



New South Wales

# Drug Court Legislation Amendment Act 2014 No 45

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# Drug Court Legislation Amendment Act 2014 No 45

Act No 45, 2014

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An Act to amend the *Drug Court Act 1998* and the *Crimes (Administration of Sentences) Act 1999* to implement recommendations arising from a review of legislation governing the compulsory drug treatment program; and for other purposes. [Assented to 17 September 2014]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Drug Court Legislation Amendment Act 2014*.

**2 Commencement**

This Act commences on the date of assent to this Act.

## Schedule 1 Amendment of Drug Court Act 1998 No 150

### [1] Section 5A Definition of “eligible convicted offender”

Omit section 5A (1) (b). Insert instead:

- (b) except as provided for by subsection (1A), the person has been sentenced to a term of imprisonment for the offence to be served by way of full-time detention and at the time that the sentence was imposed:
  - (i) the unexpired non-parole period of the sentence was a period of at least 18 months, and
  - (ii) the unexpired total sentence was a period of not more than 6 years, and

### [2] Section 5A (1) (c)

Omit the paragraph.

### [3] Section 5A (1A)

Insert after section 5A (1):

- (1A) Subsection (1) (b) does not prevent a person whose parole order has been revoked from being an eligible convicted offender if the person is a relevant person within the meaning of section 18BA (State Parole Authority to refer certain offenders whose parole is revoked to Drug Court).

### [4] Section 5A (2)

Omit the subsection. Insert instead:

- (2) A person is not an eligible convicted offender if:
  - (a) the offence for which the person has been convicted involved the use of a firearm, or
  - (b) the person has been convicted at any time of any of the following:
    - (i) murder, attempted murder or manslaughter,
    - (ii) sexual assault of an adult or child or a sexual offence involving a child,
    - (iii) any offence involving the violent use of a firearm,
    - (iv) an offence under section 23 (2), 24 (2), 25 (2), 26, 27 or 28 of the *Drug Misuse and Trafficking Act 1985* involving a commercial quantity or large commercial quantity of a prohibited plant or prohibited drug within the meaning of that Act,
    - (v) any offence prescribed by the regulations for the purposes of this section.

### [5] Section 18BA

Insert after section 18B:

#### **18BA State Parole Authority to refer certain offenders whose parole is revoked to Drug Court**

- (1) This section applies in respect of a person (a *relevant person*) whose parole has been revoked in respect of a sentence that has previously been the subject of a compulsory drug treatment order which has expired under section 106E (b) of the *Crimes (Administration of Sentences) Act 1999*.

- (2) It is the duty of the State Parole Authority in respect of a relevant person:
  - (a) to ascertain whether there are grounds on which the Drug Court might find the person to be an eligible convicted offender, and
  - (b) if so, to refer the person to the Drug Court to determine whether the person should be the subject of a compulsory drug treatment order.
- (3) If the State Parole Authority refers a relevant person to the Drug Court under this section, the Secretary of the Authority must give the registrar of the Drug Court such documents and materials relating to the person prescribed by the regulations as may be requested by that registrar.
- (4) The duty imposed on the State Parole Authority by this section is to be exercised as soon as practicable after the relevant person's parole is revoked.
- (5) No appeal lies against the State Parole Authority's decision to refer or not to refer a relevant person to the Drug Court for a determination as to whether the person should be the subject of a compulsory drug treatment order.

**[6] Section 18C Compulsory drug treatment detention**

Insert at the end of the section:

- (2) If an eligible convicted offender whose parole order has been revoked is referred to the Drug Court by the State Parole Authority under section 18BA, the Drug Court may make a new compulsory drug treatment order in respect of the offender.
- (3) When making an order under subsection (2), the Drug Court must have regard to the circumstances of the revocation of the offender's parole order, including any charge or conviction for an offence committed by the offender while serving any sentence by way of compulsory drug treatment detention or while on release on parole.

**[7] Section 18E Assessment of eligibility and suitability by the multi-disciplinary team**

Insert "weapons or" after "offences involving" in section 18E (2) (c1).

**[8] Section 18E (2) (c2)**

Insert after section 18E (2) (c1):

- (c2) the offender's history of committing offences related to the offender's long-term drug dependency and associated lifestyle,

**[9] Section 18G Effect of compulsory drug treatment order**

Insert at the end of section 18G (c):

- , and
- (d) suspending any entitlement of the eligible convicted offender to be considered for parole under the *Crimes (Administration of Sentences) Act 1999*.

**[10] Section 29 Court business**

Omit "administrative" from section 29 (2) (a).

**[11] Schedule 2 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

any other Act that amends this Act

**[12] Schedule 2, Part 6**

Insert after Part 5:

**Part 6 Provisions consequent on enactment of Drug Court  
Legislation Amendment Act 2014**

**7 Definition**

In this Part, *amending Act* means the *Drug Court Legislation Amendment Act 2014*.

**8 Eligible convicted offenders**

Section 5A (as in force before the commencement of the amending Act) continues to apply to persons sentenced before its amendment.

**9 Effect of compulsory drug treatment order**

The amendment made to section 18G by the amending Act applies only to compulsory drug treatment orders made under this Act after the commencement of the amending Act.

## **Schedule 2 Amendment of other legislation**

### **2.1 Crimes (Administration of Sentences) Act 1999 No 93**

#### **[1] Section 106I Sanctions for non-compliance with personal plan**

Insert after section 106I (3):

- (3A) However, the Commissioner is not required to refer an offender to the Drug Court under subsection (3) for a failure to comply with a condition of the offender's compulsory drug treatment personal plan if the Director has made a regression direction under section 106MA with respect to the offender for that failure.

#### **[2] Section 106MA**

Insert after section 106M:

##### **106MA Director may make regression directions**

- (1) If the Director is satisfied that an offender has failed to comply in a serious respect with any condition of the offender's compulsory drug treatment personal plan, the Director may direct that the offender regress from one stage of compulsory drug treatment detention to a lower stage for a specified period (not exceeding 3 months).
- (2) The Director must notify the Drug Court of the direction within 7 days of issuing the direction.
- (3) The regulations may make provision for or with respect to the criteria to be used by the Director in determining whether to make a direction under this section.
- (4) The offender may apply to the Drug Court for a review of the direction within 14 days after a direction is issued.
- (5) In reviewing a direction, if the Drug Court is satisfied, on the balance of probabilities, that the offender has failed to comply in a serious respect with any condition of the offender's compulsory drug treatment personal plan, the Drug Court may make an order:
  - (a) confirming the direction, or
  - (b) setting aside the direction, or
  - (c) confirming the direction, but amending its terms.
- (6) No appeal lies against an order made by the Drug Court under this section.

#### **[3] Section 106Q Revocation of compulsory drug treatment order**

Insert after section 106Q (1) (c):

- (c1) if, in the opinion of the Drug Court (having regard to advice provided by the Director and the offender's progress in the compulsory drug treatment program), the offender is unlikely to make any further progress in the offender's compulsory drug treatment program, or

#### **[4] Section 106W Conviction and sentencing of offenders for certain offences while compulsory drug treatment order is in force**

Omit "is convicted" from section 106W (1). Instead instead "has been convicted".

**[5] Section 106W (1)**

Omit “for an offence that occurred before the offender’s compulsory drug treatment order was made”.

Instead instead “that is being served concurrently or partly concurrently with a sentence in relation to which the offender’s compulsory drug treatment order was made”.

**[6] Section 137 Consideration of parole when offender first eligible for parole**

Omit section 137 (2). Insert instead:

- (2) Despite subsection (1), the Parole Authority:
  - (a) may defer consideration of an offender’s case until not less than 21 days before the offender’s parole eligibility date if it is of the opinion:
    - (i) that it is unable to complete its consideration because it has not been furnished with a report required to be made to it, or
    - (ii) that there are other relevant matters requiring further consideration, and
  - (b) may consider an offender’s case less than 60 days before the offender’s parole eligibility date where the Drug Court has revoked the offender’s compulsory drug treatment order.

## **2.2 Crimes (Administration of Sentences) Regulation 2008**

### **Clause 233 Circumstances constituting manifest injustice**

Insert after clause 233 (1) (h):

- (i) where the Drug Court has revoked the offender’s compulsory drug treatment order under the Act.

[Second reading speech made in—  
Legislative Assembly on 26 March 2014  
Legislative Council on 10 September 2014]