



New South Wales

Crimes (Sentencing Procedure) Regulation 2017

under the

Crimes (Sentencing Procedure) Act 1999

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

MARK SPEAKMAN, MP
Attorney General

Explanatory note

The object of this Regulation is to remake, with minor amendments, the provisions of the *Crimes (Sentencing Procedure) Regulation 2010*, which is repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to sentencing procedures generally and sentencing procedures for intensive correction 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) and (3), 32 (4) (c), 70 (2) (a) and (3), 81 (2) (a) (vii) and (4) 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 and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	3
2 Commencement	3
3 Definitions	3
Part 2 Sentencing procedures generally	
Division 1 General	
4 Lists of additional charges	4
5 Parole orders	4
6 Consultation required before conditions as to residence or treatment imposed on parole orders	4
7 Warrants of commitment	5
8 Consultation with victim and police in relation to charge negotiations	5
Division 2 Victim impact statements	
9 Persons who may prepare victim impact statement	5
10 Form of victim impact statements	5
11 Content of victim impact statements	5
12 Tendering of victim impact statements	6
Part 3 Sentencing procedures for intensive correction orders	
13 Intensive correction orders	7
14 Undertaking to comply with intensive correction order	7
15 Assessment reports	7
16 Notice of intensive correction order	8
Part 4 Sentencing procedures for home detention orders	
17 Home detention orders	9
18 Consent of persons living with or in relationship with offender	9
19 Undertaking to comply with home detention order	9
20 Assessment of effect of order on children	9
Part 5 Sentencing procedures for community service orders	
21 Community service orders	10
22 Maximum number of hours of community service work	10
23 Undertaking to comply with community service order	10
24 Notice of community service order	10
Part 6 Miscellaneous	
25 Savings provision	11

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Crimes (Sentencing Procedure) Act 1999

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Crimes (Sentencing Procedure) Regulation 2017*.

2 Commencement

This Regulation commences on 1 September 2017 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Crimes (Sentencing Procedure) Regulation 2010* which is repealed on 1 September 2017 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*.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(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 (4) (c) of the Act, the following persons and classes of persons are prescribed:
 - (a) police officers,
 - (b) persons employed in the Transport Service in any role designated by the Secretary of the Department of Transport as a senior legal role,
 - (c) the Point to Point Transport Commissioner appointed under the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*,
 - (d) persons employed in the Department of Finance, Services and Innovation in any role designated by the Secretary of that Department as a senior legal role,
 - (e) the Commissioner for Fair Trading, Department of Finance, Services and Innovation or, if there is no person employed as Commissioner for Fair Trading, the Secretary of that Department,
 - (f) the General Counsel, Ministry of Health,
 - (g) the Chief Health Officer, Ministry of Health,
 - (h) the Secretary of the Ministry of Health,
 - (i) the Chief Executive Officer of the Food Authority,
 - (j) the Secretary of the Department of Planning and Environment,
 - (k) the Secretary of the Department of Industry,
 - (l) officers or employees of an approved charitable organisation within the meaning of the *Prevention of Cruelty to Animals Act 1979* designated by the chief executive of the organisation.

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 community corrections officer as to the offender's circumstances.
- (2) Before a court makes a parole order containing conditions requiring the co-operation of a person other than the offender or a community corrections 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.

8 Consultation with victim and police in relation to charge negotiations

For the purposes of section 35A (3) of the Act, the following persons and classes of persons are prescribed:

- (a) in relation to proceedings being prosecuted by a police prosecutor—police officers,
- (b) the Commissioner for Fair Trading, Department of Finance, Services and Innovation or, if there is no person employed as Commissioner for Fair Trading, the Secretary of that Department,
- (c) persons employed in the Department of Finance, Services and Innovation in any role designated by the Secretary of that Department as a senior legal role.

Division 2 Victim impact statements

9 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 31 of the *Victims Rights and Support Act 2013*, 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.

10 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.victimsservices.justice.nsw.gov.au>.

11 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.
- (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.

12 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:
 - (a) the primary victim, or
 - (b) if the primary victim has died as a result of the offence—each family victim.

Part 3 Sentencing procedures for intensive correction orders

13 Intensive correction orders

- (1) An intensive correction 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.

14 Undertaking to comply with intensive correction order

An undertaking referred to in section 67 (1) (d) of the Act is to be in the approved form.

15 Assessment reports

- (1) An offender's assessment report must take into account, and specifically address, the following matters:
 - (a) any criminal record of the offender, and the likelihood that the offender will re-offend,
 - (b) any risks associated with managing the offender in the community (taking into account the offender's response to supervision in the community on previous occasions),
 - (c) the likelihood that the offender will commit a domestic violence offence,
 - (d) whether the offender will have suitable residential accommodation for the duration of an intensive correction order,
 - (e) whether any circumstances of the offender's residence, employment, study or other activities would inhibit effective implementation of an intensive correction order,
 - (f) whether the persons with whom it is likely the offender would reside, or continue or resume a relationship, understand the requirements of an intensive correction order and are prepared to live in conformity with them, so far as may be necessary,
 - (g) whether the making of an intensive correction order would place at risk of harm any person who would be living with or in the vicinity of the offender,
 - (h) any dependency of the offender on alcohol or drugs, or other substance abuse, that would affect the offender's ability to comply with the offender's obligations under an intensive correction order,
 - (i) any physical or mental health conditions of the offender that would affect the offender's ability to comply with the offender's obligations under an intensive correction order,
 - (j) the existence and extent of any self-harm risk, including the likely impact of an intensive correction order on that risk, and the availability in the community of the support and treatment services necessary to manage the risk.
- (2) If a child under the age of 18 years would be living with an offender serving a sentence of imprisonment by way of intensive correction, the assessment report must take into account, and specifically address, the effect on the child of that fact.
- (3) If it appears to the officer preparing the assessment report that the offender is homeless:
 - (a) all reasonable efforts must be made by the Commissioner of Corrective Services, in consultation with the offender, to find suitable accommodation for the offender, and
 - (b) the report is not to be finalised until those efforts have been made.

- (4) An offender's assessment report must also include an assessment of:
- (a) factors associated with his or her offending that would be able to be addressed by targeted interventions under an intensive correction order, and
 - (b) the availability of resources to address those factors by targeted interventions under an intensive correction order, and
 - (c) any issues relevant to the administration of an intensive correction order in respect of the offender that may be relevant to the court's determination of an appropriate date to be fixed for the commencement of the sentence.

16 Notice of intensive correction order

A notice referred to in section 73 (1) of the Act is to be in the approved form.

Part 4 Sentencing procedures for home detention orders

17 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.

18 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.

19 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.

20 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 community corrections officer and an officer within the Department of Family and Community Services, and must be carried out in accordance with child protection risk assessment procedures approved by the Secretary of that Department.

Part 5 Sentencing procedures for community service orders

21 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.

22 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.

23 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.

24 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.

Part 6 Miscellaneous

25 Savings provision

Any act, matter or thing that, immediately before the repeal of the *Crimes (Sentencing Procedure) Regulation 2010*, had effect under that Regulation continues to have effect under this Regulation.