



New South Wales

# Criminal Procedure Regulation 2005

under the

Criminal Procedure Act 1986

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Criminal Procedure Act 1986*.

BOB DEBUS, M.P.,  
Attorney General

## Explanatory note

The object of this Regulation is to repeal and remake the *Criminal Procedure Regulation 2000*. The new Regulation deals with the following matters:

- (a) prescribing procedural matters relating to the listing of criminal proceedings for hearing,
- (b) prescribing the fees payable in relation to criminal proceedings in the Supreme Court, in the District Court and in Local Courts,
- (c) declaring a circle sentencing intervention program to be an intervention program for the purposes of Part 4 of Chapter 7 of the *Criminal Procedure Act 1986*,
- (d) prescribing offences for which the District Court does not have jurisdiction,
- (e) requiring notice of an accused person's intention to adduce evidence of substantial impairment at his or her trial to be given to the Director of Public Prosecutions at least 35 days before the date on which the trial is listed to commence,
- (f) prescribing procedural matters relating to the summary disposal of indictable offences,
- (g) other procedural matters.

This Regulation is made under the *Criminal Procedure Act 1986*, including sections 3 (1), 4 (the general regulation-making power), 44 (1), 46 (2), 114 (2), 121, 151 (1), 187 (5), 218 (2), 220, 265 (1) (b), 266 (2) (a) and (b), 279 (5) (b), 284 (2), 336 and 337 and Part 4 of Chapter 7 of that Act.

This Regulation is made in connection with the staged repeal of subordinate legislation under the *Subordinate Legislation Act 1989*.

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## 2005 No 411

Clause 1 Criminal Procedure Regulation 2005

Part 1 Preliminary

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## Criminal Procedure Regulation 2005

under the

Criminal Procedure Act 1986

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Criminal Procedure Regulation 2005*.

#### 2 Commencement

This Regulation commences on 15 August 2005.

#### 3 Definitions

(1) In this Regulation:

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

***the Act*** means the *Criminal Procedure Act 1986*.

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

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

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## Part 2 Listing of criminal proceedings

### 4 Information for Criminal Listing Director

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

### 5 Notice of appearance

- (1) A solicitor:
  - (a) who acts for an accused person or appellant in any criminal proceedings, and
  - (b) who has not filed a notice of appearance in the proceedings in the Local Court that led to those criminal proceedings,must file a notice of appearance, in the court in which the criminal proceedings are to be heard, as soon as practicable after accepting instructions to so act.
- (2) A notice of appearance must be in the form of a document signed by or on behalf of the solicitor filing it containing:
  - (a) the full name of the accused person or appellant for whom the solicitor acts, and
  - (b) the full name, address and telephone number of the solicitor.

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Clause 6 Criminal Procedure Regulation 2005

Part 2 Listing of criminal proceedings

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- (3) A solicitor who ceases to act for an accused person or appellant in any criminal proceedings must file a notice of ceasing to act, in the court in which the proceedings are to be heard, as soon as practicable after ceasing to so act.
- (4) Subclause (3) does not apply if a notice of appearance for the accused person or appellant has already been filed by another solicitor.
- (5) As soon as practicable after a notice under this clause is filed, the registrar with whom the notice is filed must give a copy of the notice to the Director of Public Prosecutions and to the Criminal Listing Director.

### 6 Transcript

- (1) The Director of Public Prosecutions must notify the Criminal Listing Director and the registrar of the relevant Local Court:
  - (a) if a written transcript of the proceedings in the Local Court that led to the committal for trial of an accused person is not received by the Director of Public Prosecutions within the prescribed time after the accused person was committed for trial, or
  - (b) if a written transcript of the proceedings in the Local Court that led to an appeal is not received by the Director of Public Prosecutions within the prescribed time after the appellant lodged notice of the appeal under Part 3 of the *Crimes (Local Courts Appeal and Review) Act 2001*.
- (2) For the purposes of this clause, the **prescribed time** is:
  - (a) 2 weeks, in the case of an accused person (being a juvenile) who is in custody for the offence the subject of the proceedings, or
  - (b) 4 weeks, in any other case.
- (3) The Criminal Listing Director must take information received under this clause into account in fixing any date for the hearing or mention of the matter before the Supreme Court or the District Court.

### 7 Notice of readiness

- (1) As soon as practicable after determining that criminal proceedings are ready to proceed on the part of the Crown, the Director of Public Prosecutions must give to the Criminal Listing Director a notice of readiness for the proceedings.
- (2) The notice must be in the form approved for the time being by the Criminal Listing Director and must be accompanied by a draft of the indictment proposed to be presented in the proceedings.

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- (3) As soon as practicable after receiving the notice, the Criminal Listing Director:
    - (a) must give a copy of the notice, and of the draft indictment which accompanies the notice, to the registrar of the relevant court, and
    - (b) must give a copy of the draft indictment to each accused person or the accused person's solicitor.
  - (4) As soon as practicable after determining that the indictment to be presented in any criminal proceedings is to depart in any material particular from the draft indictment that accompanied the notice of readiness for the proceedings, the Director of Public Prosecutions must give to the Criminal Listing Director a draft of the indictment then proposed to be presented in the proceedings.
  - (5) The later draft must contain a notice, in the form approved for the time being by the Criminal Listing Director, indicating the nature and extent of the departures from the earlier draft.
  - (6) As soon as practicable after receiving a draft indictment under subclause (4), the Criminal Listing Director must give a copy of the draft indictment to the registrar and to each accused person or the accused person's solicitor.

## 8 Application to stay indictment

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

## 9 Notice of listing

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

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Clause 9 Criminal Procedure Regulation 2005

Part 2 Listing of criminal proceedings

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- (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.

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## **Part 3 Penalty notice offences**

### **10 Penalty notice offences**

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

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

The provisions of the Act relating to penalty notice offences and penalty notices are to apply, for the period ending on 30 June 2006, only to offences dealt with in that period in the areas of New South Wales covered by the following police Local Area Commands:

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

### **12 Repeal of Part and Schedule 2**

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

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Clause 13 Criminal Procedure Regulation 2005

Part 4 Fees

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### **Part 4 Fees**

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

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

#### **14 Amounts payable in relation to Sheriff's functions**

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

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

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

#### **16 When fees become due**

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

#### **17 General power to waive, postpone and remit fees**

- (1) 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 court 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.

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- (3) The senior judicial officer of any court may, by instrument in writing:
- (a) direct that any function of the court under this clause may be exercised by such registrars or other officers of the court, and in such circumstances and subject to such conditions, as are specified in the instrument, and
  - (b) vary or revoke any such instrument.
- (4) The powers conferred by this clause are to be exercised in accordance with such guidelines as may from time to time be published by the Attorney General.

**18 Postponement of fees for legally assisted persons**

- (1) The taking of any fee in respect of the business of the court in relation to proceedings involving a party who is a legally assisted person is, if the fee is payable by the party, to be postponed until judgment has been given in the proceedings.
- (2) The fee is not to be taken at all, or if taken must be remitted, if:
- (a) judgment in the proceedings is against the legally assisted person, or
  - (b) judgment is in favour of the legally assisted person, but costs are not awarded in his or her favour.
- (3) In this clause:
- legally assisted person*** means a person who is receiving legal assistance through a community legal centre that complies with the requirements of section 48H of the *Legal Profession Act 1987* or section 240 of the *Legal Profession Act 2004*, as the case requires.

## **2005 No 411**

Clause 19 Criminal Procedure Regulation 2005

Part 5 Intervention programs

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### **Part 5 Intervention programs**

#### **19 Circle sentencing intervention program**

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

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## Part 6 Miscellaneous

### 20 Public officers

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

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

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

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

### 22 Offences not within jurisdiction of District Court

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

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

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

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

### 24 Offences for which briefs of evidence not required

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

### 25 Exclusion of indemnity for personal liability for costs

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

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Part 6 Miscellaneous

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

### 26 Issue of subpoenas in AVO proceedings

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

### 27 Prescribed form of words

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

### 28 Form and manner of election and withdrawal of election

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

### 29 Compellability of spouses to give evidence in certain proceedings

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

### 30 Depositions by persons dangerously ill

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

### 31 Repeal and savings

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

**Schedule 1 Forms**

(Clause 3 (2))

**Form 1**

(Clause 21)

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

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

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

To their Honours the Judges of the Supreme Court. }

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

Date: .....

**Form 2**

(Clause 23)

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

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

R v (insert name of defendant)

To the Director of Public Prosecutions:

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

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

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Schedule 1 Forms

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 27)

**Important information about your rights**  
(Criminal Procedure Act 1986: section 265 (1) (b))

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

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

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

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

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

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

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

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

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

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

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

**Form 4**

(Clause 29)

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

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

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

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

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

Reasons: .....

.....  
Judge/Magistrate

Date: .....

**Form 5**

(Clause 30)

**Form of deposition**

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

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

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

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Criminal Procedure Regulation 2005

Schedule 1      Forms

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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.]*

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**Schedule 2    Penalty notice offences**

(Clause 10 (1) and (2))

<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

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## 2005 No 411

Criminal Procedure Regulation 2005

Schedule 3 Fees

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### Schedule 3 Fees

(Clauses 13 and 14)

#### Part 1 Court fees

	Column 1	Column 2
Item	Matter for which fee payable	Fee
1	Filing a court attendance notice under Chapter 4 of the <i>Criminal Procedure Act 1986</i>	\$65
2	Filing application to Local Court for annulment of conviction or sentence under Part 2 of the <i>Crimes (Local Courts Appeal and Review) Act 2001</i>	\$65
3	Filing notice of appeal, or application for leave to appeal, to District Court under Part 3 of the <i>Crimes (Local Courts Appeal and Review) Act 2001</i> :	
	(a) in relation to appellant's first such notice	\$79
	(b) in relation to appellant's second or subsequent such notice	\$43
4	To issue a certificate of conviction or dismissal	\$43
5	Retrieving, providing access to and furnishing a copy of any document (otherwise than as provided for by items 4, 6 and 8)	\$10, plus \$5 for each 10 pages (or part thereof) after the first 20 pages
6	Retrieving and providing access to, but not furnishing a copy of, any document	\$0
7	Supply of duplicate tape recording of sound-recorded evidence	\$36 per cassette
8	Copy of any deposition, transcript or diskette (unless otherwise provided for under any other Act):	
	(a) for each page, where the matter being transcribed is under 3 months old	\$66, plus \$7.90 per page for each page after the first 8 pages
	(b) for each page, where the matter being transcribed is 3 months old or older	\$78, plus \$9 per page for each page after the first 8 pages

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**Part 2 Sheriff's fees**

	<b>Column 1</b>	<b>Column 2</b>
<b>Item</b>	<b>Matter for which fee payable</b>	<b>Fee</b>
1	For attending a view by a jury in criminal proceedings	\$126

## 2005 No 411

Criminal Procedure Regulation 2005

Schedule 4 Circle sentencing intervention program

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# Schedule 4 Circle sentencing intervention program

(Clause 19)

## Part 1 Interpretation

### 1 Definitions

In this Part:

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

**Aboriginal person** means a person who:

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

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

**guidelines** means guidelines issued by the Minister under Part 7.

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

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

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

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

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

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

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

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

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*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.

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Schedule 4 Circle sentencing intervention program

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

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

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

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

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

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

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

### Part 3 Assessment of suitability to participate

#### 3 Notification of suitability assessment order

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

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

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

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

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

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**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,

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

### 8 Eligibility to participate in program

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

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

### 9 Measures that constitute the circle sentencing program

The program is constituted by the following measures:

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

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

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

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

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

The circle sentencing group meets:

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

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

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

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

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**10 Convening of circle sentencing group**

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

**11 Constitution of circle sentencing group**

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

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

### 12 Functions of circle sentencing groups

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

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

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

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

#### **14 Termination of circle sentencing group meeting**

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

#### **15 Victims to be heard**

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

#### **16 Procedure generally**

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

#### **17 Records of meetings**

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

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

### 18 Reconvening of the circle sentencing group

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

## Part 5 Project Officers

### 19 Project Officer (Circle Sentencing)

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

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

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

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

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

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

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

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- (5) The Minister may revoke the appointment of a person as a member of an Aboriginal Community Justice Group at any time by written notice to the person.
- (6) Nothing in this clause prevents the Minister from re-appointing a person as a member of an Aboriginal Community Justice Group under subclause (1) following the expiry of a previous period of appointment or the revocation of a previous appointment.

### 22 Functions of Aboriginal Community Justice Groups

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

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

### 23 Procedure

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

## Part 7 Guidelines

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

- (1) The Minister may from time to time issue guidelines, not inconsistent with this Schedule, for or with respect to any or all of the following matters:
  - (a) the constitution and procedure for meetings of Aboriginal Community Justice Groups and circle sentencing groups,
  - (b) the functions of such Aboriginal Community Justice Groups and circle sentencing groups and of members of such groups in connection with the program or assessment for participation in the program,
  - (c) any other matter in respect of which guidelines are permitted or required by this Schedule.

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

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

### **25 Evidence of statements generally inadmissible**

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

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

- (1) A relevant program participant must not disclose any information obtained in connection with:
- (a) the assessment of a referred offender's suitability to participate in the program, or
  - (b) the conduct of the program or an intervention plan arising out of the program.
- Maximum penalty: 20 penalty units.
- (2) Nothing in subclause (1) prevents a relevant program participant from disclosing information:
- (a) in connection with the conduct of an assessment of a referred offender's suitability to participate in the program, or

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- (b) to a victim of a referred offender about the outcome of a circle sentencing group for the offender, or
  - (c) for the purposes of any legal proceedings, or
  - (d) in accordance with a requirement of the *Ombudsman Act 1974* or with any request made by the Ombudsman, or
  - (e) with other lawful excuse.
- (3) In this clause:  
***relevant program participant*** means:
- (a) a member of an Aboriginal Community Justice Group, or
  - (b) a person selected to participate in a circle sentencing group for a referred offender under clause 11 (1) (f) or (2) (b), (c) or (d).

BY AUTHORITY

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