

[Act 1998 No 150]



New South Wales

## Drug Court Bill 1998

### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.\*

#### Overview of Bill

The objects of this Bill are:

- (a) to establish a Drug Court of New South Wales, and
- (b) to establish a scheme under which:
  - (i) drug dependent persons who are charged with offences (other than certain offences involving violence or the supply of drugs) can be referred to the Drug Court on indicating that they intend to plead guilty. and
  - (ii) the Drug Court can direct into drug programs such of the persons so referred as meet specified criteria for acceptance into drug programs. and
  - (iii) drug dependent persons accepted into drug programs are subject to supervision by the Drug Court. and to rewards and sanctions imposed by the Drug Court. in relation to their compliance with certain conditions. and

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\*Amended in committee—see table at end of volume.

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- (iv) the Drug Court is required, when a person's drug program ends, to reconsider the sentence imposed on the person before the program began.

The Bill also makes consequential amendments to certain other Acts and enacts provisions of a savings or transitional nature.

## Outline of provisions

### **Part 1 Preliminary**

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** specifies that the object of the proposed Act is to reduce the level of criminal activity that results from drug dependency.

**Clause 4** defines certain words and expressions used in the proposed Act.

**Clause 5** defines the expression *eligible person* for the purposes of the proposed Act. A person is an eligible person if he or she is charged with an offence (other than an offence involving violent conduct, sexual assault or the supply of drugs), is likely (if convicted) to be sentenced to imprisonment, has pleaded guilty (or indicated a willingness to plead guilty) to the offence, appears to be dependent on addictive drugs and satisfies such other criteria as are prescribed by the regulations under the proposed Act.

### **Part 2 Drug Court programs**

#### **Division 1 Acceptance into program**

**Clause 6** provides for the referral to the Drug Court of a person who, having been charged with an offence, appears to be an eligible person. The power is to be exercised as soon as practicable after the person is charged.

**Clause 7** enables the Drug Court to convict and sentence a person who pleads guilty to the offence in respect of which he or she has been referred if he or she meets specified criteria, and requires the Drug Court, on sentencing the person, to make an order specifying conditions with which the person must comply and to make a further order suspending execution of the sentence. No appeal will lie against the Drug Court's refusal to convict and sentence a person under the proposed section.

**Clause 8** enables the Drug Court to convict and sentence a person who has not been convicted and sentenced as referred to in clause 7, but only with the person's consent. If the person does not consent, the person is to be referred back to the court from which he or she was referred to the Drug Court as referred to in clause 6. A person who is convicted and sentenced under the proposed section will not participate in a drug program. A court to which a person is referred back by the Drug Court is to continue to deal with the person as if he or she had never been referred to the Drug Court.

### **Division 2 Administration of program**

**Clause 9** enables the Drug Court to vary or add to the conditions of a drug offender's drug program. No appeal will lie against action taken by the Drug Court under the proposed section.

**Clause 10** provides for the procedures to be followed if the Drug Court suspects that a drug offender has failed to comply with the requirements of a drug program. Those procedures include a power to conduct a hearing to decide (on the balance of probabilities) if there has been a failure to comply and a power to impose sanctions on the drug offender or to terminate the drug offender's participation in the drug program. No appeal will lie against action taken by the Drug Court under the proposed section.

**Clause 11** empowers the Drug Court to terminate a drug offender's participation in a drug program if the drug offender successfully completes the program, if the drug offender requests the Drug Court to terminate the program or if the Drug Court decides to terminate the program as referred to in clause 10. No appeal will lie against action taken by the Drug Court under the proposed section.

**Clause 12** requires the Drug Court to reconsider a drug offender's sentence when it terminates his or her drug program. As a result of its reconsideration, the Drug Court may discharge the drug offender, may defer passing sentence, may impose some other sentence or may confirm the initial sentence.

**Clause 13** requires the Drug Court to revoke the relevant suspension order referred to in clause 7 when it sentences a drug offender as referred to in clause 12.

### **Division 3 Miscellaneous**

**Clause 14** enables the Drug Court to issue arrest warrants if it suspects that a drug offender has failed to comply with a drug program.

**Clause 15** ensures that the Drug Court is able to impose the same sentence for an offence committed by a drug offender as the District Court or a Local Court could have imposed had the offence been dealt with by the District Court or Local Court, as the case may be.

**Clause 16** elaborates on the kinds of conditions that may be included in a drug program. The conditions may allow the Drug Court to confer various rewards on a person who maintains a satisfactory level of compliance with the program, and to impose various sanctions (including monetary penalties or imprisonment for up to 14 days) on a person who fails to comply with the program.

**Clause 17** gives a drug offender immunity from prosecution for offences with respect to the unlawful possession or use of drugs on the basis of certain admissions made by the drug offender for the purposes of the proposed Act.

**Clause 18** provides for the application of the *Criminal Procedure Act 1986* to proceedings before the Drug Court.

### **Part 3 The Drug Court**

#### **Division 1 Constitution of Drug Court**

**Clause 19** establishes the Drug Court of New South Wales.

**Clause 20** enables the Governor to appoint District Court Judges as Drug Court Judges, and provides that a person ceases to be the Drug Court Judge if the person ceases to be a District Court Judge.

**Clause 21** enables the Governor to appoint a Senior Judge of the Drug Court.

**Clause 22** enables the Minister administering the proposed Act to appoint an acting Senior Judge of the Drug Court.

#### **Division 2 Procedure of Drug Court**

**Clause 23** provides that proceedings in the Drug Court are to be dealt with by a Judge, who will constitute the Court.

**Clause 24** provides that the Drug Court has the criminal jurisdiction of the District Court, the criminal jurisdiction of a Local Court and such other jurisdiction as is vested in the Drug Court by the proposed Act or any other Act.

**Clause 25** provides for the sittings of the Drug Court, and enables two or more sittings of the Drug Court to be held at the same time.

**Clause 26** provides for the way in which certain proceedings before the Drug Court are to be conducted and, in particular, provides for the adjournment of such proceedings and for the conduct of such proceedings with minimal formality and technicality.

**Clause 27** enables the Senior Judge to make rules of court with respect to the practice and procedure of the Drug Court.

### **Division 3 Administration**

**Clause 28** provides for the appointment of a registrar and other court staff and for the use by the Drug Court of the staff and facilities of Government departments.

**Clause 29** provides that the Senior Judge is responsible for the administration of the business of the Drug Court, and for the devolution of some of those responsibilities to the registrar.

**Clause 30** provides for the delegation of functions by the Senior Judge and by the registrar.

### **Part 4 Miscellaneous**

**Clause 31** requires persons prescribed by the regulations under the proposed Act to provide certain information to the registrar for the purposes of the proposed Act. Compliance with such a requirement will be protected from any legal action founded on the provision of information in accordance with the requirement.

**Clause 32** enables the Governor to make regulations for the purposes of the proposed Act.

**Clause 33** is a formal provision giving effect to the amendments to other Acts that are made by Schedule 1.

**Clause 33** is a formal provision giving effect to the savings and transitional provisions in Schedule 2.

**Clause 35** provides for the review of the proposed Act at the end of 2 years after its date of assent, and for the tabling in Parliament of a report on the results of the review.

**Schedule 1** makes consequential amendments to the following Acts:

- *Bail Act 1978 No 161*
- *Children (Criminal Proceedings) Act 1987 No 55*
- *Criminal Appeal Act 1912 No 16*
- *Criminal Procedure Act 1986 No 209*
- *Justices Act 1902 No 27*
- *Search Warrants Act 1985 No 37*
- *Victims Compensation Act 1996 No 115*

**Schedule 2** contains a provision enabling the regulations under the proposed Act to contain provisions of a savings or transitional nature (clause 34) and provides for the application of Part 2 of the proposed Act to offences committed before the commencement of that Part (clause 2).