

Youth Justice (COVID-19 Emergency Response) Regulation 2020

Explanatory notes for SL 2020 No. 123

made under the

COVID-19 Emergency Response Act 2020
Youth Justice Act 1992

General Outline

Short title

Youth Justice (COVID-19 Emergency Response) Regulation 2020.

Authorising law

Section 8 of the *COVID-19 Emergency Response Act 2020*.
Section 314 of the *Youth Justice Act 1992*.

Policy objectives and the reasons for them

The objective of the *Youth Justice (COVID-19 Emergency Response) Regulation 2020* (the Extraordinary Regulation) is to ensure that restorative justice conference agreements made during the COVID-19 health emergency period remain compliant with the *Youth Justice Act 1992* (YJ Act).

Currently, under part 3, division 2 of the YJ Act, participants of restorative justice conferences are required to sign and immediately be given a copy of the conference agreement.

Under social distancing requirements put in place in response to the COVID-19 public health emergency, it has not been possible to comply with these provisions for some conference agreements. While restrictions are in place under the health emergency, either state-wide or in response to local outbreaks, compliance will remain challenging.

Achievement of policy objectives

The policy objective is achieved by retrospectively and temporarily providing an alternative method to be taken as compliance with the relevant provisions of the YJ Act.

The requirement in section 36(2) for conference participants to sign a conference agreement will be taken to have been complied with if the convenor of the conference notes on the agreement that the person has agreed to the agreement.

Also, the requirement in section 36(4) for each person who signed the agreement to

immediately be given a copy of it will be taken to have been complied with if the copy is given promptly after the conference.

Consistency with policy objectives of authorising law

The Extraordinary Regulation is consistent with the objectives of the *COVID-19 Emergency Response Act 2020*. It is also consistent with the objectives of the YJ Act.

Inconsistency with policy objectives of other legislation

There is no inconsistency with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There are no alternative means of achieving the purpose of the Extraordinary Regulation.

Benefits and costs of implementation

There are no costs associated with the implementation of this Extraordinary Regulation. Benefits of implementation include the continuance of restorative justice conferences due to the ability to make valid conference agreements during the COVID-19 health emergency period.

Consistency with fundamental legislative principles

The Extraordinary Regulation is consistent with fundamental legislative principles.

Consultation

Limited consultation was undertaken with selected legal stakeholders, who supported the proposals.

In accordance with the *Queensland Government Guide to Better Regulation*, the Office of Best Practice Regulation was not consulted in relation to the Extraordinary Regulation. The Department of Youth Justice applied a self-assessed exclusion from further regulatory impact analysis on the basis that the Extraordinary Regulation relates to police powers and administration, general criminal laws, the administration of courts and tribunals and corrective services (self-assessed exclusion category j).

Notes on provisions

Clause 1 provides that the short title of the Regulation is the *Youth Justice (COVID-19 Emergency Response) Regulation 2020*.

Clause 2 provides for the commencement of provisions in the regulation. It is stated that the provisions retrospectively commenced on 19 March 2020. Section 8(4) of the *COVID-19 Emergency Response Act 2020* enables a regulation to be made with retrospective operation to a day not earlier than 19 March 2020. Retrospectively commencing this regulation ensures that conference agreements made throughout the health emergency period remain compliant with the YJ Act.

Clause 3 declares that the regulation is made under section 8 of the *COVID-19 Emergency Response Act 2020*. Section 8 provides a regulation-making power where an Act requires or permits an entity to call or hold a meeting for a particular purpose. The regulation can establish altered arrangements for the meeting.

Clause 4 provides that it applies in relation to a conference agreement made at a conference held during the response period. The response period is defined in subsection (4) and is the period starting on 19 March 2020 and ending on the earliest of either the day that is 1 month after the end of the COVID-19 emergency period or 31 December 2020.

Regulations made under the *COVID-19 Emergency Response Act 2020* must expire on 31 December 2020. However, the amendments made by this regulation will only be required for the period that the health emergency remains in place, which may be prior to 31 December 2020. Providing that the regulation remains in effect for a 1 month window after the emergency period is designed to ensure that conferences already arranged to be held by video or audio technology using the Regulation may proceed as planned if the conference convenor considers it to be in the best interests of participants.

Subsection (2) provides that the requirement in section 36(2) of the YJ Act for a participant to sign a conference agreement will be taken to have been complied with if the convenor notes on the agreement that the person has agreed to it. This enables conference participants who would normally be required to sign an agreement to provide oral assent rather than physically signing. The conference convenor will note the participant's assent on the agreement.

Subsection (3) provides that the requirement in section 36(4) of the YJ Act to immediately give a copy of the signed agreement to participants who signed it will be complied with if the convenor promptly gives a copy of the agreement to each of the people listed under section 36(2) of the YJ Act.

The effect of subsection (3) is that copies of the agreement must be given *promptly* rather than *immediately*.

This can occur either electronically or by post. Sections 10 and 11 of the *Electronic Transactions (Queensland) Act 2001* facilitate electronic communication (for example, by email or mobile phone), provided the recipient consents. Sections 39 and 39A of the *Acts Interpretation Act 1954* facilitate postage.

In practice, the convenor will ask each recipient at the end of the conference how they would like to receive their copy of the agreement.

Clause 5 provides that the regulation will expire on 31 December 2020 as required by the *COVID-19 Emergency Response Act 2020*.