



New South Wales

## Young Offenders Regulation 2016

under the

Young Offenders Act 1997

*[The following enacting formula will be included if this Regulation is made:]*

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Young Offenders Act 1997*.

Attorney General

### Explanatory note

The object of this Regulation is to remake, with some minor amendments, the provisions of the *Young Offenders Regulation 2010*, which is repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) youth justice conferences and outcome plans, including outcome plans in respect of bush fire or arson offences or graffiti offences,
- (b) maximum periods for community service work that may be imposed in an outcome plan,
- (c) the offences in respect of which an investigating official must consider, before issuing a penalty notice to a child, whether the child should be given a warning, a caution or be referred to a specialist youth officer,
- (d) the particulars to be included in records of youth justice conferences, and records of warnings and cautions,
- (e) the form and content of written victim statements,
- (f) the delegation of functions by the Secretary of the Department of Justice,
- (g) the divulging of records relating to cautions and conferences to authorised officers of the Department of Justice,
- (h) savings and formal matters.

This Regulation is made under the *Young Offenders Act 1997*, including sections 9 (2A), 17 (2), 24A (2), 33 (2), 52 (6) (b), (c) and (e), 59 (2), 62A (b), 66 (2) (e), (f) and (f1) and (4) (e) (definition of **authorised officer of the Department of Justice**) and 73 (the general regulation-making power).

This Regulation (other than clauses 8 and 9) comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Young Offenders 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**Note.** This Regulation replaces the *Young Offenders Regulation 2010*, which is repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*.

#### 3 Interpretation

(1) In this Regulation:

***COPS*** means the COPS (Computerised Operational Policing System) database maintained by the NSW Police Force.

***DPP*** means the Director of Public Prosecutions.

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

**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.

## Part 2 Youth justice conferences

### 4 Notification of referrals

- (1) If the DPP or a court refers a matter involving a child who is alleged to have committed an offence to a conference administrator for a conference under section 40 of the Act, the DPP or court must notify, in writing, the Local Area Commander of the local police area in which the offence was alleged to have occurred.
- (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.

### 5 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 Secretary.
- (3) The Secretary 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 DPP—the DPP, and
  - (c) in the case of a matter referred by the Local Court—the Chief Magistrate of the Local Court, and
  - (d) in the case of a matter referred by the Children’s Court—the President of the Children’s Court.
- (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 COPS 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 COPS that relates to the matter or any equivalent record—a copy of the record,
  - (e) any other information that the person or body giving the notice considers relevant.

### 6 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 any further time that the Secretary may approve in any particular case.

### 7 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 number of hours that may be imposed in respect of the same offence under the *Children (Community Service Orders) Act 1987*.

## **8 Outcome plans in respect of bush fire or arson offences**

- (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:
  - (a) attendance by the child at a program, or at the screening of a film or video, designed to provide education as to the harmful effects of fire, and
  - (b) the making of reparation for the offence, such as:
    - (i) assistance in clean-up operations and in treatment of injured animals or, if work of this kind is not available, community service work comparable to the performance of work of that kind, 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.

## **9 Outcome plans in respect of graffiti offences**

- (1) This clause applies to a child who admits to an offence covered by the Act that consists of:
  - (a) an offence against section 5 or 6 of the *Graffiti Control Act 2008* or another crime involving graffiti, or
  - (b) damage to property by means of any graffiti implement (within the meaning of the *Graffiti Control Act 2008*).
- (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 at least one of the following:
  - (a) the making of reparation for the offence, such as:
    - (i) the performance of graffiti removal work or, if work of that kind is not available, community service work comparable to the performance of work of that kind, and
    - (ii) the payment of compensation (not exceeding the amount that a court may impose on conviction for the offence),
  - (b) participation in a personal development, educational or other program,
  - (c) the fulfilment of any other obligation by the child:
    - (i) that is suggested by any victim of the offence who personally attends the conference, and
    - (ii) that is consistent with the objects of the Act.
- (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.

## **10 Records of conferences**

For the purposes of section 59 (2) of the Act, a record of a conference 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 on which, 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 3 Disclosure of records

### 11 Disclosure of records relating to cautions and conferences to Department of Justice

For the purposes of section 66 (2) (e) of the Act, a record of, or relating to, a caution or conference under the Act may be divulged to an authorised officer of the Department of Justice only if the request for the record:

- (a) is in writing (on Department of Justice letterhead) and addressed to the Manager, Criminal Records Section, 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 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 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 record relates, and
- (f) includes a description of any court order that relates to the request.

### 12 Disclosure of records relating to warnings, cautions and conferences to Bureau of Crime Statistics and Research

For the purposes of section 66 (2) (f) of the Act, a record of, or relating to, a warning, caution or conference under the Act may be divulged to a person employed in the Bureau of Crime Statistics and Research if:

- (a) the information contained in the record will only be used in research by that Bureau, the production of statistics by that Bureau and the publication of those statistics and of reports relating to that research, and
- (b) the publication does not name or otherwise identify the child to whom the record relates.

### 13 Disclosure of records relating to warnings, cautions and conferences to the Australian Bureau of Statistics and the Australian Institute of Criminology

For the purposes of section 66 (2) (f1) of the Act, a record of, or relating to, a warning, caution or conference under the Act may be divulged to a person employed in the Australian Bureau of Statistics or the Australian Institute of Criminology if:

- (a) the information contained in the record will only be used by that Bureau or Institute in research, the production of statistics and the publication of those statistics and of reports relating to that research, and
- (b) the publication does not name or otherwise identify the person to whom the record relates.

## Part 4 Miscellaneous

### 14 Penalty notice offences subject to young offenders scheme

For the purposes of section 9 (2A) of the Act, an offence under any of the following provisions is prescribed as an offence in respect of which an investigating official must consider the matters referred to in section 9 (2) (a) and (b) of the Act before issuing a penalty notice:

- (a) section 11C of the *Summary Offences Act 1988*,
- (b) section 199 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

### 15 Records of warnings and cautions

- (1) For the purposes of section 17 (2) of the Act, a record of a warning given to a child under Part 3 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) For the purposes of section 33 (2) of the Act, a record of a caution given to a child under Part 4 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.
- (3) A record referred to in subclause (1) or (2) is to be kept on COPS.

### 16 Form and content of written victim statements

For the purposes of section 24A (2) of the Act, a written statement from a victim:

- (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 compensation or reparation.



## 17 Delegation of Secretary's functions

For the purposes of section 62A (b) of the Act, the following persons (or persons belonging to a class of persons) are prescribed:

- (a) a Regional Director of the Department of Justice,
- (b) the Executive Director of Juvenile Justice, Department of Justice.

## 18 Authorised officers

For the purposes of paragraph (e) of the definition of *authorised officer of the Department of Justice* in section 66 (4) of the Act, the following members of staff of the Department of Justice are prescribed:

- (a) the Executive Director of Juvenile Justice,
- (b) a Regional Director,
- (c) an Area Manager,
- (d) an Assistant Manager,
- (e) a Project Manager or Project Officer performing duties in connection with the Department's Youth on Track scheme,
- (f) any person who has direct responsibility for youth justice conferencing policy and procedures and who is authorised by the Secretary for the purposes of this paragraph.

## 19 Savings

Any act, matter or thing that, immediately before the repeal of the *Young Offenders Regulation 2010*, had effect under that Regulation continues to have effect under this Regulation.