

# Children (Criminal Proceedings) Regulation 2016

[2016-555]



New South Wales

## Status Information

### Currency of version

Repealed version for 30 April 2018 to 19 August 2021 (accessed 7 July 2024 at 18:17)

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.

### Notes—

- **Repeal**

This Regulation was repealed by cl 14(1) of the [Children \(Criminal Proceedings\) Regulation 2021 \(455\)](#) with effect from 20.8.2021.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 20 August 2021

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New South Wales

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# Children (Criminal Proceedings) Regulation 2016



New South Wales

## 1 Name of Regulation

This Regulation is the *Children (Criminal Proceedings) Regulation 2016*.

## 2 Commencement

This Regulation commences on 1 September 2016 and is required to be published on the NSW legislation website.

### Note—

This Regulation replaces the *Children (Criminal Proceedings) Regulation 2011*, which is repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*.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.

**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*.

### Note—

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

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

## 4 Serious children's indictable offence

An offence arising under section 80A of the *Crimes Act 1900* in which the victim of the offence was under the age of 10 years when the offence occurred is prescribed as a

serious children's indictable offence.

## **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 as referred to in section 13 of the Act.

## **6 Background reports**

For the purposes of section 25 (2) (a) of the Act, a background report must be in the approved form and must deal with such of the following matters as are relevant to the circumstances surrounding the commission of the offence concerned:

- (a) the child's family background,
- (b) the child's employment,
- (c) the child's education,
- (d) the child's friends and associates,
- (e) the nature and extent of the child's participation in the life of the community,
- (f) the child's disabilities (if any),
- (g) the child's antecedents,
- (h) any other matters that the Children's Court may require,
- (i) any other matters that the prosecutor considers appropriate to include in the report.

### **6A Explanations to accused persons in committal proceedings**

(1) The Magistrate must give the accused person an oral and a written explanation in or to the effect of the forms set out in this clause before the commencement of committal proceedings under Division 3A of Part 3 of the Act.

(2) The form of the oral explanation is as follows:

#### **Purpose of proceedings**

You have heard the prosecution's case against you.

Since then the prosecutor may have given you or your lawyer copies of more witness statements.

I now have to decide if your case is to go to trial or not. I decide this by looking at all the evidence. You will also be given a written explanation with more details about this process.

**Next steps**

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.

You can also give your own evidence to the court. You do not have to say anything unless you want to. But if you do say something, it may be recorded and used against you if your case goes to trial. You should talk to your lawyer about what to do.

If someone told you that you will be treated better if you plead guilty, that may not happen. Even if there has been any kind of threat or promise to you, anything you say now may still be used against you if your case goes to trial.

Is there anything I have said you do not understand?

Do you want to say anything in answer to what you are charged with? Do you want to give any evidence 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?

(3) The form of the written explanation is to be as follows:

**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.

You heard the prosecution's case against you.

Since then the prosecutor may have given you copies of some more witness statements.

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**

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.

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 say anything unless you want to. Also, if you do say something, 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.

**7 Conditions that may be imposed by certain orders**

- (1) The kinds of conditions that may be imposed by an order made in respect of a child under section 33 (1) of the Act 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 any matter referred to in paragraphs (a)-(g),
  - (i) conditions relating to such other matters as the court considers appropriate in relation to the child.
- (2) If the Children's Court makes an order releasing a child on probation under section 33 (1) (e) of the Act and also makes an order requiring the child to perform community service work under section 33 (1) (f) of the Act, the order releasing the child on probation may include a condition that requires the child to comply with the community service work order.

**8 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 section 33 (1) of the Act.

- (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 any particular order:
  - (a) the requirements imposed by the order,
  - (b) the consequences that may follow if those requirements are not observed,
  - (c) the rights of appeal that exist in relation to the order,
  - (d) the rights (if any) that exist 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.

## **9 Authorised officers**

The persons employed in the Department of Justice who are assigned to any of the following roles are declared to be authorised officers for the purposes of Division 5 of Part 3 of the Act:

- (a) Executive Director, Juvenile Justice,
- (b) Director, Operational Standards and Compliance, Juvenile Justice,
- (c) Regional Directors, Juvenile Justice,
- (d) Area Managers, Juvenile Justice Community Offices,
- (e) Managers, Juvenile Justice Community Offices,
- (f) Assistant Managers, Juvenile Justice Community Offices,
- (g) Principal Psychologist, Juvenile Justice,
- (h) Juvenile Justice Officers,
- (i) Juvenile Justice Counsellors,
- (j) Juvenile Justice Professional Development Officers.

## **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 detainee'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 detainee or a juvenile justice officer, the consent of the person to the specification of those terms and conditions in so far as they require the person's co-operation must be obtained.

#### **11 Parole orders**

(1) A parole order made by the Children's Court must be in the approved form.

(2) A copy of the order must be given to the detainee, and further copies are to be sent to the following persons:

(a) the centre manager of the detention centre in which the detainee is to be kept,

(b) the Executive Director, Juvenile Justice, Department Justice.

(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 must be in the approved form.

#### **13 Savings**

Any act, matter or thing that, immediately before the repeal of the *Children (Criminal Proceedings) Regulation 2011*, had effect under that Regulation continues to have effect under this Regulation.