

Crimes (Sentencing Procedure) Regulation 2000

[2000-134]



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—

- **Repeal**

The Regulation was repealed by sec 10 (2) of the [Subordinate Legislation Act 1989 No 146](#) with effect from 1.9.2005.

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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Crimes (Sentencing Procedure) Regulation 2000



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Crimes (Sentencing Procedure) Regulation 2000*.

2 Commencement

This Regulation commences on 3 April 2000.

3 Definitions

(1) In this Regulation:

approved form means a form approved by the Minister.

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

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

4 Notes

The explanatory note and table of contents do not form part of this Regulation.

Part 2 Sentencing procedures generally

Division 1 General

5 List of additional charges: section 32

- (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 (5) (b) of the Act, the following persons are prescribed:
 - (a) police officers,
 - (b) the Director-General of the Department of Fair Trading.

6 Consultation required before conditions as to residence or treatment imposed on parole

- (1) Before a court makes a parole order containing terms or conditions relating to residence or treatment, the court:
 - (a) must consider a report from a probation and parole officer as to the offender's circumstances, and
 - (b) must satisfy itself, having regard to the probation and parole officer's report, that it is feasible to secure compliance with the terms or conditions.
- (2) Before a court makes a parole order containing terms or conditions requiring the co-operation of a person other than the offender or a probation and parole officer, it must obtain the consent of the person to the specification of those terms and conditions in so far as they require the person's co-operation.

7 Parole orders: section 50

- (1) A parole order made by a court must be reduced to writing using the approved form.
- (2) A copy of the order must be given to the offender, and further copies are to be sent to the following persons:
 - (a) the Commissioner of Corrective Services, and
 - (b) if the sentence to which the order relates is to be served by way of full-time imprisonment, the governor of the correctional centre to which the offender is committed to serve the sentence.

8 Warrants of commitment: section 62

A warrant of commitment referred to in section 62 (2) of the Act is to be in the approved form.

Division 2 Victim impact statements

9 Persons who may prepare statements

- (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) The 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 authorised to provide approved counselling services for the purposes of section 21 of the *Victims Compensation Act 1996*, 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 statement

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 (except with the leave of the court) must be no longer than 20 pages in length (including medical reports or other annexures), and
- (c) may (but need not) be in Form 5 or 6, whichever is appropriate.

11 Content of victim impact statement

- (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 statement

- (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 each victim.

Part 3 Sentencing procedures for periodic detention orders

13 Availability of accommodation: section 66

- (1) For the purpose of satisfying itself that accommodation is available at a periodic detention centre for an offender to serve a sentence by way of periodic detention, a court must address its inquiries to the officer in charge of administration of periodic detention orders within the Department of Corrective Services.
- (2) As soon as practicable after a court has made a periodic detention order, the court must ensure that the officer in charge is informed of that fact, by telephone or otherwise.

14 Undertakings to comply with periodic detention order: section 66

An undertaking referred to in section 66 (1) (f) of the Act is to be in the approved form.

15 Assessment reports: section 69

An offender's assessment report must assess the offender's suitability to serve a sentence by way of periodic detention by reference to the following factors:

- (a) the degree, if any, to which the person is dependent on alcohol or drugs (a major alcohol or drug problem being an indicator of unsuitability),
- (b) the offender's psychiatric or psychological condition (a major psychiatric or psychological disorder being an indicator of unsuitability),
- (c) the person's medical condition (a medical condition that may render the offender unfit to report for periodic detention being an indicator of unsuitability),
- (d) the offender's criminal record, if any (a serious criminal record being an indicator of unsuitability),
- (e) the offender's employment and other personal circumstances (circumstances that may render the offender's regular attendance at a periodic detention centre impracticable being an indicator of unsuitability).

16 Periodic detention orders

- (1) A periodic detention order must be reduced to writing using the approved form.
- (2) A copy of the order must be given to the offender, and further copies are to be sent to the following persons:
 - (a) the Commissioner of Corrective Services, and
 - (b) the governor for the periodic detention centre to which the offender is committed

to serve the sentence.

17 Notice of periodic detention order: section 72

- (1) A notice referred to in section 72 (1) of the Act must be in the approved form.
- (2) The offender must sign 3 copies of the notice in the presence of the person by whom it was given to the offender.
- (3) Of the 3 copies:
 - (a) one is to be kept by the offender, and
 - (b) one is to be kept by the court by which the relevant periodic detention order was made, and
 - (c) one is to be sent to the Commissioner of Corrective Services.

18 Warrants of commitment: section 73

A warrant of commitment referred to in section 73 (2) of the Act is to be in the approved form.

Part 4 Sentencing procedures for home detention orders

19 Drug offences for which home detention not available: section 76

For the purposes of section 76 (i) of the Act, offences under sections 23 (2), 24 (2), 25 (2), 26, 27 and 28 of the *Drug Misuse and Trafficking Act 1985* (where the number or amount of prohibited drug or prohibited plant concerned is a commercial quantity within the meaning of that Act) are prescribed offences.

20 Undertakings to comply with home detention order: section 78

- (1) A consent referred to in section 78 (1) (c) of the Act is to be in the approved form.
- (2) The consent of a child under the age of 18 years, or of a mentally incapacitated person, may be given by the Commissioner of Corrective Services.
- (3) An undertaking referred to in section 78 (1) (c) of the Act is to be in the approved form.

21 Assessment of effect of order on children: section 81

- (1) If a child under the age of 18 years would be living with an offender serving home detention, an assessment report must take into account, and specifically address, the effect on the child of that fact.
- (2) The investigation of the matter referred to in subclause (1) must be carried out jointly by an officer within the Probation and Parole Service and an officer within the

Department of Community Services, and must be carried out in accordance with child protection risk assessment procedures approved by the Director-General of that Department.

22 Home detention orders

- (1) A home detention order must be reduced to writing using the approved form.
- (2) A copy of the order must be given to the offender, and a further copy must be sent to the Commissioner of Corrective Services.

Part 5 Sentencing procedures for community service orders

23 Maximum hours' community service work: section 8

For the purposes of section 8 (2) of the Act, the prescribed number of hours is:

- (a) 100, for offences for which the maximum term of imprisonment provided by law does not exceed 6 months, or
- (b) 200, for offences for which the maximum term of imprisonment provided by law exceeds 6 months but does not exceed 1 year, or
- (c) 500, for offences for which the maximum term of imprisonment provided by law exceeds 1 year.

24 Undertakings to comply with community service order: section 86

An undertaking referred to in section 86 (5) of the Act is to be in the approved form.

25 Community service orders

- (1) A community service order must be reduced to writing using the approved form.
- (2) A copy of the order must be given to the offender, and a further copy must be sent to the Commissioner of Corrective Services.

26 Notice of community service order: section 93

- (1) A notice referred to in section 93 (1) of the Act must be in the approved form.
- (2) The offender must sign 3 copies of the notice in the presence of the person by whom it was given to the offender.
- (3) Of the 3 copies:
 - (a) one is to be kept by the offender, and
 - (b) one is to be kept by the court by which the relevant community service order was made, and

(c) one is to be sent to the Commissioner of Corrective Services.

Schedule 1 Forms

(Clause 3)

Forms 1-4

(Repealed)

Form 5

(Clause 10)

VICTIM IMPACT STATEMENT FOR PRIMARY VICTIMS

(Crimes (Sentencing Procedure) Act 1999, section 30)

(1) Name of victim(s):

Name of offender:

Charges to which this statement relates:

Sentencing court:

Sentencing date:

(2) Details of personal harm suffered as a direct result of the offence(s)

Physical bodily harm:

Mental illness or nervous shock:

(3) Attached to this statement are the following medical or other specialist reports:

(4) *(To be completed if statement prepared by victim's representative)*

Nature of relationship to primary victim:

Duration of relationship to primary victim (unless a relative by blood or marriage):

Nature of primary victim's incapacity:

(5) *(To be completed if statement prepared by victim himself or herself, or by victim's representative)*

This statement is true to the best of my knowledge and belief*

or (if the person preparing the statement is less than 12 years old)

I have not told any lies in this statement.*

Signed (victim or victim's representative)

Dated

(* Delete whichever does not apply)

(6) *(To be completed if statement prepared by a qualified person on behalf of the victim(s))*

This statement is true to the best of my knowledge and belief.

Signed (deponent)

Dated

I do not object to this statement being given to the court.

Signed (victim or victim's representative)

Dated

Form 6

VICTIM IMPACT STATEMENT FOR FAMILY VICTIMS

(Crimes (Sentencing Procedure) Act 1999, section 30)

(1) Name of family victim(s):

Name of primary victim(s):

Name of offender:

Charges to which this statement relates:

Sentencing court:

Sentencing date:

(2) Details of impact of the death of the primary victim on the family victim(s), being the member(s) of the immediate family of the primary victim(s)

(3) Attached to this statement are the following medical or other specialist reports:

(4) *(To be completed if statement prepared by the family victim himself or herself)*

This statement is true to the best of my knowledge and belief*

or (if the family victim is less than 12 years old)

I have not told any lies in this statement.*

Signed (victim(s))

Dated

(* Delete whichever does not apply)

(5) *(To be completed if statement prepared by a qualified person on behalf of the victim(s))*

This statement is true to the best of my knowledge and belief.

Signed (deponent)

Dated

I do not object to this statement being given to the court.

Signed (victim(s))

Dated

Forms 7-16

(Repealed)