



New South Wales

# Criminal Procedure Amendment (Forum Sentencing Intervention Program) Regulation 2014

under the

Criminal Procedure Act 1986

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

GREG SMITH, MP  
Attorney General

## Explanatory note

The object of this Regulation is to make changes to the program of measures for dealing with offenders known as the forum sentencing intervention program (which has been declared to be an intervention program for the purposes of Part 4 of Chapter 7 of the *Criminal Procedure Act 1986*). The amendments made by this Regulation:

- (a) alter the forum sentencing program's structure and process as follows:
  - (i) by providing that, as well as making an assessment of the offender's capacity and prospects for participation in an intervention program (as at present), an employee of the Department of Attorney General and Justice whose role includes giving assistance in relation to the program (an *operations team employee*) who receives a referral from a participating court must also make an assessment as to whether or not the offender's case itself is an appropriate one for being dealt with under the forum sentencing intervention program,
  - (ii) by extending the time limit for holding conferences (formerly called forums) as part of an intervention program from 28 days after an operations team employee is notified by the participating court that it has made a forum participation order to 56 days after that notification, and
- (b) increase the program's focus on victim participation (one of the objectives of the program) as follows:
  - (i) by providing that the forum sentencing program will only be undertaken if a victim of the offender wishes to participate in the relevant conference or to have his or her nominated representative participate (whereas at present this is merely one factor that a court considers in determining whether to make a forum participation order),
  - (ii) by requiring the court that made the forum participation order to be notified if all victims withdraw their consent to participate, or to have their nominated representatives participate, in the conference,
  - (iii) by providing that an operations team employee may request the victim's details from any police prosecutor responsible for the prosecution of the relevant offence (as well as from an investigating police officer, as at present) but only for the purposes of contacting the victim to ask if he or she wishes to participate in the conference, and

- (c) increase the pool of offenders who are eligible to participate in the program by including offenders in relation to whom the facts, antecedents and information available to the court indicate that it is likely that a community service order will be made or a good behaviour bond will be required to be entered into (whereas, at present, an offender is eligible only if those facts, antecedents and information indicate that it is likely that the person will be required to serve a sentence of imprisonment), and
- (d) exclude offenders in relation to whom it is likely that a conviction will not be recorded from eligibility to participate in the program, and
- (e) confer certain functions currently exercised by forum facilitators (who are not public servants) on operations team employees (who are), and
- (f) confer certain functions currently exercised by the program administrator on forum facilitators.

This Regulation is made under the *Criminal Procedure Act 1986*, including sections 4 (the general regulation-making power), 347 (which provides for the declaration and regulation of intervention programs) and 351 (which provides for the making of regulations about the provision or disclosure of information in connection with intervention programs).

## **Criminal Procedure Amendment (Forum Sentencing Intervention Program) Regulation 2014**

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### **1 Name of Regulation**

This Regulation is the *Criminal Procedure Amendment (Forum Sentencing Intervention Program) Regulation 2014*.

### **2 Commencement**

This Regulation commences on 31 March 2014 and is required to be published on the NSW legislation website.

## Schedule 1 Amendment of Criminal Procedure Regulation 2010

### [1] Clause 3 Definitions

Omit the definition of *Director-General*. Insert in alphabetical order:

*community service order* means a community service order under the *Crimes (Sentencing Procedure) Act 1999*.

*good behaviour bond* means a good behaviour bond under the *Crimes (Sentencing Procedure) Act 1999*.

*Secretary* means the Secretary of the Department of Attorney General and Justice.

### [2] Clause 36 Eligibility to participate in program

Omit “a periodic detention order,” from clause 36 (2) (a). Insert instead “an”.

### [3] Clause 36 (2) (b) and (c)

Omit “under the *Crimes (Sentencing Procedure) Act 1999*” wherever occurring.

### [4] Clause 56 Definitions

Insert in alphabetical order:

*conference* means a conference convened or proposed to be convened under Subdivision 2 of Division 3.

*operations team employee* for a declared place or a court means an employee of the Department of Attorney General and Justice whose role includes giving assistance in relation to the program for that declared place or court.

*program manager* means an employee of the Department of Attorney General and Justice whose role includes managing the program.

*senior forum facilitator* means a person appointed as a senior forum facilitator by the program manager under Division 4.

### [5] Clause 56, definitions of “forum” and “program administrator”

Omit the definitions.

### [6] Clause 56, definition of “forum participation order”

Omit “a forum”. Insert instead “a conference”.

### [7] Clause 58

Omit the clause. Insert instead:

#### 58 Summary of process for 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 and the offender enters into an agreement to be subjected to an assessment of the offender’s capacity and prospects for participation in the program.

(b) **Operations team employee ensures that assessment is carried out of the appropriateness of the program for the offender**

An operations team employee ensures that an assessment is carried out of the appropriateness of the offender's case for being dealt with under the program.

(c) **Operations team employee ensures that assessment is carried out of offender's suitability**

If the offender's case has been assessed as appropriate for being dealt with under the program, an operations team employee ensures that an assessment is carried out of the offender's capacity and prospects for participation in the program.

(d) **Victim participation is sought**

If the offender's case has been assessed as appropriate for being dealt with under the program and the offender has been assessed as having the capacity and prospects for participation in the program, an operations team employee contacts any victim of the offender to ascertain whether the victim wishes to participate, or to have his or her nominated representative participate, in the conference.

(e) **Offender not eligible if offender's case not appropriate, offender not suitable or no victim consents to participate**

The offender will not be eligible to participate in any program if:

- (i) the offender's case has been assessed as not appropriate for being dealt with under the program, or
- (ii) the offender has been assessed as not being suitable for participation in the program, or
- (iii) no victim wishes to participate, or to have his or her nominated representative participate, in any conference.

(f) **Participating court determines whether forum participation order should be made**

However, if:

- (i) the offender's case has been assessed as appropriate for being dealt with under the program, and
- (ii) the offender has been assessed as being suitable for participation in the program, and
- (iii) at least one victim wishes to participate, or to have his or her nominated representative participate, in a conference,

the participating court may make a forum participation order if it is satisfied that the offender is otherwise eligible for participation in the program, having regard to the matters set out in clause 63.

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

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

(h) **Offender returned to court if offender becomes unsuitable or all victims withdraw consent to participate in conference**

The offender will be returned to the court for the court to deal with if:

- (i) the offender becomes unsuitable to participate in the program, or
- (ii) all victims who wished to participate, or to have their nominated representatives participate, in a conference withdraw their consent to participate, or

- (iii) the offender's case otherwise becomes inappropriate for being dealt with under the program.
  - (i) **Conference held and draft intervention plan for offender prepared**  
A conference is held. Participants are encouraged to agree to appropriate recommendations about the offender. A draft intervention plan is prepared that is based on any recommendations made, and agreed to, by participants in the conference.
  - (j) **Participating court considers draft intervention plan**  
Any draft intervention plan arising from the conference is referred to the participating court together with a report on the conference that is prepared by an operations team employee. If the court approves the draft intervention plan, it makes an intervention plan order.
  - (k) **Offender to comply with intervention plan**  
An offender who is subject to any such order must comply with the intervention plan. An operations team employee for the declared place supervises the implementation and completion of the intervention plan. An operations team employee notifies the court as to whether the plan is satisfactorily completed.
  - (l) **Effect of failure to comply with intervention plan**  
A failure to satisfactorily complete the intervention plan may result in the offender being returned to the court for the court to deal with the offender.
- (2) This clause does not affect the meaning or interpretation of any provision of this Part that it summarises.

**[8] Part 7, Division 2**

Omit the Division. Insert instead:

**Division 2 Making assessments and ensuring victim participation**

**59 Notification of suitability assessment order**

A participating court that makes a suitability assessment order in respect of an offender must, within 7 days after making the order, notify an operations team employee for the declared place that it has done so.

**60 Assessment of appropriateness of offender's case**

- (1) As soon as practicable after any operations team employee has been notified of the making of a suitability assessment order, an operations team employee must ensure that an assessment is carried out of the appropriateness of the offender's case for being dealt with under the program.
- (2) The assessment must be carried out in accordance with the guidelines.
- (3) If the offender's case has been assessed as not being appropriate for being dealt with under the program, an operations team employee must report, in the form approved by the Minister, to the participating court that made the suitability assessment order at least 2 days before the date on which the court is due to continue the proceedings in respect of which the offender was referred.

**60A Assessment of offender's capacity and prospects for participation in program**

- (1) As soon as practicable after any operations team employee has been notified of the making of a suitability assessment order and an assessment has been made that the offender's case is appropriate for being dealt with under the program, an operations team employee must ensure that an assessment is carried out of the offender's capacity and prospects for participation in the program.
- (2) The assessment must be carried out in accordance with the guidelines.
- (3) An operations team employee must report, in the form approved by the minister, to the participating court that made the suitability assessment order at least 2 days before the date on which the court is due to continue the proceedings in respect of which the offender was referred.

**60B Victim details may be sought**

- (1) An operations team employee may request a relevant police officer or relevant prosecutor to provide the name, address and phone number of any victim of the offender.
- (2) The request may be made only if an operations team employee has made an assessment that the offender's case is appropriate for being dealt with under the program and may be made for the purpose only of enabling compliance with clause 60C.
- (3) A relevant police officer or relevant prosecutor must provide an operations team employee with the information requested under this clause as soon as practicable and in any case no later than 72 hours after the request is made.
- (4) 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.

*relevant prosecutor* means any police prosecutor responsible for the prosecution of the offence to which the suitability assessment order relates.

**60C Victims must be contacted**

- (1) An operations team employee must contact any victim of the offender to ascertain whether the victim wishes to participate, or to have his or her nominated representative participate, in a conference and must record the victim's response in the report to the court under clause 60A (3).
- (2) Such contact may be made only if:
  - (a) an operations team employee has made an assessment that the offender's case is appropriate for being dealt with under the program, and
  - (b) an operations team employee has made an assessment that the offender is suitable for participation in the program.

**[9] Clause 62 Principles to guide the program**

Omit "forums" wherever occurring in clause 62 (b), (c) and (d).

Insert instead "conferences".

**[10] Clause 63**

Omit the clause. Insert instead:

**63 Eligibility to participate in program**

- (1) A person is eligible to be referred by a participating court to participate in a conference only if:
  - (a) the person is an offender, and
  - (b) the court considers that the facts, as found by the court, or as pleaded to by the person, in connection with the offence, together with the person's antecedents and any other information available to the court, indicate that it is likely that a conviction will be recorded and that the person will be required:
    - (i) to serve a sentence of imprisonment, including a suspended sentence or a sentence the subject of an intensive correction order or a home detention order under the *Crimes (Sentencing Procedure) Act 1999*, or
    - (ii) to perform community service work in accordance with a community service order, or
    - (iii) to enter into a good behaviour bond, and
  - (c) the offender's case has been assessed as appropriate for being dealt with under the program in accordance with clause 60, and
  - (d) the offender has been assessed as suitable for participation in the program in accordance with clause 60A, and
  - (e) at least one victim of the offender has agreed to participate, or to have his or her nominated representative participate, in a conference, and
  - (f) the court considers that, if it refers the person to participate in the program, it is likely that the person will enter into an agreement to participate in the program.
- (2) A person is not eligible to be referred by a participating court to participate in a conference if, at the date on which the court proposes to make the referral, the person has been convicted of any of the following offences:
  - (a) murder,
  - (b) manslaughter,
  - (c) a category 1 personal violence offence,
  - (d) two or more category 2 personal violence offences (whether or not the same offence),
  - (e) a relevant drug offence,
  - (f) a serious firearms or weapons offence.
- (3) A reference in subclause (2) to a conviction for an offence does not include a reference to a conviction for:
  - (a) the particular offence in respect of which a referral is proposed to be made, or
  - (b) an offence committed by the person when the person was under 18 years of age, other than an offence that is a serious children's indictable offence within the meaning of the *Children (Criminal Proceedings) Act 1987*.



(4) In this clause:

**category 1 personal violence offence** means:

- (a) an offence under section 26, 27, 28, 29, 30, 31, 33, 61J, 61JA, 61K, 66A, 66B, 66C, 66EA, 66F, 73, 86, 96 or 98 of the *Crimes Act 1900*, or
- (b) an offence committed before the commencement of this Regulation under a law of New South Wales that constituted an offence of a similar nature to an offence referred to in paragraph (a).

**category 2 personal violence offence** means any of the following offences:

- (a) an offence under section 33A, 35 (1) or (3), 37, 38, 39 (1), 46, 47, 48, 61I, 61M, 80A, 87, 110, 195 (1) (b), (1A) (b) and (2) (b), 196 (1) (b) and (2) (b) or 198 of the *Crimes Act 1900*,
- (b) an offence under section 109, 111, 112, 113 or 249K of the *Crimes Act 1900* if the circumstances of the offence involve an act of actual or threatened violence against a person,
- (c) an offence committed before the commencement of this Regulation under a law of New South Wales that constituted an offence of a similar nature to an offence referred to in paragraph (a) or (b).

**relevant drug offence** means any of the following offences:

- (a) an offence under section 23 (1), 24 (1) or 25 (1) or (1A) of the *Drug Misuse and Trafficking Act 1985* (but only if the plant or drug concerned was found to be of a quantity that was at least twice the indictable quantity applicable under that Act at the date of the offence),
- (b) an offence under section 23 (1A) or (2), 24 (1A), (2) or (2A), 25 (2), (2A), (2C) or (2D) or 25A of that Act,
- (c) an offence under section 26 of that Act of conspiring to commit an offence referred to in paragraph (a) or (b),
- (d) an offence under section 27 of that Act of aiding, abetting, counselling, procuring, soliciting or inciting the commission of an offence referred to in paragraph (a) or (b).

**serious firearms or weapons offence** means any of the following offences:

- (a) an offence under section 93G, 93GA, 93H (2), 93I (2) or 154D of the *Crimes Act 1900*,
- (b) an offence under section 7, 36, 50, 50A (2), 51 (1A) or (2A), 51A or 51D (2) of the *Firearms Act 1996*, being an offence that relates to a prohibited firearm or pistol,
- (c) an offence under section 51B or 51BB of the *Firearms Act 1996*.

**[11] Clause 63A Court to consider if victim wishes to participate in forum**

Omit the clause.

**[12] Clauses 64, 65 and 65A**

Omit the clauses. Insert instead:

**64 Measures that constitute the forum sentencing program**

The program is constituted by the following measures:

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

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

- (b) **Forum facilitator arranges conference**  
A forum facilitator arranges a conference in respect of the offender.
- (c) **Conference held and draft intervention plan prepared**  
A conference is held with the aim of determining an appropriate draft intervention plan for the offender. Any draft intervention plan arising from the conference is referred to the participating court.
- (d) **Offender completes intervention plan**  
If the participating court makes an intervention plan order, the offender completes the intervention plan to which the order applies.

**65 Decision not to participate in program**

- (1) If a referred offender decides not to participate, or to continue to participate, in the program, the referred offender is to notify this decision to an operations team employee or forum facilitator for the declared place at which the court that made the forum participation order or intervention plan order applying to that offender was sitting.
- (2) An operations team employee is to notify the court of the referred offender's decision within 7 days after the referred offender gives notice under this clause.

**65A Victim withdraws consent to participate in conference or offender's case otherwise becomes unsuitable for program**

- (1) The program manager must as soon as practicable notify the court that made the forum participation order:
  - (a) if, at anytime after the order was made and before any conference in respect of the referred offender is concluded, the program manager forms an opinion (with reference to the guidelines referred to in clauses 60 (2) and 60A (2), as appropriate):
    - (i) that the offender's case is no longer appropriate for being dealt with under the program, or
    - (ii) that the offender is no longer suitable to participate in the program, or
  - (b) if, at any time before a conference is held, all the victims of the referred offender who wished to participate, or have their nominated representative participate, in a conference withdraw their consent to participate.
- (2) The program manager may delegate his or her functions under this clause (other than this power of delegation) to an operations team employee.

**[13] Part 7, Division 3, Subdivision 2**

Omit the Subdivision. Insert instead:

**Subdivision 2 Conferences**

**66 Notification of forum participation order**

- (1) A participating court that makes a forum participation order must, within 7 days after making the order, notify an operations team employee for the declared place that it has done so.

- (2) As soon as practicable after being notified under this clause, an operations team employee must allocate a forum facilitator to facilitate a conference in respect of the offender to whom the order applies.

**67 Time limit for holding conferences**

A conference is to be held in respect of a referred offender:

- (a) if practicable, within 56 days after an operations team employee is notified by the participating court that it has made a forum participation order applying to that offender, or
- (b) as soon as practicable after those 56 days have elapsed.

**68 Preparation for conferences**

- (1) A forum facilitator must determine:
- (a) the date, time and location of any conference that the forum facilitator has been allocated to facilitate, and
- (b) the persons who are to be invited to participate in the conference.
- (2) The forum facilitator must, if practicable, before determining the matters referred to in subclause (1):
- (a) consult with:
- (i) an operations team employee for the court that made the forum participation order, and
- (ii) the referred offender concerned, and
- (iii) any victim of that offender, and
- (b) advise any such victim:
- (i) of the victim's right to participate in the conference and to be accompanied by one or more support persons, and
- (ii) if the victim cannot, or elects not to, participate in the conference—of the victim's right to be represented by a person nominated by the victim and to have the victim's views about the matter conveyed to conference participants, and
- (c) consider the specific needs and expressed views or wishes of the referred offender and of any such victim.
- (3) Before the conference is held, the forum facilitator must notify the referred offender of the following information:
- (a) the offence in respect of which the conference is to be held,
- (b) the date, time and location of the conference,
- (c) the name of the forum facilitator,
- (d) any requirements to be met by the referred offender,
- (e) the right of the referred offender to decide not to participate, or to continue to participate, in the program, the requirement for the referred offender to notify an operations team employee of any such decision and the consequences of any such decision,
- (f) the consequences of failure to participate in the conference,
- (g) the right of the referred offender to obtain legal advice and where that advice may be obtained,
- (h) the right of the referred offender to have a legal practitioner participate in the conference in an advisory, but not in a representative, capacity,

- (i) the right of the referred offender to have one or more support persons participate in the conference.
- (4) Before the conference is held, the forum facilitator must take all reasonable steps to notify any other persons who are entitled to participate, or who the forum facilitator determines are to be invited to participate, of the date, time and location of the conference.
- (5) Before the conference is held, the forum facilitator must take all reasonable steps to provide persons who are to participate in the conference with information available to the forum facilitator that, in the forum facilitator's opinion, will assist the participants to formulate a draft intervention plan.
- (6) Before the conference is held, the forum facilitator must ascertain, if practicable, the views about the matter of any persons who have been invited or are entitled to participate but have advised that they will not be participating.

#### **69 Participants in conferences**

- (1) The following persons are entitled to participate in a conference:
  - (a) the referred offender in respect of whom the conference is to be held,
  - (b) the forum facilitator,
  - (c) any victim of the referred offender or a person nominated by any such victim as a representative of the victim,
  - (d) a police officer responsible for investigating the offence in respect of which the conference is proposed to be held or a person chosen by the police officer as a representative of the police officer,
  - (e) any persons chosen by the referred offender as support persons for the referred offender,
  - (f) a legal practitioner advising the referred offender,
  - (g) any persons chosen by any victim of the referred offender as support persons for any such victim.
- (2) The forum facilitator may, after consulting with the referred offender and any victim of that offender who proposes to participate in the conference, invite any of the following persons to participate in the conference:
  - (a) a member of the referred offender's family nominated by the referred offender,
  - (b) if the referred offender is subject to a good behaviour bond that requires supervision, a community service order or parole—the referred offender's supervising officer,
  - (c) an interpreter,
  - (d) any other person of a class specified by the guidelines.
- (3) The following persons may be invited to attend, but not participate in, a conference, with the consent of the referred offender and any victim of that offender:
  - (a) a senior forum facilitator,
  - (b) an operations team employee for the court that made the forum participation order applying to the referred offender,
  - (c) a person wishing to observe the conference for a research or educational purpose, including a police officer, a magistrate and a legal practitioner,

- (d) a person wishing to observe the conference for the purpose of monitoring or evaluating the program,
- (e) a member of the news media,
- (f) any other person of a class specified by the guidelines.

**70 Exclusion of persons from attending conference**

If a forum facilitator forms the opinion that the presence of a person (other than a referred offender or any victim of that offender) may frustrate the purpose or conduct of a conference, the forum facilitator may exclude that person from attending, or continuing to attend, the conference.

**71 Conference may deal with more than one offender and offence**

A conference may be held in respect of more than one offender and more than one offence.

**72 Views of persons invited but not in attendance**

A forum facilitator must, at or before a conference, ensure that the participants are informed of the views of any person who is entitled or invited to attend, but is unable or declines to do so, if the forum facilitator is informed of those views.

**73 Facilitation of conferences to be in accordance with guidelines**

A forum facilitator is to facilitate a conference in accordance with any guidelines on the facilitation of conferences.

**74 Representation at conferences**

- (1) A referred offender is entitled to be advised, but not represented, by a legal practitioner at a conference.
- (2) A conference may be adjourned at any time for the purpose of allowing the referred offender to obtain advice from a legal practitioner.

**75 Non-attendance at conferences**

If a referred offender fails, without reasonable explanation, to attend a conference, a forum facilitator or operations team employee must notify the court that made the forum participation order applying to the referred offender.

**76 Draft intervention plans**

- (1) The participants at a conference may agree to make such recommendations as they think fit about the referred offender in respect of whom the conference is held and include those recommendations in a draft intervention plan.
- (2) Without limiting subclause (1), a draft intervention plan may provide for one or more of the following:
  - (a) that the referred offender apologise to any victim of that offender orally or in writing,
  - (b) that the referred offender make reparations to any such victim or the community,
  - (c) that the referred offender participate in a program aimed at improving that offender's prospects (for example, a counselling program, a drug or alcohol rehabilitation program or an education program),

- (d) the taking of action directed towards the reintegration of the referred offender into the community,
  - (e) the times within which the plan is to be implemented.
- (3) The participants may not include in a draft intervention plan a requirement that the referred offender carry out work in the community for a period that exceeds the period applying to community service orders under section 8 of the *Crimes (Sentencing Procedure) Act 1999*.
  - (4) A draft intervention plan is, if possible, to be determined by consensus of the participants in the conference and, subject to subclauses (5) and (6), may be agreed to by a majority of participants in the conference even though it is not agreed to by all the participants. In the absence of a consensus, a decision of a majority of the participants is a decision of the conference.
  - (5) The referred offender, and any victim of that offender who personally attends the conference, each has a right of veto with respect to the whole of a draft intervention plan, or with respect to any recommendation proposed to be contained in a draft intervention plan, regardless of the views of any other participant in the conference who is not a victim.
  - (6) A victim's right of veto does not operate unless all victims who personally attend the conference agree to the veto.
  - (7) The draft intervention plan is to be prepared in the form approved by the Minister.

#### **77 Draft intervention plan to be reported to court**

- (1) An operations team employee must refer a draft intervention plan agreed to at the conference to the court that made the forum participation order.
- (2) An operations team employee must notify the court that made the forum participation order if a forum facilitator for a conference has informed an operations team employee that:
  - (a) the participants at a conference are unable to agree to a draft intervention plan, or
  - (b) the referred offender or any victim of that offender who has personally attended the conference has vetoed the draft intervention plan.
- (3) An operations team employee must also provide to the court a report (prepared by the forum facilitator in the form approved by the Minister) on the following matters:
  - (a) the name, address and date of birth of the referred offender,
  - (b) the nature of the offence in respect of which the conference has been held,
  - (c) the name of the forum facilitator,
  - (d) the names of the other persons who attended the conference and, if they participated, the capacity in which they participated,
  - (e) the dates on, and locations at, which the conference was held,
  - (f) any recommendation contained in the draft intervention plan that has been agreed to at the conference other than by consensus (including the name of any participant who did not agree with the recommendation and any reason given by the participant for not agreeing with the recommendation),

- (g) any failure of the conference to agree to recommendations that could be included in a draft intervention plan,
  - (h) the major points of discussion in the course of the conference,
  - (i) any other matter that the forum facilitator considers relevant, such as anything noted at the conference that the facilitator considers could assist in explaining the context for particular recommendations.
- (4) A referral, notification or report under this clause must be made or provided at least 2 days before the date on which the court is due to continue the proceedings in respect of which the referred offender was referred.

**[14] Part 7, Division 3, Subdivision 3**

Omit the Subdivision. Insert instead:

**Subdivision 3 Intervention plans**

**78 Referring back draft intervention plans**

- (1) If a court has concerns about a draft intervention plan referred to the court under Subdivision 2, it may:
  - (a) consult with an operations team employee for the declared place in relation to its concerns, or
  - (b) notify an operations team employee for the declared place of its concerns and refer the draft plan for consideration under this clause.
- (2) The operations team employee:
  - (a) must ascertain whether the referred offender to whom the draft intervention plan applies and all of the relevant victims (if any) agree to consider the court's concerns about the draft intervention plan, and
  - (b) if they do so, must arrange for the referred offender and those victims to consider the court's concerns.
- (3) If the referred offender and all of the relevant victims (if any) agree to consider the court's concerns, they are to do so:
  - (a) if practicable, within 7 days after an operations team employee is notified by the court under subclause (1), or
  - (b) as soon as practicable after those 7 days have elapsed.
- (4) On considering the court's concerns, the referred offender and the relevant victims (if any) may decide to vary the draft intervention plan or decide not to vary the draft intervention plan.
- (5) Any such decision is, if practicable, to be made by consensus of the referred offender and the relevant victims (if any). In the absence of a consensus, a decision of a majority of the persons concerned is sufficient.
- (6) The referred offender and any relevant victim each has a right of veto with respect to any proposed variation to the draft intervention plan. However, a victim's right of veto does not operate unless all such victims agree to the veto.
- (7) A draft intervention plan cannot be varied under this clause to require that the referred offender carry out work in the community for a period that exceeds the period applying to community service orders under section 8 of the *Crimes (Sentencing Procedure) Act 1999*.

- (8) The operations team employee must notify the court of:
  - (a) any failure of the referred offender and the relevant victims (if any) to agree to consider the court's concerns, or
  - (b) any decision made under subclause (4) to vary or not to vary the draft intervention plan, or
  - (c) any failure of the referred offender and the relevant victims (if any) to agree on a decision under subclause (4), or
  - (d) any veto of a proposed variation of the draft intervention plan.
- (9) A notice under subclause (8) must be given within 7 days (or such further period as the court may allow) after:
  - (a) the date on which the operations team employee ascertains that the referred offender and the relevant victims (if any) do not agree to consider the court's concerns, or
  - (b) the final date on which a decision about the draft intervention plan is made under subclause (4), or
  - (c) if the referred offender and the relevant victims (if any) fail to agree on a decision about the draft intervention plan under subclause (4), the date on which the operations team employee becomes aware that they have failed to do so.
- (10) The court may not refer concerns about a draft intervention plan on more than one occasion under this clause.
- (11) In this clause:  
*relevant victim* means any victim of the referred offender who personally attended the conference at which the draft intervention plan was determined and is able to be contacted.

## **79 Notification of approval or refusal**

- (1) Following its consideration of any draft intervention plan referred to a court under Subdivision 2 (including any draft intervention plan varied under clause 78 (4)) the court is to notify an operations team employee for the declared place of the following matters:
  - (a) if the court approves the draft intervention plan—the terms of any intervention plan order made in respect of the referred offender to whom the plan applies, which may include the date by which the plan must be completed,
  - (b) if the court does not approve the draft intervention plan:
    - (i) that it has not approved the draft intervention plan, and
    - (ii) its reasons for not doing so.
- (2) The court is to notify an operations team employee within 7 days after making its decision to approve or not approve the intervention plan.
- (3) An operations team employee is to notify the following persons of the court's decision to approve or not approve the draft intervention plan within 7 days after being notified by the court under subclause (2):
  - (a) the forum facilitator,
  - (b) any victim of the referred offender,
  - (c) any police officer responsible for investigating the offence in respect of which that offender was referred to the program.



## **80 Implementation of intervention plan**

- (1) If a participating court makes an intervention plan order, an operations team employee for the declared place at which the intervention plan order was made is to supervise the implementation and completion of the applicable intervention plan by the referred offender to whom that order applies.
- (2) The operations team employee must notify the following as to whether or not the intervention plan is satisfactorily completed by the referred offender:
  - (a) the court,
  - (b) the forum facilitator,
  - (c) any victim of the referred offender,
  - (d) any police officer responsible for investigating the offence in respect of which that offender was referred to the program.
- (3) If the intervention plan has not been satisfactorily completed, the operations team employee must notify the court of:
  - (a) any reasons of which any operations team employee is aware for the referred offender's failure to complete the plan satisfactorily, and
  - (b) if the plan has been partially completed, the extent to which it has been completed, and
  - (c) any other matter that an operations team employee considers relevant.

### **[15] Part 7, Division 4**

Omit the Division. Insert instead:

## **Division 4 Forum facilitators and senior forum facilitators**

### **81 Forum facilitators**

- (1) The Secretary may appoint a person as a forum facilitator, including a police officer in the police officer's private capacity and an employee of a Department in the employee's private capacity.
- (2) A forum facilitator has the following functions:
  - (a) to prepare for, and to hold, conferences referred to the forum facilitator by an operations team employee,
  - (b) any other functions conferred or imposed on the forum facilitator by this Part or any guidelines.
- (3) Subject to clause 84, a forum facilitator holds office for such period (not exceeding 3 years) as is specified in the facilitator's instrument of appointment, but may be re-appointed.

### **82 Senior forum facilitators**

- (1) The program manager may appoint a forum facilitator as a senior forum facilitator.
- (2) A senior forum facilitator has the following functions:
  - (a) to mentor new forum facilitators,
  - (b) to conduct assessments of forum facilitators,
  - (c) to conduct forum facilitator debrief meetings,
  - (d) any other functions conferred or imposed on the senior forum facilitator by this Part or any guidelines.

- (3) Subject to clause 84, a senior forum facilitator holds office for such period (not exceeding 3 years) as is specified in the facilitator's instrument of appointment, but may be re-appointed.

**83 Remuneration of forum facilitators and senior forum facilitators**

- (1) A forum facilitator is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the forum facilitator.
- (2) A senior forum facilitator is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the senior forum facilitator.

**84 Vacancy in office of forum facilitators and senior forum facilitators**

- (1) A person's appointment as a forum facilitator or a senior forum facilitator is automatically terminated if the person:
- (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Secretary, or
  - (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (e) becomes a mentally incapacitated person, or
  - (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Secretary may remove a forum facilitator or senior forum facilitator from office at any time.

**[16] Clause 85 Minister may issue guidelines**

Omit clause 85 (1). Insert instead:

- (1) The Minister may from time to time issue guidelines, not inconsistent with this Part, for or with respect to any of the following matters:
- (a) the functions of operations team employees or other persons in connection with assessments,
  - (b) the functions of operations team employees, senior forum facilitators or forum facilitators in connection with the program,
  - (c) the constitution of and procedure for conferences,
  - (d) any other matter in respect of which guidelines are permitted or required by this Part.

**[17] Clause 86 Evidence of statements generally inadmissible**

Omit "forum" wherever occurring in clause 86 (1) and (3). Insert instead "conference".

**[18] Clause 86 (4)**

Insert after clause 86 (3):

- (4) A reference in this clause to a conference includes a reference to a forum conducted under this Part before the commencement of the *Criminal Procedure Amendment (Forum Sentencing Intervention Program) Regulation 2014*.

**[19] Clause 87**

Omit the clause. Insert instead:

**87 Prohibition on disclosure of information**

- (1) A relevant program participant must not disclose the name of, or any other identifying information about, a referred offender or a victim of a referred offender that is obtained in connection with:
- (a) the assessment of the appropriateness of the offender's case for being dealt with under the program, or
  - (b) the assessment of the referred offender's suitability to participate in the program, or
  - (c) 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 the information referred to in that subclause:
- (a) to any of the following persons:
    - (i) the referred offender,
    - (ii) a senior forum facilitator,
    - (iii) a forum facilitator,
    - (iv) any victim of the referred offender,
    - (v) any police officer responsible for investigating the offence in respect of which the referred offender was referred to the program,
    - (vi) if the referred offender is subject to a good behaviour bond that requires supervision, a community service order or parole—the referred offender's supervising officer,
    - (vii) an operations team employee, or
  - (b) for the purposes of any legal proceedings, or
  - (c) in accordance with a requirement of the *Ombudsman Act 1974* or with any request made by the Ombudsman, or
  - (d) with other lawful excuse.
- (3) Nothing in subclause (1) prevents an operations team employee for a declared place from disclosing the information referred to in that subclause to a person for the purpose of monitoring or evaluating the program.
- (4) In this clause:
- identifying information*** in relation to a person means any information that identifies the person or that is likely to lead to the identification of the person.
- relevant program participant*** means any of the following:
- (a) an operations team employee,

- (b) a person carrying out an assessment as to whether or not the offender's case is appropriate for being dealt with under the program,
- (c) a person carrying out an assessment of a referred offender's capacity and prospects for participating in the program,
- (d) a senior forum facilitator,
- (e) a forum facilitator,
- (f) a person entitled or invited to participate in, or attend, a conference and a person attending any such conference,
- (g) a person entitled to consider a draft intervention plan under clause 78 and any person who does so.

**[20] Clause 96 Secretary may approve courses for program**

Omit "Director-General" wherever occurring in clause 96 (1)–(3), (5) and (7).

Insert instead "Secretary".

**[21] Clause 92 (2) (a)**

Omit "Director-General's". Insert instead "Secretary's".

**[22] Clause 108 Savings**

Insert after clause 108 (2):

- (3) An offender in relation to whom a suitability assessment order has been made before the commencement of the *Criminal Procedure Amendment (Forum Sentencing Intervention Program) Regulation 2014* and in relation to whom the program under Part 7 had not been completed before that commencement, is to be dealt with under Part 7 as if that Regulation had not been made.
- (4) From 31 March 2014 to 31 March 2015, the functions of an operations team employee under Part 7 may be exercised by a program administrator (within the meaning of that Part immediately before the commencement of the *Criminal Procedure Amendment (Forum Sentencing Intervention Program) Regulation 2014*).