



New South Wales

Pre-Trial Diversion of Offenders Regulation 2005

under the

Pre-Trial Diversion of Offenders Act 1985

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Pre-Trial Diversion of Offenders Act 1985*.

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Attorney General

Explanatory note

The object of this Regulation is to remake, without any changes in substance, the provisions of the *Pre-Trial Diversion of Offenders Regulation 2000* which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*. The new Regulation deals with the following matters:

- (a) the maximum periods for which proceedings to which the *Pre-Trial Diversion of Offenders Act 1985* (**the Act**) applies may be adjourned for the purposes of the Act (clause 4),
- (b) the guidelines to be observed by a prosecutor in deciding whether a person should be referred for assessment as to the person's suitability for participation in the Pre-Trial Diversion of Offenders Program (clause 5),
- (c) matters relating to the carrying out of such an assessment (clause 6),
- (d) formal matters (clauses 1–3 and 7).

This Regulation is made under the Act, including sections 9 (Proceedings to be adjourned pending decision by prosecutor), 10 (Matters to be considered by prosecutor in deciding whether to refer person for assessment), 13 (Proceedings to be further adjourned pending assessment), 14 (Assessment), 17 (Act ceases to apply if person does not plead guilty before Magistrate) and 34 (the general regulation-making power).

This Regulation comprises or relates to matters of a machinery nature.

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Pre-Trial Diversion of Offenders Act 1985

1 Name of Regulation

This Regulation is the *Pre-Trial Diversion of Offenders Regulation 2005*.

2 Commencement

This Regulation commences on 1 September 2005.

Note. This Regulation replaces the *Pre-Trial Diversion of Offenders Regulation 2000* which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

- (1) In this Regulation:
the Act means the *Pre-Trial Diversion of Offenders Act 1985*.
- (2) Notes included in this Regulation do not form part of this Regulation.

4 Maximum adjournment periods: sections 9, 13 and 17

- (1) For the purposes of section 9 of the Act, 4 weeks is prescribed as the maximum period for which proceedings may be adjourned to allow a determination to be made as to whether a person is to be referred for assessment for suitability for participation in the Program.
- (2) For the purposes of section 13 of the Act, 8 weeks is prescribed as the maximum period for which proceedings may be adjourned to allow such an assessment to be made.
- (3) For the purposes of section 17 of the Act, 2 weeks is prescribed as the maximum period for which proceedings may be adjourned to allow the person charged to be given advice and information.

5 Prosecutor's guidelines: section 10

For the purposes of section 10 of the Act, the following guidelines are prescribed for consideration by the prosecutor in determining whether a person is to be referred for assessment:

Guidelines

- 1** A prosecutor should not refer a person for assessment:
 - (a) if the child sexual assault offence with which the person is charged is alleged to have been accompanied by acts of violence towards the alleged victim or others, or
 - (b) if the person is under 18 years of age, or
 - (c) if the person has a prior conviction for a sexual offence, whether in New South Wales or elsewhere, or
 - (d) if the alleged victim is 18 years of age or more when the person first appears before a court in relation to the offence, or
 - (e) if the person has previously been requested under section 23 of the Act to give an undertaking in relation to any offence.
- 2** A prosecutor may take into account any other matter that the prosecutor considers relevant to the question of whether or not the person should be referred for assessment.

6 Assessment procedure: section 14

- (1) Within one week after the prosecutor's decision to refer a person for an assessment of suitability for participation in the Program, the prosecutor must notify the Director in writing of that decision.
- (2) Within one week after the assessment is carried out, the Director must notify the prosecutor of the results of the assessment and (if appropriate) the reasons why the person concerned is not suitable for participation in the Program.
- (3) The assessment must be carried out by means of structured clinical interviews of:
 - (a) the person referred for assessment, and
 - (b) such other persons acquainted with the person referred for assessment as the Director may determine.

7 Saving

Any act, matter or thing that, immediately before the repeal of the *Pre-Trial Diversion of Offenders Regulation 2000*, had effect under that Regulation continues to have effect under this Regulation.