



# Criminal Procedure Amendment (Circle Sentencing Intervention Program) Regulation 2003

under the

Criminal Procedure Act 1986

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following Regulation under the *Criminal Procedure Act 1986*.

BOB DEBUS, M.P.,  
Attorney General

## Explanatory note

The objects of this Regulation are:

- (a) to declare a circle sentencing program to be an intervention program for the purposes of Part 9 of the *Criminal Procedure Act 1986* (as inserted by the *Crimes Legislation Amendment (Criminal Justice Interventions) Act 2002*), and
- (b) to regulate entry into, and the conduct of, the program.

A circle sentencing intervention program enables certain Aboriginal offenders who have pleaded guilty to, or been found guilty of, certain offences before Local Courts to participate in groups that are constituted to consider appropriate punishments and treatment and rehabilitation plans for the offenders. Other participants in a circle sentencing group include the presiding Magistrate in the Local Court proceedings, the offender's legal representatives, the prosecutor, victims and appropriate members of the Aboriginal community to which the offender belongs.

This Regulation is made under the *Criminal Procedure Act 1986*, including section 5 (the general regulation-making power) and sections 175 and 179.

**2003 No 164**

Clause 1 Criminal Procedure Amendment (Circle Sentencing Intervention Program)  
Regulation 2003

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**Criminal Procedure Amendment (Circle Sentencing  
Intervention Program) Regulation 2003**

under the

Criminal Procedure Act 1986

**1 Name of Regulation**

This Regulation is the *Criminal Procedure Amendment (Circle Sentencing Intervention Program) Regulation 2003*.

**2 Commencement**

This Regulation commences on 24 February 2003.

**3 Amendment of Criminal Procedure Regulation 2000**

The *Criminal Procedure Regulation 2000* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Clause 3)

### [1] Part 3B

Insert after Part 3A:

### Part 3B Intervention programs

#### 11D Circle sentencing intervention program

The program of measures described in Part 4 of Schedule 3 (Circle sentencing intervention program) for dealing with offenders is declared to be an intervention program for the purposes of Part 9 of the Act.

### [2] Schedule 3

Insert after Schedule 2:

### Schedule 3 Circle sentencing intervention program

(Clause 11D)

## Part 1 Interpretation

### 1 Definitions

In this Schedule:

***Aboriginal Community Justice Group*** for a participating court means the Aboriginal Community Justice Group established for that court under Part 6.

***Aboriginal person*** means a person who:

- (a) is a member of the Aboriginal race of Australia, and
- (b) identifies as an Aboriginal person, and,
- (c) is accepted by the Aboriginal community as an Aboriginal person.

***circle sentencing group*** for a referred offender means a circle sentencing group convened under Part 4 for the offender.

***guidelines*** means guidelines issued by the Minister under clause 23.

***offender*** means a person who has pleaded guilty to, or has been found guilty of, an offence before a participating court where that offence is an offence in respect of which an intervention program may be conducted as provided by section 176 of the Act.

***participating court*** means any Local Court declared to be a participating court for the program by the Minister by order published in the Gazette.

***presiding Magistrate*** means the Magistrate presiding over the participating court that refers a referred offender.

***program*** means the program of measures described in Part 4.

***program participation order*** means a grant of bail by, or other order of, a participating court made in respect of an offender for the purpose of allowing the offender to participate in the program.

***Project Officer*** for a participating court means the Project Officer (Circle Sentencing) for the court referred to in clause 18 (1).

***referral*** means the referral of an offender for assessment under a suitability assessment order or for participation in the program under a program participation order (as the case may be).

***referred offender*** means an offender that is the subject of:

- (a) a suitability assessment order, or
- (b) a program participation order.

***suitability assessment order*** means a grant of bail by, or other order of, a participating court made in respect of an offender for the purpose of allowing an assessment of the offender's capacity and prospects for participation in the program to be made.

***victim*** has the same meaning as ***victim of crime*** has for the purposes of the *Victims Rights Act 1996*.

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## Part 2 Overview of process

### 2 Summary of process involved in entry into and participation in program

(1) The following is a summary of the process involved in referring an offender for participation in the program:

(a) **Suitability assessment order made**

A participating court makes a suitability assessment order in respect of the offender.

(b) **Project Officer convenes meeting of Aboriginal Community Justice Group**

The Project Officer for the court convenes a special meeting of the Aboriginal Community Justice Group for the court under Part 3 to assess whether the offender is a suitable candidate to participate in the program.

(c) **Aboriginal Community Justice Group assesses offender**

The Aboriginal Community Justice Group meets to assess the offender's suitability having regard to certain criteria. The Group may either assess the offender as being suitable or not suitable for participation. In either event, the Group must report its finding to the court that referred the offender.

(d) **Court determines whether program participation order should be made**

If the Aboriginal Community Justice Group assesses an offender as not being suitable for participation, the offender will not be eligible to participate in the program. However, if the Group assesses the offender to be suitable, the participating court may then make a program participation order if it is satisfied that the offender is otherwise eligible to participate and that it would be appropriate for the offender to participate in the program.

(e) **Offender enters into agreement to participate**

The offender enters into an agreement to participate in the program.

(f) **Project Officer convenes a circle sentencing group**

The Project Officer will then convene a circle sentencing group constituted as provided by Part 4 for the purpose of recommending an appropriate sentence and determining a treatment and rehabilitation plan for the offender. The Magistrate that refers the offender will preside over the circle sentencing group.

(g) **Offender must comply with program and any intervention plan**

An offender must comply with the program participation order and any intervention plan determined by the circle sentencing group. A failure to do so may result in the offender being returned to the participating court for the court to deal with the offender.

(h) **Court may pronounce a sentence**

The court that referred the offender may, if it agrees with the consensus of the circle sentencing group on the issue, impose a sentence on the offender in the terms recommended by the group following the conclusion of the circle. Any such sentence will be pronounced in open court.

- (2) This clause does not affect the meaning or interpretation of any provision of this Schedule that it summarises.

## **Part 3 Assessment of suitability to participate**

### **3 Notification of suitability assessment order**

A participating court that makes a suitability assessment order in respect of a referred offender must notify the Project Officer for the court of the order.

### **4 Convening of meeting of Aboriginal Community Justice Group**

The Project Officer for the participating court must convene a meeting of the Aboriginal Community Justice Group for the court to assess the suitability of a referred offender to participate in the program as soon as practicable after being notified of a suitability assessment order in respect of the offender.

**5 Meeting of Aboriginal Community Justice Group to assess referred offender**

A meeting of an Aboriginal Community Justice Group convened by the Project Officer for a participating court under clause 4 is to be attended by at least 3 members of the Group chosen by the Project Officer.

**6 Role of Aboriginal Community Justice Group convened to assess referred offender**

- (1) In assessing the suitability of a referred offender to participate in the program, the Aboriginal Community Justice Group to which the offender has been referred is to have regard to the following matters:
  - (a) the nature of the offence committed by the offender,
  - (b) whether the offender is part of an Aboriginal community in the trial location or has a close association or kinship with any such community,
  - (c) the impact of the offence on its victims and the Aboriginal community to which the offender belongs or with which the offender has a close association or kinship,
  - (d) the potential benefits to the offender, the victims, the Aboriginal community and the community generally should the offender participate in the program,
  - (e) any other matter that it considers relevant.
- (2) The Aboriginal Community Justice Group to which an offender has been referred must report to the participating court that made the suitability assessment order in the form approved by the Minister within 14 days (or such further period as the court may allow) after the Group has been convened.

## **Part 4      The circle sentencing intervention program**

### **7      Objectives of the program**

The objectives of the program are as follows:

- (a) to include members of Aboriginal communities in the sentencing process,
- (b) to increase the confidence of Aboriginal communities in the sentencing process,
- (c) to reduce barriers between Aboriginal communities and the courts,
- (d) to provide more appropriate sentencing options for Aboriginal offenders,
- (e) to provide effective support to victims of offences by Aboriginal offenders,
- (f) to provide for the greater participation of Aboriginal offenders and their victims in the sentencing process,
- (g) to increase the awareness of Aboriginal offenders of the consequences of their offences on their victims and the Aboriginal communities to which they belong,
- (h) to reduce recidivism in Aboriginal communities.

### **8      Eligibility to participate in program**

A person is eligible to participate in the program only if the person:

- (a) is an Aboriginal person, and
- (b) is an offender, and
- (c) has been assessed as suitable for participation in the program by the Aboriginal Community Justice Group for the court at a meeting convened in accordance with Part 3, and
- (d) enters into an agreement to participate in the program.



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## 9 Measures that constitute the circle sentencing program

The program is constituted by the following measures:

(a) **Offender agrees to enter into agreement to participate in the program**

A participating court refers an offender for participation in a circle sentencing intervention program by making a program participation order and the offender enters into an agreement to participate in the program.

(b) **Constitution of circle sentencing group**

The Project Officer for the court, in consultation with the presiding Magistrate, convenes a circle sentencing group for the referred offender.

(c) **Circle sentencing group determines intervention plan for offender and recommends sentence**

The circle sentencing group meets:

- (i) to determine an appropriate plan (if any) for the treatment or rehabilitation of the referred offender, and
- (ii) to recommend an appropriate sentence for the offender.

(d) **Offender to comply with intervention plan**

The offender complies with the requirements of an intervention plan (if any) determined by the circle sentencing group.

**Note.** Section 174 (1) of the Act defines *intervention plan* to mean a plan, agreement or arrangement arising out of the participation of an offender or an accused person in an intervention program.

## 10 Convening of circle sentencing group

- (1) A participating court that makes a program participation order in respect of a referred offender must notify the Project Officer for the court of the order.
- (2) The Project Officer must convene a circle sentencing group for the referred offender as soon as practicable after being notified of the making of a program participation order in respect of the offender.

**11 Constitution of circle sentencing group**

- (1) A circle sentencing group for a referred offender convened by the Project Officer under clause 10 (2) must include the following persons:
  - (a) the presiding Magistrate,
  - (b) the offender,
  - (c) the offender's legal representatives (unless the offender directs otherwise),
  - (d) the prosecutor,
  - (e) the Project Officer,
  - (f) at least 3 Aboriginal persons (but no more than the maximum number of persons specified in the guidelines) chosen by the Project Officer, being persons who:
    - (i) the Project Officer is satisfied belong to the Aboriginal community of which the offender claims to be part or with which the offender claims to have a close association or kinship, and
    - (ii) have been recommended to the Project Officer by the Aboriginal Community Justice Group for the court that made the program participation order.
- (2) A circle sentencing group convened by a Project Officer may (but need not) include the following persons:
  - (a) any victim of the offender's offence who consents to participate in the group,
  - (b) a support person for any such victim chosen by the victim,
  - (c) a support person for the offender chosen by the offender,
  - (d) any other person or persons chosen by the Project Officer, but only with the consent of the offender and, if a victim is participating, the consent of the victim.
- (3) A member of a circle sentencing group may object to the participation in the group of a person chosen by the Project Officer for the purposes of subclause (1) (f) or (2) (d). The presiding Magistrate is to determine any such objection.

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## 12 Functions of circle sentencing groups

- (1) The functions of a circle sentencing group are as follows:
  - (a) to determine an appropriate plan for the treatment or rehabilitation of a referred offender,
  - (b) to recommend an appropriate sentence for the offender,
  - (c) to provide support or other assistance to the offender in completing the program or an intervention plan arising out of the program,
  - (d) such other functions as may be imposed or conferred on the group by this Schedule or the guidelines.
- (2) Without limiting subclause (1) (a), a circle sentencing group may require a referred offender to comply with a plan that includes requirements relating to any one or more of the following:
  - (a) the conduct and good behaviour of the offender,
  - (b) attendance for counselling or other treatment,
  - (c) the supervision of the offender for the duration of the plan,
  - (d) residence, association with other persons or attendance at specified locations,
  - (e) involvement in activities, courses, training or employment for the purpose of promoting the re-integration of the offender into the community,
  - (f) such other matters as the group considers would promote the treatment or rehabilitation of the offender.

## 13 Exclusions of persons from meetings of circle sentencing groups

- (1) The presiding Magistrate may exclude a person (other than the offender or a victim) from participation in a circle sentencing group if the Magistrate is satisfied that:
  - (a) the person has a conflict of interest that would prevent the person from impartially discharging his or her obligations as a member of the group, or
  - (b) the behaviour of the person is disrupting the orderly conduct of a meeting of the group.

- (2) The Magistrate may, with the agreement of the other members of the group, invite another person to replace a person who has been excluded from participating in the group under subclause (1). However, if the other members do not agree, the Project Officer is to convene a new circle sentencing group for the offender excluding any such person.
- (3) A person who is not a member of the circle sentencing group may not attend a meeting of the group unless all of the following persons consent:
  - (a) the presiding Magistrate,
  - (b) the offender,
  - (c) if a victim is participating in the group, the victim.

**14 Victims to be heard**

If a victim agrees to participate in a circle sentencing group, the victim must be given an opportunity to express his or her views about the offender and the nature of the offence committed against the victim.

**15 Procedure generally**

- (1) The procedure for the calling of meetings of a circle sentencing group and the conduct of business at those meetings is, subject to this Schedule and the guidelines, to be as determined by the group.
- (2) The presiding Magistrate is to preside at a meeting of a circle sentencing group.
- (3) The quorum for a meeting of a circle sentencing group is all of the members of the group (other than members excluded under clause 13).
- (4) A decision supported by a majority of the members in a meeting of the circle sentencing group is to be treated as a decision of the whole group.

**16 Records of meetings**

The presiding Magistrate must make a record (or cause a record to be made) of the following matters in connection with a circle sentencing group:

- (a) the name, address and date of birth of the referred offender,
- (b) the nature of the offence,
- (c) the name of the Project Officer,
- (d) the names of the other members of the group and the capacity in which they participated,
- (e) the dates on, and the locations at, which the circle sentencing group met,
- (f) particulars of any intervention plan determined, or sentence recommended, by the group,
- (g) the major points of discussion of the group,
- (h) any other matter that the Magistrate considers relevant.

#### **17 Reconvening of the circle sentencing group**

- (1) The Project Officer may, in consultation with the presiding Magistrate, reconvene a circle sentencing group after it has determined an intervention plan or recommended an appropriate sentence (or both) for a referred offender for the purpose of reconsidering any matter it had previously determined or recommended.
- (2) The members of the reconvened group should, so far as is reasonably possible, be the same members who participated in the original circle sentencing group.
- (3) A circle sentencing group cannot be reconvened if:
  - (a) the period of 3 months has elapsed since the matter to be reconsidered was originally determined or recommended by the group, or
  - (b) the court that referred the referred offender to the group has imposed a sentence on the offender for the offence (whether or not in the terms recommended by the group).

### **Part 5 Project Officers**

#### **18 Project Officer (Circle Sentencing)**

- (1) The Minister is to ensure that there is a Project Officer (Circle Sentencing) for each participating court.

- (2) The functions of a Project Officer include (but are not limited to) the following functions:
- (a) contacting victims of a referred offender for the purpose of ascertaining whether they wish to participate in a circle sentencing group for the offender,
  - (b) informing any such offender of:
    - (i) the processes involved in the program or in being assessed for participation in the program, and
    - (ii) the offender's obligations under the program or an intervention plan arising out of the program,
  - (c) convening meetings of Aboriginal Community Justice Groups and circle sentencing groups,
  - (d) monitoring the compliance of an offender with his or her obligations under the program or an intervention plan arising out of the program and reporting any non-compliance to the participating court that referred the offender and to the Aboriginal Community Justice Group for the court,
  - (e) such other functions as may be imposed or conferred on the Project Officer by this Schedule or the guidelines.

## **Part 6 Aboriginal Community Justice Groups**

### **19 Minister to establish Aboriginal Community Justice Groups for each court**

The Minister is to establish an Aboriginal Community Justice Group for each participating court.

### **20 Appointment of members of Aboriginal Community Justice Groups**

- (1) The Minister may appoint such Aboriginal persons as the Minister considers necessary to be members of an Aboriginal Community Justice Group established under clause 19.
- (2) The Minister may make an appointment under subclause (1) only on the recommendation of the Project Officer for the participating court concerned.

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- (3) A person appointed as a member under subclause (1) is appointed for a period of 2 years, unless before the expiry of that period:
    - (a) the person resigns his or her appointment, or
    - (b) the person's appointment is revoked by the Minister.
  - (4) A person appointed as a member under subclause (1) may resign his or her appointment by written notice to the Minister.
  - (5) The Minister may revoke the appointment of a person as a member of an Aboriginal Community Justice Group at any time by written notice to the person.
  - (6) Nothing in this clause prevents the Minister from re-appointing a person as a member of an Aboriginal Community Justice Group under subclause (1) following the expiry of a previous period of appointment or the revocation of a previous appointment.

## **21 Functions of Aboriginal Community Justice Groups**

The functions of an Aboriginal Community Justice Group include (but are not limited to) the following functions:

- (a) assessing the suitability of a referred offender to participate in the program and reporting to the participating court that referred the offender about the offender's suitability,
- (b) recommending appropriate Aboriginal persons to participate in a circle sentencing group for a referred offender,
- (c) such other functions as may be imposed or conferred on the Group by this Schedule or the guidelines.

## **22 Procedure**

- (1) The procedure for the calling of meetings of an Aboriginal Community Justice Group and the conduct of business at those meetings is, subject to this Schedule and the guidelines, to be as determined by the Group.
- (2) The quorum for a meeting of an Aboriginal Community Justice Group is 3 members of the Group.

- (3) A decision supported by a majority of the members in attendance at a meeting of an Aboriginal Community Justice Group is to be treated as a decision of the whole Group.

## **Part 7 Guidelines**

### **23 Minister may issue guidelines in respect of the conduct of the program**

- (1) The Minister may issue guidelines, not inconsistent with this Schedule, from time to time with respect to any or all of the following matters:
- (a) the constitution and procedure for meetings of Aboriginal Community Justice Groups and circle sentencing groups,
  - (b) the functions of such Aboriginal Community Justice Groups and circle sentencing groups and of members of such groups in connection with the program or assessment for participation in the program,
  - (c) any other matter in respect of which guidelines are permitted or required by this Schedule.
- (2) Without limiting subclause (1), the guidelines may include provisions that:
- (a) apply generally, or
  - (b) apply only in relation to specified persons, courts, groups or other bodies, or
  - (c) apply only in specified circumstances, or
  - (d) do a combination of the things referred to in paragraphs (a), (b) and (c).

## **Part 8 Disclosure of information in connection with program**

### **24 Evidence of statements generally inadmissible**

- (1) Evidence of anything said, or any admission made, in:
- (a) a meeting of a circle sentencing group concerning a referred offender, or



- 
- (b) a meeting of an Aboriginal Community Justice Group held to assess a referred offender's suitability to participate in the program,

is not admissible in any criminal or civil proceedings.

- (2) Subclause (1) does not apply to the criminal proceedings in respect of which a referred offender was referred.

**25 Disclosure of information in connection with the program by certain persons prohibited**

- (1) Except as provided by subclause (2), a relevant program participant must not disclose any information obtained in connection with:

- (a) the assessment of a referred offender's suitability to participate in the program, or  
(b) the conduct of the program or an intervention plan arising out of the program.

Maximum penalty: 20 penalty units.

- (2) Nothing in subclause (1) prevents a relevant program participant from disclosing information:

- (a) in connection with the conduct of an assessment of a referred offender's suitability to participate in the program, or  
(b) in connection with the conduct of the program or an intervention plan arising out of the program, or  
(c) to a victim of a referred offender about the outcome of a circle sentencing group for the offender, or  
(d) for the purposes of any legal proceedings, or  
(e) in accordance with a requirement of the *Ombudsman Act 1974* or with any request made by the Ombudsman, or  
(f) with other lawful excuse.

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(3) In this clause:

***relevant program participant*** means:

- (a) a member of an Aboriginal Community Justice Group,  
or
- (b) a person selected to participate in a circle sentencing  
group for a referred offender under clause 11 (1) (f) or  
(2) (b), (c) or (d).

BY AUTHORITY

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