

# Young Offenders Regulation 2004

[2004-607]



New South Wales

## Status Information

### Currency of version

Historical version for 1 May 2008 to 21 August 2008 (accessed 30 November 2024 at 3:56)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

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File last modified 1 May 2008

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# Young Offenders Regulation 2004



New South Wales

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This Regulation replaces the *Young Offenders Regulation 1997*, which is repealed on 1 September 2004 by section 10 (2) of the *Subordinate Legislation Act 1989*.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

**the Act** means the *Young Offenders Act 1997*.

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

## Part 2

### 4-13 (Repealed)

## 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 the NSW Police Force.

### **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 the NSW Police Force.

### **16 (Repealed)**

## **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.

### **17A Notice of referrals to be given to conference administrators**

(1) The referral of a matter to a conference administrator under section 38 (1) or 40 (1) of the Act must be accompanied by a notice in accordance with this clause.

(2) A notice must be in the form approved by the Director-General.

(3) The Director-General may approve a form only after consultation with:

- (a) in the case of a matter referred by a specialist youth officer—the Commissioner of Police, and
  - (b) in the case of a matter referred by the Director of Public Prosecutions (the **DPP**)—the DPP, and
  - (c) in the case of a matter referred by a court—the Chief Magistrate of the Local Courts.
- (4) A notice is to include the following, unless it is not reasonably practicable to do so:
- (a) a summary of the criminal history of the child concerned,
  - (b) details of any warning or caution given, or conference held, under the Act in relation to the child concerned,
  - (c) in the case of a matter referred by a specialist youth officer—a copy of any record kept on the COPS (Computerised Operational Policing) computer system maintained by the NSW Police Force that relates to the matter or any equivalent record,
  - (d) in the case of a matter referred by the DPP or a court:
    - (i) a copy of the charge sheet, charge cover sheet and facts sheet that relate to the matter or any equivalent record, and
    - (ii) if the DPP or court has been provided with any record kept on the COPS (Computerised Operational Policing) computer system maintained by the NSW Police Force that relates to the matter or any equivalent record—a copy of such record,
  - (e) such other information that the person or body giving the notice considers relevant.

### **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,
  - (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.

#### **23A Form and content of written victim statements**

A written statement given under section 24A (1) of the Act:

- (a) must be legible, and may be either typed or hand-written, and
- (b) must be no longer than two A4 sized pages, and
- (c) must identify the victim or victims to whom it relates, and
- (d) must include the full name of the person who prepared the statement, and must be signed and dated by that person, and
- (e) must include only the victim's description of the incident that is the subject of the caution and its impact on the victim, and
- (f) must not have any medical, psychological or similar report attached, and
- (g) must not contain anything that is offensive, threatening, intimidating or harassing,



and

(h) must not contain a request for an apology, compensation or reparation.

**Note—**

Under section 29 (4) of the Act, a person who gives a caution to a child may request the child being cautioned to provide a written apology to any victim of the alleged offence.

**23B Delegation of Director-General's functions**

For the purposes of section 62A of the Act, a Regional Director of the Department of Juvenile Justice is prescribed as a person to whom the Director-General may delegate any of the Director-General's functions.

**23C Disclosure of records relating to cautions and conferences**

Records may be divulged in accordance with section 66 (2) (e) of the Act only if the request for any such records:

- (a) is in writing (on a Department of Juvenile Justice letterhead) and addressed to the Manager, Criminal Records Unit, NSW Police Force, and
- (b) includes the reason for the request and describes how the information will be used, and
- (c) includes the full name and work location of the authorised officer of the Department of Juvenile Justice to whom the records are to be divulged, and
- (d) contains a declaration, by the authorised officer, that:
  - (i) the request relates to a child who is subject to the supervision of the Department of Juvenile Justice pursuant to an order made under section 33 of the *Children (Criminal Proceedings) Act 1987*, and
  - (ii) the information will be used only in the manner set out in the request, and
- (e) includes the full name and date of birth (and, if known, the place of birth) of the person to whom the records relate, and
- (f) includes a description of any court order that relates to the request.

**23D Authorised officers of the Department of Juvenile Justice**

The following members of staff of the Department of Juvenile Justice are prescribed as authorised officers of the Department of Juvenile Justice for the purposes of section 66 of the Act:

- (a) an Executive Director,
- (b) a Regional Director,

- (c) an Area Manager,
- (d) an Assistant Manager,
- (e) any person who has direct responsibility for youth justice conferencing policy and procedures and who is authorised by the Director-General for the purposes of this paragraph.

**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.