



New South Wales

Criminal Procedure Amendment (Traffic Offender Intervention Program) Regulation 2007

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*.

JOHN HATZISTERGOS, M.L.C.,
Attorney General

Explanatory note

The object of this Regulation is to amend the *Criminal Procedure Regulation 2005*:

- (a) to declare a traffic offender program to be an intervention program for the purposes of Part 4 of Chapter 7 of the *Criminal Procedure Act 1986*, and
- (b) to regulate entry into, and the conduct of, the program.

The traffic offender intervention program will enable certain offenders who have pleaded guilty to, or been found guilty of, certain traffic offences before a Local Court to be referred to community based road safety educational and training courses aimed at providing such offenders with the information and skills necessary to develop positive attitudes to driving and change driving behaviour and at developing safer driving behaviours.

Local Courts will be able to refer offenders to the program on and from 28 March 2008. However, the Director-General of the Attorney General's Department will be able to commence to approve courses for the purposes of the program, and the Minister will be able to issue guidelines, on and from 28 September 2007.

This Regulation is made under the *Criminal Procedure Act 1986*, including sections 4 (the general regulation-making power), 347 and 351.

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Clause 1 Criminal Procedure Amendment (Traffic Offender Intervention Program)
Regulation 2007

**Criminal Procedure Amendment (Traffic Offender
Intervention Program) Regulation 2007**

under the

Criminal Procedure Act 1986

1 Name of Regulation

This Regulation is the *Criminal Procedure Amendment (Traffic Offender Intervention Program) Regulation 2007*.

2 Amendment of Criminal Procedure Regulation 2005

The *Criminal Procedure Regulation 2005* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 2)

[1] Clause 3 Definitions

Insert in clause 3 (1) in alphabetical order:

Director-General means the Director-General of the Attorney-General's Department.

[2] Clause 19B

Insert after clause 19A:

19B Traffic offender intervention program

- (1) Schedule 6 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 6 for dealing with offenders is declared to be an intervention program for the purposes of Part 4 of Chapter 7 of the Act.

[3] Schedule 6

Insert after Schedule 5:

Schedule 6 Traffic offender intervention program

(Clause 19B)

Part 1 Preliminary

1 Definitions

In this Schedule:

approved traffic course means a course of study or training conducted by a government agency or an association that is approved under Part 5.

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

association means:

- (a) an association incorporated under the *Associations Incorporation Act 1984*, or

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Schedule 1

Amendments

(b) an Aboriginal association incorporated under the *Aboriginal Councils and Associations Act 1976* of the Commonwealth.

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

guidelines means guidelines issued by the Minister under Part 6.

program means the program of measures described in Part 4.

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

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

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

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

Note. Section 5 of the *Road Transport (General) Act 2005* defines **road transport legislation** to mean the following:

- (a) that Act,
- (b) the *Road Transport (Driver Licensing) Act 1998*,
- (c) the *Road Transport (Heavy Vehicles Registration Charges) Act 1995*,
- (d) the *Road Transport (Safety and Traffic Management) Act 1999*,
- (e) the *Road Transport (Vehicle Registration) Act 1997*,
- (f) the *Motor Vehicles Taxation Act 1988*,
- (g) any other Act or regulation (or any provision of such an Act or regulation) prescribed by the regulations,
- (h) any regulation made under any Act referred to in paragraphs (a)–(f) (or any provision of such an Act).

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

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

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

2 Commencement of this Schedule

- (1) This Schedule commences on 28 March 2008, except as provided by subclause (2).
- (2) This Part and Parts 5 and 6 commence on 28 September 2007.

Part 2 Overview of process

3 Summary of process involved in entry into and participation in program

- (1) The following is a summary of the process involved in referring a traffic offender for participation in the program:
 - (a) **Court determines whether an offender may be referred for participation**

A Local Court determines whether a traffic offender may be referred to the program having regard to the matters specified in clause 4.
 - (b) **Court makes a program participation order**

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

The traffic offender enters into a written agreement to participate in the program as a condition of bail or deferral of sentence.
 - (d) **Traffic offender to comply with requirements of approved traffic course**

The traffic offender complies with the requirements of the approved traffic course. A failure to do so may result in the offender being returned to the Local Court for the Court to deal with the offender.
- (2) This clause does not affect the meaning or interpretation of any provision of this Schedule that it summarises.

Part 3 Determining eligibility to participate in program

4 Eligibility to participate in program

- (1) A person is eligible to be referred by a Local Court to participate in the program only if:
 - (a) the person is a traffic offender, and
 - (b) the person has not been sentenced for the traffic offence, and
 - (c) the person enters into a written agreement to participate in the program, and
 - (d) the Court considers that, having regard to the matters referred to in subclause (2), the person is suitable for participation in the program.
- (2) A Local Court is to have regard to the following matters in determining whether a traffic offender is suitable for participation in the program:
 - (a) the extent to which the offender's character, antecedents, age, health and mental condition would be likely to prevent the offender's participation in the program or disrupt the conduct of the program,
 - (b) the nature of the offence committed by the offender,
 - (c) any extenuating circumstances in which the traffic offence was committed,
 - (d) the impact of the offence on the community and the victim of the offence (if any),
 - (e) the offender's history of convictions for traffic offences (if any),
 - (f) such other matters as the Court considers relevant.
- (3) When considering a traffic offender's history for the purposes of subclause (2), the Local Court is to consider the following:
 - (a) whether this is the traffic offender's first offence,
 - (b) if it is not the traffic offender's first offence, the nature and seriousness of any previous offence or offences.

Part 4 The traffic offender intervention program

5 Objectives of the program

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

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

6 Measures that constitute the traffic offender intervention program

The program is constituted by the following measures:

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

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

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

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

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

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

7 Reports to Local Court on compliance

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

8 Approved traffic course provider to make records

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

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

Part 5 Approved traffic courses**9 Director-General may approve courses for program**

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

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

10 Approved traffic course to comply with guidelines

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

- (a) the course complies with any content requirements specified in the guidelines that are relevant to the course, and

- (b) the course is otherwise conducted in accordance with any guidelines that are relevant to the course.

Part 6 Guidelines

11 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 keeping of records in respect of participation in the program or approved traffic courses undertaken as part of the program,
 - (b) the monitoring of participation of referred traffic offenders in the program and in approved traffic courses undertaken as part of the program,
 - (c) the functions and responsibilities of approved traffic course providers in connection with the program,
 - (d) the content and conduct of approved traffic courses,
 - (e) the process of identifying the availability of a suitable approved traffic course,
 - (f) any other matter in respect of which guidelines are permitted or required by this 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 7 Disclosure of information in connection with program

12 Evidence of statements generally inadmissible

- (1) Evidence of anything said, or any admission made, by a referred traffic offender in the course of participating in an approved traffic course is not admissible in any criminal or civil proceedings.

- (2) Subclause (1) does not apply to the criminal proceedings in respect of which a referred traffic offender was referred.

13 Disclosure of information in connection with the program by approved traffic course providers and others prohibited

- (1) An approved traffic course provider that conducts an approved traffic course undertaken by a referred traffic offender as part of the program (or any person involved in conducting the course for or on behalf of the provider) must not disclose the name of, or any other identifying information about, the offender that is obtained in connection with the conduct of the program or course.
Maximum penalty: 20 penalty units.
- (2) Nothing in subclause (1) prevents an approved traffic course provider or person from disclosing information of the kind referred to in that subclause:
- (a) in connection with the conduct of the program or an approved traffic course undertaken as part of the program, or
 - (b) for the purposes of any legal proceedings, or
 - (c) in accordance with a requirement of the *Ombudsman Act 1974* or with any request made by the Ombudsman, or
 - (d) with other lawful excuse.