

Criminal Procedure Regulation 2005

[2005-411]



New South Wales

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
Cl 12 of this Regulation (cl 12 repeals Part 3 and Sch 2 on 31.12.2006)
[Crimes Amendment \(Apprehended Violence\) Act 2006 No 73](#) (not commenced)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Criminal Procedure Regulation 2005



New South Wales

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Criminal Procedure Regulation 2005



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Criminal Procedure Regulation 2005*.

2 Commencement

This Regulation commences on 15 August 2005.

3 Definitions

(1) In this Regulation:

Criminal Listing Director has the same meaning that it has in Part 3 of Chapter 3 of the Act.

the Act means the *Criminal Procedure Act 1986*.

(2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 1.

(3) Notes included in this Regulation do not form part of this Regulation.

Part 2 Listing of criminal proceedings

4 Information for Criminal Listing Director

(1) The Criminal Listing Director may direct any of the following persons to give to the Director such information to assist the Director in making arrangements for the listing of criminal proceedings as the Director reasonably requires:

- (a) a prosecuting authority,
- (b) an accused person or appellant,
- (c) a solicitor acting for an accused person or appellant,
- (d) a registrar.

- (2) A person to whom such a direction is given must comply with the direction without delay.
- (3) The Criminal Listing Director must not give to a prosecuting authority any information furnished to the Director by an accused person or appellant (or by the solicitor of an accused person or appellant) in response to a direction under this clause except with the consent of the accused person, appellant or solicitor.
- (4) The Criminal Listing Director must not give to an accused person or appellant (or to any person acting in the interest of an accused person or appellant) any information furnished to the Director by a prosecuting authority in response to a direction under this clause except with the consent of the prosecuting authority.

5 Notice of appearance

- (1) A solicitor:
 - (a) who acts for an accused person or appellant in any criminal proceedings, and
 - (b) who has not filed a notice of appearance in the proceedings in the Local Court that led to those criminal proceedings,must file a notice of appearance, in the court in which the criminal proceedings are to be heard, as soon as practicable after accepting instructions to so act.
- (2) A notice of appearance must be in the form of a document signed by or on behalf of the solicitor filing it containing:
 - (a) the full name of the accused person or appellant for whom the solicitor acts, and
 - (b) the full name, address and telephone number of the solicitor.
- (3) A solicitor who ceases to act for an accused person or appellant in any criminal proceedings must file a notice of ceasing to act, in the court in which the proceedings are to be heard, as soon as practicable after ceasing to so act.
- (4) Subclause (3) does not apply if a notice of appearance for the accused person or appellant has already been filed by another solicitor.
- (5) As soon as practicable after a notice under this clause is filed, the registrar with whom the notice is filed must give a copy of the notice to the Director of Public Prosecutions and to the Criminal Listing Director.

6 Transcript

- (1) The Director of Public Prosecutions must notify the Criminal Listing Director and the registrar of the relevant Local Court:
 - (a) if a written transcript of the proceedings in the Local Court that led to the

committal for trial of an accused person is not received by the Director of Public Prosecutions within the prescribed time after the accused person was committed for trial, or

(b) if a written transcript of the proceedings in the Local Court that led to an appeal is not received by the Director of Public Prosecutions within the prescribed time after the appellant lodged notice of the appeal under Part 3 of the *Crimes (Local Courts Appeal and Review) Act 2001*.

(2) For the purposes of this clause, the **prescribed time** is:

(a) 2 weeks, in the case of an accused person (being a juvenile) who is in custody for the offence the subject of the proceedings, or

(b) 4 weeks, in any other case.

(3) The Criminal Listing Director must take information received under this clause into account in fixing any date for the hearing or mention of the matter before the Supreme Court or the District Court.

7 Notice of readiness

(1) As soon as practicable after determining that criminal proceedings are ready to proceed on the part of the Crown, the Director of Public Prosecutions must give to the Criminal Listing Director a notice of readiness for the proceedings.

(2) The notice must be in the form approved for the time being by the Criminal Listing Director and must be accompanied by a draft of the indictment proposed to be presented in the proceedings.

(3) As soon as practicable after receiving the notice, the Criminal Listing Director:

(a) must give a copy of the notice, and of the draft indictment which accompanies the notice, to the registrar of the relevant court, and

(b) must give a copy of the draft indictment to each accused person or the accused person's solicitor.

(4) As soon as practicable after determining that the indictment to be presented in any criminal proceedings is to depart in any material particular from the draft indictment that accompanied the notice of readiness for the proceedings, the Director of Public Prosecutions must give to the Criminal Listing Director a draft of the indictment then proposed to be presented in the proceedings.

(5) The later draft must contain a notice, in the form approved for the time being by the Criminal Listing Director, indicating the nature and extent of the departures from the earlier draft.

- (6) As soon as practicable after receiving a draft indictment under subclause (4), the Criminal Listing Director must give a copy of the draft indictment to the registrar and to each accused person or the accused person's solicitor.

8 Application to stay indictment

- (1) This clause applies to:
- (a) any application to the Supreme Court or District Court for an order staying or quashing an indictment, and
 - (b) any demurrer to an indictment.
- (2) Unless the court otherwise orders, an application or demurrer to which this clause applies must not be listed for hearing unless it has been filed within the prescribed time after a copy of the draft indictment was given to the accused person or the accused person's solicitor under clause 7 (3) or (6).
- (3) For the purposes of this clause, the **prescribed time** is:
- (a) 1 month, in the case of an accused person who is in custody for the offence to which the indictment relates, or
 - (b) 3 months, in any other case.

9 Notice of listing

- (1) As soon as practicable after fixing a date for the hearing or mention of any criminal proceedings, the Criminal Listing Director must give notice of the listing to the registrar of the relevant court.
- (2) As soon as practicable after receiving notice of the listing, the registrar must cause written notice of the listing to be served, in accordance with the rules of court, on the Director of Public Prosecutions and each accused person or appellant in the proceedings.

Part 3 Penalty notice offences

10 Penalty notice offences

- (1) For the purposes of section 336 of the Act, each offence created by a provision specified in Column 1 of Schedule 2 is prescribed as a penalty notice offence.
- (2) For the purposes of section 337 of the Act, the prescribed penalty for any such offence is the amount specified in Column 2 of Schedule 2 opposite the offence.

11 Limitation of areas in which penalty notices may be issued

The provisions of the Act relating to penalty notice offences and penalty notices are to

apply, for the period ending on 31 December 2006, only to offences dealt with in that period in the areas of New South Wales covered by the following police Local Area Commands:

- (a) Albury,
- (b) Bankstown,
- (c) Blacktown,
- (d) Brisbane Waters,
- (e) City Central,
- (f) Lake Illawarra,
- (g) Lake Macquarie,
- (h) Miranda,
- (i) Parramatta,
- (j) Penrith,
- (k) The Rocks,
- (l) Tuggerah Lakes.

12 Repeal of Part and Schedule 2

This Part and Schedule 2 are repealed on 31 December 2006.

Part 4 Fees

13 Amounts payable in relation to court proceedings

The fee that a person must pay to the Supreme Court, the District Court or a Local Court in respect of a matter referred to in Column 1 of Part 1 of Schedule 3 is the fee specified in respect of that matter in Column 2 of that Part.

14 Amounts payable in relation to Sheriff's functions

The fee that a person must pay to the Sheriff in relation to a matter referred to in Column 1 of Part 2 of Schedule 3 is the fee specified in respect of that matter in Column 2 of that Part.

15 Persons by and to whom fees are payable

- (1) Any fee imposed by Schedule 3 is payable, by the person at whose request the relevant document is filed or service rendered:

- (a) in the case of a fee imposed by Part 1 of Schedule 3, to the registrar of the court concerned, and
 - (b) in the case of a fee imposed by Part 2 of Schedule 3, to the Sheriff or the registrar of the court concerned.
- (2) If a document is filed or service rendered at the request of a person acting as agent for another person, each of those persons is jointly and severally liable for payment of any such fee.

16 When fees become due

- (1) A fee imposed by Schedule 3 becomes due when the document concerned is filed or the service concerned is rendered.
- (2) Despite subclause (1), a registrar who is requested to file a document or render a service may require any fee for the document or service to be paid before the document is filed or the service rendered.

17 General power to waive, postpone and remit fees

- (1) The registrar of a court may, by order in writing, direct that the whole or any part of any fee payable to the court be waived, postponed or remitted, subject to such conditions (if any) as the registrar thinks fit to impose.
- (2) The Sheriff may, by order in writing, direct that the whole or any part of any fee payable to the Sheriff be waived, postponed or remitted, subject to such conditions (if any) as the Sheriff thinks fit to impose.
- (3) (Repealed)
- (4) The powers conferred by this clause are to be exercised in accordance with such guidelines as may from time to time be published by the Attorney General.

18 Postponement of fees for legally assisted persons

- (1) The taking of any fee in respect of the business of the court in relation to proceedings involving a party who is a legally assisted person is, if the fee is payable by the party, to be postponed until judgment has been given in the proceedings.
- (2) The fee is not to be taken at all, or if taken must be remitted, if:
 - (a) judgment in the proceedings is against the legally assisted person, or
 - (b) judgment is in favour of the legally assisted person, but costs are not awarded in his or her favour.
- (3) In this clause:

legally assisted person means a person who is receiving legal assistance through a community legal centre that complies with the requirements of section 48H of the [Legal Profession Act 1987](#) or section 240 of the [Legal Profession Act 2004](#), as the case requires.

Part 5 Intervention programs

19 Circle sentencing intervention program

- (1) Schedule 4 has effect for the purposes of Part 4 of Chapter 7 of the Act.
- (2) For the purposes of section 347 of the Act, the program of measures described in Part 4 of Schedule 4 for dealing with offenders is declared to be an intervention program for the purposes of Part 4 of Chapter 7 of the Act.

19A Community conference intervention program

- (1) Schedule 5 has effect for the purposes of Part 4 of Chapter 7 of the Act.
- (2) For the purposes of section 347 of the Act, the program of measures described in Part 4 of Schedule 5 for dealing with offenders is declared to be an intervention program for the purposes of Part 4 of Chapter 7 of the Act.
- (3) **Excluded offences** The following offences are prescribed for the purposes of section 348 (2) of the Act in relation to that intervention program:
 - (a) a domestic violence offence within the meaning of the [Crimes Act 1900](#),
 - (b) an offence under section 60 of the [Crimes Act 1900](#) (Assault and other actions against police officers),
 - (c) an offence under section 93B of the [Crimes Act 1900](#) (Riot),
 - (d) an offence under section 93C of the [Crimes Act 1900](#) (Affray).

Part 6 Miscellaneous

20 Public officers

The following bodies are declared to be public bodies for the purposes of paragraph (f) of the definition of **public officer** in section 3 (1) of the Act:

- (a) the Independent Commission Against Corruption,
- (b) the Royal Society for the Prevention of Cruelty to Animals, New South Wales,
- (c) the Animal Welfare League NSW,
- (d) the Australian Federal Police,

(e) the Australian Securities and Investments Commission.

21 Certificate by Attorney General or Director of Public Prosecutions that no further proceedings to be taken

For the purposes of section 44 (1) of the Act, Form 1 is the prescribed form of certificate.

22 Offences not within jurisdiction of District Court

For the purposes of section 46 (2) of the Act, the offences referred to in sections 12 and 19A of the *Crimes Act 1900* are prescribed as being offences that are not within the jurisdiction of the District Court.

23 Notice of intention to adduce evidence of substantial mental impairment

For the purposes of section 151 (1) of the Act, notice of an accused person's intention to adduce evidence of substantial mental impairment at his or her trial for murder:

- (a) must be in Form 2, and
- (b) must be given to the Director of Public Prosecutions at least 35 days before the date on which the trial is listed to commence.

23A New trials of sexual assault proceedings—notice of intention to tender record of original evidence of complainant

A notice given by the prosecutor to the accused person under section 306B (3) (a) of the Act must:

- (a) specify whether the record or records to be tendered by the prosecutor in the new trial proceedings are an audio visual recording, an audio recording or a transcript of the evidence given by the complainant in the original proceedings, and
- (b) if a record to be tendered is an audio visual recording or audio recording, contain information to the effect that the accused person and his or her counsel are entitled to listen to or view the recording at a place nominated by the prosecutor and set out the name of the person responsible for arranging access to the recording.

23B Procedure for obtaining access to record of original evidence of complainant

- (1) This clause sets out the procedure for obtaining access to listen to or view an audio visual recording or audio recording of the original evidence of the complainant for the purposes of section 306F of the Act.
- (2) On receipt of a notice under section 306B (3) (a) of the Act specifying the prosecutor's intention to tender in proceedings an audio visual recording or audio recording of the original evidence of the complainant, the accused person, or his or her counsel, may give the responsible person a notice in writing that he or she requires access to the recording.

- (3) A responsible person who receives a notice that complies with this clause must give the accused person and his or her counsel (if any) access to listen to or view the recording as soon as practicable after the day on which the responsible person receives the notice.
- (4) The responsible person may give any person accompanying the accused person, or his or her counsel, who has been engaged to assist the accused person's case access to listen to or view the recording.
- (5) In this clause:

responsible person means the person nominated by the prosecutor in the notice under section 306B (3) (a) of the Act as the person responsible for arranging access to the recording (as referred to in clause 23A (b)).

24 Offences for which briefs of evidence not required

For the purposes of section 187 (5) of the Act, proceedings for offences for which a penalty notice may be issued (other than offences set out in Schedule 2) are prescribed as proceedings of a kind in which a prosecutor is not required to serve a brief of evidence.

25 Exclusion of indemnity for personal liability for costs

An officer or employee of any of the following bodies is prescribed as a person who is not a **public officer** for the purposes of section 218 (2) of the Act:

- (a) the Royal Society for the Prevention of Cruelty to Animals, New South Wales,
- (b) the Animal Welfare League NSW.

26 Issue of subpoenas in AVO proceedings

For the purposes of section 220 of the Act, proceedings for or relating to an apprehended violence order commenced under Part 15A of the *Crimes Act 1900* are prescribed as proceedings to which Part 3 of Chapter 4 of the Act applies.

27 Prescribed form of words

For the purposes of section 265 (1) (b) of the Act, Form 3 is the prescribed form of words for the statement about a person's right to make an election and the consequences of not making an election.

28 Form and manner of election and withdrawal of election

- (1) For the purposes of section 266 (2) (a) of the Act, an election may be made orally to a Local Court or by filing a written notice with the Court.
- (2) For the purposes of section 266 (2) (b) of the Act, the withdrawal of an election may be made orally to a Local Court or by filing a written notice with the Court.

29 Compellability of spouses to give evidence in certain proceedings

For the purposes of section 279 (5) (b) of the Act, Form 4 is the prescribed form in which a court's reasons are to be recorded.

30 Depositions by persons dangerously ill

For the purposes of section 284 (2) of the Act, Form 5 is the prescribed form in which a deposition must be taken.

30A Delegation of functions

- (1) The registrar of a court may delegate to any person the exercise of any of the functions conferred on the registrar by this Regulation, other than this power of delegation.
- (2) The Sheriff may delegate to any person the exercise of any of the functions conferred on the Sheriff by this Regulation, other than this power of delegation.

31 Repeal and savings

- (1) The *Criminal Procedure Regulation 2000* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Criminal Procedure Regulation 2000*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Forms

(Clause 3 (2))

Form 1

(Clause 21)

Certificate of Attorney General or Director of Public Prosecutions

(Criminal Procedure Act 1986: section 44 (1))

This is to certify that no further proceedings are to be taken with respect to, a person who is in custody on remand in the correctional centre at, under the order of, a Judge of the Supreme Court, *or*....., Justice, on the following charge:

.....

To their Honours the Judges of the Supreme Court.

}
}

.....
Attorney General or Director of Public Prosecutions

Date:

Form 2

Notice of intention to adduce evidence of substantial impairment

(Criminal Procedure Act 1986: section 151 (1))

R v *(insert name of defendant)*

To the Director of Public Prosecutions:

The defendant has been committed for trial on a charge of murder. The trial is listed for hearing on at

In accordance with section 151 of the *Criminal Procedure Act 1986*, notice is given to the Director of Public Prosecutions that the defendant intends to adduce evidence tending to prove a contention by the defendant that the defendant is not liable to be convicted of murder by virtue of section 23A of the *Crimes Act 1900*.

The defendant intends to rely on the evidence of the following persons in support of that contention:

[List the name, occupation and address of each person to be called by the defendant, and include (in relation to each such person) a short statement of the particulars of the evidence that the person proposes to give. If more space is needed, attach material to this form.]

.....
Defendant/defendant's legal practitioner

Date:

Form 3

Important information about your rights

(Criminal Procedure Act 1986: section 265 (1) (b))

To
charged with the offence of
.....
before the*(name of Court)*.

You have a right to make an election

The offence with which you have been charged is an indictable offence. That means that you may be dealt with by a jury.

If you want to be dealt with by a jury you must elect to have the offence dealt with that way.

If you are dealt with by a jury and are found guilty the maximum penalty/term is

.....
.....

If you do not elect to be dealt with by a jury, you will be dealt with summarily by a Magistrate of the Local Court sitting alone.

If the offence is dealt with summarily by a Magistrate and you are found guilty, the maximum penalty/term is

.....

You will shortly be provided with a copy of the brief of evidence against you and with your criminal history.

You have to make your decision within days of being served with a copy of the brief of evidence.

You may wish to seek legal advice before you make an election.

Regardless of what you do, the prosecuting authority can elect to have the offence dealt with on indictment.

Form 4

(Clause 29)

Reasons for excusing a spouse from giving evidence for the prosecution in a domestic violence or child assault case

(*Criminal Procedure Act 1986*: section 279 (5) (b))

On this date, I, the undersigned, a Judge of the Supreme Court/Judge of the District Court/Magistrate, sitting at in the State of New South Wales, dealt with an application under section 279 of the *Criminal Procedure Act 1986*, that be excused from giving evidence for the prosecution in proceedings against charged with the following offence:
.....

I am satisfied, for the reasons stated below, that the application to be excused was made freely and independently of threat or any other improper influence by any person and that:

(a) it is relatively unimportant to the case to establish the facts in relation to which it appears that the husband or wife is to be asked to give evidence or there is other evidence available to establish those facts, and

(b) the offence with which the accused person is charged is of a minor nature.

Reasons:

.....

.....
Judge/Magistrate

Date:

Form 5

(Clause 30)

Form of deposition

(*Criminal Procedure Act 1986*: section 284 (2))

The deposition of, a person now dangerously ill, taken before the undersigned Justice at which said, being duly sworn, states as follows:
.....
.....

[The witness's statement is to be in the first person, and should be reasonably full as to all material facts. The statement should be signed by the witness.]

And I hereby certify that I have taken this deposition under section 284 of the *Criminal Procedure Act 1986* because it has been made to appear to me that the deponent is dangerously ill and that his or her evidence, if not immediately taken, will probably be lost.

.....
Justice

Date:

[If the deposition is by affirmation or declaration, the form is to be varied accordingly.]

Schedule 2 Penalty notice offences

(Clause 10 (1) and (2))

Column 1

Column 2

Offence

Amount of penalty

Crimes Act 1900

| | |
|--|-------|
| section 61 | \$400 |
| section 117, where the value of the property or amount does not exceed \$300 | \$300 |
| section 527A | \$300 |
| section 527C | \$350 |

Summary Offences Act 1988

| | |
|----------------|-------|
| section 4 (1) | \$200 |
| section 4A (1) | \$150 |
| section 6 | \$200 |
| section 6A | \$250 |

Schedule 3 Fees

(Clauses 13 and 14)

Part 1 Court fees

| | Column 1 | Column 2 |
|-------------|---|---|
| Item | Matter for which fee payable | Fee |
| 1 | Filing a court attendance notice under Chapter 4 of the <i>Criminal Procedure Act 1986</i> | \$67 |
| 2 | Filing an application to a Local Court for annulment of conviction or sentence under Part 2 of the <i>Crimes (Local Courts Appeal and Review) Act 2001</i> | \$67 |
| 3 | Filing a notice of appeal, or an application for leave to appeal, to the District Court under Part 3 of the <i>Crimes (Local Courts Appeal and Review) Act 2001</i> : | |
| | (a) in relation to appellant's first such notice | \$82 |
| | (b) in relation to appellant's second or subsequent such notice | \$44 |
| 4 | To issue a certificate of conviction or dismissal | \$44 |
| 5 | Retrieving, providing access to and furnishing a copy of any document (otherwise than as provided for by items 4, 6 and 8) | \$10, plus \$5 for each 10 pages (or part thereof) after the first 20 pages |
| 6 | Retrieving and providing access to, but not furnishing a copy of, any document | \$0 |
| 7 | Supply of duplicate tape recording of sound-recorded evidence | \$37 per cassette |

| | | |
|---|---|--|
| 8 | Copy of any deposition, transcript or diskette (unless otherwise provided for under any other Act): | |
| | (a) for each page, where the matter being transcribed is under 3 months old | \$68, plus \$8.20 per page for each page after the first 8 pages |
| | (b) for each page, where the matter being transcribed is 3 months old or older | \$81, plus \$9.30 per page for each page after the first 8 pages |

Part 2 Sheriff's fees

| Column 1 | Column 2 |
|--|----------|
| Item Matter for which fee payable | Fee |
| 1 For attending a view by a jury in criminal proceedings | \$130 |

Schedule 4 Circle sentencing intervention program

(Clause 19)

Part 1 Interpretation

1 Definitions

In this Part:

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

Aboriginal person means a person who:

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

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

guidelines means guidelines issued by the Minister under Part 7.

offender means a person who has pleaded guilty to, or has been found guilty of, an offence before a participating court where that offence is an offence in respect of which an intervention program may be conducted as provided by section 348 of the Act.

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

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

program means the program of measures described in Part 4.

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

Project Officer for a participating court means the Project Officer (Circle Sentencing) for the court referred to in clause 19 (1).

referred offender means an offender who is the subject of:

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

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

victim has the same meaning as **victim of crime** has for the purposes of the [Victims Rights Act 1996](#).

Part 2 Overview of process

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

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

(a) **Suitability assessment order made**

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

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

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

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

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

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

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

(e) Offender enters into agreement to participate

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

(f) Project Officer convenes a circle sentencing group

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

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

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

(h) Court may pronounce a sentence

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

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

Part 3 Assessment of suitability to participate

3 Notification of suitability assessment order

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

4 Convening of meeting of Aboriginal Community Justice Group

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

assessment order in respect of the offender.

5 Meeting of Aboriginal Community Justice Group to assess referred offender

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

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

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

Part 4 The circle sentencing intervention program

7 Objectives of the program

The objectives of the program are as follows:

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

- (g) to increase the awareness of Aboriginal offenders of the consequences of their offences on their victims and the Aboriginal communities to which they belong,
- (h) to reduce recidivism in Aboriginal communities.

8 Eligibility to participate in program

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

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

9 Measures that constitute the circle 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 circle sentencing intervention program by making a program participation order and the offender enters into an agreement to participate in the program.

(b) Constitution of circle sentencing group

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

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

The circle sentencing group meets:

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

(d) Offender to comply with intervention plan

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

Note—

Section 346 (1) of the Act defines *intervention plan* to mean a plan, agreement or arrangement arising

out of the participation of an offender or an accused person in an intervention program.

10 Convening of circle sentencing group

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

11 Constitution of circle sentencing group

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

- (4) The presiding Magistrate may invite any other person of a class specified by the guidelines to attend a circle sentencing group.
- (5) The guidelines may specify whether that person may or may not participate in the circle sentencing group.

12 Functions of circle sentencing groups

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

13 Exclusions of persons from meetings of circle sentencing groups

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

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

14 Termination of circle sentencing group meeting

- (1) The presiding Magistrate may terminate a meeting of a circle sentencing group if the Magistrate is satisfied that the behaviour of a member of the group is disrupting the orderly conduct of the meeting.
- (2) If a meeting is terminated, the Magistrate may direct the Project Officer to convene a new circle sentencing group or the Magistrate may return the matter to the participating court.

15 Victims to be heard

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

16 Procedure generally

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

17 Records of meetings

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

- (a) the name, address and date of birth of the referred offender,
 - (b) the nature of the offence,
 - (c) the name of the Project Officer,
 - (d) the names of the other members of the group and the capacity in which they participated,
 - (e) the dates on, and the locations at, which the circle sentencing group met,
 - (f) particulars of any intervention plan determined, or sentence recommended, by the group,
 - (g) the major points of discussion of the group,
 - (h) any other matter that the Magistrate considers relevant.
- (2) A copy of a record made under subclause (1) must be kept in the participating court's file for the proceedings in respect of which a referred offender was referred.

18 Reconvening of the circle sentencing group

- (1) The Project Officer may, in consultation with the presiding Magistrate, reconvene a circle sentencing group after it has determined an intervention plan or recommended an appropriate sentence (or both) for a referred offender for the purpose of reconsidering any matter it had previously determined or recommended.
- (2) The members of the reconvened group should, so far as is reasonably possible, be the same members who participated in the original circle sentencing group.
- (3) A circle sentencing group cannot be reconvened if:
 - (a) the period of 12 months has elapsed since the matter to be reconsidered was originally determined or recommended by the group, or
 - (b) the court that referred the referred offender to the group has imposed a sentence on the offender for the offence (whether or not in the terms recommended by the group).

Part 5 Project Officers

19 Project Officer (Circle Sentencing)

- (1) The Minister is to ensure that there is a Project Officer (Circle Sentencing) for each participating court.
- (2) The functions of a Project Officer include (but are not limited to) the following functions:

- (a) contacting victims of a referred offender for the purpose of ascertaining whether they wish to participate in a circle sentencing group for the offender,
- (b) informing any such offender of:
 - (i) the processes involved in the program or in being assessed for participation in the program, and
 - (ii) the offender's obligations under the program or an intervention plan arising out of the program,
- (c) convening meetings of Aboriginal Community Justice Groups and circle sentencing groups,
- (d) monitoring the compliance of an offender with his or her obligations under the program or an intervention plan arising out of the program and reporting any non-compliance to the participating court that referred the offender and to the Circle Sentencing Group for the court,
- (e) such other functions as may be imposed or conferred on the Project Officer by this Part or the guidelines.

Part 6 Aboriginal Community Justice Groups

20 Minister to establish Aboriginal Community Justice Groups for each court

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

21 Appointment of members of Aboriginal Community Justice Groups

- (1) The Minister may appoint such Aboriginal persons as the Minister considers necessary to be members of an Aboriginal Community Justice Group established under this Part.
- (2) The Minister may make an appointment under subclause (1) only on the recommendation of the Project Officer for the participating court concerned.
- (3) A person appointed as a member under subclause (1) is appointed for a period of 3 years, unless before the expiry of that period:
 - (a) the person resigns his or her appointment, or
 - (b) the person's appointment is revoked by the Minister.
- (4) A person appointed as a member under subclause (1) may resign his or her appointment by written notice to the Minister.
- (5) The Minister may revoke the appointment of a person as a member of an Aboriginal Community Justice Group at any time by written notice to the person.

- (6) Nothing in this clause prevents the Minister from re-appointing a person as a member of an Aboriginal Community Justice Group under subclause (1) following the expiry of a previous period of appointment or the revocation of a previous appointment.

22 Functions of Aboriginal Community Justice Groups

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

- (a) assessing the suitability of a referred offender to participate in the program and reporting to the participating court that referred the offender about the offender's suitability,
- (b) such other functions as may be imposed or conferred on the Group by this Part or the guidelines.

23 Procedure

- (1) The procedure for the calling of meetings of an Aboriginal Community Justice Group and the conduct of business at those meetings is, subject to this Part and the guidelines, to be as determined by the Group.
- (2) The quorum for a meeting of an Aboriginal Community Justice Group is 3 members of the Group.
- (3) A decision supported by a majority of the members in attendance at a meeting of an Aboriginal Community Justice Group is to be treated as a decision of the whole Group.

Part 7 Guidelines

24 Minister may issue guidelines in respect of the conduct of the program

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

- (b) apply only in relation to specified persons, courts, groups or other bodies, or
- (c) apply only in specified circumstances, or
- (d) do a combination of the things referred to in paragraphs (a), (b) and (c).

Part 8 Disclosure of information in connection with program

25 Evidence of statements generally inadmissible

- (1) Evidence of anything said, or any admission made or document produced, in:
 - (a) a meeting of a circle sentencing group concerning a referred offender, or
 - (b) a meeting of an Aboriginal Community Justice Group held to assess a referred offender's suitability to participate in the program,is not admissible in any criminal or civil proceedings.
- (2) Subclause (1) does not apply to the criminal proceedings in respect of which a referred offender was referred or any appeal made in respect of those proceedings.

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

- (1) A relevant program participant must not disclose any information obtained in connection with:
 - (a) the assessment of a referred offender's suitability to participate in the program, or
 - (b) the conduct of the program or an intervention plan arising out of the program.Maximum penalty: 20 penalty units.
- (2) Nothing in subclause (1) prevents a relevant program participant from disclosing information:
 - (a) in connection with the conduct of an assessment of a referred offender's suitability to participate in the program, or
 - (b) to a victim of a referred offender about the outcome of a circle sentencing group for the offender, or
 - (c) for the purposes of any legal proceedings, or
 - (d) in accordance with a requirement of the *Ombudsman Act 1974* or with any request made by the Ombudsman, or
 - (e) with other lawful excuse.
- (3) In this clause:

relevant program participant means:

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

Schedule 5 Community conference intervention program

(Clause 19A)

Part 1 Interpretation

1 Definitions

In this Schedule:

conference means a conference convened or proposed to be convened under Division 2 of Part 4.

conference facilitator means a person appointed as a conference facilitator under Part 5.

conference participation order means:

- (a) a grant of bail that is subject to a condition referred to in section 36A (2) (b) (i) of the [Bail Act 1978](#), or
- (b) an order referred to in section 11 (1) (b2) of the [Crimes \(Sentencing Procedure\) Act 1999](#),

made in respect of an offender for the purpose of allowing the offender to participate in the program by attending a conference.

draft intervention plan means a draft intervention plan prepared under clause 20.

guidelines means guidelines issued by the Minister under Part 6.

intervention plan means an intervention plan arising out of the program that is the subject of an intervention plan order.

intervention plan order means any of the following orders of a participating court for the purposes of allowing a person to participate in the program by completing an intervention plan:

- (a) a grant of bail that is subject to a condition referred to in section 36A (2) (b) (i) of the [Bail Act 1978](#),
- (b) an order referred to in section 10 (1) (c) of the [Crimes \(Sentencing Procedure\) Act 1999](#),

- (c) an order referred to in section 11 (1) (b2) of the *Crimes (Sentencing Procedure) Act 1999*,
- (d) an order providing for an offender to enter into a good behaviour bond that contains a condition referred to in section 95A (1) of the *Crimes (Sentencing Procedure) Act 1999*.

offender means a person who has been found guilty of an offence before a participating court where that offence is an offence in respect of which an intervention program may be conducted as provided by section 348 of the Act.

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

program means the program of measures described in Part 4.

program administrator for a participating court means a person appointed as a program administrator for the court under Part 5.

referred offender means an offender who is the subject of a conference participation order or an intervention plan order.

suitability assessment order means:

- (a) a grant of bail that is subject to a condition referred to in section 36A (2) (a) of the *Bail Act 1978*, or
- (b) an order referred to in section 11 (1) (b1) of the *Crimes (Sentencing Procedure) Act 1999*,

made in respect of an offender for the purpose of allowing an assessment of the offender's capacity and prospects for participation in the program to be made.

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

Part 2 Overview of process

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

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

(a) **Suitability assessment order made**

A participating court makes a suitability assessment order 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) Program administrator ensures that assessment is carried out

The program administrator ensures that an assessment is carried out of the offender's capacity and prospects for participation in the program.

(c) Participating court determines whether conference participation order should be made

If the offender has been assessed as not being suitable for participation in the program, the offender will not be eligible to participate in the program. However, if the offender has been assessed as being suitable for participation in the program, the participating court may make a conference 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 7.

(d) Offender enters into agreement to participate

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

(e) 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.

(f) 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 the conference facilitator. If the court approves the draft intervention plan, it makes an intervention plan order.

(g) Offender to comply with intervention plan

An offender who is subject to any such order must comply with the intervention plan. The program administrator for the participating court supervises the implementation and completion of the intervention plan. The program administrator notifies the court as to whether the plan is satisfactorily completed.

(h) 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 Schedule that it summarises.

Part 3 Assessment of offender's capacity and prospects for

participation in the program

3 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 the program administrator for the court that it has done so.

4 Assessment to be carried out

- (1) As soon as practicable after being notified under clause 3, the program administrator 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) The program administrator must report to the participating court that made the suitability assessment order in the form approved by the Minister 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.

Part 4 The community conference intervention program

Division 1 Preliminary

5 Objectives of the program

The objectives of the program are as follows:

- (a) to provide for the greater participation in the justice process of offenders and victims and the families and support persons of offenders and victims,
- (b) to increase offenders' awareness of the consequences of their offences for their victims and the community,
- (c) to promote the reintegration of offenders into the community,
- (d) to increase the satisfaction of victims with the justice process,
- (e) to increase the confidence of the community in the justice process,
- (f) to provide a participating court with an additional sentencing option.

6 Principles to guide the program (cf s 34 *Young Offenders Act 1997*)

The principles that are to guide the operation of the program, including persons exercising functions under the program, are as follows:

- (a) the program should enhance the rights and place of victims in the justice process and have due regard to their interests,

- (b) conferences should be conducted in a way that promotes the active participation and empowerment of referred offenders and their victims, and the families and support persons of those offenders and victims, in responding to and resolving crime,
- (c) conferences should be conducted in a way that respects and takes into account the rights, needs, capacities, gender, sexuality and cultural and linguistic diversity of all participants, including the Aboriginality of any participants and any disability that any participants have,
- (d) conferences should be conducted in a way that assists referred offenders to understand and take responsibility for the offences they have committed,
- (e) an intervention plan should recognise the harm done, as a consequence of the offending behaviour of the referred offender to whom the plan applies, to any victims of that offender and the community,
- (f) an intervention plan should take account of the rights, needs, capacities, gender, sexuality, culture of, and language spoken by, the referred offender to whom the plan applies, including (if applicable) the Aboriginality of that offender,
- (g) if a referred offender has a disability, an intervention plan that applies to that offender should take account of any needs arising from that disability, especially needs arising from any communication or cognitive difficulties that the offender has.

7 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 at least 18 years, and under 25 years, of age at the time that the offence was committed, and
 - (b) the person is an offender, and
 - (c) the court considers that the facts, as found by the court, or as pleaded to by the defendant, 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 the person will be required to serve a sentence of imprisonment, and
 - (d) at the date on which the court proposes to make the referral, the person has not been convicted of any of the following offences:
 - (i) murder or manslaughter,
 - (ii) a category 1 personal violence offence,
 - (iii) two or more category 2 personal violence offences (whether or not the same offence),

- (iv) a relevant drug offence,
 - (v) a serious firearms or weapons offence, and
 - (e) the person has been assessed as suitable for participation in the program in accordance with Part 3, 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 reference in subclause (1) (d) 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*.
- (3) In this clause:
- category 1 personal violence offence** means:
- (a) an offence under section 26, 27, 28, 29, 30, 31, 33, 61J, 61K, 66A, 66B, 86, 95, 96, 97 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 (2), 37, 38, 39, 46, 47, 48, 61I, 61M, 66C, 66EA, 66F, 73, 80A, 87, 91, 103, 110, 195 (b), 196 (b) or 198 of the *Crimes Act 1900*,
 - (b) an offence under section 79, 106, 107, 109, 111, 112 or 113 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) 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 (2), 24 (2), 25 (2) 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).

sentence of imprisonment means any sentence of imprisonment, including a sentence the subject of a periodic detention order or home detention order under the [Crimes \(Sentencing Procedure\) Act 1999](#).

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), 51 (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](#).

8 Measures that constitute the community conference intervention 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 conference participation order and the offender enters into an agreement to participate in the program.

(b) Conference facilitator arranges conference

A conference 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 to complete intervention plan

If the participating court makes an intervention plan order, the offender completes the intervention plan to which the order applies.

9 Decision not to participate in intervention 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 the program administrator of the participating court that made the conference participation order or intervention plan order applying to that offender.

- (2) The program administrator is to notify the court of the referred offender's decision within 7 days of being notified by the referred offender under subclause (1).

Division 2 Conferences

10 Notification of conference participation order

- (1) A participating court that makes a conference participation order must, within 7 days after making the order, notify the program administrator for the court that it has done so.
- (2) As soon as practicable after being notified under subclause (1), the program administrator must allocate a conference facilitator to arrange and facilitate a conference in respect of the offender to whom the order applies.

11 Time limit for holding conferences (cf s 43 *Young Offenders Act 1997*)

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

- (a) if practicable, within 28 days after the program administrator is notified by the participating court that it has made a conference participation order applying to that offender, or
- (b) as soon as practicable after that 28 days has elapsed.

12 Preparation for conferences (cf s 45 *Young Offenders Act 1997*)

- (1) A conference facilitator must determine:
 - (a) the date, time and location of any conference that the conference facilitator has been allocated to facilitate, and
 - (b) the persons who are to be invited to attend the conference.
- (2) The conference facilitator must, if practicable, before determining the matters referred to in subclause (1):
 - (a) consult with the program administrator for the court that made the conference participation order, the referred offender concerned and any victim of that offender, and
 - (b) advise any such victim:
 - (i) of the victim's right to attend and to be accompanied by one or more support persons, and

- (ii) if the victim cannot or elects not to attend the conference—of the victim’s right to be represented by a person chosen 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 conference 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 conference 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 the program administrator of any such decision and the consequences of any such decision,
 - (f) the consequences of failure to attend 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 attend 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 attend the conference.
- (4) Before a conference is held, the conference facilitator must take all reasonable steps to notify any other persons who are entitled to attend, or who the conference facilitator determines are to be invited to attend, of the date, time and location of the conference.
- (5) Before a conference is held, the conference facilitator must take all reasonable steps to provide persons who are to attend the conference with information available to the conference facilitator that, in the conference facilitator’s opinion, will assist the participants to formulate a draft intervention plan.
- (6) Before a conference is held, the conference facilitator must ascertain, if practicable, the views about the matter of any persons who have been invited or are entitled to attend but have advised that they will not be attending.

13 Participants in conferences (cf s 47 *Young Offenders Act 1997*)

- (1) The following persons are entitled to attend a conference:
 - (a) the referred offender in respect of whom the conference is to be held,
 - (b) the conference facilitator,
 - (c) any victim of the referred offender or a person chosen 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 conference 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 attend a conference:
 - (a) a member of the referred offender's family chosen by the referred offender,
 - (b) if the referred offender is subject to a supervised good behaviour bond, 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) the program administrator for the court that made the conference participation order applying to the referred offender,
 - (b) a person wishing to observe the conference for a research or educational purpose, including a police officer, a magistrate and a legal practitioner,
 - (c) a person wishing to observe the conference for the purpose of monitoring or evaluating the program,
 - (d) a member of the news media,

(e) any other person of a class specified by the guidelines.

14 Exclusion of persons from attending conference (cf s 48 (3) *Young Offenders Act 1997*)

If a conference 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 conference facilitator may exclude that person from attending, or continuing to attend, the conference.

15 Conference may deal with more than one offender and offence (cf s 48 (8) *Young Offenders Act 1997*)

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

16 Views of persons invited but not in attendance (cf s 48 (5) *Young Offenders Act 1997*)

A conference 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 conference facilitator is informed of those views.

17 Facilitation of conferences to be carried out in accordance with guidelines (cf s 49 *Young Offenders Act 1997*)

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

18 Representation at conferences (cf s 50 *Young Offenders Act 1997*)

- (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.

19 Non-attendance at conferences (cf s 51 *Young Offenders Act 1997*)

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

20 Draft intervention plans (cf s 52 *Young Offenders Act 1997*)

- (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.
- (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 the conference even though it is not agreed to by all the participants.
 - (5) The referred offender, and any victim of that offender who personally attends the conference, each have 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.
 - (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.

21 Draft intervention plan and other matters to be reported to participating court

- (1) A program administrator must refer a draft intervention plan agreed to by conference participants to the court that made the conference participation order.
- (2) The program administrator must notify the court that made the conference participation order if a conference facilitator for a conference has informed the program administrator 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) The program administrator must also provide to the court a report (prepared by the

conference 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 conference 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 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 conference 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.

Division 3 Intervention plans

22 Draft intervention plan may be referred back for further consideration

- (1) If a court has concerns about a draft intervention plan referred to the court under clause 21, it may:
- (a) consult with the program administrator for the court in relation to its concerns, or
 - (b) notify the program administrator for the court of its concerns and refer the draft plan for consideration under this clause.
- (2) The program administrator:
- (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.

Note—

See definition of **relevant victim** appearing in subclause (11).

- (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 the program administrator is notified by the court under subclause (1), or
 - (b) as soon as practicable after that 7 days has 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 possible, to be made by consensus of the referred offender and the relevant victims (if any).
- (6) The referred offender and any relevant victim each have 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 program administrator 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) of:
 - (a) the date on which the program administrator 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 program administrator 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.

23 Notification of approval or refusal

(1) Following its consideration of any draft intervention plan referred to a court under clause 21 (including any draft intervention plan varied under clause 22 (4)) the court is to notify the program administrator for the court 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 the program administrator within 7 days of making its decision to approve or not approve the intervention plan.

(3) The program administrator is to notify the following persons of the court's decision to approve or not approve the draft intervention plan within 7 days of being notified by the court under subclause (2):

(a) the conference 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.

24 Implementation of intervention plan (cf s 56 *Young Offenders Act 1997*)

(1) If a participating court makes an intervention plan order, the program administrator for the court is to supervise the implementation and completion of the applicable intervention plan by the referred offender to whom that order applies.

- (2) The program administrator must notify the following as to whether or not the intervention plan is satisfactorily completed by the referred offender:
 - (a) the court,
 - (b) the conference 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 program administrator must notify the court of:
 - (a) any reasons of which the program administrator 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 the program administrator considers relevant.

Part 5 Program administrators and conference facilitators

25 Program administrators

- (1) The Minister is to ensure that there is a program administrator for each participating court.
- (2) The functions of a program administrator are to carry out:
 - (a) administrative functions related to this Schedule, and
 - (b) any other functions conferred on program administrators by this Schedule or any guidelines.

26 Conference facilitators (cf section 60 (3) *Young Offenders Act 1997*)

- (1) The Director-General may appoint a person as a conference facilitator, including a police officer in the police officer's private capacity and a member of staff of a Department in the member of staff's private capacity.
- (2) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a conference facilitator.
- (3) Despite subclause (2), section 59 of the *Public Sector Employment and Management Act 2002* applies to a proposed conference facilitator who is a member of staff of a Department.

- (4) A conference facilitator has the following functions:
- (a) to prepare for, and to hold, conferences referred to the conference facilitator by a program administrator,
 - (b) any other functions conferred or imposed on the conference facilitator by this Schedule or any guidelines.
- (5) Subject to clause 28, a conference 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.

27 Remuneration of conference facilitators (cf cl 2 of Sch 1 to *Young Offenders Act 1997*)

A conference 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 conference facilitator.

28 Vacancy in office of conference facilitators (cf cl 3 of Sch 1 to *Young Offenders Act 1997*)

- (1) A person's appointment as a conference 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 Director-General, 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 Director-General may remove a conference facilitator from office at any time.

Part 6 Guidelines

29 Minister may issue guidelines in respect of the conduct of the program

- (1) The Minister may from time to time issue guidelines, not inconsistent with this Schedule, for or with respect to any or all of the following matters:
- (a) the functions of program administrators or other persons in connection with assessment for participation in the program,

- (b) the functions of program administrators or conference 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 Schedule.
- (2) Without limiting subclause (1), the guidelines may include provisions that:
- (a) apply generally, or
 - (b) apply only in relation to specified persons, courts, groups or other bodies, or
 - (c) apply only in specified circumstances, or
 - (d) do a combination of the things referred to in paragraphs (a), (b) and (c).

Part 7 Disclosure of information in connection with the program

30 Evidence of statements generally inadmissible

- (1) Evidence of anything said, or any admission made or document produced, in a conference concerning a referred offender is not admissible in any criminal or civil proceedings.
- (2) Subclause (1) does not apply to the criminal proceedings in respect of which a referred offender was referred or any appeal made in respect of those proceedings.
- (3) Despite subclause (2), evidence of any admission made by a referred offender in a conference is not admissible in the criminal proceedings in respect of which the referred offender was referred or any appeal in respect of those proceedings.

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

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

Maximum penalty: 20 penalty units.

- (2) Nothing in subclause (1) prevents a relevant program participant from disclosing the information referred to in that subclause:
 - (a) to any of the following persons:

- (i) the referred offender,
 - (ii) the conference facilitator,
 - (iii) any victim of the referred offender,
 - (iv) any police officer responsible for investigating the offence in respect of which the referred offender was referred to the program,
 - (v) if the referred officer is subject to a supervised good behaviour bond, a community service order or parole—the referred offender’s supervising officer, 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 a program administrator for a participating court 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:

- (a) a program administrator for a participating court, or
- (b) a person carrying out an assessment of a referred offender’s capacity and prospects for participation in the program, or
- (c) a conference facilitator, or
- (d) a person entitled or invited to participate in, or attend, a conference and a person attending any such conference, or
- (e) a person entitled to consider a draft intervention plan under clause 22 and any person who does so.