



New South Wales

Drug Court Regulation 2020

under the

Drug Court Act 1998

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Drug Court Act 1998*.

MARK SPEAKMAN, MP
Attorney General, and Minister for the Prevention of Domestic Violence

Explanatory note

The object of this Regulation is to remake, without amendments, the *Drug Court Regulation 2015*, which was repealed on 1 September 2020 by section 10(2) of the *Subordinate Legislation Act 1989*.

The Regulation makes provision for the following matters—

- (a) eligibility criteria for acceptance into a Drug Court program,
- (b) the courts and proceedings from which a person may be referred to the Drug Court,
- (c) the practice and procedures of the Drug Court
- (d) other minor matters.

This Regulation is made under the *Drug Court Act 1998*, including section 5(1)(e), 5A(1)(f), 6(1), 7(1)(b), 7A(2)(d), 7B(2)(d), 18(2), 18B(1), 31(1) and (2)(b) and 32 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature.

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1 Name of Regulation

This Regulation is the *Drug Court Regulation 2020*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Note. This Regulation replaces the *Drug Court Regulation 2015*, which was repealed on 1 September 2020 by section 10(2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation—

facsimile means facsimile transmission, the Internet or any other means of electronic transmission of information in a form from which written material is capable of being reproduced with or without the aid of any other device or article.

the Act means the *Drug Court Act 1998*.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

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

4 Eligible person

For the purposes of section 5(1)(e) of the Act, the following criteria are prescribed as other criteria that a person must satisfy to be an eligible person within the meaning of the Act—

- (a) the person's usual place of residence must be within one of the following local government areas—
Canterbury-Bankstown, City of Blacktown, City of Campbelltown, City of Cessnock, City of Fairfield, City of Hawkesbury, City of Lake Macquarie, City of Liverpool, City of Maitland, City of Newcastle, City of Parramatta, City of Penrith, City of Sydney, Cumberland, Port Stephens, The Hills Shire,
- (b) the person must not be suffering from any mental condition that could prevent or restrict the person's active participation in a program under the Act,
- (c) the person must be of or above the age of 18 years,
- (d) criminal proceedings against the person for the offence with which the person is charged must not be criminal proceedings that are within the Children's Court's jurisdiction to hear and determine.

5 Eligible convicted offender

For the purposes of section 5A(1)(f) of the Act, the following criteria are prescribed as other criteria that a person must satisfy to be an eligible convicted offender within the meaning of the Act—

- (a) the person's usual place of residence must be within one of the following local government areas—
Bayside, Burwood, Camden, Canada Bay, Canterbury-Bankstown, City of Blacktown, City of Campbelltown, City of Fairfield, City of Hawkesbury, City of Liverpool, City of Parramatta, City of Penrith, City of Randwick, City of Ryde, City of Sydney, City of Willoughby, Cumberland, Georges River, Hornsby, Hunter's Hill, Inner West, Ku-ring-gai, Lane Cove, Mosman, Northern Beaches, North Sydney, Strathfield, Sutherland Shire, The Hills Shire, Waverley, Woollahra,
- (b) the person must be of or above the age of 18 years,
- (c) criminal proceedings against the person for the offence for which the person was convicted must not be criminal proceedings that are within the Children's Court's jurisdiction to hear or determine,
- (d) the person must be male.

6 Referring courts—referral during proceedings

For the purposes of sections 6(1) and 7(1)(b) of the Act, the following courts and proceedings are prescribed—

- (a) the District Court, in respect of all criminal proceedings brought before it in its sittings at Campbelltown, East Maitland, Liverpool, Newcastle, Parramatta, Penrith or Sydney,
- (b) the Local Court, in respect of all criminal proceedings brought before it in its sittings at Bankstown, Belmont, Blacktown, Burwood, Campbelltown, Central, Cessnock, the Downing Centre, Fairfield, Kurri Kurri, Liverpool, Maitland, Mount Druitt, Newcastle, Newtown, Parramatta, Penrith, Raymond Terrace, Toronto, Waverley or Windsor.

7 Guidelines to determine availability and allocation of facilities

- (1) For the purposes of sections 7A(2)(d) and 7B(2)(d) of the Act, the following guidelines are to be observed in determining the availability and allocation of facilities for the supervision and control of a referred person's participation in a program under the Act—
 - (a) facilities are taken to be available in relation to a referred person if—
 - (i) the person or body providing those facilities is willing to accept the referred person, and
 - (ii) it is reasonably likely that those facilities will be available to the referred person when needed, and
 - (iii) the registrar has received advice as to the treatment proposed to be provided to the referred person by means of those facilities,
 - (b) facilities are to be allocated to referred persons in accordance with policies determined from time to time by the Drug Court.
- (2) In this clause, *referred person* means a person who has been referred to the Drug Court under section 6 or 7 of the Act.

8 Application of Criminal Procedure Act 1986

- (1) For the purposes of section 18(2) of the Act, the provisions of section 265(1) and (2) of the *Criminal Procedure Act 1986* are modified so as to provide that, in proceedings before the Drug Court under section 7A, 7B or 7C of the Act, the obligations of the Drug Court and the prosecutor under those provisions of the *Criminal Procedure Act 1986* are suspended in relation to a person charged if the person charged consents to their suspension.
- (2) The suspension of those obligations ceases to have effect—
 - (a) on the person withdrawing consent under subclause (1), or
 - (b) on the person consenting to being dealt with by the Drug Court under section 7D of the Act, or
 - (c) on the Drug Court referring the person back to the referring court under section 7D of the Act, or
 - (d) on the person being dealt with by the Drug Court under section 7E of the Act.

9 Referring courts—referral of eligible convicted offenders

For the purposes of section 18B(1) of the Act, the following courts are prescribed—

- (a) the District Court, in respect of all criminal proceedings brought before it in its sittings at Campbelltown, Liverpool, Parramatta, Penrith or Sydney,
- (b) the Local Court, in respect of all criminal proceedings brought before it in its sittings at Bankstown, Blacktown, Burwood, Camden, Campbelltown, Central, the Downing Centre, Fairfield, Hornsby, Liverpool, Manly, Mount Druitt, Newtown, Parramatta, Penrith, Sutherland, Waverley or Windsor,
- (c) the Drug Court, in respect of sentences imposed or determined under section 7D(3) or 12(3) of the Act,
- (d) the Court of Criminal Appeal, in respect of appeals from a court referred to in paragraph (a), (b) or (c) in respect of the proceedings referred to in relation to that court.

10 Provision of information to Drug Court

- (1) For the purposes of section 31(1) of the Act, the following persons are prescribed, but only if they are involved in the administration of, or provide services in connection with, a drug offender's program—
 - (a) persons acting for or on behalf of the Hunter New England, Nepean Blue Mountains, South Eastern Sydney, South Western Sydney, Sydney or Western Sydney Local Health Districts,
 - (b) persons acting for or on behalf of the Drug Toxicology Unit of the NSW Forensic and Analytical Science Service (being an administrative arm of the Division of the Health Administration Corporation known as NSW Health Pathology),
 - (c) persons acting for or on behalf of an organisation providing treatment to a drug offender in connection with the drug offender's program.
- (2) For the purposes of section 31(2)(b) of the Act—
 - (a) information is to be provided to the registrar—
 - (i) personally, or
 - (ii) by letter sent by post to the registrar or delivered to the offices of the registrar, or
 - (iii) by letter sent to the registrar by means of document exchange facilities, or

- (iv) by message sent by facsimile, and
- (b) information provided to the registrar otherwise than in writing must be confirmed in writing within 24 hours unless the registrar indicates otherwise.

11 Forms

Any form that may be used in respect of criminal proceedings before the District Court or the Local Court may also be used in respect of criminal proceedings before the Drug Court in its exercise of the criminal jurisdiction of the respective court.

12 Fees

- (1) Any fee that may be charged in respect of criminal proceedings before the District Court or the Local Court may also be charged in respect of criminal proceedings before the Drug Court in its exercise of the criminal jurisdiction of the respective court.
- (2) The Drug Court may postpone, waive or remit any fee that may be charged under the Act, either unconditionally or subject to conditions.
- (3) The Drug Court's function under subclause (2) may be exercised by the registrar.

13 Referrals to Drug Court

A referral under section 6, 7 or 18B of the Act to the Drug Court by another court may be made by notifying the registrar by telephone, in writing or by facsimile of the other court's decision to so refer the matter.

14 Referral back by Drug Court

- (1) An order under section 7D of the Act referring a matter back to the referring court may be made by the Drug Court in the absence of the person to whom the order relates.
- (2) The registrar may, by telephone or facsimile, notify a court of an order by the Drug Court to refer a person back to the referring court.

15 Savings

Any act, matter or thing that, immediately before the repeal of the *Drug Court Regulation 2015*, had effect under that Regulation continues to have effect under this Regulation.