

# Criminal Procedure Regulation 2000

[2000-435]



New South Wales

## Status Information

### Currency of version

Repealed version for 10 June 2005 to 14 August 2005 (accessed 21 December 2024 at 5:22)

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**  
Clause 11C of this Regulation (the repeal of certain provisions is to have effect on 30.6.2006)
- **See also**  
[Crimes Amendment \(Corporate Manslaughter\) Bill 2005](#) [Non-government Bill: Hon Dr A Chesterfield-Evans, MLC]
- **Repeal**  
The Regulation was repealed by cl 31 of the [Criminal Procedure Regulation 2005 \(411\)](#) (GG No 100 of 10.8.2005, p 4225) with effect from 15.8.2005.

### 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](#).

File last modified 15 August 2005

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New South Wales

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# Criminal Procedure Regulation 2000



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Criminal Procedure Regulation 2000*.

### 2 Commencement

This Regulation commences on 1 September 2000.

**Note—**

This Regulation replaces the *Criminal Procedure Regulation 1995* which is repealed on 1 September 2000 under section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation:

**Director** means the Criminal Listing Director.

**DPP** means the Director of Public Prosecutions.

**registrar** means:

- (a) the registrar of the Criminal Division of the Supreme Court (in relation to a person committed for trial or sentence to the Supreme Court), and
- (b) the registrar of the District Court in its criminal jurisdiction for the relevant proclaimed place (in relation to a person committed for trial or sentence to the District Court sitting at that place).

**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) The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

## **Part 2 Jurisdiction of District Court**

### **4 Offences not within jurisdiction of District Court**

For the purposes of section 46 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.

## **Part 3 Listing**

### **5 Information for Director**

- (1) The Director may direct any of the following persons to give to the Director such information as the Director reasonably requires to assist the Director in making arrangements for the listing of criminal proceedings:
  - (a) a prosecuting authority,
  - (b) an accused person or appellant,
  - (c) a solicitor acting for an accused person or appellant,
  - (d) a registrar.
- (2) A person to whom such a direction is given must comply with the direction without delay.
- (3) The Director must not give to a prosecuting authority any information furnished to the Director by an accused person or appellant (or by the solicitor of an accused person or appellant) in response to a direction under this clause except with the consent of the accused person, appellant or solicitor.
- (4) The 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.

### **6 Notice of appearance**

- (1) A solicitor:
  - (a) who acts for an accused person or appellant in any criminal proceedings, and
  - (b) who has not filed a notice of appearance in the proceedings in the Local Court which led to those criminal proceedings,must file a notice of appearance, in the Court in which the criminal proceedings are to be heard, as soon as practicable after accepting instructions to so act.

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

## **7 (Repealed)**

## **8 Transcript**

- (1) The DPP must notify the Director and the Clerk of the relevant Local Court:
  - (a) if a written transcript of the proceedings in the Local Court that led to the committal for trial of an accused person is not received by the DPP 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 DPP within the prescribed time after the appellant lodged notice of the appeal under Part 3 of the [Crimes \(Local Courts Appeal and Review\) Act 2001](#).
- (2) For the purposes of this clause, the prescribed time is:
  - (a) 2 weeks, in the case of an accused person (being a juvenile) who is in custody for the offence the subject of the proceedings, or
  - (b) 4 weeks, in any other case.
- (3) The 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.

## **9 Notice of readiness**

- (1) As soon as practicable after determining that criminal proceedings are ready to proceed on the part of the Crown, the DPP must give to the Director a notice of readiness for the proceedings.
- (2) The notice must be in the form approved for the time being by the 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 Director:
  - (a) must give a copy of the notice, and of the draft indictment which accompanies the notice, to the registrar, and
  - (b) must give a copy of the draft indictment to each accused person or the accused person's solicitor.
- (4) As soon as practicable after determining that the indictment to be presented in any criminal proceedings is to depart in any material particular from the draft indictment that accompanied the notice of readiness for the proceedings, the DPP must give to the 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 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 Director must give a copy of the draft indictment to the registrar and to each accused person or the accused person's solicitor.

#### **10 Application to stay indictment**

- (1) This clause applies to:
  - (a) any application to the Supreme Court or District Court for an order staying or quashing an indictment, and
  - (b) any demurrer to an indictment.
- (2) Unless the Court otherwise orders, an application or demurrer to which this clause applies must not be listed for hearing unless it has been filed within the prescribed time after a copy of the draft indictment was given to the accused person or the accused person's solicitor under clause 9 (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.

#### **11 Notice of listing**

- (1) As soon as practicable after fixing a date for the hearing or mention of any criminal proceedings, the Director must give notice of the listing to the registrar.

- (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 DPP and each accused person or appellant in the proceedings.

## **Part 3A Penalty notice offences**

### **11A Penalty notice offences**

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

### **11B Limitation of areas in which penalty notices may be issued**

The provisions of the Act relating to penalty notice offences and penalty notices are to apply, for the period ending on the day referred to in clause 11C, only to offences dealt with in that period in the areas of New South Wales covered by the following police Local Area Commands:

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

### **11C Repeal of Part and Schedule 2**

This Part and Schedule 2 are repealed on 30 June 2006.

## **Part 3B Intervention programs**



### **11D Circle sentencing intervention program**

The program of measures described in Part 4 of Schedule 3 (Circle sentencing intervention program) for dealing with offenders is declared to be an intervention program for the purposes of Part 4 of Chapter 7 of the Act.

## **Part 4 Miscellaneous**

### **12 Prescribed form of words**

For the purposes of section 265 (1) (b) of the Act, the prescribed form of words in which a statement about a person's right to make an election must be is the form of words in Form 1.

### **12A Offences for which briefs of evidence not required**

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

### **12B Public officers**

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

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

### **12C Exclusion of indemnity for personal liability for costs**

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

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

### **13 Form and manner of election and withdrawal of election**

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

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

For the purposes of section 151 (1) of the Act, notice of an accused person's intention to

adduce evidence of substantial mental impairment at his or her trial for murder:

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

**14A New trials of sexual assault proceedings—notice of intention to tender record of original evidence of complainant**

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

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

**14B Procedure for obtaining access to record of original evidence of complainant**

- (1) This clause sets out the procedure for obtaining access to listen to or view an audio visual recording or audio recording of the original evidence of the complainant for the purposes of section 306F of the Act.
- (2) On receipt of a notice under section 306B (3) (a) of the Act specifying the prosecutor's intention to tender in proceedings an audio visual recording or audio recording of the original evidence of the complainant, the accused person, or his or her counsel, may give the responsible person a notice in writing that he or she requires access to the recording.
- (3) A responsible person who receives a notice that complies with this clause must give the accused person and his or her counsel (if any) access to listen to or view the recording as soon as practicable after the day on which the responsible person receives the notice.
- (4) The responsible person may give any person accompanying the accused person, or his or her counsel, who has been engaged to assist the accused person's case access to listen to or view the recording.
- (5) In this clause:

**responsible person** means the person nominated by the prosecutor in the notice under section 306B (3) (a) of the Act as the person responsible for arranging access to the recording (as referred to in clause 14A (b)).

**15 Compellability of spouses to give evidence in certain proceedings**

For the purposes of section 279 (5) (b) of the Act, the prescribed form in which a court’s reasons are to be recorded is Form 3.

**16 Depositions by persons dangerously ill**

For the purposes of section 284 (2) of the Act, the prescribed form in which a deposition must be taken is Form 4.

**17 Certificate by Attorney General or DPP that no further proceedings to be taken**

For the purposes of section 44 (1) of the Act, the prescribed form of certificate is Form 5.

**18 Savings provision**

Any act, matter or thing that, immediately before the repeal of the *Criminal Procedure Regulation 1995*, had effect under that Regulation continues to have effect under this Regulation.

**Schedule 1 Forms**

(Clause (3 (2)))

**Form 1**

(Clause 12)

**Important information about your rights**

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

**You have a right to make an election**

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

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

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

.....  
.....

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

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

.....

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

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

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

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

**Form 2**

(Clause 14)

**Notice of intention to adduce evidence of substantial impairment**

(Criminal Procedure Act 1986, section 151)

R v (insert name of defendant)

To the Director of Public Prosecutions:

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

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

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

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

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

Date: .....

**Form 3**

(Clause 15)

**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)

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

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

- (a) it is relatively unimportant to the case to establish the facts in relation to which it appears that the husband or wife is to be asked to give evidence or there is other evidence available to establish those facts, and
- (b) the offence with which the accused person is charged is of a minor nature.

Reasons: .....  
.....

.....  
Judge/Magistrate

Date: .....

**Form 4**

(Clause 16)

**Form of deposition**

(Criminal Procedure Act 1986, section 284)

The deposition of ....., a person now dangerously ill, taken before the undersigned Justice at

..... which said ....., being duly sworn, states as follows:

.....  
.....

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

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

.....  
Justice

Date: .....

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

**Form 5**

(Clause 17)

**Certificate of Attorney General or Director of Public Prosecutions**

([Criminal Procedure Act 1986](#), section 44)

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

.....

To their Honours the Judges of the Supreme Court.



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

Date: .....

**Schedule 2 Penalty notice offences**

(Clause 11A)

<b>Column 1</b>	<b>Column 2</b>
<b>Offence</b>	<b>Amount of penalty</b>
<b>Crimes Act 1900</b>	
section 61	\$400
section 117, where the value of the property or amount does not exceed \$300	\$300
section 527A	\$300
section 527C	\$350
<b>Summary Offences Act 1988</b>	
section 4 (1)	\$200

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

## Schedule 3 Circle sentencing intervention program

(Clause 11D)

### Part 1 Interpretation

#### 1 Definitions

In this Schedule:

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

**Aboriginal person** means a person who:

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

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

**guidelines** means guidelines issued by the Minister under clause 23.

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

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

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

**program** means the program of measures described in Part 4.

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

**Project Officer** for a participating court means the Project Officer (Circle Sentencing) for the court referred to in clause 18 (1).

**referral** means the referral of an offender for assessment under a suitability assessment order or for participation in the program under a program participation order (as the case may be).

**referred offender** means an offender that is the subject of:

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

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

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

## Part 2 Overview of process

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

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

(a) **Suitability assessment order made**

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

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

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

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

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

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

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

appropriate for the offender to participate in the program.

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

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

(f) **Project Officer convenes a circle sentencing group**

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

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

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

(h) **Court may pronounce a sentence**

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

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

### **Part 3 Assessment of suitability to participate**

#### **3 Notification of suitability assessment order**

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

#### **4 Convening of meeting of Aboriginal Community Justice Group**

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

#### **5 Meeting of Aboriginal Community Justice Group to assess referred offender**

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



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

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

## **Part 4 The circle sentencing intervention program**

### **7 Objectives of the program**

The objectives of the program are as follows:

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

## **8 Eligibility to participate in program**

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

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

## **9 Measures that constitute the circle sentencing program**

The program is constituted by the following measures:

### **(a) Offender agrees to enter into agreement to participate in the program**

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

### **(b) Constitution of circle sentencing group**

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

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

The circle sentencing group meets:

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

### **(d) Offender to comply with intervention plan**

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

#### **Note—**

Section 346 (1) of the Act defines *intervention plan* to mean a plan, agreement or arrangement arising out of the participation of an offender or an accused person in an intervention program.

## **10 Convening of circle sentencing group**

- (1) A participating court that makes a program participation order in respect of a referred

offender must notify the Project Officer for the court of the order.

- (2) The Project Officer must convene a circle sentencing group for the referred offender as soon as practicable after being notified of the making of a program participation order in respect of the offender.

## **11 Constitution of circle sentencing group**

- (1) A circle sentencing group for a referred offender convened by the Project Officer under clause 10 (2) must include the following persons:
  - (a) the presiding Magistrate,
  - (b) the offender,
  - (c) the offender's legal representatives (unless the offender directs otherwise),
  - (d) the prosecutor,
  - (e) the Project Officer,
  - (f) at least 3 Aboriginal persons (but no more than the maximum number of persons specified in the guidelines) chosen by the Project Officer, being persons who:
    - (i) 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, and
    - (ii) have been recommended to the Project Officer by the Aboriginal Community Justice Group for the court that made the program participation order.
- (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.

## **12 Functions of circle sentencing groups**

- (1) The functions of a circle sentencing group are as follows:

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

### **13 Exclusions of persons from meetings of circle sentencing groups**

- (1) The presiding Magistrate may exclude a person (other than the offender or a victim) from participation in a circle sentencing group if the Magistrate is satisfied that:
- (a) the person has a conflict of interest that would prevent the person from impartially discharging his or her obligations as a member of the group, or
  - (b) the behaviour of the person is disrupting the orderly conduct of a meeting of the group.
- (2) The Magistrate may, with the agreement of the other members of the group, invite another person to replace a person who has been excluded from participating in the group under subclause (1). However, if the other members do not agree, the Project Officer is to convene a new circle sentencing group for the offender excluding any such person.
- (3) A person who is not a member of the circle sentencing group may not attend a meeting of the group unless all of the following persons consent:

- (a) the presiding Magistrate,
- (b) the offender,
- (c) if a victim is participating in the group, the victim.

#### **14 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.

#### **15 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 Schedule and the guidelines, to be as determined by the group.
- (2) The presiding Magistrate is to preside at a meeting of a circle sentencing group.
- (3) The quorum for a meeting of a circle sentencing group is all of the members of the group (other than members excluded under clause 13).
- (4) A decision supported by a majority of the members in a meeting of the circle sentencing group is to be treated as a decision of the whole group.

#### **16 Records of meetings**

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.

## **17 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 3 months has elapsed since the matter to be reconsidered was originally determined or recommended by the group, or
  - (b) the court that referred the referred offender to the group has imposed a sentence on the offender for the offence (whether or not in the terms recommended by the group).

## **Part 5 Project Officers**

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

- (1) The Minister is to ensure that there is a Project Officer (Circle Sentencing) for each participating court.
- (2) The functions of a Project Officer include (but are not limited to) the following functions:
  - (a) contacting victims of a referred offender for the purpose of ascertaining whether they wish to participate in a circle sentencing group for the offender,
  - (b) informing any such offender of:
    - (i) the processes involved in the program or in being assessed for participation in the program, and
    - (ii) the offender's obligations under the program or an intervention plan arising out of the program,
  - (c) convening meetings of Aboriginal Community Justice Groups and circle sentencing groups,
  - (d) monitoring the compliance of an offender with his or her obligations under the program or an intervention plan arising out of the program and reporting any non-compliance to the participating court that referred the offender and to the Aboriginal Community Justice Group for the court,
  - (e) such other functions as may be imposed or conferred on the Project Officer by this

Schedule or the guidelines.

## **Part 6 Aboriginal Community Justice Groups**

### **19 Minister to establish Aboriginal Community Justice Groups for each court**

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

### **20 Appointment of members of Aboriginal Community Justice Groups**

- (1) The Minister may appoint such Aboriginal persons as the Minister considers necessary to be members of an Aboriginal Community Justice Group established under clause 19.
- (2) The Minister may make an appointment under subclause (1) only on the recommendation of the Project Officer for the participating court concerned.
- (3) A person appointed as a member under subclause (1) is appointed for a period of 2 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.

### **21 Functions of Aboriginal Community Justice Groups**

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

- (a) assessing the suitability of a referred offender to participate in the program and reporting to the participating court that referred the offender about the offender's suitability,
- (b) recommending appropriate Aboriginal persons to participate in a circle sentencing group for a referred offender,
- (c) such other functions as may be imposed or conferred on the Group by this Schedule or the guidelines.

## **22 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 Schedule and the guidelines, to be as determined by the Group.
- (2) The quorum for a meeting of an Aboriginal Community Justice Group is 3 members of the Group.
- (3) A decision supported by a majority of the members in attendance at a meeting of an Aboriginal Community Justice Group is to be treated as a decision of the whole Group.

## **Part 7 Guidelines**

### **23 Minister may issue guidelines in respect of the conduct of the program**

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

## **Part 8 Disclosure of information in connection with program**

### **24 Evidence of statements generally inadmissible**

- (1) Evidence of anything said, or any admission made, 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.

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

- (1) Except as provided by subclause (2), 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) in connection with the conduct of the program or an intervention plan arising out of the program, or
  - (c) to a victim of a referred offender about the outcome of a circle sentencing group for the offender, or
  - (d) for the purposes of any legal proceedings, or
  - (e) in accordance with a requirement of the *Ombudsman Act 1974* or with any request made by the Ombudsman, or
  - (f) with other lawful excuse.

- (3) In this clause:

**relevant program participant** means:

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