



New South Wales

Crimes (Sentencing Procedure) Regulation 2024

under the

Crimes (Sentencing Procedure) Act 1999

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

MICHAEL DALEY, MP
Attorney General

Explanatory note

The object of this regulation is to remake, with minor amendments, the *Crimes (Sentencing Procedure) Regulation 2017*, which is repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

This regulation makes provision in relation to sentencing procedures generally, procedures relating to victim impact statements and sentencing procedures for community-based orders.

This regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely—

- (a) matters of a machinery nature, and
- (b) matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Crimes (Sentencing Procedure) Act 1999

Part 1 Preliminary

1 Name of regulation

This regulation is the *Crimes (Sentencing Procedure) Regulation 2024*.

2 Commencement

This regulation commences on 1 September 2024.

Note— This regulation replaces the *Crimes (Sentencing Procedure) Regulation 2017*, which is repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

3 Definitions

(1) In this regulation—

forensic patient, for Part 2, Division 4—see section 14.

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

Tribunal, for Part 2, Division 4—see section 14.

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

(2) A reference in this regulation to a community corrections officer is, if the offender to whom the reference relates is subject to supervision by a juvenile justice officer, taken to be a reference to a juvenile justice officer within the meaning of the *Children (Detention Centres) Act 1987*.

Note— Juvenile justice officers are referred to in—

(a) the Act, sections 17B, 55, 56, 58, 89–91 and 99–100, and

(b) the *Crimes (Administration of Sentences) Act 1999*, sections 107E and 108E.

Part 2 Sentencing procedures generally

Division 1 General

4 Lists of additional charges

For the Act, section 32(4)(c), the following persons and classes of persons are prescribed—

- (a) police officers,
- (b) persons employed in the Transport Service in a role designated by the Secretary of the Department of Transport as a senior legal role,
- (c) the Commissioner for Fair Trading, Department of Customer Service or, if there is no person employed as Commissioner for Fair Trading, the Secretary of the Department of Customer Service,
- (d) the Point to Point Transport Commissioner appointed under the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*,
- (e) the General Counsel of the Ministry of Health,
- (f) the Chief Health Officer of the Ministry of Health,
- (g) the Secretary of the Ministry of Health,
- (h) the Secretary of the Department of Climate Change, Energy, the Environment and Water,
- (i) the Secretary of the Department of Creative Industries, Tourism, Hospitality and Sport,
- (j) the Secretary of the Department of Planning, Housing and Infrastructure,
- (k) the Secretary of the Department of Primary Industries and Regional Development,
- (l) the Chief Executive Officer of the Environment Protection Authority,
- (m) the Chief Executive Officer of the Food Authority,
- (n) the Deputy Secretary, Hospitality and Racing, within the Department of Creative Industries, Tourism, Hospitality and Sport,
- (o) persons employed in the Department of Education in a role designated by the Secretary of the Department of Education as a senior legal role,
- (p) persons employed in the Department of Climate Change, Energy, the Environment and Water—
 - (i) in whose name prosecution proceedings are instituted, or
 - (ii) in a role designated by the Secretary of the Department of Climate Change, Energy, the Environment and Water as a senior legal role,
- (q) persons employed in the Department of Creative Industries, Tourism, Hospitality and Sport—
 - (i) in whose name prosecution proceedings are instituted, or
 - (ii) in a role designated by the Secretary of the Department of Creative Industries, Tourism, Hospitality and Sport as a senior legal role,
- (r) persons employed in the Department of Planning, Housing and Infrastructure—
 - (i) in whose name prosecution proceedings are instituted, or
 - (ii) in a role designated by the Secretary of the Department of Planning, Housing and Infrastructure as a senior legal role,

- (s) persons employed in the Department of Customer Service in a role designated by the Secretary of the Department of Customer Service as a senior legal role,
- (t) persons employed in the Department of Primary Industries and Regional Development—
 - (i) in whose name prosecution proceedings are instituted, or
 - (ii) in a role designated by the Secretary of the Department of Primary Industries and Regional Development as a senior legal role,
- (u) persons who—
 - (i) under the *Prevention of Cruelty to Animals Act 1979*, are appointed officers employed by an approved charitable organisation, and
 - (ii) are designated by the chief executive of the approved charitable organisation.

5 Consultation with victim and police in relation to charge negotiations

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

- (a) for proceedings being prosecuted by a police prosecutor—police officers,
- (b) persons employed in the Transport Service in a role designated by the Secretary of the Department of Transport as a senior legal role,
- (c) the Commissioner for Fair Trading, Department of Customer Service or, if there is no person employed as Commissioner for Fair Trading, the Secretary of the Department of Customer Service,
- (d) the Point to Point Transport Commissioner appointed under the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*,
- (e) the Secretary of the Department of Climate Change, Energy, the Environment and Water,
- (f) the Secretary of the Department of Planning, Housing and Infrastructure,
- (g) the Secretary of the Department of Primary Industries and Regional Development,
- (h) the Chief Executive Officer of the Environment Protection Authority,
- (i) the Chief Executive Officer of the Food Authority,
- (j) persons employed in the Department of Climate Change, Energy, the Environment and Water—
 - (i) in whose name prosecution proceedings are instituted, or
 - (ii) in a role designated by the Secretary of the Department of Climate Change, Energy, the Environment and Water as a senior legal role,
- (k) persons employed in the Department of Education in a role designated by the Secretary of the Department of Education as a senior legal role,
- (l) persons employed in the Department of Planning, Housing and Infrastructure—
 - (i) in whose name prosecution proceedings are instituted, or
 - (ii) in a role designated by the Secretary of the Department of Planning, Housing and Infrastructure as a senior legal role,
- (m) persons employed in the Department of Primary Industries and Regional Development—
 - (i) in whose name prosecution proceedings are instituted, or
 - (ii) in a role designated by the Secretary of the Department of Primary Industries and Regional Development as a senior legal role,

- (n) persons employed in the Department of Customer Service in a role designated by the Secretary of the Department of Customer Service as a senior legal role.

6 Warrant of commitment—the Act, s 103(2)(b)

A warrant for the committal of an offender issued under the Act, section 62(1) must be in the form approved by the Minister.

Division 2 Victim impact statements

7 Form of victim impact statements—the Act, s 29(1)(b)

A victim impact statement—

- (a) must be—
 - (i) legible, whether typed or handwritten, and
 - (ii) on A4-sized paper, and
- (b) must not, without the leave of the court, be longer than 20 pages in total, including any medical reports or other annexures.

Note— The Department of Communities and Justice provides information about victim impact statements, including the suggested form of a victim impact statement, on its website at www.victimsservices.justice.nsw.gov.au.

8 Content requirements for victim impact statements generally—the Act, s 29(1)(b)

- (1) A victim impact statement must identify each victim to whom the statement relates.
- (2) The statement must include the full name of the person who prepared the statement.
- (3) If the statement is prepared by a person other than a victim to whom the statement relates, or a representative of a victim mentioned in section 11(1), the statement must—
 - (a) indicate that each victim does not object to the statement being tendered to the court, and
 - (b) be signed by each victim, or the representative of the victim, to verify that each victim does not object to the statement being tendered to the court.
- (4) If a victim to whom the victim impact statement relates is a family victim, the statement must—
 - (a) identify the primary victim, and
 - (b) state the nature of the family victim's relationship with the primary victim, and
 - (c) unless the family victim is related to the primary victim by blood or marriage—state the duration of the family victim's relationship with the primary victim.
- (5) If a victim's representative acts on behalf of a primary victim for the purposes of providing information for the preparation of the statement, the statement must state the following—
 - (a) the representative's name, and
 - (b) the nature of the representative's relationship with the primary victim, and
 - (c) unless the representative is related to the primary victim by blood or marriage—the duration of the representative's relationship with the primary victim.
- (6) The statement must not contain—
 - (a) anything that is offensive, threatening, intimidating or harassing, or
 - (b) suggestions or views about—

- (i) the sentence to be imposed, or
- (ii) the matters that the sentencing court should take into account, or
- (c) anything else that is not referred to in the Act, section 28 or otherwise not contemplated by the Act to be included in the statement.

9 Additional content requirements for section 30L victim impact statements—the Act, s 29(1)(b)

- (1) This section applies to a victim impact statement prepared for the purposes of the Act, section 30L (a *section 30L victim impact statement*).
- (2) A section 30L victim impact statement may include the following matters—
 - (a) the risk that the release of the offender would pose to the victim,
 - (b) conditions that should be imposed on the release of the offender,
 - (c) any other matters relating to the victim that the victim thinks should be considered in deciding the conditions of release for the offender.
- (3) If the court receives a section 30L victim impact statement, the court may invite the victim or the person who prepared the statement to—
 - (a) add any matter mentioned in subsection (2) to the statement, or
 - (b) make submissions on any of the matters.
- (4) Section 8(3) does not apply to a section 30L victim impact statement.

10 Tendering of victim impact statements—the Act, s 29(1)(b)

Only 1 victim impact statement may be tendered in relation to—

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

11 Persons who may assist victim—the Act, s 30(4)

- (1) Any of the following persons may be a representative of a victim for the purposes of providing information for the preparation of a victim impact statement or objecting to the tendering of a victim impact statement—
 - (a) a person having parental responsibility for the victim,
 - (b) a member of the victim’s immediate family,
 - (c) the victim’s carer,
 - (d) a person who is important in the victim’s life,
 - (e) another person chosen by the victim.
- (2) A qualified person designated by any of the following persons may be a representative of a victim for the purposes of preparing a victim impact statement—
 - (a) the victim or victims to whom the statement relates,
 - (b) a representative of a victim who is providing information for the preparation of the statement,
 - (c) the prosecutor in the proceedings to which the statement relates.
- (3) Subsection (2) does not limit the ability of a victim to designate a person as a representative of the victim for the purposes of preparing a victim impact statement.
- (4) Any of the following persons may be a representative of a victim for the purposes of reading a victim impact statement—
 - (a) a person designated by the victim or victims to whom the statement relates,

- (b) if a representative of the victim is providing information for the preparation of the statement—a person, including the representative, designated by the representative.
- (5) In this section—
qualified person means—
 - (a) a counsellor approved under the *Victims Rights and Support Act 2013*, section 31, or
 - (b) another person qualified, by training, study or experience, to provide the particulars required for the preparation of a victim impact statement.

Division 3 Assessment reports for courts

Note— A request for an assessment report about an offender may be made at any time during sentencing proceedings. An offender is defined as a person whom a court has found guilty of an offence. See the Act, sections 3 and 17C.

12 Assessment reports generally—the Act, s 17B(4)

- (1) An assessment report in relation to an offender must address the following matters—
 - (a) the offender’s risk of re-offending,
 - (b) factors related to the offender’s offending behaviour,
 - (c) factors that may affect the offender’s ability to address the offender’s offending behaviour,
 - (d) how the factors referred to in paragraphs (b) and (c) would be addressed by supervision and the availability of resources to provide supervision,
 - (e) conditions that would facilitate the effective supervision of the offender in the community,
 - (f) the offender’s suitability for community service work,
 - (g) a summary of the offender’s response to any previous period of management in the community in relation to a relevant order,
 - (h) any other matters the court wishes to have specifically addressed.
- (2) Subsection (1) does not limit the matters that may be addressed in an assessment report.
- (3) An assessment report does not need to address a matter referred to in subsection (1) if—
 - (a) the matter is not relevant to the circumstances relating to the offender, or
 - (b) the court does not require the matter to be addressed.

13 Assessment reports for home detention condition—the Act, s 17B(4)

- (1) An assessment report in relation to a home detention condition must address the following matters—
 - (a) the offender’s suitability for home detention,
 - (b) risks associated with imposing home detention, including risks to the offender or other persons, including children, and strategies that could manage the risks,
 - (c) any other matters relevant to administering an intensive correction order with a home detention condition.
- (2) If the offender does not have accommodation suitable for home detention, the assessment report must not be finalised until reasonable efforts have been made by a

community corrections officer, in consultation with the offender, to find suitable accommodation.

- (3) Subsection (1) does not limit the matters that may be addressed in an assessment report.

Division 4 Offenders affected by mental illness or cognitive impairment

14 Definitions

In this division—

forensic patient has the same meaning as in the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*.

Tribunal means the Mental Health Review Tribunal constituted under the *Mental Health Act 2007*.

15 Copies of certain victim impact statements to be given to Tribunal—the Act, s 30N(5)

- (1) This section applies if the court—
- (a) makes a decision that results in an offender becoming a forensic patient, and
 - (b) accepts a victim impact statement relating to the offender under the Act, section 30L(1).
- (2) The court must give the Tribunal a copy of the victim impact statement as soon as practicable after making the decision.

16 Victim impact statements in proceedings before Tribunal—the Act, s 30N(5)

- (1) This section applies if the court gives the Tribunal a victim impact statement in relation to a forensic patient under the Act, section 30N(4).
- (2) The Tribunal must—
- (a) acknowledge the victim impact statement at each review of the forensic patient by the Tribunal, and
 - (b) consider and take into account the statement before determining an application by the forensic patient for release or a grant of leave.
- (3) The victim may, with the consent of the Tribunal, update the victim impact statement.
- (4) The Tribunal may disclose the contents of the victim impact statement to the forensic patient's legal representative only in the circumstances in which, and subject to any conditions on which, the court permitted the disclosure.
- (5) Despite subsection (4), if information in the victim impact statement was not disclosed by the court to the forensic patient's legal representative or information is inserted in an updated victim impact statement, the Tribunal may, in the interests of justice, for the purposes of determining an application for release or a grant of leave, disclose the information to—
- (a) the legal representative, or
 - (b) if the forensic patient does not have a legal representative—an Australian lawyer appointed by the Tribunal as the forensic patient's legal representative for the purposes of the application.
- (6) The Tribunal may—
- (a) direct that the legal representative must not disclose the information referred to in subsection (5) to the forensic patient, and

- (b) if the Tribunal makes a direction under paragraph (a)—consent to the legal representative disclosing general information about the statement to the forensic patient.

17 Submissions by designated carers and principal care providers—the Act, s 30M(2)

The court may seek written or oral submissions from a designated carer or principal care provider in relation to the following—

- (a) the risk that the release of the offender would pose to the victim,
- (b) conditions that should be imposed on the release of the offender,
- (c) any other matters the designated carer or principal care provider thinks should be considered in deciding the conditions of release for the offender.

Part 3 Community-based orders

Note 1— If, in sentencing an offender, the sentencing court makes an intensive correction order in relation to the offender with conditions imposed by the sentencing court under the Act, any conditions of the order that are later imposed, varied or revoked are imposed, varied or revoked by the Parole Authority rather than the sentencing court.

Note 2— The *Crimes Act 1914* of the Commonwealth, section 20AB provides that intensive correction orders under State legislation are available for federal offences in certain circumstances. The Parole Authority's powers in relation to administering intensive correction orders, including imposing, varying or revoking conditions of an order, or providing permissions in relation to conditions of an order, extend to intensive correction orders for federal offences. That Act, section 20AC in effect requires breaches of intensive correction orders for federal offences to be dealt with by the sentencing court.

Note 3— The Act, sections 69, 89 and 99 provide that certain orders and conditions must not be made or imposed in relation to offenders who reside, or intend to reside, in another State or Territory unless the other State or Territory is an approved jurisdiction. Section 69 relates to making intensive correction orders, section 89 relates to imposing supervision conditions and community service work conditions on community correction orders and section 99 relates to imposing supervision conditions on conditional release orders.

No States or Territories are currently declared by the regulations to be approved jurisdictions for the Act, section 69, 89 or 99.

Division 1 Procedure for imposing, varying or revoking additional or further conditions on or of community correction orders or conditional release orders—the Act, s 103

18 Application of division

This division applies in relation to the following applications—

- (a) an application to impose, vary or revoke an additional condition on or of a community correction order under the Act, section 89(1),
- (b) an application to impose, vary or revoke a further condition on or of a community correction order under the Act, section 90(1),
- (c) an application to impose, vary or revoke an additional condition on or of a conditional release order under the Act, section 99(1),
- (d) an application to impose, vary or revoke a further condition on or of a conditional release order under the Act, section 99A(1).

19 Applications must be in writing

The application must be in writing.

20 Hearing dates for applications

- (1) The court must set a date for hearing the application (the *hearing date*).
- (2) The hearing date must be—
 - (a) not earlier than 14 days after the date the application is filed, and
 - (b) not later than 3 months after the date the application is filed.
- (3) If the court decides to deal with the matter under section 22 without the offender being present, the court may waive the requirement under subsection (1) to set a hearing date for the application.
- (4) If the court sets a hearing date for the application, the court may vary or waive any requirement under subsection (2) relating to the hearing date.

21 Notice of applications

- (1) If the court sets a hearing date under section 20, the applicant or the court must give a copy of the application to the following persons at least 5 days before the hearing date—

- (a) if the applicant is a community corrections officer—the offender, unless the offender’s whereabouts are unknown or the court decides to deal with the matter under section 22 without the offender being present,
 - (b) if the applicant is an offender—a community corrections officer.
- (2) The applicant or the court may give a copy of the application in any of the following ways—
- (a) for the giving of a copy to the offender—
 - (i) by serving the copy on the offender personally, or
 - (ii) by email to an email address, or by other electronic means, specified by the offender for the service of documents of that kind, or
 - (iii) by sending the copy to the offender’s address as last known to Community Corrections,
 - (b) for the giving of a copy to a community corrections officer—
 - (i) by serving the copy on the community corrections officer personally, or
 - (ii) by email to an email address, or by other electronic means, specified by the community corrections officer for the service of documents of that kind, or
 - (iii) by sending the copy to the community corrections officer’s work address.
- (3) In this section—
Community Corrections means the Community Corrections Division, Department of Communities and Justice.

22 Dealing with applications

The court may deal with the application—

- (a) with or without parties being present, and
- (b) in open court or in the absence of the public.

23 Explanation of effect of additional or further conditions to offender

- (1) If the court imposes or varies an additional or further condition on or of a community correction order or conditional release order, the court must take reasonable steps to explain to the offender, in language the offender can readily understand—
- (a) the offender’s obligations under the condition, and
 - (b) the consequences that may follow if the offender fails to comply with the offender’s obligations.
- (2) The court may vary or waive a requirement under subsection (1).
- (3) An order of the court is not invalidated by a failure to comply with this section.

24 Notice of outcome of applications

- (1) As soon as practicable after dealing with the application, the court must—
- (a) give the offender notice of the outcome of the application, and
 - (b) give the community corrections officer notice of the outcome if the court does any of the following—
 - (i) imposes, varies or revokes an additional or further condition on or of a community correction order or conditional release order that is subject to a supervision condition or community service work condition,

- (ii) imposes a supervision condition on a community correction order or conditional release order,
 - (iii) imposes a community service work condition on a community correction order.
- (2) The court may vary or waive the requirement under subsection (1)(a).
- (3) The court may give notice of the outcome to the offender or community corrections officer in any of the following ways—
 - (a) for the giving of notice to the offender—
 - (i) by serving the notice on the offender personally, or
 - (ii) by email to an email address, or by other electronic means, specified by the offender for the service of documents of that kind, or
 - (iii) by sending the notice to the offender’s address as last known to Community Corrections,
 - (b) for the giving of notice to the community corrections officer—
 - (i) by serving the notice on the community corrections officer personally, or
 - (ii) by email to an email address, or by other electronic means, specified by the community corrections officer for the service of documents of that kind, or
 - (iii) by sending the notice to the community corrections officer’s work address.
- (4) In this section—

Community Corrections means the Community Corrections Division, Department of Communities and Justice.

Division 2 Community service work—the Act, ss 73A and 89

25 Community service work—maximum hours

For the Act, sections 73A(2)(d) and 89(2)(b), the maximum number of hours that may be specified for community service work in an additional condition of an intensive correction order or community correction order is as follows—

- (a) for offences for which the maximum term of imprisonment provided by law is not more than 6 months—100 hours,
- (b) for offences for which the maximum term of imprisonment provided by law is more than 6 months but not more than 1 year—200 hours,
- (c) for offences for which the maximum term of imprisonment provided by law is more than 1 year—
 - (i) if the order is a community correction order—500 hours, or
 - (ii) if the order is an intensive correction order—750 hours.

26 Community service work—minimum periods

For the Act, sections 73A(5) and 89(4C), the minimum period that a community service work condition of an intensive correction order or community correction order must be in force is as follows—

- (a) if the number of hours of community service work required to be performed is not more than 100 hours—6 months,
- (b) if the number of hours of community service work required to be performed is more than 100 hours but not more than 300 hours—12 months,

- (c) if the number of hours of community service work required to be performed is more than 300 hours but not more than 500 hours—18 months,
- (d) if the number of hours of community service work required to be performed is more than 500 hours—2 years.

Part 4 Savings and transitional provisions

27 Savings

An act, matter or thing that, immediately before the repeal of the *Crimes (Sentencing Procedure) Regulation 2017*, had effect under that regulation continues to have effect under this regulation.

28 Transitional arrangements for guilty plea provisions

The Act, Part 3, as in force before its amendment by the *Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017* (the **amendment Act**), continues to apply to the determination of the sentence for an indictable offence to which the offender pleaded guilty if the committal proceedings for the offence—

- (a) dealt with one or more offences and the proceedings for any of the offences commenced before the commencement of the amendment Act, Schedule 1, and
- (b) were conducted in accordance with the provisions that were applicable to committal proceedings before the commencement of the amendment Act, Schedule 1.