statement.

If you do not ask for a witness to come to court to give evidence, their written statement will be their only evidence.

### **Step 2**

You can also give your own evidence to the court or call your own witnesses. Before you say anything, you should know that you do not have to give evidence to the court or call your own witnesses unless you want to. But, if you do, it may be recorded and used against you if your case goes to trial.

### **If accused person not represented by legal practitioner**

You have the right to get legal representation or advice about your case. If you want to get legal help you can ask a Magistrate to adjourn your case. This means your case will be put on hold so you can ask for help from Legal Aid NSW or another lawyer.