Crimes (Sentencing Procedure) Regulation 2017

[2017-436]

New South Wales

Status Information

Currency of version

Historical version for 24 September 2018 to 26 May 2019 (accessed 21 December 2024 at 13:16)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

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

Notes—

- **Does not include amendments by**
  Crimes Legislation Amendment (Victims) Act 2018 No 88 (not commenced)

Authorisation

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

File last modified 28 November 2018

Crimes (Sentencing Procedure) Regulation 2017

New South Wales

Contents

Crimes (Sentencing Procedure) Regulation 2017

New South Wales

Part 1 Preliminary

1 Name of Regulation

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

2 Commencement

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

Note—

This Regulation replaces the *Crimes (Sentencing Procedure) Regulation 2010* which is repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

approved form means a form approved by the Minister.

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

Note—

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

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

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

Note—

Juvenile justice officers are referred to in certain provisions of the *Crimes (Sentencing Procedure) Act 1999* (see sections 89–91 and 99–100) and the *Crimes (Administration of Sentences) Act 1999* (see sections 107E and 108E).

Part 2 Sentencing procedures generally

Division 1 General

4 Lists of additional charges

(1) A list of additional charges under section 32 of the Act is to be in the approved form.

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

(a) police officers,

(b) persons employed in the Transport Service in any role designated by the Secretary of the Department of Transport as a senior legal role,

(c) the Point to Point Transport Commissioner appointed under the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*,

(d) persons employed in the Department of Finance, Services and Innovation in any role designated by the Secretary of that Department as a senior legal role,

(e) the Commissioner for Fair Trading, Department of Finance, Services and Innovation or, if there is no person employed as Commissioner for Fair Trading, the Secretary of that Department,

(f) the General Counsel, Ministry of Health,

(g) the Chief Health Officer, Ministry of Health,

(h) the Secretary of the Ministry of Health,

(i) the Chief Executive Officer of the Food Authority,

(j) the Secretary of the Department of Planning and Environment,

(k) the Secretary of the Department of Industry,

(l) officers or employees of an approved charitable organisation within the meaning of the *Prevention of Cruelty to Animals Act 1979* designated by the chief executive of the organisation.

5, 6 (Repealed)

7 Warrants of commitment

A warrant for the committal of an offender referred to in section 62 (1) of the Act is to be in the approved form.

8 Consultation with victim and police in relation to charge negotiations

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

(a) in relation to proceedings being prosecuted by a police prosecutor—police officers,

(b) the Commissioner for Fair Trading, Department of Finance, Services and Innovation or, if there is no person employed as Commissioner for Fair Trading, the Secretary of that Department,

(c) persons employed in the Department of Finance, Services and Innovation in any role designated by the Secretary of that Department as a senior legal role.

Division 2 Victim impact statements

9 Persons who may prepare victim impact statement

(1) A victim impact statement may be prepared by any qualified person designated by:

(a) the victim or victims to whom the statement relates, or any such victim's representative, or

(b) the prosecutor in the proceedings to which the statement relates.

(2) A victim impact statement may also be prepared by the victim or any of the victims to whom it relates, or any such victim's representative.

(3) In this clause, ***qualified person*** means:

(a) a counsellor who is approved under section 31 of the *Victims Rights and Support Act 2013*, or

(b) any other person who is qualified by training, study or experience to provide the particulars required for inclusion in a victim impact statement.

10 Form of victim impact statements

A victim impact statement:

(a) must be legible and may be either typed or hand-written, and

(b) must be on A4 size paper, and

(c) must be no longer than 20 pages in length including medical reports or other annexures (except with the leave of the court).

Note—

Victims Services provides information about victim impact statements, including the suggested form of a victim impact statement, on its website at http://www.victimsservices.justice.nsw.gov.au.

11 Content of victim impact statements

(1) A victim impact statement must identify the victim or victims to whom it relates.

(2) The statement must include the full name of the person who prepared the statement, and must be signed and dated by that person.

(3) If the person who prepared the statement is not a victim to whom it relates (or any such victim's representative):

(a) the statement must indicate that the victim or victims do not object to the statement being given to the court, and

(b) the victim or victims (or any such victim's representative) must sign the statement to verify that they do not object.

(4) If a victim to whom the statement relates is a family victim, the statement must identify the primary victim and state the nature and (unless a relative by blood or marriage) the duration of that victim's relationship to the primary victim.

(5) If a victim's representative acts on behalf of a primary victim for the purpose of providing information for the statement, the statement must indicate the name of that person and the nature and (unless a relative by blood or marriage) the duration of that person's relationship to the primary victim.

(6) A victim impact statement must not contain anything that is offensive, threatening, intimidating or harassing.

12 Tendering of victim impact statements

(1) A victim impact statement may be tendered to the court only by the prosecutor in the proceedings before the court.

(2) Only one victim impact statement may be tendered in respect of:

(a) the primary victim, or

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

Division 3 Assessment reports for courts

Note—

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

12A Assessment reports generally

(1) An assessment report in respect of an offender is to address the following matters:

(a) the offender's risk of re-offending,

(b) any factors related to the offender's offending behaviour,

(c) any factors that may impact on the offender's ability to address his or her offending behaviour,

(d) how the matters referred to in paragraphs (b) and (c) would be addressed by supervision and the availability of resources to do so,

(e) any conditions that would facilitate the effective supervision of the offender in the community,

(f) the offender's suitability for community service work,

(g) a summary of the offender's response to any previous period of management in the community in respect of any relevant order,

(h) any additional matters that the court wishes to have specifically addressed.

(2) Subclause (1) does not limit the matters that may be addressed in an assessment report.

(3) An assessment report need not address a matter referred to in subclause (1) if the matter is not relevant to the circumstances relating to the offender or the court does not require the matter to be addressed.

12B Assessment reports for home detention condition

(1) An assessment report in relation to a home detention condition must address the following matters:

(a) the offender's suitability for home detention,

(b) any risks associated with imposing home detention, including any risks to the offender or any other persons, including children, and any strategies that could manage the risks,

(c) any other matters relevant to administering an intensive correction order with a home detention condition.

(2) If it appears that the offender does not have accommodation suitable for the purposes of home detention, the assessment report is not to be finalised until reasonable efforts have been made by a community corrections officer, in consultation with the offender, to find suitable accommodation.

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

Part 3 Community-based orders

Note 1—

If, in sentencing an offender, the sentencing court makes an intensive correction order in respect of the offender (with conditions imposed by the sentencing court under the Act), conditions of the intensive correction order are afterwards imposed, varied or revoked by the Parole Authority rather than the sentencing court.

Note 2—

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

Note 3—

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

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

13 Procedure for imposition, variation or revocation of additional or further conditions of community correction orders or conditional release orders

(1) An application to a court for the imposition, variation or revocation (under section 89, 90, 99 or 99A of the Act) of an additional or further condition of a community correction order or conditional release order must be in writing.

(2) The court to which an application is made must fix a date for the hearing of the application, being a date not earlier than 14 days after, and not later than 3 months after, the date the application is filed.

(3) The court may vary or waive a requirement imposed by subclause (2).

(4) If the court fixes a date for the hearing, a copy of the application must be given not later than 5 days before the date fixed for the hearing of the application:

(a) to the offender (unless the offender's whereabouts are unknown or the court decides to deal with the matter under subclause (6) without the offender being present), if the applicant is a community corrections officer, or

(b) to a community corrections officer, if the applicant is an offender.

(5) For the purposes of subclause (4), the application may be given to a person by the court or by the applicant:

(a) by serving it or causing it to be served on the person personally, or

(b) by email to an email address, or by other electronic means, specified by the offender or a community corrections officer for the service of documents of that kind, or

(c) in the case of notice to the offender—by sending it or causing it to be sent by post to the person's address as last known to Community Corrections, or

(d) in the case of notice to a community corrections officer—by sending it or causing it to be sent to the officer's work address or to an office of Community Corrections.

(6) The court may deal with the matter with or without parties being present and in open court or in the absence of the public.

(7) The court:

(a) must cause notice of the outcome of the application to be given to the offender, and

(b) must, as soon as practicable after the application is dealt with, cause notice of the outcome to be given to Community Corrections if the court:

(i) adds, varies or revokes a condition of a community correction order or conditional release order that is subject to a supervision condition or community service work condition, or

(ii) imposes a supervision condition on a community correction order or conditional release order or a community service work condition on a community correction order.

(8) If the court imposes, adds or varies a condition, the court must take reasonable steps to explain to the offender (in language that the offender can readily understand):

(a) the offender's obligations under the condition, and

(b) the consequences that may follow if the offender fails to comply with those obligations.

(9) An order of the court is not invalidated by a failure to comply with subclause (8).

(10) The court may vary or waive a requirement imposed by subclause (7) (a) or (8).

(11) In this clause, ***Community Corrections*** means the Community Corrections Division, Department of Justice.

14 Community service work—maximum hours and minimum periods (ICO or CCO)

(1) For the purposes of sections 73A and 89 of the Act, the maximum number of hours that may be specified for community service work in an additional condition of an intensive correction order or community correction order is:

(a) 100 hours—for offences for which the maximum term of imprisonment provided by law does not exceed 6 months, or

(b) 200 hours—for offences for which the maximum term of imprisonment provided by law exceeds 6 months but does not exceed 1 year, or

(c) 500 hours if the order is a community correction order—for offences for which the maximum term of imprisonment provided by law exceeds 1 year, or

(d) 750 hours if the order is an intensive correction order—for offences for which the maximum term of imprisonment provided by law exceeds 1 year.

(2) For the purposes of sections 73A and 89 of the Act, the minimum period that a community service work condition of an intensive correction order or community correction order must be in force is:

(a) the period of 6 months—if the number of hours of community service work required to be performed does not exceed 100 hours, or

(b) the period of 12 months—if the number of hours of community service work required to be performed exceeds 100 hours but does not exceed 300 hours, or

(c) the period of 18 months—if the number of hours of community service work required to be performed exceeds 300 hours but does not exceed 500 hours, or

(d) the period of 2 years—if the number of hours of community service work required to be performed exceeds 500 hours.

15, 16 (Repealed)

Parts 4, 5

17–24 (Repealed)

Part 6 Miscellaneous

25 Savings provision

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

26 Transitional arrangements for guilty pleas provisions

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

(a) dealt with one or more offences and proceedings for any of those offences commenced before the commencement of Schedule 1 to that Act, and

(b) were conducted in accordance with the provisions that were applicable to committal proceedings before the commencement of Schedule 1 to that Act.