



New South Wales

Crimes (Sentencing Procedure) Regulation 2010

under the

Crimes (Sentencing Procedure) Act 1999

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Crimes (Sentencing Procedure) Act 1999*.

JOHN HATZISTERGOS, MLC
Attorney General

Explanatory note

The object of this Regulation is to remake, with minor amendments, the provisions of the *Crimes (Sentencing Procedure) Regulation 2005*, which is repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to sentencing procedures generally and sentencing procedures for periodic detention orders, home detention orders and community service orders.

This Regulation is made under the *Crimes (Sentencing Procedure) Act 1999*, including sections 8 (2), 30 (1), 32 (5), 69 (2), 81 (2) and 103 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely, matters of a machinery nature.

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Clause 1 Crimes (Sentencing Procedure) Regulation 2010

Part 1 Preliminary

Crimes (Sentencing Procedure) Regulation 2010

under the

Crimes (Sentencing Procedure) Act 1999

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Crimes (Sentencing Procedure) Regulation 2010*.

2 Commencement

This Regulation commences on 1 September 2010 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Crimes (Sentencing Procedure) Regulation 2005* which is repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

approved form means a form approved by the Minister.

the Act means the *Crimes (Sentencing Procedure) Act 1999*.

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

Part 2 Sentencing procedures generally

Division 1 General

4 Lists of additional charges

- (1) A list of additional charges under section 32 of the Act is to be in the approved form.
- (2) For the purposes of section 32 (5) (b) of the Act, the following persons are prescribed:
 - (a) police officers,
 - (b) the Commissioner for Fair Trading, Department of Services, Technology and Administration,
 - (c) the Chief Executive Officer of the WorkCover Authority of New South Wales.

5 Parole orders

- (1) A parole order made by a court is to be in the approved form.
- (2) A copy of the order must be given to the offender, and further copies are to be sent to:
 - (a) the Commissioner of Corrective Services, and
 - (b) if the sentence to which the order relates is to be served by way of full-time imprisonment, the general manager of the correctional centre to which the offender is committed to serve the sentence.

6 Consultation required before conditions as to residence or treatment imposed on parole orders

- (1) Before a court makes a parole order containing conditions relating to residence or treatment, the court must consider a report from a probation and parole officer as to the offender's circumstances.

Note. Under section 51 of the Act, a court may impose such conditions as it considers appropriate on any parole order made by it.
- (2) Before a court makes a parole order containing conditions requiring the co-operation of a person other than the offender or a probation and parole officer, the court must obtain the consent of the person to those conditions in so far as they require the person's co-operation.

7 Warrants of commitment

A warrant for the committal of an offender referred to in section 62 (1) of the Act is to be in the approved form.

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Clause 8 Crimes (Sentencing Procedure) Regulation 2010

Part 2 Sentencing procedures generally

Division 2 Victim impact statements

8 Persons who may prepare victim impact statement

- (1) A victim impact statement may be prepared by any qualified person designated by:
 - (a) the victim or victims to whom the statement relates, or any such victim's representative, or
 - (b) the prosecutor in the proceedings to which the statement relates.
- (2) A victim impact statement may also be prepared by the victim or any of the victims to whom it relates, or any such victim's representative.
- (3) In this clause, *qualified person* means:
 - (a) a counsellor who is approved under section 21A of the *Victims Support and Rehabilitation Act 1996*, or
 - (b) any other person who is qualified by training, study or experience to provide the particulars required for inclusion in a victim impact statement.

9 Form of victim impact statements

A victim impact statement:

- (a) must be legible and may be either typed or hand-written, and
- (b) must be on A4 size paper, and
- (c) must be no longer than 20 pages in length including medical reports or other annexures (except with the leave of the court).

Note. Victims Services provides information about victim impact statements, including the suggested form of a victim impact statement, on its website at <http://www.lawlink.nsw.gov.au/vs>.

10 Content of victim impact statements

- (1) A victim impact statement must identify the victim or victims to whom it relates.
- (2) The statement must include the full name of the person who prepared the statement, and must be signed and dated by that person.
- (3) If the person who prepared the statement is not a victim to whom it relates (or any such victim's representative):
 - (a) the statement must indicate that the victim or victims do not object to the statement being given to the court, and
 - (b) the victim or victims (or any such victim's representative) must sign the statement to verify that they do not object.

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- (4) If a victim to whom the statement relates is a family victim, the statement must identify the primary victim and state the nature and (unless a relative by blood or marriage) the duration of that victim's relationship to the primary victim.
 - (5) If a victim's representative acts on behalf of a primary victim for the purpose of providing information for the statement, the statement must indicate the name of that person and the nature and (unless a relative by blood or marriage) the duration of that person's relationship to the primary victim.
 - (6) A victim impact statement must not contain anything that is offensive, threatening, intimidating or harassing.

11 Tendering of victim impact statements

- (1) A victim impact statement may be tendered to the court only by the prosecutor in the proceedings before the court.
- (2) Only one victim impact statement may be tendered in respect of each victim.

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Clause 12 Crimes (Sentencing Procedure) Regulation 2010

Part 3 Sentencing procedures for periodic detention orders

Part 3 Sentencing procedures for periodic detention orders

12 Periodic detention orders

- (1) A periodic detention order is to be in the approved form.
- (2) A copy of the order must be given to the offender, and further copies are to be sent to:
 - (a) the Commissioner of Corrective Services, and
 - (b) the general manager of the periodic detention centre to which the offender is committed to serve the sentence.

13 Availability of accommodation

- (1) For the purpose of satisfying itself that accommodation is available at a periodic detention centre for an offender to serve a sentence by way of periodic detention, a court must address its inquiries to the officer in charge of administration of periodic detention orders within the Department of Justice and Attorney General.
- (2) As soon as practicable after a court has made a periodic detention order, the court must ensure that the officer in charge is informed that an order has been made, by telephone or otherwise.

14 Undertaking to comply with periodic detention order

An undertaking referred to in section 66 (1) (f) of the Act is to be in the approved form.

15 Assessment reports

An offender's assessment report must assess the offender's suitability to serve a sentence by way of periodic detention by reference to the following factors:

- (a) the degree, if any, to which the person is dependent on alcohol or drugs (a major alcohol or drug problem being an indicator of unsuitability),
- (b) the offender's psychiatric or psychological condition (a major psychiatric or psychological disorder being an indicator of unsuitability),
- (c) the person's medical condition (a medical condition that may make the offender unfit to report for periodic detention being an indicator of unsuitability),

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- (d) the offender's criminal record, if any (a serious criminal record being an indicator of unsuitability),
 - (e) the offender's employment and other personal circumstances (circumstances that may make the offender's regular attendance at a periodic detention centre impracticable being an indicator of unsuitability).

16 Notice of periodic detention order

- (1) A notice referred to in section 72 (1) of the Act is to be in the approved form.
- (2) The offender must sign 3 copies of the notice in the presence of the person who gave it to the offender.
- (3) Of the 3 copies:
 - (a) one is to be kept by the offender, and
 - (b) one is to be kept by the court that made the relevant periodic detention order, and
 - (c) one is to be sent to the Commissioner of Corrective Services.

17 Warrants of commitment

A warrant for the committal of an offender referred to in section 73 (1) of the Act is to be in the approved form.

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Clause 18 Crimes (Sentencing Procedure) Regulation 2010

Part 4 Sentencing procedures for home detention orders

Part 4 Sentencing procedures for home detention orders

18 Home detention orders

- (1) A home detention order is to be in the approved form.
- (2) A copy of the order must be given to the offender, and a further copy is to be sent to the Commissioner of Corrective Services.

19 Consent of persons living with or in relationship with offender

- (1) A consent referred to in section 78 (1) (c) of the Act is to be in the approved form.
- (2) The consent of a child under the age of 18 years or of a mentally incapacitated person may be given by the Commissioner of Corrective Services.

20 Undertaking to comply with home detention order

An undertaking referred to in section 78 (1) (d) of the Act is to be in the approved form.

21 Assessment of effect of order on children

- (1) If a child under the age of 18 years would be living with an offender serving home detention, an assessment report must take into account, and specifically address, the effect on the child of that fact.
- (2) The investigation of the matter must be carried out jointly by a probation and parole officer and an officer within the Department of Human Services, and must be carried out in accordance with child protection risk assessment procedures approved by the Director-General of that Department.

Part 5 Sentencing procedures for community service orders

22 Community service orders

- (1) A community service order is to be in the approved form.
- (2) A copy of the order must be given to the offender, and a further copy is to be sent to the Commissioner of Corrective Services.

23 Maximum number of hours of community service work

For the purposes of section 8 (2) of the Act, the prescribed number of hours is:

- (a) 100, for offences for which the maximum term of imprisonment provided by law does not exceed 6 months, or
- (b) 200, for offences for which the maximum term of imprisonment provided by law exceeds 6 months but does not exceed 1 year, or
- (c) 500, for offences for which the maximum term of imprisonment provided by law exceeds 1 year.

24 Undertaking to comply with community service order

An undertaking referred to in section 86 (5) of the Act is to be in the approved form.

25 Notice of community service order

- (1) A notice referred to in section 93 (1) of the Act is to be in the approved form.
- (2) The offender must sign 3 copies of the notice in the presence of the person who gave it to the offender.
- (3) Of the 3 copies:
 - (a) one is to be kept by the offender, and
 - (b) one is to be kept by the court that made the relevant community service order, and
 - (c) one is to be sent to the Commissioner of Corrective Services.

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Clause 26 Crimes (Sentencing Procedure) Regulation 2010

Part 6 Miscellaneous

Part 6 Miscellaneous

26 Savings provision

Any act, matter or thing that, immediately before the repeal of the *Crimes (Sentencing Procedure) Regulation 2005*, had effect under that Regulation continues to have effect under this Regulation.