

# Criminal Procedure Regulation 2010

[2010-474]



New South Wales

## Status Information

### Currency of version

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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**  
[Criminal Procedure Amendment \(Fees\) Regulation 2012 \(258\)](#) (LW 22.6.2012) (not commenced — to commence on 1.7.2012)

### 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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New South Wales

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# Criminal Procedure Regulation 2010



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Criminal Procedure Regulation 2010*.

### 2 Commencement

This Regulation commences on 1 September 2010 and is required to be published on the NSW legislation website.

**Note—**

This Regulation replaces the *Criminal Procedure Regulation 2005*, which is repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 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.

**Director-General** means the Director-General of the Department of Justice and Attorney General.

**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 (except in Schedule 1) 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) an Australian legal practitioner 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 Australian legal practitioner of an accused person or appellant) in response to a direction under this clause except with the consent of the accused person, appellant or Australian legal practitioner.
- (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) An Australian legal practitioner:
  - (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 Australian legal practitioner filing it containing:
  - (a) the full name of the accused person or appellant for whom the Australian legal practitioner acts, and
  - (b) the full name, address and telephone number of the Australian legal practitioner.
- (3) An Australian legal practitioner 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 Australian legal practitioner.

- (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 relevant registrar of the 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 (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 person who is under 21 years of age) 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 Australian legal practitioner.

- (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 Australian legal practitioner.

## **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 Australian legal practitioner 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 Fees**

### **10 Amounts payable in relation to court proceedings**

- (1) The fee that a person must pay to the Supreme Court, the Land and Environment Court, the District Court or the Local Court in respect of a matter referred to in Part 1 of Schedule 2 is the fee specified in that Part in respect of that matter.
- (2) Despite subclause (1), no fee is payable for a copy of the print out of any record of committal proceedings conducted in the Local Court by means of an ECM system within the meaning of Schedule 1 to the *Electronic Transactions Act 2000*.

### **11 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 Part 2 of Schedule 2 is the fee specified in that Part in respect of that matter.

### **12 Persons by and to whom fees are payable**

- (1) Any fee imposed by Schedule 2 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 2, to the registrar of the court concerned, and
  - (b) in the case of a fee imposed by Part 2 of Schedule 2, 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.

### **13 When fees become due**

- (1) A fee imposed by Schedule 2 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.

### **14 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) 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.

#### **15 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 within the meaning of the [Legal Profession Act 2004](#).

### **Part 4 Recorded interviews with vulnerable persons**

#### **16 Definitions**

In this Part:

**defence notice** means a notice given by an accused person or his or her Australian legal practitioner under clause 18.

**prosecuting authority**, in relation to a prosecution, means the Director of Public Prosecutions, or a police officer, who is responsible for the conduct of the prosecution.

**prosecuting authority notice** means a notice given by a prosecuting authority under clause 17.

**recorded interview** means a recording made by an investigating official of an interview during which a vulnerable person is questioned by an investigating official in connection with the investigation of the commission or possible commission of an offence by the vulnerable person or any other person.

**responsible person** means a person named in a prosecuting authority notice as referred to in clause 17 (2) (d).

**vulnerable person** has the same meaning as it has in Part 6 of Chapter 6 of the Act.

## **17 Prosecuting authority notice**

- (1) For the purposes of section 306V (2) of the Act, if a prosecuting authority intends to adduce evidence of a previous representation by a vulnerable person wholly or partly by means of a recorded interview or a transcript of a recorded interview in a criminal proceeding where the vulnerable person who made the representation is not the accused person, the prosecuting authority must notify the accused person or his or her Australian legal practitioner (if any) of the intention in accordance with this clause.
- (2) A notice under subclause (1) must:
  - (a) be in writing, and
  - (b) specify each recorded interview (or transcript of such interview) that the prosecuting authority intends to adduce, and
  - (c) contain information to the effect that the accused person and his or her Australian legal practitioner are entitled to listen to or view each recorded interview at a police station or other place nominated by the prosecuting authority, and
  - (d) set out the name of a person responsible for arranging access to each recorded interview.
- (3) A notice under subclause (1) must be given to the accused person or his or her Australian legal practitioner at least 14 days before the evidence for the prosecution is given in the proceeding.

### **Note—**

Section 76 of the Act provides that a transcript of a recorded interview is not admissible in committal proceedings unless the defendant has been given, in accordance with the regulations under section 306V (2) of the Act, a reasonable opportunity to listen to or view the recorded interview.

## **18 Defence notice**

- (1) An accused person or Australian legal practitioner who receives a prosecuting authority notice may notify the responsible person that he or she requires access to any one or more of the recorded interviews specified in the notice.
- (2) A notice under subclause (1) must:
  - (a) be in writing, and
  - (b) set out the name of the accused person and his or her Australian legal practitioner (if any), and
  - (c) specify the recorded interview or interviews to which the accused person or his or her Australian legal practitioner requires access, and
  - (d) be given to the responsible person at least 7 days before the evidence for the

prosecution is given in the proceeding, unless the court gives leave for the notice to be given at a later time.

#### **19 Recorded interview to be made available within 7 days**

- (1) A responsible person who receives a defence notice must give the accused person and his or her Australian legal practitioner (if any) access to listen to or view the recorded interview within 7 days (or such shorter period of time as the court directs) after the day on which the responsible person receives the defence notice.
- (2) The responsible person may give the accused person or his or her Australian legal practitioner access to listen to or view the recorded interview on more than one occasion.

### **Part 5 Evidentiary matters**

#### **20 Notice—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 1, 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.

#### **21 Offences for which briefs of evidence not required**

- (1) For the purposes of section 187 (5) of the Act, the following proceedings are prescribed as proceedings of a kind in which a prosecutor is not required to serve a brief of evidence:
  - (a) proceedings for an offence for which a penalty notice may be issued (other than an offence that is set out in Schedule 3 and that is not referred to below),
  - (b) proceedings for an offence under section 4 of the *Summary Offences Act 1988*,
  - (c) proceedings for an offence under section 9 or 12 of the *Road Transport (Safety and Traffic Management) Act 1999*,
  - (d) proceedings for a summary offence for which there is a monetary penalty only,
  - (e) proceedings for an offence under section 25 (2) or 25A (1) (a), (2) (a), (3) (a), (3A) (a) (i) or (3A) (b) (i) of the *Road Transport (Driver Licensing) Act 1998*,
  - (f) proceedings for an offence under section 10 of the *Drug Misuse and Trafficking Act 1985*,
  - (g) proceedings for an offence under section 16 (1) of the *Poisons and Therapeutic*

*Goods Act 1966.*

- (2) Subclause (1) has effect in relation to proceedings referred to in subclause (1) (b), (c) or (d) only if the proceedings are commenced on or after 14 November 2007 and before 1 July 2012.
- (3) Subclause (1) has effect in relation to proceedings referred to in subclause (1) (e), (f) or (g) only if the proceedings are commenced on or after 1 February 2010 and before 1 July 2012.

**22 Short briefs of evidence required in certain circumstances**

- (1) The object of this clause is to reduce the time spent by police officers in producing statements of non-material witnesses for inclusion in certain briefs of evidence and, accordingly, a court is to have regard to that object when exercising its functions under this clause.
- (2) This clause applies only to proceedings for summary offences (including proceedings for indictable offences specified in Table 2 to Schedule 1 to the Act that are being dealt with summarily) for which a brief of evidence is required to be served under section 183 of the Act.
- (3) In this clause, **prescribed statement** means, in relation to a brief of evidence required to be served under section 183 of the Act in proceedings, a statement of a non-material witness, including the following:
  - (a) a police officer who provides evidence that the preconditions of the exercise of a power have been satisfied or establishes that the evidence on which the prosecutor relies was obtained in accordance with the law (for example, the custody manager who cautions the accused person under Part 9 of the *Law Enforcement (Powers and Responsibilities) Act 2002*),
  - (b) a police officer who was responsible for the movement of, or recording the movement of, a thing connected with the offence or the investigation of the offence (for example, a police officer who conveys DNA or a drug sample to the Division of Analytical Laboratories),
  - (c) a police officer who operated a device that produced or caused the production of a document, photograph, video or any other thing relied on by the prosecutor to prove the prosecution's case,
  - (d) any other police officer who provides evidence that merely corroborates evidence of another police officer whose statement relates to a process or procedure and is included in the brief of evidence (for example, a police officer, other than the investigating police officer, who was present when the accused person was interviewed),



- (e) a person who is a medical practitioner, nurse, paramedic or other health care professional if all the notes of the person (for example, doctor's treatment notes or ambulance officer's checklists) have been included in the brief of evidence.
- (4) For the purposes of section 183 (2) of the Act, a brief of evidence need not include the following:
  - (a) any prescribed statement so long as the brief includes a list of each prescribed statement that, but for this clause, would need to be included in the brief and a summary of what each such statement would include,
  - (b) any document that was served on the accused person or the accused person's legal representative by or on behalf of the prosecutor after the court attendance notice in relation to the offence concerned was served.
- (5) On application by the accused person in proceedings, the court may order that any prescribed statement, or any document referred to in subclause (4) (b), be served on the accused person by the prosecutor within a specified time before the hearing if the statement or document was not included in the brief of evidence. The court is to give reasons for the making of such an order.
- (6) The court may make an order under subclause (5) only if satisfied that:
  - (a) in the case of a prescribed statement, the making of the order would assist the accused person to respond to the charge or assist the court in determining the matter, or
  - (b) in the case of a document referred to in subclause (4) (b), the application for the order has been made in good faith.
- (7) This clause has effect in respect of proceedings only if the accused person in the proceedings was charged with the offence to which the proceedings relate on or after 12 November 2007 and before 1 July 2012.

### **23 Evaluation of Local Court process reforms**

- (1) The object of this clause is to facilitate the evaluation of the Local Court process reforms.

**Note—**

For that purpose, this clause requires the service of a brief of evidence in proceedings to which this clause applies in accordance with rules that are substantially the same as the rules that applied before the Local Court process reforms were made.

- (2) This clause applies to proceedings for an offence in which the prosecution is conducted by a police prosecutor and which:
  - (a) are heard in the Local Court sitting at Manly, Sydney, and

(b) are commenced on or after 1 July 2010 and before 1 October 2010.

(3) Clause 21 (1) (b)–(g) does not apply to proceedings to which this clause applies. That is, in proceedings to which this clause applies a brief of evidence must be served under section 183 of the Act in relation to offences referred to in clause 21 (1) (b)–(g).

**Note—**

Section 183 of the Act requires a brief of evidence to be served on an accused person who pleads not guilty to an offence.

(4) Clause 22 does not apply to proceedings to which this clause applies.

(5) If the proceedings to which this clause applies relate to an indictable offence listed in Table 1 to Schedule 1 to the Act, the copy of the brief of evidence relating to the offence, being a copy that complies with section 186 of the Act, must be served within the time fixed by the Local Court (being a time that is before the time fixed by the Court for the making of an election in respect of the offence).

(6) The prosecutor is not required to include a copy of a proposed exhibit identified in a brief of evidence if it is impossible or impractical to copy the exhibit. However, the prosecutor must in that case comply with section 184 (2) of the Act.

(7) The Local Court is to grant such adjournments as appear to be just and reasonable if a brief of evidence is not served in accordance with subclause (5), and the Court is to extend accordingly the time fixed for the making of an election in respect of the offence.

(8) The jurisdiction of the Local Court under this clause may also be exercised by a registrar of the Court.

(9) This clause does not affect the requirement under section 265 (2) of the Act that the prosecutor also serve on the person charged a copy of the person's criminal record.

(10) In this clause:

**brief of evidence** means a brief of evidence within the meaning of section 183 (2) of the Act.

**Local Court process reforms** means the amendments made by the [Criminal Procedure Amendment \(Local Court Process Reforms\) Act 2007](#).

#### **24 New trials of sexual assault proceedings—notice of intention to tender record of original evidence of complainant**

For the purposes of section 306B (3) (a) or 306I (3) (a) of the Act, a notice given by the prosecutor to the accused person under either of those provisions 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 Australian legal practitioner 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.

## **25 Access to record of original evidence of complainant**

- (1) For the purposes of section 306F (4) of the Act, 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 a complainant.
- (2) On receipt of a notice under section 306B (3) (a) or 306I (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 Australian legal practitioner, 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 Australian legal practitioner (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 Australian legal practitioner, 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 under clause 24 (b) by the prosecutor as the person responsible for arranging access to the recording.

## **26 Compellability of spouses**

For the purposes of section 279 (5) (b) of the Act, Form 2 is the prescribed form in which a court's reasons are to be recorded.

## **27 Depositions by persons dangerously ill**

For the purposes of section 284 (2) of the Act, Form 3 is the prescribed form in which a deposition must be taken.

## **27A Authorised classifiers**

For the purposes of the definition of **authorised classifier** in section 289A of the Act, members of the NSW Police Force who have undertaken training in the classification of

child abuse material that is conducted or arranged by the NSW Police Force are prescribed as authorised classifiers.

## **Part 6 Circle sentencing intervention program**

### **Division 1 Preliminary**

#### **28 Program declared to be intervention program**

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

#### **29 Definitions**

In this Part:

**Aboriginal Community Justice Group** for a declared place means the Aboriginal Community Justice Group established for that place under Division 4.

**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 Division 3 for the offender.

**guidelines** means guidelines issued by the Minister under clause 52.

**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 the Local Court.

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

**program** means the program of measures described in Division 3.

**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 declared place means the Project Officer (Circle Sentencing) for the place referred to in clause 51 (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](#).

### 30 Application

- (1) This Part applies only in respect of the Local Court sitting at a declared place.
- (2) For the purposes of this Part, a **declared place** means any place declared by the Minister to be a place for the program.
- (3) Each place at which sittings of a participating court could be held immediately before the commencement of the [Miscellaneous Acts \(Local Court\) Amendment Act 2007](#) is taken to be a declared place.
- (4) Any declaration made, or taken to have been made, under this clause may be amended or revoked from time to time.

### 31 Summary of process for participation in program

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

- (a) **Suitability assessment order made**

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

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

- The Project Officer for the declared place convenes a special meeting of the Aboriginal Community Justice Group for the declared place under Division 2 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 Division 3 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 Part that it summarises.

## **Division 2 Assessment of suitability to participate**

### **32 Notification of suitability assessment order**

If a participating court sitting at a declared place makes a suitability assessment order in respect of a referred offender, it must notify the Project Officer for the declared place of the order.

### **33 Meeting of Aboriginal Community Justice Group**

(1) The Project Officer for the declared place must convene a meeting of the Aboriginal Community Justice Group for the declared place 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.

- (2) The meeting is to be attended by at least 3 members of the Group chosen by the Project Officer.

### **34 Role of Aboriginal Community Justice Group**

- (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 at the declared place 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.

## **Division 3 The circle sentencing intervention program**

### **35 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.

### **36 Eligibility to participate in program**

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

- (a) the person is an Aboriginal person, and
- (b) the person is an offender, and
- (c) the person has been assessed as suitable for participation in the program by the Aboriginal Community Justice Group for the declared place at a meeting convened in accordance with Division 2, and
- (d) the person enters into an agreement to participate in the program, and
- (e) the court considers that the facts, as found by the court, or as pleaded to by the person, in connection with the offence, together with the person's antecedents and any other information available to the court, indicate that it is likely that the person will be required to serve, or be subject to, a relevant sentence.

(2) In this clause, **relevant sentence** means:

- (a) any sentence of imprisonment, including a suspended sentence and a sentence the subject of a periodic detention order, intensive correction order or home detention order under the *Crimes (Sentencing Procedure) Act 1999*, or
- (b) a community service order under the *Crimes (Sentencing Procedure) Act 1999*, or
- (c) an order providing for an offender to enter into a good behaviour bond under the *Crimes (Sentencing Procedure) Act 1999*.

### **37 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 declared place, 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.

### **38 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 declared place 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.

### **39 Constitution of circle sentencing group**

- (1) A circle sentencing group for a referred offender 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.

#### **40 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 Division 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.

#### **41 Exclusions of persons from 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.

#### **42 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.

#### **43 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.

#### **44 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 Division 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 41).
- (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.

#### **45 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.

#### **46 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).

## **Division 4 Aboriginal Community Justice Groups**

### **47 Minister to establish Group for each declared place**

The Minister is to establish an Aboriginal Community Justice Group for each declared place.

### **48 Appointment of members of 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 declared place 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.

### **49 Functions of 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.

## **50 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.

## **Division 5 Miscellaneous**

### **51 Project Officer (Circle Sentencing)**

- (1) The Minister is to ensure that there is a Project Officer (Circle Sentencing) for each declared place.
- (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 Division or the guidelines.

## **52 Minister may issue guidelines**

- (1) The Minister may from time to time issue guidelines, not inconsistent with this Part, 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 Part.
- (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).

## **53 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.

## **54 Prohibition on disclosure of information**

- (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 39 (1) (f) or (2) (b), (c) or (d).

## Part 7 Forum sentencing intervention program

### Division 1 Preliminary

#### 55 Program declared to be intervention program

- (1) For the purposes of section 347 (1) of the Act, the program of measures described in this Part for dealing with offenders is declared to be an intervention program for the purposes of Part 4 of Chapter 7 of the Act.
- (2) **Excluded offences** The following offences are prescribed for the purposes of section 348 (2) (g) of the Act in relation to that intervention program:
  - (a) a domestic violence offence within the meaning of the *Crimes (Domestic and Personal Violence) Act 2007*, but only in relation to an offence committed by an offender against another person with whom the offender has or has had an intimate domestic relationship,
  - (b) an offence under section 60 or 93B of the *Crimes Act 1900*,
  - (b1) an offence under section 10, 11, 11A, 11B, 11C, 12, 15, 16, 17, 18, 18A, 19 or 20 of the *Drug Misuse and Trafficking Act 1985*,
  - (c) an offence under section 25 (2) or 25A (1), (2), (3) or (3A) of the *Road Transport (Driver Licensing) Act 1998*,



- (c1) an offence under section 9 (3), 15 or 16 of the *Road Transport (Safety and Traffic Management) Act 1999*,
  - (d) an offence under section 21A of the *Road Transport (Vehicle Registration) Act 1997*,
  - (e) an offence under section 4, 11B or 11C of the *Summary Offences Act 1988*.
- (3) For the purposes of this clause, a person has or has had an **intimate domestic relationship** with another person if the person:
- (a) is or has been married to the other person, or
  - (b) is or has been a de facto partner of the other person, or

**Note—**

**De facto partner** is defined in section 21C of the *Interpretation Act 1987*.

- (c) has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person, or
  - (d) otherwise has or has had an intimate personal relationship with the other person, whether or not the intimate relationship involves or has involved a relationship of a sexual nature,
- but not if the person merely:
- (e) is living or has lived in the same household as the other person, or
  - (f) is living or has lived as a long-term resident in the same residential facility as the other person (not being a facility that is a correctional centre within the meaning of the *Crimes (Administration of Sentences) Act 1999* or a detention centre within the meaning of the *Children (Detention Centres) Act 1987*), or
  - (g) is or has been a relative, within the meaning of section 6 of the *Crimes (Domestic and Personal Violence) Act 2007*, of the other person, or
  - (h) in the case of an Aboriginal person or a Torres Strait Islander, is or has been part of the extended family or kin of the other person according to the Indigenous kinship system of the person's culture.

## 56 Definitions

In this Part:

**draft intervention plan** means a draft intervention plan prepared under clause 76.

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

**forum facilitator** means a person appointed as a forum facilitator under Division 4.

**forum 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 forum.

**guidelines** means guidelines issued by the Minister under clause 85.

**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) or 11 (1) (b2) of the [Crimes \(Sentencing Procedure\) Act 1999](#),
- (c) 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 the Local Court.

**program** means the program of measures described in Division 3.

**program administrator** for a declared place means a person appointed as a program administrator for the place under Division 4.

**referred offender** means an offender who is the subject of a forum 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*.

## **57 Application**

- (1) This Part applies only in respect of the Local Court sitting at a declared place.
- (2) For the purposes of this Part, a **declared place** means any place declared by the Minister to be a place for the program.
- (3) Each place at which sittings of a participating court could be held immediately before the commencement of the *Miscellaneous Acts (Local Court) Amendment Act 2007* is taken to be a declared place.
- (4) Any declaration made, or taken to have been made, under this clause may be amended or revoked from time to time.

## **58 Summary of process for participation in program**

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

(a) **Suitability assessment order made**

A participating court makes a suitability assessment order and the offender enters into an agreement to be subjected to an assessment of the offender's capacity and prospects for participation in the program.

(b) **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 forum 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 forum participation order if it is satisfied that the offender is otherwise eligible for participation in the program having regard to

the matters set out in clause 63, and after considering whether any victim of the offender wishes to participate in a forum.

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

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

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

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

**(e) Forum held and draft intervention plan for offender prepared**

A forum 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 forum.

**(f) Participating court considers draft intervention plan**

Any draft intervention plan arising from the forum is referred to the participating court together with a report on the forum that is prepared by the forum 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 declared place 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 Part that it summarises.

## **Division 2 Assessment of offender's capacity and prospects for participation in the program**

### **59 Notification of suitability assessment order**

A participating court that makes a suitability assessment order in respect of an offender

must, within 7 days after making the order, notify the program administrator for the declared place that it has done so.

#### **60 Assessment to be carried out**

- (1) As soon as practicable after being notified of the making of a suitability assessment order, 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.
- (4) The program administrator must contact any victim of the offender to ascertain whether the victim wishes to participate in a forum and must record the victim's response in the report to the court.
- (5) After being notified under clause 59, and for the purpose only of enabling compliance with subclause (4), the program administrator may request a relevant police officer to provide the name, address and phone number of any victim of the offender.
- (6) A relevant police officer must provide the program administrator with the information requested under subclause (5) as soon as possible and in any case no later than 72 hours after the request is made.
- (7) In this clause:

***relevant police officer*** means:

- (a) any police officer responsible for investigating the offence to which the suitability assessment order relates, or
- (b) any senior police officer (within the meaning of section 332 of the Act) from that police officer's command.

### **Division 3 The forum sentencing program**

#### **Subdivision 1 Preliminary**

##### **61 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,
- (g) to reduce re-offending.

## **62 Principles to guide the program**

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) forums 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) forums 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) forums 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.

## **63 Eligibility to participate in program**

- (1) A person is eligible to be referred by a participating court to participate in a forum only if:

- (a) the person is an offender, and
  - (b) the court considers that the facts, as found by the court, or as pleaded to by the person, in connection with the offence, together with the person's antecedents and any other information available to the court, indicate that it is likely that the person will be required to serve a sentence of imprisonment, and
  - (c) 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
  - (d) the person has been assessed as suitable for participation in the program in accordance with Division 3, and
  - (e) 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.
  - (f) (Repealed)
- (2) A reference in subclause (1) (c) 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, 61JA, 61K, 66A, 66B, 86, 96 or 98 of the *Crimes Act 1900*, or
- (b) an offence committed before the commencement of this Regulation under a law of New South Wales that constituted an offence of a similar nature to an offence referred to in paragraph (a).

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

- (a) an offence under section 33A, 35 (1) or (3), 37, 38, 39 (1), 46, 47, 48, 61I, 61M, 66C, 66EA, 66F, 73, 80A, 87, 110, 195 (1) (b), (1A) (b) and (2) (b), 196 (1) (b) and (2) (b) or 198 of the *Crimes Act 1900*,
- (b) an offence under section 109, 111, 112, 113 or 249K of the *Crimes Act 1900* if the circumstances of the offence involve an act of actual or threatened violence against a person,
- (c) an offence committed before the commencement of this Regulation under a law of New South Wales that constituted an offence of a similar nature to an offence referred to in paragraph (a) or (b).

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

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

**sentence of imprisonment** means any sentence of imprisonment, including a sentence the subject of a periodic detention order, intensive correction 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) or (2A), 51A or 51D (2) of the *Firearms Act 1996*, being an offence that relates to a prohibited firearm or pistol,
- (c) an offence under section 51B or 51BB of the *Firearms Act 1996*.

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

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



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

The program is constituted by the following measures:

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

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

(b) **Forum facilitator arranges forum**

A forum facilitator arranges a forum in respect of the offender.

(c) **Forum held and draft intervention plan prepared**

A forum is held with the aim of determining an appropriate draft intervention plan for the offender. Any draft intervention plan arising from the forum 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.

#### **65 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 forum 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).

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

- (1) The program manager must as soon as practicable notify the court that made the forum participation order if:
  - (a) at any time after the order was made and before any forum in respect of the referred offender is concluded, the program manager forms an opinion (with reference to the guidelines referred to in clause 60 (2)) that the offender is no longer suitable to participate in the program, or
  - (b) at any time before a forum is held, any victim of the referred offender withdraws his or her consent to participate in a forum and the program manager forms an opinion that the victim's withdrawal will frustrate the purpose of a forum.

- (2) The program manager may delegate his or her functions under this clause (other than this power of delegation) to:
  - (a) the operations manager for the program, or
  - (b) the program administrator.
- (3) A reference in this clause to the program manager or the operations manager for the program is a reference to any person holding or acting in the position within the Department of Justice and Attorney General of, respectively, State Manager, Forum Sentencing or Operations Manager, Forum Sentencing.

## **Subdivision 2 Forums**

### **66 Notification of forum participation order**

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

### **67 Time limit for holding forums**

A forum 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 forum participation order applying to that offender, or
- (b) as soon as practicable after that 28 days has elapsed.

### **68 Preparation for forums**

- (1) A forum facilitator must determine:
  - (a) the date, time and location of any forum that the forum facilitator has been allocated to facilitate, and
  - (b) the persons who are to be invited to attend the forum.
- (2) The forum 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 forum 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 forum—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 forum participants, and
  - (c) consider the specific needs and expressed views or wishes of the referred offender and of any such victim.
- (3) Before the forum is held, the forum facilitator must notify the referred offender of the following information:
- (a) the offence in respect of which the forum is to be held,
  - (b) the date, time and location of the forum,
  - (c) the name of the forum facilitator,
  - (d) any requirements to be met by the referred offender,
  - (e) the right of the referred offender to decide not to participate, or to continue to participate, in the program, the requirement for the referred offender to notify the program administrator of any such decision and the consequences of any such decision,
  - (f) the consequences of failure to attend the forum,
  - (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 forum 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 forum.
- (4) Before a forum is held, the forum facilitator must take all reasonable steps to notify any other persons who are entitled to attend, or who the forum facilitator determines are to be invited to attend, of the date, time and location of the forum.
- (5) Before a forum is held, the forum facilitator must take all reasonable steps to provide persons who are to attend the forum with information available to the forum facilitator that, in the forum facilitator's opinion, will assist the participants to formulate a draft intervention plan.
- (6) Before a forum is held, the forum facilitator must ascertain, if practicable, the views

about the matter of any persons who have been invited or are entitled to attend but have advised that they will not be attending.

## **69 Participants in forums**

- (1) The following persons are entitled to attend a forum:
  - (a) the referred offender in respect of whom the forum is to be held,
  - (b) the forum 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 forum is proposed to be held or a person chosen by the police officer as a representative of the police officer,
  - (e) any persons chosen by the referred offender as support persons for the referred offender,
  - (f) a legal practitioner advising the referred offender,
  - (g) any persons chosen by any victim of the referred offender as support persons for any such victim.
- (2) The forum facilitator may, after consulting with the referred offender and any victim of that offender who proposes to participate in the forum, invite any of the following persons to attend a forum:
  - (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 forum, with the consent of the referred offender and any victim of that offender:
  - (a) the program administrator for the court that made the forum participation order applying to the referred offender,
  - (b) a person wishing to observe the forum for a research or educational purpose, including a police officer, a magistrate and a legal practitioner,
  - (c) a person wishing to observe the forum 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.

#### **70 Exclusion of persons from attending forum**

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

#### **71 Forum may deal with more than one offender and offence**

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

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

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

#### **73 Facilitation of forums to be in accordance with guidelines**

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

#### **74 Representation at forums**

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

#### **75 Non-attendance at forums**

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

#### **76 Draft intervention plans**

- (1) The participants at a forum may agree to make such recommendations as they think fit about the referred offender in respect of whom the forum 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 forum and, subject to subclauses (5) and (6), may be agreed to by the forum 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 forum, 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 forum.
- (6) A victim's right of veto does not operate unless all victims who personally attend the forum agree to the veto.
- (7) The draft intervention plan is to be prepared in the form approved by the Minister.

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

- (1) A program administrator must refer a draft intervention plan agreed to by forum participants to the court that made the forum participation order.
- (2) The program administrator must notify the court that made the forum participation order if a forum facilitator for a forum has informed the program administrator that:
- (a) the participants at a forum 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 forum has vetoed the draft intervention plan.
- (3) The program administrator must also provide to the court a report (prepared by the forum facilitator in the form approved by the Minister) on the following matters:
- (a) the name, address and date of birth of the referred offender,
  - (b) the nature of the offence in respect of which the forum has been held,

- (c) the name of the forum facilitator,
  - (d) the names of the other persons who attended the forum and, if they participated, the capacity in which they participated,
  - (e) the dates on, and locations at, which the forum 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 forum to agree to recommendations that could be included in a draft intervention plan,
  - (h) the major points of discussion in the course of the forum,
  - (i) any other matter that the forum facilitator considers relevant, such as anything noted at the forum 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.

### **Subdivision 3 Intervention plans**

#### **78 Referring back draft intervention plans**

- (1) If a court has concerns about a draft intervention plan referred to the court under Subdivision 2, it may:
  - (a) consult with the program administrator for the declared place in relation to its concerns, or
  - (b) notify the program administrator for the declared place 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.
- (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 forum at which the draft intervention plan was determined and is able to be contacted.

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

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

## **80 Implementation of intervention plan**

- (1) If a participating court makes an intervention plan order, the program administrator for the declared place at which the intervention plan order was made is to supervise the implementation and completion of the applicable intervention plan by the referred offender to whom that order applies.
- (2) The 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 forum facilitator,
  - (c) any victim of the referred offender,
  - (d) any police officer responsible for investigating the offence in respect of which that offender was referred to the program.
- (3) If the intervention plan has not been satisfactorily completed, the 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.

## **Division 4 Program administrators and forum facilitators**

### **81 Program administrators**

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

### **82 Forum facilitators**

- (1) The Director-General may appoint a person as a forum 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) A forum facilitator has the following functions:
  - (a) to prepare for, and to hold, forums referred to the forum facilitator by a program administrator,
  - (b) any other functions conferred or imposed on the forum facilitator by this Part or any guidelines.
- (3) Subject to clause 84, a forum facilitator holds office for such period (not exceeding 3 years) as is specified in the facilitator's instrument of appointment, but may be re-appointed.

### **83 Remuneration of forum facilitators**

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

### **84 Vacancy in office of forum facilitators**

- (1) A person's appointment as a forum facilitator is automatically terminated if the person:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the 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 forum facilitator from office at any time.

## **Division 5 Miscellaneous**

### **85 Minister may issue guidelines**

- (1) The Minister may from time to time issue guidelines, not inconsistent with this Part, 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 forum facilitators in connection with the program,
  - (c) the constitution of and procedure for forums,
  - (d) any other matter in respect of which guidelines are permitted or required by this Part.
- (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).

**86 Evidence of statements generally inadmissible**

- (1) Evidence of anything said, or any admission made or document produced, in a forum 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 forum is not admissible in the criminal proceedings in respect of which the referred offender was referred or any appeal in respect of those proceedings.

**87 Prohibition on disclosure of information**

- (1) A relevant program participant must not disclose the name of, or any other identifying information about, a referred offender or a victim of a referred offender that is obtained in connection with:
  - (a) the assessment of the 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 forum 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 declared place from disclosing the information referred to in that subclause to a person for the purpose of monitoring or evaluating the program.

(4) In this clause:

**identifying information** in relation to a person means any information that identifies the person or that is likely to lead to the identification of the person.

**relevant program participant** means:

(a) a program administrator for a declared place, or

(b) a person carrying out an assessment of a referred offender's capacity and prospects for participation in the program, or

(c) a forum facilitator, or

(d) a person entitled or invited to participate in, or attend, a forum and a person attending any such forum, or

(e) a person entitled to consider a draft intervention plan under clause 78 and any person who does so.

## **Part 8 Traffic offender intervention program**

### **Division 1 Preliminary**

#### **88 Program declared to be intervention program**

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

#### **89 Definitions**

In this Part:

**approved traffic course** means a course of study or training conducted by a government agency or an association that is approved under Division 4.

**approved traffic course provider** means the person, association or body that conducts an approved traffic course.

**association** means:

- (a) an association registered under the *Associations Incorporation Act 2009*, or
- (b) an Aboriginal and Torres Strait Islander corporation within the meaning of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth.

**government agency** means any person, department or body exercising executive or administrative functions on behalf of the Government.

**guidelines** means guidelines issued by the Minister under Division 5.

**program** means the program of measures described in Division 3.

**program participation order** means a grant of bail by, or other order of, the Local Court made in respect of a traffic offender for the purpose of allowing the offender to participate in the program by undertaking an approved traffic course specified by the Court.

**referral** means the referral of a traffic offender under a program participation order for participation in the program by undertaking an approved traffic course.

**referred traffic offender** means a traffic offender who is the subject of a program participation order.

**traffic offence** means an offence under the road transport legislation (within the meaning of the *Road Transport (General) Act 2005*).

**Note—**

**Road transport legislation** is defined in section 5 of the *Road Transport (General) Act 2005* as:

- (a) that Act,
- (b) the *Road Transport (Driver Licensing) Act 1998*,
- (c) the *Road Transport (Safety and Traffic Management) Act 1999*,
- (d) the *Road Transport (Vehicle Registration) Act 1997*,
- (e) the *Motor Vehicles Taxation Act 1988*,
- (f) any other Act or regulation (or any provision of such an Act or regulation) prescribed by the regulations under the *Road Transport (General) Act 2005*,
- (g) any statutory rule made under any Act referred to in paragraphs (a)–(e) above.

**traffic offender** means a person who has pleaded guilty to, or has been found guilty of, a traffic offence before the Local 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.

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

**working day** means any day that is not a Saturday, Sunday or public holiday.

## **90 Summary of process for participation in program**

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

(a) **Court determines whether an offender may be referred for participation**

The Local Court determines whether a traffic offender may be referred to the program having regard to the matters specified in Division 2.

(b) **Court makes a program participation order**

If the Local Court determines that a traffic offender is a suitable person for participation in the program and a suitable approved traffic course is available, the Court may then make a program participation order if it is satisfied that the offender is otherwise eligible to participate. The order will specify the approved traffic course that the offender is to undertake.

(c) **Traffic offender enters into agreement to participate**

The traffic offender enters into a written agreement to participate in the program as a condition of bail or deferral of sentence.

(d) **Traffic offender to comply with requirements of approved traffic course**

The traffic offender complies with the requirements of the approved traffic course. A failure to do so may result in the offender being returned to the Local Court for the Court to deal with the offender.

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

## **Division 2 Determining eligibility to participate in program**

### **91 Eligibility to participate in program**

(1) A person is eligible to be referred by the Local Court to participate in the program only if:

- (a) the person is a traffic offender, and
- (b) the person has not been sentenced for the traffic offence, and
- (c) the person enters into a written agreement to participate in the program, and
- (d) the Court considers that, having regard to the matters referred to in subclause (2), the person is suitable for participation in the program.

(2) The Local Court is to have regard to the following matters in determining whether a traffic offender is suitable for participation in the program:

- (a) the extent to which the offender's character, antecedents, age, health and mental condition would be likely to prevent the offender's participation in the program or disrupt the conduct of the program,
  - (b) the nature of the offence committed by the offender,
  - (c) any extenuating circumstances in which the traffic offence was committed,
  - (d) the impact of the offence on the community and the victim of the offence (if any),
  - (e) the offender's history of convictions for traffic offences (if any),
  - (f) such other matters as the Court considers relevant.
- (3) When considering a traffic offender's history for the purposes of subclause (2), the Local Court is to consider the following:
- (a) whether this is the traffic offender's first offence,
  - (b) if it is not the traffic offender's first offence, the nature and seriousness of any previous offence or offences.

### **Division 3 The traffic offender intervention program**

#### **92 Objectives of the program**

The objective of the program is to provide a community based road safety educational program for referred traffic offenders:

- (a) to provide such offenders with the information and skills necessary to develop positive attitudes to driving and to change driving behaviour, and
- (b) to develop safer driving behaviour in such offenders.

#### **93 Measures that constitute the program**

The program is constituted by the following measures:

(a) **Court refers traffic offender to approved traffic course**

The Local Court refers an offender for participation in the program by making a program participation order that specifies the approved traffic course that the offender is to undertake and the offender enters into a written agreement to participate in the program.

(b) **Referred traffic offender to participate in course**

The referred traffic offender complies with the requirements of the approved traffic course that the Local Court has required the offender to undertake.

(c) **Approved traffic course provider reports to Local Court on compliance**



The approved traffic course provider makes a written report to the Local Court as to the referred traffic offender's compliance with the requirements of the approved traffic course before the Court finalises the matter.

#### **94 Reports to Local Court on compliance**

The approved traffic course provider that conducts the approved traffic course to which a referred traffic offender has been referred must report to the Local Court in the form approved by the Minister on the extent to which the offender has complied with the requirements of the program no later than 5 working days before the date fixed by the Court for the offender to re-appear before the Court to finalise the matter.

#### **95 Approved traffic course provider to make records**

The approved traffic course provider that conducts the approved traffic course to which a referred traffic offender has been referred must make a record (or cause a record to be made) of the following matters in connection with the participation of the offender in the course:

- (a) the name, address and date of birth of the offender,
- (b) the nature of the traffic offence,
- (c) the extent to which the offender has complied with the requirements of the course (including attendance at the course and assessment criteria for the course),
- (d) any fees or other moneys paid by the offender to the provider in relation to the course,
- (e) any other matters specified by the guidelines or that the provider considers relevant.

### **Division 4 Approved traffic courses**

#### **96 Director-General may approve courses for program**

- (1) The Director-General may, by order published in the Gazette, approve a course of study or training as an approved traffic course for the purposes of the program.
- (2) The Director-General may approve a course of study or training under subclause (1):
  - (a) on the Director-General's own motion, or
  - (b) on the application (in the form approved by the Director-General from time to time) of the government agency or association that conducts the course.
- (3) The Director-General may approve a course of study or training under subclause (1) only if:
  - (a) the course is to be conducted by a government agency or by an association, and

- (b) the course provider has submitted a statement to the Director-General in the form approved by the Director-General from time to time that sets out the following:
    - (i) the objectives of the course,
    - (ii) an outline of the content of the course,
    - (iii) assessment criteria for the course, including the minimum rate of attendance by course participants,
    - (iv) an itemised proposed fee structure for course participants,
    - (v) details of proposed monitoring of the course and evaluation mechanisms for the course, and
  - (c) the course consists of the following kinds of measures:
    - (i) measures that aim to improve the understanding of course participants of their legal obligations as road users,
    - (ii) measures that aim to develop safe driving behaviour by course participants,
    - (iii) measures to inform course participants about the potential impact of traffic offences on the victims of such offences and on the community generally, and
  - (d) the Director-General is satisfied that any fee that is proposed to be charged for participation in the course is being charged on a cost recovery basis and not for profit, and
  - (e) the Director-General is satisfied that the course complies with any relevant guidelines for the content or conduct of approved traffic courses.
- (4) A course of study or training approved under subclause (1) may be approved for all Local Courts or for only such Local Courts as may be specified in the order approving the course.
- (5) The Director-General may at any time and for any reason revoke an approval for a course of study or training under subclause (1) by order published in the Gazette.
- (6) An approval for a course of study or training under subclause (1) has effect for a period of 3 years, unless sooner revoked.
- (7) Nothing in subclause (6) prevents the Director-General from re-approving a course of study or training under subclause (1) after a previous approval for the study or training has ceased to have effect.

### **97 Approved traffic course to comply with guidelines**

An approved traffic course provider that conducts an approved traffic course is to ensure

that:

- (a) the course complies with any content requirements specified in the guidelines that are relevant to the course, and
- (b) the course is otherwise conducted in accordance with any guidelines that are relevant to the course.

## **Division 5 Miscellaneous**

### **98 Minister may issue guidelines**

- (1) The Minister may issue guidelines, not inconsistent with this Part, from time to time with respect to any or all of the following matters:
  - (a) the keeping of records in respect of participation in the program or approved traffic courses undertaken as part of the program,
  - (b) the monitoring of participation of referred traffic offenders in the program and in approved traffic courses undertaken as part of the program,
  - (c) the functions and responsibilities of approved traffic course providers in connection with the program,
  - (d) the content and conduct of approved traffic courses,
  - (e) the process of identifying the availability of a suitable approved traffic course,
  - (f) any other matter in respect of which guidelines are permitted or required by this Part.
- (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).

### **99 Evidence of statements generally inadmissible**

- (1) Evidence of anything said, or any admission made, by a referred traffic offender in the course of participating in an approved traffic course 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 traffic offender was referred.

### **100 Prohibition on disclosure of information**

- (1) An approved traffic course provider that conducts an approved traffic course undertaken by a referred traffic offender as part of the program (or any person involved in conducting the course for or on behalf of the provider) must not disclose the name of, or any other identifying information about, the offender that is obtained in connection with the conduct of the program or course.

Maximum penalty: 20 penalty units.

- (2) Nothing in subclause (1) prevents an approved traffic course provider or person from disclosing information of the kind referred to in that subclause:
  - (a) in connection with the conduct of the program or an approved traffic course undertaken as part of the program, 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.

## **Part 9 Miscellaneous**

### **101 Public officers**

- (1) For the purposes of paragraph (f) of the definition of **public officer** in section 3 (1) of the Act, the following bodies are declared to be public bodies:
  - (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,
  - (f) the Australian Health Practitioner Regulation Agency,
  - (g) the Office of the Commonwealth Director of Public Prosecutions,
  - (h) the Police Integrity Commission.
- (2) For the purposes of the definitions of **public officer** in sections 218 (2) and 257E (2) of the Act, an officer or employee of any of the following bodies is prescribed as a person who is not a public officer:

- (a) the Royal Society for the Prevention of Cruelty to Animals, New South Wales,
- (b) the Animal Welfare League NSW,
- (c) the Australian Federal Police,
- (d) the Australian Securities and Investments Commission,
- (e) the Office of the Commonwealth Director of Public Prosecutions.

**102 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 4 is the prescribed form of certificate.

**103 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.

**104 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 the *Crimes (Domestic and Personal Violence) Act 2007* are prescribed as proceedings to which Part 3 of Chapter 4 of the Act applies.

**105 Election not to have indictable offence dealt with summarily**

- (1) For the purposes of section 265 (1) (b) of the Act, Form 5 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.
- (2) For the purposes of section 266 (2) (a) of the Act, an election may be made orally to the Local Court or by filing a written notice with the Court.
- (3) For the purposes of section 266 (2) (b) of the Act, the withdrawal of an election may be made orally to the Local Court or by filing a written notice with the Court.

**106 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 3 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 3 opposite the offence.

**107 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.

### 108 Savings

- (1) Any act, matter or thing that, immediately before the repeal of the *Criminal Procedure Regulation 2005*, had effect under that Regulation continues to have effect under this Regulation.
- (2) The amendments to this Regulation made by the *Criminal Procedure Amendment (Forum Sentencing Program) Regulation 2010* apply only in relation to criminal proceedings commenced on or after the commencement of that Regulation and offenders the subject of such proceedings.

## Schedule 1 Forms

(Clause 3 (2))

### Form 1

(Clause 20)

#### Notice of intention to adduce evidence of substantial mental impairment

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

R v [insert name of defendant]

To the Director of Public Prosecutions:

The defendant [insert name of defendant] has been committed for trial on a charge of murder. The trial is listed for hearing on [insert date] at [insert name of court].

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 [insert 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].

#### Note—

If more space is needed, attach material to this form.

[insert signature of defendant or defendant's legal practitioner]

Defendant/defendant's legal practitioner

Date:

### Form 2

(Clause 26)

**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 [insert location] in the State of New South Wales, dealt with an application under section 279 of the *Criminal Procedure Act 1986*, that [insert name of person to be excused] be excused from giving evidence for the prosecution in proceedings against [insert name of person charged] charged with the following offence [insert 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 spouse of the accused person 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:

[insert signature of Judge or Magistrate]

Judge/Magistrate

Date:

**Form 3**

(Clause 27)

**Form of deposition**

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

The deposition of [insert name of person], a person now dangerously ill, taken before the undersigned Justice at [insert location]. [insert name of person], being duly sworn, states as follows:

**Note—**

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.

[insert signature of Justice]

Justice

Date:

**Note—**

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

**Form 4**

(Clause 102)

**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 [insert name of person], a person who

is in custody on remand in the correctional centre at [insert name of correctional centre], under the order of [insert name of Judge], a Judge of the Supreme Court, or [insert name of Justice], Justice, on the following charge:

To their Honours the Judges of the Supreme Court.

}

[insert signature of Attorney General or Director of Public Prosecutions]  
Attorney General/Director of Public Prosecutions

Date:

## Form 5

(Clause 105)

### Important information about your rights

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

To [insert name of person charged] charged with the offence of [insert offence] before the [insert 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 [insert maximum penalty or term].

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 [insert maximum penalty or term].

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 [insert number of days] 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.

## Schedule 2 Fees

(Clauses 10 and 11)

### Part 1 Court fees

Item	Matter for which fee payable	Fee \$
1	Filing a court attendance notice under Chapter 4 of the <i>Criminal Procedure Act 1986</i> to commence proceedings to which Parts 2-4 of that Chapter apply	81
2	Filing an application under Chapter 4 of the <i>Criminal Procedure Act 1986</i> to commence proceedings to which Part 5 of that Chapter applies, being proceedings in the Land and Environment Court (Class 5 of that Court's jurisdiction)	807



2A	Filing an application to commence summary proceedings brought in the District Court, other than proceedings brought by the secretary of an industrial organisation of employees	1,596
3	Filing an application to the Local Court for annulment of conviction or sentence under Part 2 of the <i>Crimes (Appeal and Review) Act 2001</i>	81
4	Filing a notice of appeal, or an application for leave to appeal, to the District Court under Part 3 of the <i>Crimes (Appeal and Review) Act 2001</i> :	
	(a) in relation to a single offence	100
	(b) in relation to more than 1 offence arising from the same court appearance	154
5	Filing a notice of appeal, or an application for leave to appeal, to the Land and Environment Court under Part 4 of the <i>Crimes (Appeal and Review) Act 2001</i> (Class 6 or 7 of that Court's jurisdiction)	807
6	To issue a certificate of conviction or dismissal	53
7	Retrieving, providing access to and furnishing a copy of any document (otherwise than as provided for by items 8 and 10):	
	(a) for up to 20 pages	11.10
	(b) for each 10 pages (or part thereof) after the first 20 pages	5.50
8	Retrieving and providing access to, but not furnishing a copy of, any file or box of files, where the file or box of files is retrieved from:	
	(a) the Government Records Repository or any other off-site storage facility (other than the State Archives):	
	(i) standard retrieval request	\$12 per file or box of files
	(ii) non-standard retrieval request (including an urgent, high or after hours priority retrieval request or a retrieval request for delivery to or from a regional location outside the Sydney metropolitan area)	Such additional fee incurred by a court
	(b) the State Archives—standard retrieval request	\$30 per file or box of files
9	Supplying a duplicate recording of sound-recorded evidence—per cassette tape or disc	45.50
10	Copy of any deposition or transcript (unless otherwise provided for under any other Act):	
	(a) for each page, where the matter being transcribed is under 3 months old:	

(i) for up to 8 pages	79
(ii) for each page after the first 8 pages	9.70
(b) for each page, where the matter being transcribed is 3 months old or older:	
(i) for up to 8 pages	97
(ii) for each page after the first 8 pages	11

## Part 2 Sheriff's fees

Item	Matter for which fee payable	Fee \$
1	For attending a view by a jury in criminal proceedings	159

## Schedule 3 Penalty notice offences

(Clause 106)

Column 1	Column 2
Offence	Amount of penalty
<b>Crimes Act 1900</b>	
section 117, if value of property or amount does not exceed \$300	\$300
section 527C (1)	\$350
<b>Summary Offences Act 1988</b>	
section 4 (1)	\$200
section 4A (1)	\$150
section 6	\$200
section 6A	\$250
section 9	\$200