



New South Wales

# Drug Court Amendment Bill 2002

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Drug Court Act 1998*:

- (a) to update the objects of the Act to better reflect the role of the Drug Court, and
- (b) to increase from 7 days to 21 days the maximum period for which a drug offender in a drug program under the Act can be committed to a correctional centre for detoxification or assessment, and
- (c) to enable the Drug Court to commit a drug offender to a correctional centre for a period of up to 21 days to facilitate the development of a treatment plan for the offender, and
- (d) to specify the kinds of conditions that the Drug Court may impose on a drug offender participating in a drug program under the Act, and
- (e) to clarify the circumstances in which the Drug Court may terminate a drug program on the basis that the participant has substantially complied with the program, and

- (f) to enable the Drug Court to terminate a drug offender's program if it is satisfied 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 offender may re-offend, and
- (g) to clarify the circumstances in which the disclosure of information to the Drug Court about a drug offender's participation in a drug program will be protected from civil liability, and
- (h) to provide that a sentence imposed under the Act does not prevent the Drug Court from imposing a sentence of imprisonment to be served consecutively, and
- (i) to enable the Drug Court to sentence a drug offender for a conviction entered by another court in circumstances where the offender failed to appear before that other court, and
- (j) to provide that the suspension of a sentence under the Act 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 1999*, and
- (k) to require the Drug Court to be satisfied, before it orders a person to participate in a drug program under the Act, that any persons with whom it is likely the person seeking to participate in the program would reside during the period of the person's participation in the program have consented in writing to the person residing with them during that period, and
- (l) to enact provisions of a savings and transitional nature consequent on the enactment of the proposed Act.

## Outline of provisions

**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** is a formal provision that gives effect to the amendments to the *Drug Court Act 1998* set out in Schedule 1.

## Schedule 1 Amendments

**Schedule 1 [1]** amends section 3 of the Act to provide that the objects of the Act are to reduce the drug dependency of persons who are eligible to participate in drug programs, to promote the re-integration of such drug dependent persons

into the community and to reduce the need for such drug dependent persons to resort to criminal activity to support their drug dependencies. **Schedule 1 [2]** makes a consequential amendment to section 3 (2).

**Schedule 1 [3]** amends section 7 of the Act to require the Drug Court to be satisfied, before it orders a person to participate in a drug program under the Act, that any other person (an *affected person*) with whom it is likely the person would reside during the period of the person's participation in the program has consented in writing to the person residing with the affected person during that period.

**Schedule 1 [4]** amends section 7 of the Act to specify the kinds of conditions that the Drug Court may impose on a person's participation in a program under the Act. These conditions include the following:

- (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 the program,
- (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 for satisfactory compliance with the program,
- (h) conditions relating to the imposition of sanctions for failure to comply with the other conditions of the program,
- (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.

**Schedule 1 [5]** amends section 7 of the Act to provide that an order made under that section suspending the execution of a sentence for the duration of a person's drug program does not operate to suspend any period of disqualification from holding a driver licence imposed on the person by or under the road transport legislation within the meaning of the *Road Transport (General) Act 1999*. It also makes an amendment that is consequential on the amendment made by Schedule 1 [3].

**Schedule 1 [6]** amends section 8A of the Act to extend the maximum period from 7 days to 21 days for which an offender participating in a drug program can

be committed to a correctional centre by the Drug Court for detoxification or assessment.

**Schedule 1 [7]** amends section 8A of the Act to enable the Drug Court to commit a drug offender to a correctional centre for a period of up to 21 days to facilitate the development of a treatment plan for the offender.

**Schedule 1 [8]** amends section 10 of the Act to provide that the Drug Court may terminate a drug offender's program if it is satisfied (on the balance of probabilities) that the offender is unlikely to make any further progress on the program or that the offender's further participation in the program poses an unacceptable risk to the community that the offender may re-offend. Currently, section 10 provides that the Drug Court may terminate a program if it is satisfied that there is no useful purpose to be served in the drug offender's further participation in the program

**Schedule 1 [9]** amends section 11 of the Act to provide that the Drug Court may terminate a drug offender's program if the Drug Court is satisfied on the balance of probabilities that, having regard to the objects of the Act, the offender has substantially complied with the program. Currently, section 11 provides that the Drug Court may terminate a program if the drug offender successfully completes a program.

**Schedule 1 [10]** amends section 15 of the Act:

- (a) to provide that section 58 of the *Crimes (Sentencing Procedure) Act 1999* does not apply to a sentence imposed by the Drug Court under the Act in respect of offences committed by a person while participating in a drug program under the Act, and
- (b) to provide that when the Drug Court convicts and sentences a person for an offence that has been referred to the Court by another court, the Court may also sentence the person under Division 3 (Taking further offences into account) of Part 3 of the *Crimes (Sentencing Procedure) Act 1999* for an offence for which the person has been convicted (but not sentenced) by another court under section 75B of the *Justices Act 1902* or section 196 of the *Criminal Procedure Act 1986* (as inserted by the *Criminal Procedure Amendment (Justices and Local Courts) Act 2001*).

Section 58 of the *Crimes (Sentencing Procedure) Act 1999* limits the power of a Local Court to impose a new sentence of imprisonment to be served consecutively (or partly concurrently and partly consecutively) with another sentence of imprisonment (the *old sentence*). Section 15 (1) (b) of the *Drug Court Act 1998* provides that, in the case of sentencing for summary offences, the Drug Court may impose any penalty that could have been imposed by a Local Court had the offence been dealt with summarily by a Local Court. The amendment referred to in paragraph (a) above will enable the Drug Court to

impose consecutive sentences in respect of offences committed while a drug offender is participating in a drug program.

Section 75B of the *Justices Act 1902* enables a Local Court to convict a person of certain offences where the person has failed to attend the Court when required to do so. The new section 196 of the *Criminal Procedure Act 1986* (as inserted by the *Criminal Procedure Amendment (Justices and Local Courts) Act 2001*) will replace section 75B of the *Justices Act 1902* when it commences. Currently, Division 3 (Taking further offences into account) of Part 3 of the *Crimes (Sentencing Procedure) Act 1999* enables a court to take into account other offences for which a person has been charged (but not convicted) in sentencing for a principal offence if the person consents. The amendment referred to in paragraph (b) above will enable the Drug Court to impose a single global sentence under Division 3 for an offence referred to it by another court by taking into account not only outstanding charges for other offences, but also any such *ex parte* convictions.

**Schedule 1 [11]** amends section 31 of the Act to make it clear that certain provisions of that section that provide protection against civil liability for the disclosure of information about a drug offender apply to and in respect of any information relating to a drug offender that is provided to the Drug Court, or to any person to whom the section applies, by a person to whom the section applies.

**Schedule 1 [12]** amends clause 1 of Schedule 2 to the Act to enable provisions of a savings and transitional nature to be prescribed by the regulations consequent on the enactment of the proposed Act.

**Schedule 1 [13]** inserts a new Part in Schedule 2 to the Act containing provisions to ensure that certain amendments to be made by the proposed Act extend to existing drug programs.

First print



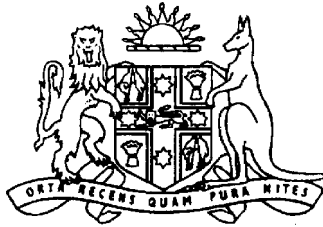
New South Wales

# Drug Court Amendment Bill 2002

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Drug Court Act 1998 No 150	2
Schedule 1 Amendments	3



New South Wales

## Drug Court Amendment Bill 2002

No. , 2002

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### **A Bill for**

An Act to amend the *Drug Court Act 1998* to make further provision with respect to participation in drug programs, the termination of drug programs, sentencing and the accommodation of participants; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Drug Court Amendment Act 2002</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5 6
<b>3 Amendment of Drug Court Act 1998 No 150</b>	7
The <i>Drug Court Act 1998</i> is amended as set out in Schedule 1.	8



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## Schedule 1 Amendments

(Section 3)

### [1] Section 3 Objects

Omit section 3 (1). Insert instead:

- (1) The objects of this Act are:
  - (a) to reduce the drug dependency of eligible persons, 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] Section 3 (2)

Omit “that object”. Insert instead “its objects”.

### [3] Section 7 Persons accepted into program

Insert after section 7 (2) (e):

- (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.

### [4] Section 7 (3B)

Insert after section 7 (3A):

- (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,

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(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,	1 2 3 4
(g) conditions relating to conferring rewards of the kind referred to in section 16 (1),	5 6
(h) conditions relating to the imposition of sanctions of the kind referred to in section 16 (2),	7 8
(i) any other kinds of conditions that may be prescribed by the regulations,	9 10
(j) such other conditions as the Drug Court considers appropriate in the circumstances.	11 12
<b>[5] Section 7 (5A) and (5B)</b>	13
Insert after section 7 (5):	14
(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 <i>Road Transport (General) Act 1999</i> .	15 16 17 18
(5B) For the purposes of subsection (2) (f):	19
(a) the consent of children below a prescribed age, and	20
(b) the consent of persons suffering a prescribed disability,	21
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.	22 23 24
<b>[6] Section 8A Statutory conditions of program</b>	25
Omit “7 days” from section 8A (1). Insert instead “21 days”.	26
<b>[7] Section 8A (1) (c)</b>	27
Insert at the end of section 8A (1) (b):	28
, or	29
(c) the development of a suitable treatment plan.	30

<b>[8] Section 10 Proceedings for non-compliance with program</b>	1
Omit section 10 (1) (b). Insert instead:	2
(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.	3 4 5 6 7 8
<b>[9] Section 11 Termination of program</b>	9
Omit section 11 (1) (a). Insert instead:	10
(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	11 12 13 14
<b>[10] Section 15 Sentences imposed by Drug Court</b>	15
Insert after section 15 (2):	16
(3) The provisions of section 58 of the <i>Crimes (Sentencing Procedure) Act 1999</i> 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.	17 18 19 20 21 22
(4) The provisions of Division 3 (Taking further offences into account) of Part 3 of the <i>Crimes (Sentencing Procedure) Act 1999</i> apply in relation to a relevant conviction of a person for an offence as if:	23 24 25 26
(a) the person had been charged, but not convicted, of the offence, and	27 28
(b) the person had admitted guilt for the offence for the purposes of section 33 (2) (a) (i) of the <i>Crimes (Sentencing Procedure) Act 1999</i> .	29 30 31
(5) In this section, <b>relevant conviction</b> 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:	32 33 34 35 36

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(a)	section 75B of the <i>Justices Act 1902</i> ,	1
(b)	section 196 of the <i>Criminal Procedure Act 1986</i> (as inserted by the <i>Criminal Procedure Amendment (Justices and Local Courts) Act 2001</i> ).	2 3 4
<b>[11]</b>	<b>Section 31 Provision of information to Drug Court</b>	5
	Omit “The following provisions apply to and in respect of any information provided for the purposes of this section ( <i>protected information</i> )” from section 31 (3).	6 7 8
	Insert instead “The following provisions apply to and in respect of any information ( <i>protected information</i> ) 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”.	9 10 11 12
<b>[12]</b>	<b>Schedule 2 Savings, transitional and other provisions</b>	13
	Insert at the end of clause 1 (1):	14
	<i>Drug Court Amendment Act 2002</i>	15
<b>[13]</b>	<b>Schedule 2</b>	16
	Insert at the end of the Schedule (with appropriate Part and clause numbers):	17 18
	<b>Part Provisions consequent on enactment of Drug Court Amendment Act 2002</b>	19 20
	<b>Application of Drug Court Amendment Act 2002 to existing programs</b>	21 22
	Each amendment made to this Act by any of the following provisions of the <i>Drug Court Amendment Act 2002</i> extends to	23 24

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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].

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