

# Drug Court Act 1998 No 150

[1998-150]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[Crimes Amendment \(Apprehended Violence\) Act 2006 No 73](#) (not commenced)
- **See also**  
[Crimes and Courts Legislation Amendment Bill 2006](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Drug Court Act 1998 No 150



New South Wales

An Act to provide for the establishment of the Drug Court of New South Wales, for the referral of drug offenders to the Drug Court, and for the supervision of drug programs by the Drug Court; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Drug Court Act 1998*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects

(1) The objects of this Act are:

- (a) to reduce the drug dependency of eligible persons and eligible convicted offenders, and
- (b) to promote the re-integration of such drug dependent persons into the community, and
- (c) to reduce the need for such drug dependent persons to resort to criminal activity to support their drug dependencies.

(2) This Act achieves its objects in relation to eligible persons by establishing a scheme under which drug dependent persons who are charged with criminal offences can be diverted into programs designed to eliminate, or at least reduce, their dependency on drugs.

(2A) This Act achieves its objects in relation to eligible convicted offenders by establishing a scheme for compulsory drug treatment and rehabilitation for certain drug dependent persons.

(3) Reducing a person's dependency on drugs should reduce the person's need to resort to criminal activity to support that dependency and should also increase the person's

ability to function as a law abiding citizen.

#### 4 Definitions

(1) In this Act:

**Compulsory Drug Treatment Correctional Centre** has the same meaning as in Part 4A of the *Crimes (Administration of Sentences) Act 1999*.

**compulsory drug treatment detention** means detention in accordance with Part 4A of the *Crimes (Administration of Sentences) Act 1999*.

**compulsory drug treatment order** means an order made under section 18C.

**court** includes a Magistrate.

**Drug Court** mean the Drug Court of New South Wales constituted by this Act.

**drug offender** means a person who has been dealt with under section 7 or 8AB.

**eligible convicted offender** is defined in section 5A.

**eligible person** is defined in section 5.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**initial sentence** means any sentence imposed on a person in accordance with section 7 or 8AB, and includes any sentence that is added to the initial sentence in accordance with section 8AC.

**Judge** means a person appointed to be a Drug Court Judge, as referred to in section 20 (1).

**member of staff** of the Drug Court means any person appointed as an officer of the Drug Court as referred to in section 28 (1) or whose services are used by the Drug Court as referred to in section 28 (2), and includes any other person prescribed by the regulations.

**program** means the program of supervision and control that arises from the conditions accepted by a person and imposed by the Drug Court under section 7 (3) (a) or 8AB (6) (a).

**referring court** means the court by which a person has been referred to the Drug Court under section 6 or 8AA.

**registrar** means the registrar of the Drug Court.

**Senior Judge** means the person appointed to be the Senior Judge of the Drug Court,

as referred to in section 21 (1).

**suspension order** means an order under section 7 (3) (b) or 8AB (6) (b) by which a person's initial sentence is suspended for the duration of the person's program.

(2) In this Act, a reference to the criminal jurisdiction of a Local Court includes a reference to the jurisdiction exercisable by a Magistrate under the *Criminal Procedure Act 1986*.

## **5 Definition of "eligible person"**

(1) A person is an eligible person if:

- (a) the person is charged with an offence, other than an offence referred to in subsection (2), and
- (b) the facts alleged in connection with the offence, together with the person's antecedents and any other information available to the court, indicate that it is highly likely that the person will, if convicted, be required to serve a sentence of full-time imprisonment, and
- (c) the person has pleaded guilty to, or indicated that he or she intends to plead guilty to, the offence, and
- (d) the person appears to be dependent on the use of prohibited drugs (within the meaning of the *Drug Misuse and Trafficking Act 1985*) or other drugs prescribed by the regulations, and
- (e) the person satisfies such other criteria as are prescribed by the regulations.

(2) A person is not an eligible person if the person is charged with:

- (a) an offence punishable under Division 2 of Part 2 of the *Drug Misuse and Trafficking Act 1985*, not being an offence that (under Chapter 5 of the *Criminal Procedure Act 1986*) is capable of being dealt with summarily, or
- (b) an offence involving violent conduct or sexual assault, or
- (c) any other offence of a kind prescribed by the regulations.

## **5A Definition of "eligible convicted offender"**

(1) A person is an eligible convicted offender if:

- (a) the person is convicted of an offence, other than an offence referred to in subsection (2), and
- (b) the person has been sentenced to a term of imprisonment for the offence to be served by way of full-time detention and the unexpired non-parole period in relation to that sentence is:

- (i) at the time the Drug Court is determining whether to make a compulsory drug treatment order with respect to the person—a period of no more than 3 years, and
    - (ii) at the time that the sentence was imposed—a period of at least 18 months, and
  - (c) the person has, in the 5-year period immediately before the person was sentenced, been convicted, under a law of this State or under a law of the Commonwealth or another State or Territory or of another country, of at least 2 other offences, not being offences arising out of the same circumstances, that resulted in any one or more of the following:
    - (i) a sentence of imprisonment (including a sentence of imprisonment that was suspended),
    - (ii) the making of a community service order (however described),
    - (iii) the entry into a good behaviour bond or recognizance (however described), and
  - (d) the person has a long-term dependency on the use of prohibited drugs (within the meaning of the *Drug Misuse and Trafficking Act 1985*) or other drugs prescribed by the regulations, and
  - (e) the facts in connection with the offence for which the person has been sentenced, together with the person's antecedents and any other information available, indicate that the offence was related to the person's long-term drug dependency and associated lifestyle, and
  - (f) the person satisfies such other criteria as are prescribed by the regulations.
- (2) A person is not an eligible convicted offender if the person has been convicted at any time of the following:
- (a) murder, attempted murder or manslaughter,
  - (b) sexual assault of an adult or child or a sexual offence involving a child,
  - (c) any offence involving the use of a firearm,
  - (d) (Repealed)
  - (e) 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,
  - (f) any offence prescribed by the regulations for the purposes of this section.



- (3) A person is not an eligible convicted offender if, in the opinion of the Drug Court:
- (a) the person suffers from a mental condition, illness or disorder that:
    - (i) is serious, or
    - (ii) leads to the person being violent, and
  - (b) the mental condition, illness or disorder could prevent or restrict the person's active participation in a drug treatment program.

## **Part 2 Drug Court programs**

### **Division 1 Acceptance into program during proceedings for offence**

#### **6 Courts may refer persons to Drug Court**

- (1) This section applies to such courts and proceedings as are prescribed by the regulations.
- (2) It is the duty of a court before which a person is charged with an offence or to which a person appeals against a sentence imposed by some other court:
- (a) to ascertain whether the person appears to be an eligible person, and
  - (b) if so, to ascertain whether the person is willing to be referred to the Drug Court to be dealt with for the offence, and
  - (c) if so, to refer the person to the Drug Court to be dealt with for the offence.
- (3) The power conferred on a court by this section is to be exercised as soon as practicable after the person first comes before the court in connection with the offence, but may be exercised at any time:
- (a) in the case of a Magistrate conducting committal proceedings under the *Criminal Procedure Act 1986*, before the Magistrate has committed the person for trial or sentence in relation to that offence, and
  - (b) in any case, before the person is sentenced or re-sentenced for the offence.

#### **7 Persons accepted into program**

- (1) This section applies to a person who has been referred to the Drug Court under section 6.
- (2) The Drug Court may deal with a person under this section in relation to an offence if, and only if, it is satisfied as to each of the following matters:
- (a) that the person is an eligible person,

- (a1) that the person has pleaded guilty to the offence (whether before the referring court or the Drug Court) and has been found guilty of the offence,
  - (b) that, having regard to the person's antecedents, it would be appropriate for the person to participate in a program under this Act,
  - (c) that facilities to supervise and control the person's participation in such a program are available, and have been allocated to the person, in accordance with the guidelines prescribed by the regulations,
  - (d) that the person accepts the conditions imposed by this Act and the conditions that the Drug Court proposes to impose on the person (whether immediately or at some later date) as a consequence of his or her conviction and sentence under this section,
  - (e) that the person has been informed of the Drug Court's powers under Division 2 and of the respective consequences, as regards the sentence to be imposed under section 12, of the person's compliance or non-compliance with a program,
  - (f) that any person (an **affected person**) with whom it is likely the person would reside during the period of the person's participation in a program under this Act has consented in writing to the person residing with the affected person during that period.
- (2A) The Drug Court deals with a person under this section in relation to an offence by convicting the person and sentencing the person in accordance with the *Crimes (Sentencing Procedure) Act 1999*.
- (3) On or within 14 days after sentencing the person, the Drug Court:
- (a) must make an order imposing on the person the conditions that the person has accepted as referred to in subsection (2) (d) (the person's **program**), and
  - (b) must make an order suspending execution of the sentence for the duration of the person's program (the person's **suspension order**).
- (3A) An order referred to in subsection (3) (a) or (b) may be made in the absence of the person in respect of whom it is made.
- (3B) The kinds of conditions that the Drug Court may impose on the person under this section are as follows:
- (a) conditions relating to conduct and good behaviour,
  - (b) conditions relating to attendance for counselling or other treatment,
  - (c) conditions relating to the supervision of the person for the duration of a program under this Act,

- (d) conditions relating to drug testing that the person must undergo,
  - (e) conditions relating to residence, association with other persons or attendance at specified locations,
  - (f) conditions relating to involvement in activities, courses, training or employment for the purpose of promoting the re-integration of the person into the community,
  - (g) conditions relating to conferring rewards of the kind referred to in section 16 (1),
  - (h) conditions relating to the imposition of sanctions of the kind referred to in section 16 (2),
  - (i) any other kinds of conditions that may be prescribed by the regulations,
  - (j) such other conditions as the Drug Court considers appropriate in the circumstances.
- (4) A person who is convicted and sentenced by the Drug Court under this section with respect to an offence for which the person has been referred to the Drug Court under section 6 may at the same time be convicted and sentenced for any other offence to which he or she has pleaded guilty (other than an offence referred to in section 5 (2)), whether or not the person has been referred to the Drug Court under section 6 in relation to that other offence.
- (4A) Subsection (3) applies to a sentence under subsection (4) in the same way as it applies to a sentence under subsection (2).
- (5) Nothing in this Act entitles a person to be convicted and sentenced under this section, and no appeal lies against any decision by the Drug Court not to convict or sentence a person under this section.
- (5A) A suspension order does not operate to suspend any period of disqualification from holding a driver licence imposed by or under the road transport legislation within the meaning of the [Road Transport \(General\) Act 2005](#).
- (5B) For the purposes of subsection (2) (f):
- (a) the consent of children below a prescribed age, and
  - (b) the consent of persons suffering a prescribed disability,
- may be given on their behalf by such other persons as the regulations may determine or may, if the regulations so provide, be dispensed with.
- (6) In this section, a reference to the convicting and sentencing of a person is, in the case of a person who is referred to the Drug Court after having been convicted, a reference to the sentencing of the person only.

## **8 Persons not accepted into program**

- (1) This section applies to a person who has been referred to the Drug Court under section 6 but whom the Drug Court has not dealt with under section 7.
- (2) The Drug Court may deal with a person under this section in relation to an offence if, and only if, it is satisfied as to each of the following matters:
  - (a) that the person has pleaded guilty to the offence (whether before the referring court or the Drug Court) and has been found guilty of the offence,
  - (b) that the person consents to being dealt with under this section.
- (2A) The Drug Court deals with a person under this section in relation to an offence by convicting the person and sentencing the person in accordance with the *Crimes (Sentencing Procedure) Act 1999*.
- (3) If the person does not consent to being dealt with under this section or in such other circumstances as the Drug Court may determine, the Drug Court is to refer the person back to the referring court.
- (3A) In the case of a person who has been referred to the Drug Court for 2 or more offences by 2 or more referring courts, the Drug Court may refer the person back to any one of the referring courts to be dealt with:
  - (a) for the offences for which the person was referred by that court, and
  - (b) for such of the other offences as are within the criminal jurisdiction of that court.
- (3B) In dealing with a person for an offence referred to in subsection (3A) (b), the court to which the person is referred back is taken to be the referring court for the purposes of subsection (4).
- (4) If the Drug Court refers a person back to the referring court, the proceedings against the person are to be continued before the referring court at a time and place specified in the order, as if:
  - (a) the person had not been referred to the Drug Court, and
  - (b) the proceedings had merely been adjourned to the time and place specified in the order.
- (5) A person who is convicted and sentenced by the Drug Court under this section with respect to an offence for which the person has been referred to the Drug Court under section 6 may at the same time be convicted and sentenced for any other offence to which he or she has pleaded guilty (other than an offence referred to in section 5 (2)), whether or not the person has been referred to the Drug Court under section 6 in relation to that other offence.

- (6) In this section, a reference to the convicting and sentencing of a person is, in the case of a person who is referred to the Drug Court after having been convicted, a reference to the sentencing of the person only.

## **Division 1A Acceptance into program during proceedings for breach of good behaviour bond**

### **8AA Courts may refer persons to Drug Court**

- (1) This section applies to such courts and proceedings as are prescribed by the regulations.
- (2) It is the duty of a court before whom an offender appears under section 98 of the *Crimes (Sentencing Procedure) Act 1999* in connection with an alleged failure to comply with the conditions of a good behaviour bond:
- (a) to ascertain whether the person appears to be an eligible person, and
  - (b) if so, to ascertain whether the person is willing to be referred to the Drug Court to be dealt with for the alleged failure, and
  - (c) if so, to refer the person to the Drug Court to be dealt with for the alleged failure.
- (3) The power conferred on a court by this section is to be exercised as soon as practicable after the person's first appearance before the court in relation to the alleged failure.
- (4) This section does not apply to an offender who, at the time of his or her appearance before the court, is in custody under a sentence of full-time imprisonment.
- (5) In relation to an offender who is remanded in custody in connection with proceedings for an offence, a court may, but only in such circumstances as the regulations prescribe, defer taking action under this section until it has disposed of those proceedings.

### **8AB Persons accepted into program**

- (1) This section applies to a person:
- (a) who has been referred to the Drug Court under section 8AA, or
  - (b) who has been called on by the Drug Court to appear before it under section 98 of the *Crimes (Sentencing Procedure) Act 1999*,
- not being a person who is currently participating in a program into which the person has been accepted as a result of previous proceedings under this Act.
- (2) The Drug Court may deal with a person under this section in relation to an alleged failure to comply with the conditions of the relevant good behaviour bond if, and only

if, it is satisfied as to each of the following matters:

- (a) that the person is an eligible person,
  - (b) that the person admits to having failed, and has in fact failed, to comply with the conditions of the bond,
  - (c) that, having regard to the person's antecedents, it would be appropriate for the person to participate in a program under this Act,
  - (d) that facilities to supervise and control the person's participation in such a program are available, and have been allocated to the person, in accordance with the guidelines prescribed by the regulations,
  - (e) that the person accepts the conditions imposed by this Act and the conditions that the Drug Court proposes to impose on the person (whether immediately or at some later date) as a consequence of his or her being dealt with under this section,
  - (f) that the person has been informed of the Drug Court's powers under Division 2 and of the respective consequences, as regards the sentence to be imposed under section 12, of the person's compliance or non-compliance with a program,
  - (g) that any person (an **affected person**) with whom it is likely the person would reside during the period of the person's participation in a program under this Act has consented in writing to the person residing with the affected person during that period.
- (3) Subject to subsections (4) and (5), the Drug Court deals with a person under this section in relation to a failure to comply with the conditions of a good behaviour bond by revoking the bond, and convicting and sentencing the person, in accordance with the *Crimes (Sentencing Procedure) Act 1999*.
- (4) Section 99 of the *Crimes (Sentencing Procedure) Act 1999* does not apply to a good behaviour bond that is revoked under subsection (3).
- (5) For the purposes of this Act, the sentence of imprisonment in relation to which a good behaviour bond referred to in section 12 of the *Crimes (Sentencing Procedure) Act 1999* was entered into under that Act is taken to be the sentence imposed under subsection (3) in relation to the bond.
- (6) On or within 14 days after sentencing the person, the Drug Court:
- (a) must make an order imposing on the person the conditions that the person has accepted as referred to in subsection (2) (e) (the person's **program**), and
  - (b) must make an order suspending execution of the sentence for the duration of the person's program (the person's **suspension order**).

- (7) An order referred to in subsection (6) (a) or (b) may be made in the absence of the person in respect of whom it is made.
- (8) The kinds of conditions that the Drug Court may impose on the person under this section are as follows:
- (a) conditions relating to conduct and good behaviour,
  - (b) conditions relating to attendance for counselling or other treatment,
  - (c) conditions relating to the supervision of the person for the duration of a program under this Act,
  - (d) conditions relating to drug testing that the person must undergo,
  - (e) conditions relating to residence, association with other persons or attendance at specified locations,
  - (f) conditions relating to involvement in activities, courses, training or employment for the purpose of promoting the re-integration of the person into the community,
  - (g) conditions relating to conferring rewards of the kind referred to in section 16 (1),
  - (h) conditions relating to the imposition of sanctions of the kind referred to in section 16 (2),
  - (i) any other kinds of conditions that may be prescribed by the regulations,
  - (j) such other conditions as the Drug Court considers appropriate in the circumstances.
- (9) Nothing in this Act entitles a person to be convicted and sentenced under this section, and no appeal lies against any decision by the Drug Court not to convict or sentence a person under this section.
- (10) A suspension order does not operate to suspend any period of disqualification from holding a driver licence imposed by or under the road transport legislation within the meaning of the [Road Transport \(General\) Act 2005](#).
- (11) For the purposes of subsection (2) (g):
- (a) the consent of children below a prescribed age, and
  - (b) the consent of persons suffering a prescribed disability,
- may be given on their behalf by such other persons as the regulations may determine or may, if the regulations so provide, be dispensed with.

### **8AC Persons allowed to continue in program**

- (1) This section applies to a person:
  - (a) who has been referred to the Drug Court under section 8AA, or
  - (b) who has been called on by the Drug Court to appear before it under section 98 of the *Crimes (Sentencing Procedure) Act 1999*,  
being a person who is currently participating in a program into which the person has been accepted as a result of previous proceedings under this Act.
- (2) The Drug Court may deal with a person under this section in relation to an alleged failure to comply with the conditions of the relevant good behaviour bond if, and only if, it is satisfied as to each of the following matters:
  - (a) that the person is an eligible person,
  - (b) that the person admits to having failed, and has in fact failed, to comply with the conditions of the bond,
  - (c) that, having regard to the person's antecedents, it would be appropriate for the person to continue to participate in a program under this Act,
  - (d) that the person consents to being dealt with under this section.
- (3) Subject to subsections (4), (5) and (6), the Drug Court deals with a person under this section in relation to a failure to comply with the conditions of a good behaviour bond:
  - (a) by revoking the bond, and convicting and sentencing the person, in accordance with the *Crimes (Sentencing Procedure) Act 1999*, and
  - (b) by adding the new sentence to the person's initial sentence.
- (4) Section 99 of the *Crimes (Sentencing Procedure) Act 1999* does not apply to a good behaviour bond that is revoked under subsection (3) (a).
- (5) For the purposes of this Act, the sentence of imprisonment in relation to which a good behaviour bond referred to in section 12 of the *Crimes (Sentencing Procedure) Act 1999* was entered into under that Act is taken to be the sentence imposed under subsection (3) (a) in relation to the bond.
- (6) Any penalty in the new sentence that comprises a term of imprisonment or a community service order is taken to be subject to a direction that it be served consecutively with any other penalty of the same kind in the initial sentence.
- (7) Nothing in this Act entitles a person to be convicted and sentenced under this section, and no appeal lies against any decision by the Drug Court not to convict or sentence a person under this section.



### **8AD Persons not accepted into program**

- (1) This section applies to a person:
  - (a) who has been referred to the Drug Court under section 8AA, or
  - (b) who has been called on by the Drug Court to appear before it under section 98 of the *Crimes (Sentencing Procedure) Act 1999*,  
but whom the Drug Court has not dealt with under section 8AB or 8AC.
- (2) The Drug Court is to deal with a person to whom this section applies in accordance with sections 98 and 99 of the *Crimes (Sentencing Procedure) Act 1999*.

## **Division 2 Administration of program**

### **8A Statutory conditions of program**

- (1) It is a condition of a drug offender's program that the Drug Court may, with the consent of the drug offender, commit the drug offender to a correctional centre for up to 21 days at a time if, in the opinion of the Drug Court, such action is necessary to facilitate:
  - (a) detoxification of the drug offender, or
  - (b) assessment of the drug offender's participation in the program, or
  - (c) the development of a suitable treatment plan.
- (2) However, a drug offender is not to be committed to a correctional centre for detoxification unless the Drug Court is satisfied that no other suitable facilities are immediately available.
- (3) A consent referred to in subsection (1) that is given by a drug offender in relation to the committal of the drug offender to a correctional centre for a particular period of time is irrevocable during that period.
- (4) A drug offender does not fail to comply with his or her program merely because the drug offender fails to give a consent referred to in subsection (1).

### **9 Variation of conditions of program**

- (1) The Drug Court may from time to time, in accordance with a drug offender's program, vary the program by adding new conditions to, or varying or revoking existing conditions of, the program.
- (2) No appeal lies against any decision by the Drug Court to vary a drug offender's program under this section.

## **10 Proceedings for non-compliance with program**

- (1) If it is satisfied, on the balance of probabilities, that a drug offender has failed to comply with his or her program, the Drug Court:
  - (a) may, in accordance with the program, impose any one or more of the sanctions specified in the program as sanctions that the Court may impose on the drug offender, or
  - (b) if it is also satisfied, on the balance of probabilities, that the offender is unlikely to make any further progress in the program or that the offender's further participation in the program poses an unacceptable risk to the community that the person may re-offend—may decide to terminate the program.
- (2) Without affecting the other circumstances in which a drug offender is taken to have failed to comply with his or her program, a drug offender is taken to have failed to comply with the program if the drug offender is charged before a court with an offence referred to in section 5 (2).
- (3) No appeal lies in relation to any action taken or decision made by the Drug Court under this section.

## **11 Termination of program**

- (1) The Drug Court may terminate a drug offender's program:
  - (a) if the Drug Court is satisfied on the balance of probabilities that, having regard to the objects of this Act, the drug offender has substantially complied with the program, or
  - (b) if the drug offender requests the Drug Court to terminate the program, or
  - (c) if the Drug Court decides to terminate the program as referred to in section 10 (1) (b).
- (2) No appeal lies against the Drug Court's termination of a drug offender's program.

## **12 Imposition of final sentence**

- (1) On terminating a drug offender's program, the Drug Court must reconsider the drug offender's initial sentence.
- (2) In reconsidering a drug offender's initial sentence, the Drug Court must take into consideration:
  - (a) the nature of the drug offender's participation in his or her program, and
  - (b) any sanctions that have been imposed on the drug offender during the program, and

- (c) any time for which the drug offender has been held in custody in connection with an offence to which his or her program relates, including time during which the person has undergone imprisonment:
  - (i) under the sentence, or
  - (ii) under the condition of the program arising under section 8A.
- (3) After considering a drug offender's initial sentence, the Drug Court is to determine the drug offender's final sentence:
  - (a) by making an order setting aside the initial sentence and taking such action under Part 2 of the *Crimes (Sentencing Procedure) Act 1999* as it could have taken for the offence to which the initial sentence related, or
  - (b) by making an order confirming the initial sentence.
- (4) The final sentence determined for a drug offender in relation to an offence is not to be greater than the initial sentence imposed on the drug offender in relation to that offence.
- (5) (Repealed)

### **13 Revocation of suspension order**

On sentencing a drug offender under section 12, the Drug Court is to revoke the drug offender's suspension order.

## **Division 3 Miscellaneous**

### **14 Arrest warrants**

- (1) If it suspects that a drug offender may have failed to comply with his or her program, the Drug Court may issue a warrant for the drug offender's arrest.
- (2) A warrant under this section authorises any police officer to arrest the drug offender and to bring the drug offender before the Drug Court to be dealt with under this Act.
- (3) The *Bail Act 1978* does not apply to a drug offender who is arrested on the authority of a warrant under this section.
- (4) The Drug Court's functions under this section may be exercised by the registrar.

#### **14A Warrants of committal**

- (1) For the purpose of subjecting a drug offender to imprisonment in a correctional centre as referred to in section 8A or 16 (2) (f), the Drug Court may issue a warrant committing the drug offender to a correctional centre.
- (2) A warrant under this section:

- (a) authorises any police officer to have custody of the drug offender named in the warrant, to convey the drug offender to the correctional centre specified in the warrant and to deliver the drug offender into the custody of the governor of that correctional centre, and
  - (b) authorises the governor of the correctional centre specified in the warrant to have custody of the drug offender named in the warrant for the period of time specified in the warrant.
- (3) The Drug Court's functions under this section may be exercised by the registrar.

### **15 Sentences imposed by Drug Court**

- (1) The sentences that may be imposed by the Drug Court under this Part are as follows:
- (a) in the case of an indictable offence (including an indictable offence for which an election to have the offence dealt with on indictment has been duly made under Chapter 5 of the *Criminal Procedure Act 1986*), any penalty that could have been imposed by the District Court had the offence been dealt with on indictment by the District Court,
  - (b) in the case of a summary offence (including an indictable offence for which an election to have the offence dealt with on indictment has not been duly made under Chapter 5 of the *Criminal Procedure Act 1986*), any penalty that could have been imposed by a Local Court had the offence been dealt with summarily by a Local Court.
- (2) Except for the purposes of the *Criminal Appeal Act 1912*, a person sentenced by the Drug Court for an offence referred to in subsection (1) (a) is taken to have been convicted of the offence on indictment.
- (3) The provisions of section 58 of the *Crimes (Sentencing Procedure) Act 1999* do not apply to a sentence imposed on a person under this Act by the Drug Court as referred to in subsection (1) (b) if that sentence is imposed for an offence committed while the person was participating in a program under this Act.
- (4) The provisions of Division 3 (Taking further offences into account) of Part 3 of the *Crimes (Sentencing Procedure) Act 1999* apply in relation to a relevant conviction of a person for an offence as if:
- (a) the person had been charged, but not convicted, of the offence, and
  - (b) the person had admitted guilt for the offence for the purposes of section 33 (2) (a) (i) of the *Crimes (Sentencing Procedure) Act 1999*.
- (5) In this section, **relevant conviction** of a person for an offence means the conviction of the person by a court (other than the Drug Court) for the offence under any of the following provisions for which the person has not been sentenced by that court:

- (a) section 75B of the *Justices Act 1902*,
- (b) section 196 of the *Criminal Procedure Act 1986* (as inserted by the *Criminal Procedure Amendment (Justices and Local Courts) Act 2001*).

## **16 Conditions of program**

- (1) The conditions of a program may allow the Drug Court to confer the following kinds of rewards on a drug offender who maintains a satisfactory level of compliance with the program:
  - (a) conferral of specified privileges,
  - (b) an appropriate change in the frequency of counselling or other treatment,
  - (c) a decrease in the degree of supervision to which the drug offender is subject,
  - (d) a decrease in the frequency with which the drug offender must undergo testing for drugs,
  - (e) a decrease in the amount of any monetary penalty payable to the Drug Court, as referred to in subsection (2) (e),
  - (f) a change in the nature of the vocational and social services attended by the drug offender or the frequency with which the drug offender is required to attend vocational and social services.
- (2) The conditions of a program may allow the Drug Court to impose the following kinds of sanctions on a drug offender who fails to comply with the program:
  - (a) withdrawal of privileges conferred on the person, as referred to in subsection (1) (a),
  - (b) an appropriate change in the frequency of counselling or other treatment,
  - (c) an increase in the degree of supervision to which the drug offender is subject,
  - (d) an increase in the frequency with which the drug offender must undergo testing for drugs,
  - (e) a requirement that the drug offender pay a monetary penalty to the Drug Court,
  - (f) a requirement that the drug offender be subjected to imprisonment in a correctional centre for up to 14 days in respect of any one failure to comply with the requirements of the order,
  - (g) a change in the nature of the vocational and social services attended by the drug offender or the frequency with which the drug offender is required to attend vocational and social services.

- (3) Any monetary penalty payable by a drug offender, as referred to in subsection (2) (e), is recoverable by the registrar of the Drug Court as a debt in any court of competent jurisdiction.
- (4) This section does not limit the conditions that may form part of a program apart from this section.

### **17 Immunity from prosecution for certain offences**

A person is not liable to prosecution for any offence comprising the unlawful possession or use of drugs:

- (a) as a result of any admission made for the purposes of seeking a referral under Division 1 or 1A, not being an admission of facts giving rise to an offence referred to in section 5 (2) (a), or
- (b) as a result of any admission made for the purposes of satisfying the Drug Court that the person should be accepted into a program, or
- (c) as a result of any admission made in connection with the Drug Court's supervision of his or her program,

nor may any such admission be admitted as evidence in proceedings for any offence comprising the unlawful possession or use of drugs that are brought as a result of the admission.

### **18 Application of criminal procedure legislation**

- (1) The provisions of Division 3 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999* that enable the Drug Court, when sentencing a person, to take other offences into account in imposing a penalty on the person do not enable the Drug Court to take into account any offence of the kind referred to in section 5 (2) of this Act.
- (2) The provisions of Chapter 5 of the *Criminal Procedure Act 1986* are subject to such modifications (if any) as are prescribed by the regulations under this Act.

## **Part 2A Compulsory drug treatment detention**

### **Division 1 Preliminary**

#### **18A Definitions**

In this Part:

**assessment report** means a report prepared under Division 3.

**multi-disciplinary team** means a team comprised of:

- (a) the Director of the Compulsory Drug Treatment Correctional Centre (or a person

nominated by the Director), who is to be the team leader, and

- (b) a probation and parole officer appointed by the Commissioner of Corrective Services, and
- (c) a person appointed by the Chief Executive Officer, Justice Health, and
- (d) such other persons as are prescribed by the regulations.

**offender's obligations** under a compulsory drug treatment order means the obligations that the offender has under section 106C of the *Crimes (Administration of Sentences) Act 1999* as a consequence of the making of the order.

**probation and parole officer** has the same meaning as in the *Crimes (Administration of Sentences) Act 1999*.

## **Division 2 Referral of eligible convicted offenders to Drug Court**

### **18B Courts to refer eligible convicted offenders to Drug Court**

- (1) This section applies to such courts as are prescribed by the regulations.
- (2) It is the duty of a court to which this section applies that sentences a person to imprisonment or which, on determining an appeal, confirms a sentence of imprisonment imposed on the person by some other court (whether or not on the same terms as the other court):
  - (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.
- (2A) The duty imposed on a court by this section does not apply to a court on determining an appeal (an **appeal court**) if the person whose sentence is confirmed in the appeal is already the subject of a compulsory drug treatment order as a consequence of a referral made to the Drug Court by the court that imposed the sentence confirmed by the appeal court.
- (2B) However, if the person whose sentence is confirmed by the appeal court is not already the subject of a compulsory drug treatment order, the duty imposed by this section applies to the appeal court, whether or not the court that imposed the sentence confirmed by the appeal court referred the person to the Drug Court under this section.
- (3) The duty imposed on a court by this section is to be exercised as soon as practicable after the person is sentenced to imprisonment or the appeal is dealt with.

- (4) The registrar or clerk of a court that refers a person to the Drug Court under this section must give to the registrar of the Drug Court such documents and materials prescribed by the regulations relating to the person as are requested by that registrar.
- (5) No appeal lies against a court's decision to refer or not to refer a person to the Drug Court for a determination as to whether the person should be the subject of a compulsory drug treatment order.
- (6) For the purposes of this section, an **appeal** includes an application for annulment of sentence in so far as it relates to a decision referred to in subsection (5).

### **Division 3 Making compulsory drug treatment orders**

#### **18C Compulsory drug treatment detention**

The Drug Court may make an order directing that an eligible convicted offender serve the offender's sentence of imprisonment by way of compulsory drug treatment detention.

#### **18D Restriction on power of Drug Court to make compulsory drug treatment orders**

- (1) The Drug Court must not make a compulsory drug treatment order with respect to an offender's sentence of imprisonment unless:
  - (a) the Drug Court has referred the offender to the multi-disciplinary team for assessment as to the eligibility and suitability of the offender for compulsory drug treatment detention and has had regard to the contents of the assessment report made by the team under section 18E, and
  - (b) the Drug Court is satisfied:
    - (i) that the offender is of or above the age of 18 years, and
    - (ii) that the offender is an eligible convicted offender, and
    - (iii) that the offender is a suitable person to serve the sentence by way of compulsory drug treatment detention, and
    - (iv) that it is appropriate in all of the circumstances that the sentence be served by way of compulsory drug treatment detention, and
    - (v) that there is accommodation available (or is likely to be available within 14 days) at the Compulsory Drug Treatment Correctional Centre for the offender to serve the sentence by way of compulsory drug treatment detention, and
    - (vi) that the offender's participation in the program will not damage the program or any other person's participation in it.
- (2) If the Drug Court declines to make a compulsory drug treatment order in relation to an eligible convicted offender's sentence on the ground that the offender's participation



in the program will damage the program or any other person's participation in it (as referred to in subsection (1) (b) (vi)), the Drug Court may:

- (a) revoke any parole order made under section 50 of the *Crimes (Sentencing Procedure) Act 1999* in relation to the offender, and
  - (b) notify the State Parole Authority of the decision to decline to make the order and the circumstances in which it was made.
- (3) The Drug Court may, for any reason it considers sufficient, decline to make a compulsory drug treatment order despite the contents of an assessment report.
- (4) No appeal lies against the Drug Court's decision to make or not to make a compulsory drug treatment order.

### **18E Assessment of eligibility and suitability by the multi-disciplinary team**

- (1) When an offender is referred to the multi-disciplinary team for assessment, the multi-disciplinary team is to investigate and report to the Drug Court on the matters referred to in sections 5A and 18D (1) (b) (i)-(vi).
- (2) When assessing whether an offender is a suitable person to serve a sentence by way of compulsory drug treatment detention (being the ground referred to in section 18D (1) (b) (iii)), the multi-disciplinary team is to have regard to the following matters:
  - (a) the offender's level of motivation and attitude to the compulsory drug treatment program,
  - (b) the offender's drug treatment history,
  - (c) the likelihood that the offender will commit a domestic violence offence (within the meaning of the *Crimes Act 1900*) during community custody (Stage 3) (within the meaning of Part 4A of the *Crimes (Administration of Sentences) Act 1999*),
  - (c1) the offender's history of committing offences involving violence,
  - (d) any other matter prescribed by the regulations.
- (3) The regulations may make provision for or with respect to the conduct of investigations and the preparation of reports for the purposes of this Part.

### **18F Concurrent and consecutive sentences**

- (1) A compulsory drug treatment order may be made in respect of two or more sentences of imprisonment that are being served concurrently or consecutively (or partly concurrently and partly consecutively).
- (2) A reference in this Part to a sentence of imprisonment includes a reference to two or more sentences of imprisonment that are being served concurrently or consecutively

(or partly concurrently and partly consecutively).

- (3) A reference in section 5A (1) (b) to an unexpired non-parole period in relation to a sentence includes a reference to a cumulative unexpired non-parole period in relation to two or more sentences of imprisonment that are being served concurrently or consecutively (or partly concurrently and partly consecutively).

## **Division 4 Miscellaneous**

### **18G Effect of compulsory drug treatment order**

A compulsory drug treatment order has the effect of:

- (a) cancelling the warrant of commitment issued under section 62 of the *Crimes (Sentencing Procedure) Act 1999* in relation to the offender, and
- (b) revoking any parole order made under section 50 of the *Crimes (Sentencing Procedure) Act 1999* in relation to the offender, and
- (c) requiring the eligible convicted offender to comply with the compulsory drug treatment personal plan to be set for the person under section 106F of the *Crimes (Administration of Sentences) Act 1999*.

### **18H Explanation of compulsory drug treatment order to offender**

- (1) Before making a compulsory drug treatment order in relation to an eligible convicted offender's sentence of imprisonment, the Drug Court must ensure that all reasonable steps are taken to explain to the offender (in language that the offender can readily understand):
  - (a) the offender's obligations under the compulsory drug treatment order, and
  - (b) the consequences that may follow if the offender fails to comply with those obligations.
- (2) A compulsory drug treatment order is not invalidated by a failure to comply with this section.

### **18I Preparation and service of written notice of compulsory drug treatment order**

- (1) As soon as practicable after making a compulsory drug treatment order, the Drug Court must cause written notice of the order to be given to the eligible convicted offender and to the Commissioner of Corrective Services.
- (2) A compulsory drug treatment order is not invalidated by a failure to comply with this section.

### **18J Warrant of commitment**

As soon as practicable after making a compulsory drug treatment order, the Drug Court must issue a warrant for the committal of the eligible convicted offender to the Compulsory Drug Treatment Correctional Centre.

## **Part 3 The Drug Court**

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

#### **19 Constitution of Drug Court**

There is constituted by this Act a court of record to be known as the Drug Court of New South Wales.

#### **20 Judges**

- (1) The Governor may, by commission under the public seal of the State, appoint as a Drug Court Judge any person who is a Judge of the District Court.
- (2) A person ceases to be a Drug Court Judge on ceasing to be a Judge of the District Court.
- (3) In this section, a reference to a Judge of the District Court includes a reference to an acting Judge of the District Court.

#### **21 Senior Judge**

- (1) The Governor may, by a person's commission as a Judge or by a subsequent commission under the public seal of the State, appoint one of the Drug Court Judges to be the Senior Judge of the Drug Court.
- (2) Subject to subsection (3), the Senior Judge holds office as Senior Judge while he or she holds office as Judge.
- (3) With the approval of the Governor, the Senior Judge may resign office as Senior Judge without resigning office as Judge.

#### **22 Acting Senior Judge**

- (1) The Minister may appoint a Judge to be acting Senior Judge during any absence from duty or vacancy in office of the Senior Judge.
- (2) An acting Senior Judge has the functions of the Senior Judge and anything done by the acting Senior Judge in the exercise of those functions has effect as if it had been done by the Senior Judge.

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

### **23 Single Judge to constitute Drug Court**

All proceedings in the Drug Court, and all matters arising out of any such proceedings, are to be heard and disposed of before a Judge, who constitutes the Court.

### **24 Jurisdiction of Drug Court**

- (1) The Drug Court has the following jurisdiction:
  - (a) the criminal jurisdiction of the District Court,
  - (b) the criminal jurisdiction of a Local Court,
  - (c) such other jurisdiction as is vested in the Drug Court by this or any other Act.
- (2) For the purpose of enabling it to exercise its jurisdiction, the Drug Court has the following functions:
  - (a) all of the functions of the District Court that are exercisable in relation to its criminal jurisdiction,
  - (b) all of the functions of a Local Court that are exercisable in relation to its criminal jurisdiction, including all the functions exercisable by a Magistrate under the *Criminal Procedure Act 1986* or the *Bail Act 1978*,
  - (c) such other functions as are conferred or imposed on it by or under this or any other Act.
- (3) For the purposes of section 98 (1) (b) and (c) of the *Crimes (Sentencing Procedure) Act 1999*:
  - (a) the Drug Court is a court of like jurisdiction in relation to the District Court, and
  - (b) the Drug Court is a court of superior jurisdiction in relation to a Local Court.

### **25 Sittings**

- (1) The Drug Court is to sit at such places and times as the Senior Judge may direct.
- (2) Two or more sittings of the Drug Court may be held at the same time.

### **26 Court proceedings**

- (1) This section applies to proceedings before the Drug Court in the exercise of its jurisdiction under this Act or the *Crimes (Administration of Sentences) Act 1999*, but does not apply to proceedings before the Drug Court in the exercise of the criminal jurisdiction of the District Court or the criminal jurisdiction of a Local Court.

- (2) Proceedings before the Drug Court are to be conducted:
  - (a) in accordance with the directions of the Judge presiding in the proceedings, and
  - (b) subject to paragraph (a), with as little formality and technicality, and with as much expedition, as the requirements of this Act, the *Crimes (Administration of Sentences) Act 1999* and any regulations made under those Acts and the proper consideration of the matters before the Court permit.
- (3) The Drug Court is not bound by the rules of evidence, but may inform itself on any matter in such manner as it considers appropriate.
- (4) The Drug Court may adjourn its proceedings from time to time.

## **27 Rules of court**

The Senior Judge may make rules of court, not inconsistent with this Act, for or with respect to any matter relating to the practice or procedure of the Drug Court, including:

- (a) any matter for or with respect to which rules may be made under the *District Court Act 1973* in relation to the criminal jurisdiction of the District Court, and
- (b) any matter for or with respect to which rules may be made under the *Criminal Procedure Act 1986* in relation to the criminal jurisdiction of a Local Court.

## **Division 3 Administration**

### **28 Court officers**

- (1) A registrar and such other officers as are necessary for the proper administration of this Act are to be appointed under Part 2 of the *Public Sector Management Act 1988*.
- (2) Arrangements may be made for the use by the Drug Court of the services of any staff (by secondment or otherwise) or facilities of a Government department.

### **29 Court business**

- (1) The Senior Judge is responsible for the administration of the business of the Drug Court.
- (2) The registrar may exercise:
  - (a) such of the administrative functions of the Court as are conferred or imposed on the registrar by the regulations or the rules of court, and
  - (b) such of the functions of a registrar of the District Court as are relevant to the exercise by the Drug Court of the criminal jurisdiction of a District Court, and
  - (c) such of the functions of a Clerk of a Local Court as are relevant to the exercise by the Drug Court of the criminal jurisdiction of a Local Court.

### 30 Delegation

- (1) The Senior Judge may delegate to a Judge any of the Senior Judge's functions, other than this power of delegation.
- (2) The registrar may delegate to any other officer of the Court any of the registrar's functions, other than this power of delegation.

## Part 4 Miscellaneous

### 31 Provision of information to Drug Court

- (1) This section applies to such persons as are prescribed by the regulations for the purposes of this section, being persons who are involved in the administration of, or who provide services in connection with, a drug offender's program.
- (2) It is the duty of a person to whom this section applies:
  - (a) to promptly notify the registrar of any failure by a drug offender to comply with the drug offender's program, and
  - (b) to promptly comply with the requirements of the regulations with respect to the giving of information to the registrar.
- (3) The following provisions apply to and in respect of any information (***protected information***) relating to a drug offender that is provided to the Drug Court, or to any person to whom this section applies, by a person to whom this section applies:
  - (a) the provision of the information does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct,
  - (b) no liability for defamation is incurred because of the provision of the information,
  - (c) the provision of the information does not constitute a ground for civil proceedings for malicious prosecution or for conspiracy,
  - (d) the information is not admissible in evidence in any proceedings before a court, tribunal or committee,
  - (e) a person is not compellable in any proceedings before a court, tribunal or committee to disclose the information or to produce any document that contains the information.
- (4) The provisions of subsection (3) (d) and (e) do not apply to or in respect of the provision of protected information:
  - (a) in proceedings before the Drug Court or any court hearing or determining an appeal from a decision of the Drug Court, or

(b) in support of, or in answer to, any charge or allegation made in proceedings against a person in relation to the person's exercise of functions under this Act.

(5) A drug offender is taken to have authorised the communication of protected information:

(a) from any person to whom this section applies to the registrar, and

(b) from the registrar to any person to whom this section applies, and

(c) from any member of staff of the Drug Court to any other member of staff of the Drug Court.

(6) A provision of any Act or law that prohibits or restricts the disclosure of information does not operate to prevent the provision of information in accordance with this section.

### **32 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:

(a) the forms to be used for the purposes of this Act, and

(b) the fees to be charged under this Act, and

(c) the postponement, waiver or remittal of fees charged under this Act.

### **33 (Repealed)**

### **34 Savings, transitional and other provisions**

Schedule 2 has effect.

### **35 Review of Act**

(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 2 years from the date of assent to this Act.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 2 years.

### **Schedule 1 (Repealed)**

## Schedule 2 Savings, transitional and other provisions

(Section 34)

### Part 1 Preliminary

#### 1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Drug Court Amendment Act 2002*

*Compulsory Drug Treatment Correctional Centre Act 2004* (but only to the extent that it amends this Act)

*Crimes and Courts Legislation Amendment Act 2005*

- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

### Part 2 Provisions consequent on enactment of **Drug Court Act 1998**

#### 2 Transitional provision for past offences

Part 2 applies to and in respect of an offence committed before the commencement of that Part in the same way as it applies to and in respect of an offence committed after that commencement, and so applies whether proceedings for the offence were commenced before or after that commencement.

### Part 3 Provisions consequent on enactment of **Drug Court Amendment Act 2002**

#### 3 Application of **Drug Court Amendment Act 2002** to existing programs

Each amendment made to this Act by any of the following provisions of the *Drug Court*



*Amendment Act 2002* extends to a program under this Act that is in effect immediately before the commencement of the amendment:

- (a) Schedule 1 [1] and [2],
- (b) Schedule 1 [5] (but only to the extent it inserts section 7 (5A) in this Act),
- (c) Schedule 1 [6],
- (d) Schedule 1 [7],
- (e) Schedule 1 [8],
- (f) Schedule 1 [9],
- (g) Schedule 1 [11].

## **Part 4 Provision consequent on enactment of *Compulsory Drug Treatment Correctional Centre Act 2004***

### **4 Compulsory drug treatment order may be made in relation to certain existing inmates**

- (1) Subject to subclause (2), Part 2A does not apply to a person who was sentenced before the commencement of this clause.
- (2) The Drug Court may make a compulsory drug treatment order in relation to a person who:
  - (a) was convicted of an offence, other than an offence referred to in section 5A (2), and was sentenced to serve a term of imprisonment by way of full-time detention for that offence within the period of 12 months before the commencement of this clause, and
  - (b) would be an eligible convicted offender if section 5A (1) (a) and (b) were disregarded,but only if:
  - (c) the unexpired non-parole period in relation to that sentence is a period of at least 18 months but not more than 3 years at the time the Drug Court makes the order, and
  - (d) the person would, but for the sentence of imprisonment, be ordinarily a resident of a local government area prescribed by the regulations.