



New South Wales

Criminal Procedure Amendment (Forum Sentencing Program) Regulation 2010

under the

Criminal Procedure Act 1986

The Administrator, with the advice of the Executive Council, has made the following Regulation under the *Criminal Procedure Act 1986*.

JOHN HATZISTERGOS, MLC
Attorney General

Explanatory note

The object of this Regulation is to amend the *Criminal Procedure Regulation 2010* as follows:

- (a) to remove the requirement that a person may only participate in the forum sentencing program (*the program*) if the person has not previously been sentenced to a term of imprisonment,
- (b) to exclude from the ambit of the program certain offences under the *Drug Misuse and Trafficking Act 1985*, the *Road Transport (Driver Licensing) Act 1998*, the *Road Transport (Safety and Traffic Management) Act 1999* and the *Summary Offences Act 1988*,
- (c) to allow the program to be conducted in respect of the offence of affray and certain robbery offences under the *Crimes Act 1900*,
- (d) to require the program administrator to ascertain whether a victim wishes to participate in a forum and to communicate the victim's wishes to the court, and to require the court to consider the victim's wishes in this regard in determining whether to make a forum participation order in respect of the offender,
- (e) to require a relevant police officer to provide a victim's contact details to the program administrator (to enable the program administrator to ascertain whether the victim wishes to participate in a forum) within 72 hours of the program administrator requesting those details,
- (f) to require the program manager to notify the court if he or she forms an opinion that an offender who has been referred to the program is no longer suitable to participate in the program or if a victim withdraws his or her consent to participate in a forum and

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the program manager forms an opinion that the withdrawal will frustrate the purpose of a forum.

This Regulation is made under the *Criminal Procedure Act 1986*, including sections 4 (the general regulation-making power), 347 and 348.

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Criminal Procedure Act 1986

1 Name of Regulation

This Regulation is the *Criminal Procedure Amendment (Forum Sentencing Program) Regulation 2010*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

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Schedule 1 Amendment of Criminal Procedure Regulation 2010

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Regulation 2010**

[1] Clause 55 Program declared to be intervention program

Omit “, 93B or 93C” from clause 55 (2) (b). Insert instead “or 93B”.

[2] Clause 55 (2) (b1)

Insert after clause 55 (2) (b):

- (b1) an offence under section 10, 11, 11A, 11B, 11C, 12, 15, 16, 17, 18, 18A, 19 or 20 of the *Drug Misuse and Trafficking Act 1985*,

[3] Clause 55 (2) (c)

Omit “or (2)”. Insert instead “, (2), (3) or (3A)”.

[4] Clause 55 (2) (c1)

Insert after clause 55 (2) (c):

- (c1) an offence under section 9 (3), 15 or 16 of the *Road Transport (Safety and Traffic Management) Act 1999*,

[5] Clause 55 (2) (e)

Insert after clause 55 (2) (d):

- (e) an offence under section 4, 11B or 11C of the *Summary Offences Act 1988*.

[6] Clause 58 Summary of process for participation in program

Omit “, having regard to the matters set out in clause 63” from clause 58 (1) (c).

Insert instead “having regard to the matters set out in clause 63, and after considering whether any victim of the offender wishes to participate in a forum”.

[7] Clause 58 (1) (c1)

Insert after clause 58 (1) (c):

- (c1) **If offender becomes unsuitable or victim withdraws consent to attend forum**

The offender will be returned to the court for the court to deal with if the offender becomes unsuitable to participate in the program or if a victim’s withdrawal of consent to participate in a forum will frustrate the purpose of a forum.

[8] Clause 60 Assessment to be carried out

Insert after clause 60 (3):

- (4) The program administrator must contact any victim of the offender to ascertain whether the victim wishes to participate in a forum and must record the victim's response in the report to the court.
- (5) After being notified under clause 59, and for the purpose only of enabling compliance with subclause (4), the program administrator may request a relevant police officer to provide the name, address and phone number of any victim of the offender.
- (6) A relevant police officer must provide the program administrator with the information requested under subclause (5) as soon as possible and in any case no later than 72 hours after the request is made.
- (7) In this clause:
relevant police officer means:
 - (a) any police officer responsible for investigating the offence to which the suitability assessment order relates, or
 - (b) any senior police officer (within the meaning of section 332 of the Act) from that police officer's command.

[9] Clause 63 Eligibility to participate in program

Omit "program, and" from clause 63 (1) (e). Insert instead "program."

[10] Clause 63 (1) (f)

Omit the paragraph.

[11] Clause 63 (3), definition of "category 1 personal violence offence"

Omit "95, 96, 97" from paragraph (a). Insert instead "96".

[12] Clause 63A

Insert after clause 63:

63A Court to consider if victim wishes to participate in forum

In determining whether to make a forum participation order, a participating court must consider whether any victim of the offender wishes to participate in a forum (as ascertained pursuant to clause 60 (4)).

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[13] Clause 65A

Insert after clause 65:

65A Offender becomes unsuitable to participate in program or victim withdraws consent to participate in forum

- (1) The program manager must as soon as practicable notify the court that made the forum participation order if:
 - (a) at any time after the order was made and before any forum in respect of the referred offender is concluded, the program manager forms an opinion (with reference to the guidelines referred to in clause 60 (2)) that the offender is no longer suitable to participate in the program, or
 - (b) at any time before a forum is held, any victim of the referred offender withdraws his or her consent to participate in a forum and the program manager forms an opinion that the victim's withdrawal will frustrate the purpose of a forum.
- (2) The program manager may delegate his or her functions under this clause (other than this power of delegation) to:
 - (a) the operations manager for the program, or
 - (b) the program administrator.
- (3) A reference in this clause to the program manager or the operations manager for the program is a reference to any person holding or acting in the position within the Department of Justice and Attorney General of, respectively, State Manager, Forum Sentencing or Operations Manager, Forum Sentencing.

[14] Clause 108 Savings

Insert at the end of the clause:

- (2) The amendments to this Regulation made by the *Criminal Procedure Amendment (Forum Sentencing Program) Regulation 2010* apply only in relation to criminal proceedings commenced on or after the commencement of that Regulation and offenders the subject of such proceedings.