

[REDACTED]

31 March 2023

Dear [REDACTED]

### **Formal Access Application – Notice of Decision**

I refer to your formal access application under the *Government Information (Public Access) Act 2009* (GIPA Act) that you lodged with the Department of Communities and Justice (the Department) on 16 October 2022. I note that you have consented to an extension of 31 March 2023 to decide this application.

In your application, you requested access to the following records:

*Finalised Briefing Notes relating to the decision to cancel the ‘Forum Sentencing Program’*

### **Decision**

I am authorised by the principal officer of the Department to decide your access application under section 9(3) of the GIPA Act.

Under section 53 of the GIPA Act, the Department must undertake reasonable searches as may be necessary to find any of the government information applied for that was held by the Department when the application was received, using the most efficient means reasonably available to the Department.

On 28 February 2023, a search of the EDRMS records management database was conducted by Corrective Services NSW’s Strategy & Policy business unit. This search identified one record as falling within the scope of your application. The record identified is a briefing note titled ‘Closure of Forum Sentencing Program’. The results of this search have been certified by the Assistant Commissioner responsible for the business unit and their Executive Assistant.

I am thus satisfied that a thorough search has been conducted and that the relevant records have been identified.

I have considered your request in view of the objectives of the GIPA Act where you have a legally enforceable right to obtain information unless there is an overriding public interest against disclosure of the subject information. Further, I have also considered the requirements of section 74 of the GIPA Act, which provides that an

agency may delete information from a record if the deleted information does not fall within the scope of the information applied for.

In deciding your application, I was required to conduct a “public interest test” where the public interest considerations favouring disclosure of government information were weighed against those factors that do not favour disclosure. On this occasion, I have not identified any overriding public interest factors against the disclosure of the information that you have requested.

Therefore, in accordance with section 58(1)(a) of the GIPA Act, I have decided to provide you with a complete copy of the information that falls within the scope of your request.

### **Form of access and processing charges**

Access to the briefing note will be provided in the form of an electronic pdf copy.

As your request is for non-personal information, processing charges of \$30/hour apply to this application.



Please note that some material has been redacted and marked as ‘out of scope’ of your request in accordance with section 74 of the GIPA Act. This information has been removed in accordance with our proposal to exclude third party personal information which was communicated to you in the acknowledgement letter for your application, dated 3 November 2022. As the Department did not receive an objection to this proposal, some third-party personal information has been removed.

### **Review rights**

If you disagree with any of the decisions in this notice that are reviewable, you may seek a review under Part 5 of the GIPA Act. You have three review options:

1. An internal review lodged with the Department’s Open Government, Information and Privacy Unit, within 20 working days of the date of this Notice;
2. An external review by the NSW Information Commissioner, within 40 working days of the date of this Notice; or
3. An external review by the NSW Civil and Administrative Tribunal, within 40 working days of the date of this Notice.

To assist you, I have enclosed a fact sheet published by the Information and Privacy Commission (IPC), entitled *Your review rights under the GIPA Act*. You will also find some useful information and frequently asked questions on the IPC’s website: [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)

You can also contact the IPC on freecall1800 IPC NSW (1800 472 679).

### **Further information**

If you have any questions about this notice or would like any further information, please contact me on 02 9716 2662 or at [infoandprivacy@dcj.nsw.gov.au](mailto:infoandprivacy@dcj.nsw.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'AM', with a long horizontal flourish extending to the right.

Alicia McKenzie  
**OGIP Solicitor**  
**Open Government, Information and Privacy Unit**  
**Department of Communities and Justice**



In O/S:  
18 SEP 2017

SEL2017-2323

## Closure of Forum Sentencing program

### Purpose: Seeking decision

<b>Topic</b>	Approval is sought from the Attorney General to remove the Forum Sentencing program from the <i>Criminal Procedure Regulation 2010</i> .
<b>Key Analysis</b>	<p>The Forum Sentencing program is an intervention program established in the <i>Criminal Procedure Regulation 2010</i>.</p> <p>Referrals to the program have diminished over time leading to an inefficient and high cost service model. Further, analysis and feedback indicates the program is not viable for the following reasons:</p> <ol style="list-style-type: none"> <li>1. The program does not strategically align with the broader criminal justice system;</li> <li>2. BOCSAR research has confirmed the program does not meet the objective to reduce reoffending;</li> <li>3. The program does not divert offenders away from custody (as it generally deals with offenders who are not being considered for a custodial sentence);</li> <li>4. The central operating model does not meet the needs of referring magistrates.</li> </ol> <p>Following consultation with stakeholders, it is proposed approval be sought to close the Forum Sentencing program and that its funding be diverted to better assist registered victims of crime.</p> <p>Closure of the program will require an amendment to remove Division 3 from the <i>Criminal Procedure Regulation 2010</i>.</p>

### Recommendations

- 1 It is recommended that the Attorney General approve the removal of the Forum Sentencing program from the *Criminal Procedure Regulation 2010*.

### Timeframes

Not urgent.

### Key reasons

- Forum Sentencing is an inefficient, high cost service model.
- Consultation with the program’s key stakeholders, including the Chief Magistrates Office, Commissioner for Victims Rights, NSW Police and the Victims Advisory Board has been unable to assure future viability and sustainability.
- Consultation with Justice Strategy and Policy has confirmed closure of the program will not reduce the sentencing options available to the Local Court.

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NSW Department of Communities and Justice, Legal

## Sensitive – NSW Government

- At the Corrective Services NSW (CSNSW) Victims of Crime Workshop, consultation with key victims support groups and direct victims has highlighted the significant need for increased assistance to victims once an offender has been sentenced; CSNSW intends to collaborate with Victims Services, Department of Justice and use the funding from Forum Sentencing to increase support to registered victims.
- CSNSW has informed stakeholders the program is no longer sustainable and consideration is underway to determine how the resources can be utilised to better support victims of crime. Stakeholders have generally been accepting of this position and have acknowledged the need to improve services for victims.

Out of Scope

- CSNSW is undertaking work to determine how its Restorative Justice Unit could increase the range of restorative justice options available to victims. This work includes applying experiences from the Forum Sentencing program and considering how program resources can be most effectively utilised.
- Should the Attorney General approve the removal of Forum Sentencing from the *Criminal Procedure Regulation 2010*, CSNSW will work with Justice Strategy and Policy on the necessary legislative amendment. CSNSW would also inform stakeholders of program closure and operational arrangements.

### Context

The Forum Sentencing program commenced in 2005 and has undergone significant regulatory and operational changes throughout time. A history of the program's development is provided at **Tab 1**. In summary, the program initially dealt with more serious offences, was operated out of Local Courts and did not require a direct victim to participate in the program.

In April 2014 Justice Strategy and Policy, Department of Justice undertook significant reform of the program aimed towards increasing cost efficiencies and referrals. This resulted in a centralised operational model that required a direct victim to participate in the program. Substantial stakeholder engagement and resource development occurred to support the centralised model. In the first year the program only received 50% of the expected referral rate.

In April 2015 the Forum Sentencing's program management was transitioned to Offender Management and Programs, CSNSW. Due to the low referral rates and stakeholder dissatisfaction, CSNSW engaged with NSW Police and the Chief Magistrate's Office to explore systemic referral pathways. It was not possible to systemically generate referrals to the Forum Sentencing program.

Substantial efforts were made at the local level to increase referrals to the program. This included consultation with Magistrates, providing a daily list of eligible matters to the court and temporarily basing staff in Local Courts. In addition, information sessions were delivered to Police Prosecutors, Legal Aid, legal practitioners and service providers. These efforts did not result in ongoing and sustained referrals. Based on feedback from the Chief Magistrates Office, this is likely attributable to the program not meeting the needs of the judiciary.

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## Sensitive – NSW Government

Another key issue has been the limited victim interest in the program. Of the matters referred, only around 40% of cases will result in a conference. This is largely due to victims not wanting to participate in the program.


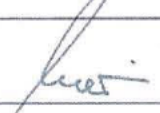

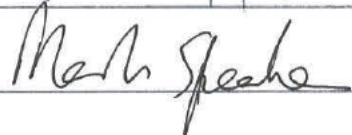
The low referral and uptake rate has increased the unit cost of the program and has not resulted in the intended cost efficiencies of the centralised operational model. A summary of referral rates, uptake rates and unit costs is provided at **Tab 2**.

The CSNSW Victims Register is established under the *Crimes (Administration of Sentences) Act 1999*. The function of the Victims Register is to provide information to victims about an offender, including seeking submissions when an offender is being considered for parole. There are over 1000 registered victims and the register is operated by two staff. This staffing ratio means the current service is generally administrative and only limited assistance can be provided.

### Attachments

Attachment number	Name of attachment
1	History of Forum Sentencing program development
2	Overview of referral rates and unit costs

### Approval

Position	Signature and date
Dr Anne Marie Martin, Assistant Commissioner Offender Management and Programs <b>Out of Scope</b>	 15.9.17
Peter Severin, Commissioner of Corrective Services	 15.8.17
Secretary, Department of Justice	 21/9/17.
Attorney General (re-signed)	 15/12/17



## Tab 1- History of Forum Sentencing Program Development

### Background

Forum Sentencing is a program that operates within the NSW Local Court jurisdiction. Facilitated by CSNSW, it functions as an intervention program through selected Local Courts across the Hunter, Sydney and Northern NSW, where magistrates are able to refer eligible adult offenders to conferences.

Forum Sentencing facilitates a conference that brings an offender and victim together with a facilitator, police officer, support people and others affected by an offence. The group discuss what happened and the harm caused by the offence, as well as prepares a joint Intervention Plan. The plan focuses on the offender repairing some of the harm caused to the victim.

The program is available post-plea and prior to sentencing. An Intervention Plan may be taken into account by the sentencing court. Completion of the plan may form part of the offender's sentence and include the making of an apology, reparation to the victim; participation in appropriate rehabilitative program/s; and other measures aimed at repairing the harm caused and helping offenders address their offending behaviour. The Intervention Plan is supervised by Forum Sentencing staff and reports are provided to the court on an offender's progress.

### History

The Forum Sentencing Program started as a two-year Pilot Program called the Community Conference Intervention Program. The Pilot Program was underpinned by the *Criminal Procedure Regulation 2005* (the *Criminal Procedure Amendment (Community Conference Intervention Program) Regulation 2005* inserted Schedule 5 into the principal Regulation).

The pilot was overseen by a working group chaired by the Attorney General's Department which comprised representatives of the Department of Corrective Services, Department of Juvenile Justice, Legal Aid Commission, NSW Law Society, NSW Police Force and Youth Justice Advisory Committee.

### Timeline

The program has gone through significant review, consultation and changes since the pilot. The below table is a timeline of program changes:

Year	Program history
2005	<p>The pilot program Community Conference Intervention Program implemented. Program governed by Schedule 5 of the <i>Criminal Procedure Regulation 2005</i>. Objectives of the program in Schedule 5</p> <ul style="list-style-type: none"> <li>(a) to provide for the greater participation in the justice process of offenders and victims and the families and support persons of offenders and victims;</li> <li>(b) to increase offenders' awareness of the consequences of their offences for their victims and the community;</li> <li>(c) to promote the reintegration of offenders into the community;</li> <li>(d) to increase the satisfaction of victims with the justice process;</li> <li>(e) to increase the confidence of the community in the justice process; and</li> <li>(f) to provide a participating court with an additional sentencing option.</li> </ul> <p>The pilot commenced in September 2005 at Liverpool Local Court and Tweed</p>

	Heads Local Court circuit and operated for two years.
2007	<p>BOCSAR released the 'Evaluation of the NSW Community Conferencing for Young Adults Pilot Program'. The evaluation involved a survey of conference participants after the completion of the conference and interviews with key stakeholders.</p> <p>The BOCSAR evaluation found that victims who participated in conferences or forums were satisfied with the way their case was dealt with during the conference and with the intervention plans agreed to at the conference or forum. The evaluation provided an overview of stakeholder satisfaction with the implementation and operation of the pilot program.</p> <p>The Attorney General's Department considered the BOCSAR report and consulted with the working party on changes to the program and a gradual state-wide rollout</p>
2008	<p>Amendments made to Schedule 5 of the <i>Criminal Procedure Regulation 2005</i> that included:</p> <ul style="list-style-type: none"> <li>• Change the name of the Program to "Forum Sentencing".</li> <li>• Include an additional objective "to reduce re-offending"</li> <li>• Change the eligibility criteria <ul style="list-style-type: none"> <li>○ remove the age limit</li> <li>○ remove the requirement that a person has not previously been sentenced to a term of imprisonment (including a suspended term of imprisonment);</li> <li>○ enabled certain domestic violence offences involving "non-intimate" relationships to be included in the Program</li> <li>○ exclude from the Program certain "regulatory driving offences" which have no direct victim</li> </ul> </li> </ul>
2009	<p><u>BOCSAR</u> In August 2009 BOCSAR released a second evaluation of Forum Sentencing, <i>Does Forum Sentencing reduce re-offending?</i></p> <p>BOCSAR found no evidence that Forum Sentencing participants performed better on any of these outcomes. The rate of reconviction within 12 months for offenders in the Forum Sentencing program was 24.2% and for the comparison group it was 25.4%.</p> <p><u>Program changes</u> In 2009 the Attorney General's Department reported to Cabinet on the BOCSAR evaluation and that the 2008 amendments had actually resulted in reducing the number of referrals to the Forum Sentencing program. This was due to the eligibility requirement that an offender must be facing imprisonment but not have previously been sentenced to imprisonment (including a suspended sentence of imprisonment). The combined effect of these two eligibility criteria is that it left only a small pool of eligible offenders.</p> <p>The Attorney General's Department made recommendations to Cabinet for amendments to the program to increase the number of matters referred to the program to the target level and better focus Forum Sentencing on reducing re-offending. This involved making the following changes to the program:</p> <ul style="list-style-type: none"> <li>• include in the program the use of a standard assessment tool</li> </ul>



	<p>(Criminogenic Needs Assessment) to identify factors contributing to an offender's criminal behaviour, and provide information to Forums regarding the assessment to assist in the development of intervention plans; and</p> <ul style="list-style-type: none"> <li>• amend Schedule 5 of the <i>Criminal Procedure Regulation 2005</i> to remove the eligibility criteria that excludes from the program offenders who have previously been sentenced to imprisonment (including a suspended sentence of imprisonment)</li> </ul>
2013	<p>BOCSAR released its third evaluation of Forum Sentencing, <i>Rates of recidivism among offenders referred to Forum Sentencing</i>. BOCSAR compared the reconviction rates of about 500 offenders referred to Forum Sentencing with the same number dealt with through the conventional court processes.</p> <p>BOCSAR also found that there was no difference in re-offending rates between those who participated in Forum Sentencing and those who went through conventional court processes. This was consistent with its 2009 study.</p>
2014	<p>Forum Sentencing restructured under instructions from Justice Strategy and Policy, Department of Justice. The focus of the restructure was to create cost efficiencies. The restructure involved:</p> <ul style="list-style-type: none"> <li>• moving to a centralised operating model from Parramatta</li> <li>• closing 13 Local Court sites (servicing 52 Local Courts)</li> <li>• deleting 44 positions</li> <li>• creating 11 new positions</li> </ul> <p>At this time the program moved to only completing a conference if a direct victim wanted to participate.</p>
2015	<p>In April 2015 Forum Sentencing was transferred to Offender Management and Programs division, Corrective Services NSW.</p>

### Forum Sentencing Eligibility Requirements

Year	Eligible participants	Offences	Victim participation
2005	<ul style="list-style-type: none"> <li>• Adult 18-24</li> <li>• Likely to be facing imprisonment</li> <li>• Pled or found guilty</li> </ul>	<ul style="list-style-type: none"> <li>• Summary offences, or indictable offences tried summarily</li> <li>• Driving and drug offences included</li> <li>• All DV Offences excluded</li> </ul>	<ul style="list-style-type: none"> <li>• Offence need not have a direct victim</li> <li>• Victim need not participate in the conferences</li> </ul>
2008	<ul style="list-style-type: none"> <li>• Adult 18 +</li> <li>• Plea of guilty entered</li> <li>• Offenders with history of imprisonment or suspended sentences excluded</li> </ul>	<ul style="list-style-type: none"> <li>• Some DV offences now included (non-intimate relationship)</li> <li>• Some driving offences with no direct victims now excluded</li> </ul>	<ul style="list-style-type: none"> <li>• Offence should have a direct victim</li> <li>• Victim need not participate in the conferences but their wishes must be considered</li> </ul>
2010	<ul style="list-style-type: none"> <li>• Adult 18 +</li> <li>• Plea of guilty</li> </ul>	<ul style="list-style-type: none"> <li>• Driving offences with no direct victims excluded</li> </ul>	<ul style="list-style-type: none"> <li>• Offence should have a direct victim</li> </ul>

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	<p>entered</p> <p>Offender with history of imprisonment or suspended sentences no longer excluded</p>	<ul style="list-style-type: none"> <li>• Drug possessions excluded</li> <li>• More serious violent offences included</li> </ul>	<ul style="list-style-type: none"> <li>• Victim need not participate in the conferences but their wishes must be considered</li> </ul>
2014	<ul style="list-style-type: none"> <li>• Adult 18 +</li> <li>• Plea of guilty entered</li> </ul>	<p>Excluded offences include:</p> <ul style="list-style-type: none"> <li>• Murder</li> <li>• Manslaughter</li> <li>• Certain personal violence offences</li> <li>• Certain drug offences</li> <li>• Serious firearms and weapons offences</li> </ul>	<ul style="list-style-type: none"> <li>• Offence must have a direct victim</li> <li>• Victim or their representative must consent to participate in the conference</li> </ul>

## Tab 2- Overview of Referral Rates and Unit Costs

The program has gone through significant regulatory and operational changes aimed at increasing referrals to the program and increasing cost efficiency of the program. The changes have not resulted in improved referrals, uptake or costs efficiency.

Below is a table outlining the referral rates, number of conferences and unit costs\*:

Financial Year	Operating sites	Budget allocation	Expected Referrals	Actual Referrals	Conferences held	Cost per conference
2005/2006	Liverpool local court and Tweed Heads local court circuit	\$633,000	200	165	81	\$7,815
2006/2007	Liverpool local court and Tweed Heads local court circuit	\$633,000	200	157	133	\$4,759
2007/2008	Liverpool local court and Tweed Heads local court circuit	\$850,000	150	108	83	\$10,240
2008/2009	4 sites – Liverpool, Tweed Heads, Burwood and Campbelltown	1.9 million	400	194	132	\$14,393
2009/2010	4 sites – Liverpool, Tweed Heads, Burwood and Campbelltown	2.78 million	400	286	181	\$15,359
2010/2011	10 sites – Liverpool, Tweed Heads, Burwood, Campbelltown, Newcastle, Gosford, Parramatta, Downing Centre, Bankstown, Coffs Harbour.	5.6 million	1000	511	306 Victims present at 178 conferences	\$18,300
2011/2012	13 sites – Bankstown, Burwood, Campbelltown, Coffs Harbour, Downing Centre, Gosford, Lismore, Liverpool, Maitland, Newcastle, Parramatta, Port Macquarie and Tweed Heads.	8.9 million	1300	726	458 Victims present at 243 conferences	\$19,432
2012/2013	13 sites servicing 52	12.5 million	1300	728	536	\$21,156

	local courts					
2014	January 2014 the program began to transition to a centralised model providing the service to the existing 52 local courts. All site locations closed by July 2014	5 million	500	225	173	\$28,901
2015	Central office servicing the existing 52 local courts	2 million	500	235	113	\$17,699
2016	Central office servicing the existing 52 local courts	2 million	500	198	80	\$25,000
2017 – January to June	Central office servicing the existing 52 local courts	1 million (based on annual budget of 2 million)	500	67	17	\$58,823

\*These figures are approximate based on available data.